

Department of Labour  
TE TARI MAHI



# ***Privacy Act Policy***

***October 2005***

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# **PRIVACY ACT**

## **QUICKGUIDE**

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### ***Process is Paramount***

- The right decision should flow from good process!

### ***It's Core Business not a Chore***

- This is a service to the public we take pride in
- Plan it
- Managers have an important role.

### ***The key things that MUST happen within the first 3 working days***

- Register the request
- Assign responsibility
- Choose the right Act
- Preliminary consultation where necessary
- Consider the need to transfer the request
- Consider extending time

### ***What Rules always Apply?***

- The 3 working day DoL rule
- Decisions made by authorised persons
- Assemble all the information covered by request (unless section 29(2) applies)
- Statutory timeframes
- Notify requester of right to review by Privacy Commissioner
  - if extending time
  - if information withheld
- Legal advice before withholding information.

### ***Key Principle***

- A right of access.

### ***What is Personal Information***

- Everything that is associated with, and could identify, an individual!

# **PRIVACY ACT CHECKLIST 1**

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## **REQUEST TO DOL**

### ***Processing Steps : Days 1-3***

1. Register the Request
2. Allocate a decision maker
3. Allocate someone to process request
4. Confirm it is a Privacy Act request (confirm the requester is asking for information about themselves)
5. Consider who should really answer the request
6. Consult where necessary (about who should handle the request)
7. (Where appropriate, transfer the request but note, transfers can be made up to 10 days after the request is received)
8. Where appropriate, extend time
9. Engage with requester to clarify scope or content where any doubt
10. Acknowledgement letter (if no transfer or extension).

### ***Subsequent Processing Steps***

11. Assemble all relevant information
12. Assess the information and apply the Act's criteria
13. Make a preliminary decision
14. Consider the need for an extension again.
15. Get legal advice if proposing to withhold anything
16. Consult where appropriate
17. Final decision made by authorised decision maker

# **PRIVACY ACT**

## **CHECKLIST 2**

### **REQUEST DIRECT TO MINISTER**

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#### ***Processing Steps : Days 1-3***

1. Register request as Ministerial
2. Allocate a decision maker ( who will decide nature of advice to be given to Minister)
3. Allocate someone to process request
4. Confirm it is a Privacy Act request (confirm the requester is asking for information about themselves)
5. Consider who should really answer the request
6. Consult where necessary (about who should handle the request)
7. (Where appropriate, arrange for Minister to transfer the request)
8. Assess timing requirements – is an extension of time likely to be necessary?
9. Where appropriate, arrange for Minister to extend time
10. Acknowledgement letter (if no transfer or extension).

#### ***Subsequent Processing Steps***

11. Assemble all relevant information
12. Assess the information and apply the Act's criteria
13. Make a preliminary decision
14. Again consider the need for an extension.
15. Get legal advice if proposing to withhold anything
16. Consult where appropriate
17. Decision on nature of final advice to Minister made by authorised decision maker.
18. Advice, including draft response letter, to Minister's office at least 5 days before due date.

# **PRIVACY ACT**

## **CHECKLIST 3**

### **REQUEST TO DOL TRANSFERRED TO MINISTER**

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#### **Processing Steps : Days 1-3**

