



**NZSTA**  
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# Governance support resources

## Responding to information requests

### Where to go for help

1. The Privacy Commissioner and Office of the Ombudsman are the experts in this area. Schools and boards can contact them for advice. You can also go to their websites and resources on:
  - <https://privacy.org.nz/about-us/contact/>
  - <http://www.ombudsman.parliament.nz/resources-and-publications/guides/official-information-legislation-guides>
2. The Office of the Ombudsman has useful guides on many aspects of information requests under the Official Information Act 1982 and the Local Government, Official Information Act 1987. Many include letter templates.
3. The Office of the Privacy Commissioner has an easy-to-use and helpful "Ask Me" tool.
4. Both websites have calculators to quickly work out the 20 working-day timeframe to respond to a request.

The board is the legal entity responsible for ensuring all information requests are dealt with correctly.

Complex information requests are time consuming and throw the spotlight on school and board processes.

## 1 Responding to Information Requests

### 1.1 Overview

1. Every day, schools deal quickly and efficiently with straightforward information requests such as the following example:

**"I would like my child's records, because the family is moving overseas."**

2. This guide identifies risks and learnings for boards dealing with less straightforward information requests. It also gives boards steps to follow about how to approach these types of information requests.

### 1.2 The board is the legal entity responsible for responding to information requests

1. The board is the agency subject to the Privacy Act, and the crown entity subject to the Local Government, Official Information and Meetings Act and the Official Information Act. The board is therefore the legal entity responsible for ensuring all information requests are dealt with correctly.
2. For a request under the Privacy Act the board (as agency) should have a Privacy Officer. This is usually the principal or member of the senior leadership team. Requests under the Local Government, Official Information and Meetings Act and the Official Information Act are usually dealt with by the board on a case-by-case basis, delegating as appropriate.

### 1.3 Information requests - risks and learning opportunities for boards

1. Less straightforward information requests pose a legal risk for boards. They are time-consuming, can generate further requests, and can be associated with complaints.
2. Poorly dealt-with requests can lead to complaints to the board, the Privacy Commissioner and the Office of the Ombudsman.
3. Information requests give boards and schools the chance to identify any gaps in their policies and procedures in light of the information requested.

4. The following is a list of some of the board and school areas of responsibility relevant to information requests:
  - a. Information requests
  - b. Collection, use, storage and retention of information;
  - c. Board meeting procedures;
  - d. Staff and parent concerns and complaints;
  - e. Student management procedures, including enrolment and Student discipline processes,
  - f. Health and Safety, including child protection, visitors and Vulnerable Children Act 2014 notifications to Oranga Tamariki.
5. Boards with policies and procedures in place which are regularly reviewed are best equipped to respond to information requests.

#### 1.4 Information requests – good board practice

1. The board is expected to be helpful to the requester, and should ensure the information is provided as soon as possible.
2. As soon as the request is received, briefly acknowledge the request and calculate the 20 working-day response timeframe.
3. Notify the board's insurer for all but a straightforward information request.
4. Refer straightforward Privacy Act requests to the school Privacy Officer; and straightforward requests under the Official Information Act to the principal to be dealt with as part of their responsibility for day-to-day administration.
5. All other requests should come to the board. The request should be tabled at the next board meeting, and the board can delegate who is to deal with it.
6. Because of the 20 working-day response timeframe, it may be necessary for the chair to call an additional meeting, which needs to be notified in the usual way.
7. Alternatively, the board could make the necessary decisions about who is to deal with the request, by way of an electronic resolution. This must be agreed to by all trustees currently in office. The resolution and all responses must be tabled at the next board meeting. They form part of the board's records.
8. Once the board has made a decision about the information request itself, it must notify the requester within 20 working-days. It should either provide the information at the same time, or within a reasonable time.
9. In some circumstances a charge can be considered for the time and expenses incurred in actually providing information to the requester under the Official Information Act. Refer 7.
10. Apart from the acknowledgement in 2, above, all communications with the requester should be on board letterhead, and signed with board authority, on behalf of the board.
11. If the requester is unhappy about a board decision to extend the time to respond, to withhold information, or to charge for providing information, they can complain to the Office of the Ombudsman.
12. The board's notification letter needs to tell the requester they can complain about any decision to withhold information.

#### 1.5 More about information requests

1. Individuals and entities can make information requests about themselves or someone else, even if that person is not a member of the school's community. These include:
  - a. Any citizen or permanent resident of New Zealand
  - b. Any person who is in New Zealand,
  - c. The media; and
  - d. A New Zealand-incorporated company, or a company with a New Zealand-based office.
2. An information request does not have to be in writing.
3. The information requested does not have to be written ('information of the mind').
4. The requester does not have to give a reason for their request, even when the board asks for one.
5. If the board asks the requester why they are making their request, their letter should explain why. For instance, to help it decide whether the public interest in providing the information is equal to or outweighs any good reason to withhold; or to narrow the scope of a very wide request.
6. An example of a very wide request:

**"I want every document about my child, including all records about attendance, academic progress, pastoral care and student discipline, all emails, all meeting minutes, and notes of every discussion between teachers, including RTLB teachers and SWiS staff."**

Even if the person has not specified an Act, or has named the wrong Act, the board must still consider the request under the appropriate legislation.

## 2 Deciding which Act applies

Even if the person has not specified an Act, or has named the wrong Act, the board must still consider the request under the appropriate legislation.

### 2.1 General rules

1. Requests for copies of meeting agendas, associated reports, and minutes are usually covered by the Local Government, Official Information and Meetings Act.
2. Requests for a person's own information are covered by the Privacy Act.
3. All other requests for information are covered by the Official Information Act.
4. Sometimes an information request must be considered under more than one Act. An example:

**“Can I please have board minutes about my complaint; my child’s behaviour records; and all correspondence and meeting notes between my ex-husband and my child’s class teacher.”**

### 2.2 Local Government Official Information and Meetings Act (LGOIMA)

#### 2.2.1 Agendas and reports

1. Members of the public can inspect agendas and reports at the school office within at least two working-days of a board meeting. This does not include reports likely to be considered during public excluded business ('in committee').
2. Members of the public who are inspecting agendas and reports can:
  - a. Take notes from the documents; and
  - b. Request a copy of each document free of charge. The board must ensure the requester is provided with a free copy as soon as possible.
3. Members of the public attending a board meeting are entitled to a free copy of the agenda on request.

#### 2.2.2 Minutes

1. Members of the public can view minutes from the public part of any board meeting at the school office. When inspecting minutes they are entitled to take notes and can request a copy, free of charge.
2. A request for minutes from the public excluded part of the meeting ('in committee') is a request under the Privacy Act, if the requester is requesting information about themselves. All other information in these minutes within the scope of the request is considered under the Official Information Act.

### 2.3 Privacy Act

1. The Privacy Act covers situations where an individual, or their agent authorised in writing, is requesting their own personal information.
2. Requests for information that include the personal information of others must be carefully reviewed, and information that identifies or names others must be deleted ('redacted'). Refer 4.5.
3. There are very limited circumstances in which the requester's personal information can be redacted or their request refused under the Privacy Act.
4. A request by parents for information about their child is dealt with under the Official Information Act, unless:
  - a. It is information parents have a right to receive about their child (refer 6) or,
  - b. The child has authorised the parent to make the request as their agent.
5. Refer requests for information under the Privacy Act to the school's Privacy Officer.

### 2.4 Official Information Act (OIA)

The OIA covers all other information requests, including requests from parents for information about their children.

Information requests that involve the OIA expose boards to the most risk, and dealing with them can take up considerable time and energy for principals and boards.

## 3 Dealing with an information request under the OIA

1. Information requests that involve the OIA expose boards to the most risk, and dealing with them can take up considerable time and energy for principals and boards.
2. Once the board has acknowledged the request, notified the insurer and if necessary, sorted out delegations (refer 1.4) here are the steps to follow.

### Step one: Scoping the request

Questions for the board:

1. Does the request for any of the information have to be transferred to another agency, for instance the Ministry of Education or Oranga Tamariki? There is a timeframe for this. Refer step 2.

2. If the request is verbal or unclear does the board need to clarify it in writing with the requester?
3. Does the request include information parents have a right to receive about their child? Refer 6.
4. Does part of the request relate to information the board or school no longer holds?
5. Does the scope of the request include 'information of the mind?' For example, if no notes exist of a meeting, the board must still provide that information. A statement from someone present at the meeting could be provided.
6. Is the information requested in digital or paper form or a mixture of both, and has the requester asked that it be provided in a particular form?
7. Has all relevant information within the scope of the request been identified?
8. If the scope of the request is very wide, could the board work with the requester to narrow its scope?
9. Would it be appropriate to charge a fee for providing the information to the requester? Refer 7.
10. What information can be reasonably provided within the 20 working-day timeframe?
11. Is there some information that might take the board longer to retrieve? In that case the board might need to notify the requester of an extension of time. The extension of time needs to be notified to the requester within the 20 working-day timeframe.

#### **Step two: Check if information requested comes from another agency**

1. Should the board notify the other agency of the information it proposes to release, or are there parts of the request that should be dealt with by that agency? The board can transfer the request to another agency if it believes the information is held by, or is more closely connected with, the functions of that agency.
2. The transfer should be made within 10 working-days of receiving the request, and the board should inform the requester.

#### **Step three: Decide if any information can be withheld**

When deciding whether to withhold any information, the board's starting point is that it will provide all the requested information as soon as possible, unless any of the following applies: 'conclusive' reason to withhold; 'other' good reason to withhold, (that equals or outweighs the public interest in providing the information), or an 'administrative' reason to refuse the request. Refer 4.

#### **Step four: Notify requester of the board's decision on their request**

Refer 5.

## **4 More about withholding information**

### **4.1 Conclusive reason to withhold information**

Conclusive reasons include:

1. Release of the information would be likely to prejudice the maintenance of the law.
2. Release of the information would be likely to endanger the safety of an individual.

### **4.2 Good reason to withhold information**

Good reasons include:

1. To protect the privacy of natural persons.
2. To maintain effective conduct of public affairs through:
  - a. Free and frank expression of opinions by or between:
    - i. members of an organisation subject to the OIA; or
    - ii. employees of any organisation subject to the OIA, in the course of their duty; or
  - b. The protection of such members of organisations and employees from improper pressure or harassment.
3. To maintain legal professional privilege.
4. To protect information that if released, would unreasonably prejudice the commercial position of the supplier/subject of the information.
5. To enable a Minister of the Crown or any department or organisation holding the information to carry out commercial activities without prejudice or disadvantage.
6. To protect confidential information where:
  - a. Providing the information would prejudice the supply of similar information, and
  - b. It is in the public interest that this information continues to be supplied; or
  - c. Would likely otherwise damage the public interest.

If the board decides there is a 'good reason to withhold information' it then needs to decide if that reason equals or outweighs the public interest in providing the information.

### 4.3 Weighing public interest when there is good reason to withhold information

If the board decides there is a 'good reason to withhold information' it then needs to decide if that reason equals or outweighs the public interest in providing the information.

### 4.4 Administrative reasons to withhold information

Administrative reasons include:

1. The information is publicly available, or soon will be.
2. The request is frivolous or vexatious, or the information requested is trivial.
3. The document alleged to contain the information does not exist or cannot be found.
4. The information cannot be made available without substantial collation and research. If this reason applies, the board also needs to also look at whether charging or extending the time limit would solve the issue. It needs to consult with the requester about this.

### 4.5 Redactions

1. If the board decides to release a document after some of the information has been withheld it will need to make deletions or alterations to the document as necessary. These are called 'redactions'.
2. Check carefully to make sure the redacted information cannot be seen in the document to be released.
3. Two ways to redact are:
  - a. With a felt tip pen to "black out" the information; and
  - b. Online, using black highlighter.

## 5 The board's notification letter

1. The board's letter notifying the requester of its decision about their request needs to clearly reference the requested information.
2. If the requested information no longer exists, the letter needs to advise the requester of this.
3. If the board refuses the request or withholds some of the information which is part of the request, it needs to let the requester know the reason for this (example: "to protect the privacy of natural persons").
4. Advise the requester of their right to complain to the Office of the Ombudsman if they are not happy with the board's decision.

## 6 Information schools must give parents about their children

1. The Education Act 1989, section 77, gives parents the right to receive reports on:
  - a. The achievement of their child; and
  - b. Any matters slowing the progress of their child or harming their relationship with staff or other students.
2. When both parents are noted on the school's enrolment records the school can assume both parents are entitled to information about their child.
3. Parents as guardians are also entitled to certain information about their child to exercise their role. This is usually similar to the information obligations described above.
4. Usually both parents are guardians of their child. Sometimes a child has additional court-appointed guardians. There is more information about the role of the guardian in the Care of Children Act 2004.
5. Uncertainties about the information the school must provide to parents about their child can arise with separated parents if they have unequal responsibility for the child and / or there is a parenting dispute. Note, even if there is a court order preventing contact between a parent and their child they are still permitted certain information about their child if they are the child's guardian.
6. If a parent's request for information is broader than information that meets the above obligations, then it should be considered under the OIA.
7. The younger the child, then the public interest in parents being able to receive information about their child usually outweighs the child's right to privacy.
8. For requests by parents for information about their older child, the public interest balance could change, depending on the circumstances of the requester and of the child. This is because there could be information the student does not want shared with their parents.
9. Contact NZSTA Governance Advisory and Support Centre for advice if unsure.

## 7 Charging for information

1. The OIA does not permit the board to charge for time and expenses incurred when considering whether to provide information, but it can consider a reasonable charge for the time and expenses incurred in actually providing the requested information.
2. The board needs to look at whether payment might cause the requester financial hardship, and whether there is a public interest in releasing the information without a charge. If the requested charge is substantial, it is good practice to allow the requester a chance to narrow the request.
3. The amount charged should follow the Ministry of Justice Charging Guidelines, available on [www.justice.govt.nz](http://www.justice.govt.nz). The most common charges made by boards are for photocopying and staff time. The Charging Guidelines allow for 20c per page photocopied, after the first 20 page, and \$38 per half hour, after the first hour, for staff time spent in making the information available.
4. When the board has decided to charge for releasing the information it must advise the requester of the estimated amount, and the right to ask the Ombudsmen to review this.



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### Where do I get advice?

The *Governance advisory and support centre* advisers can also assist and are contacted on 0800 782 435, option 1 or [govadvice@nzsta.org.nz](mailto:govadvice@nzsta.org.nz)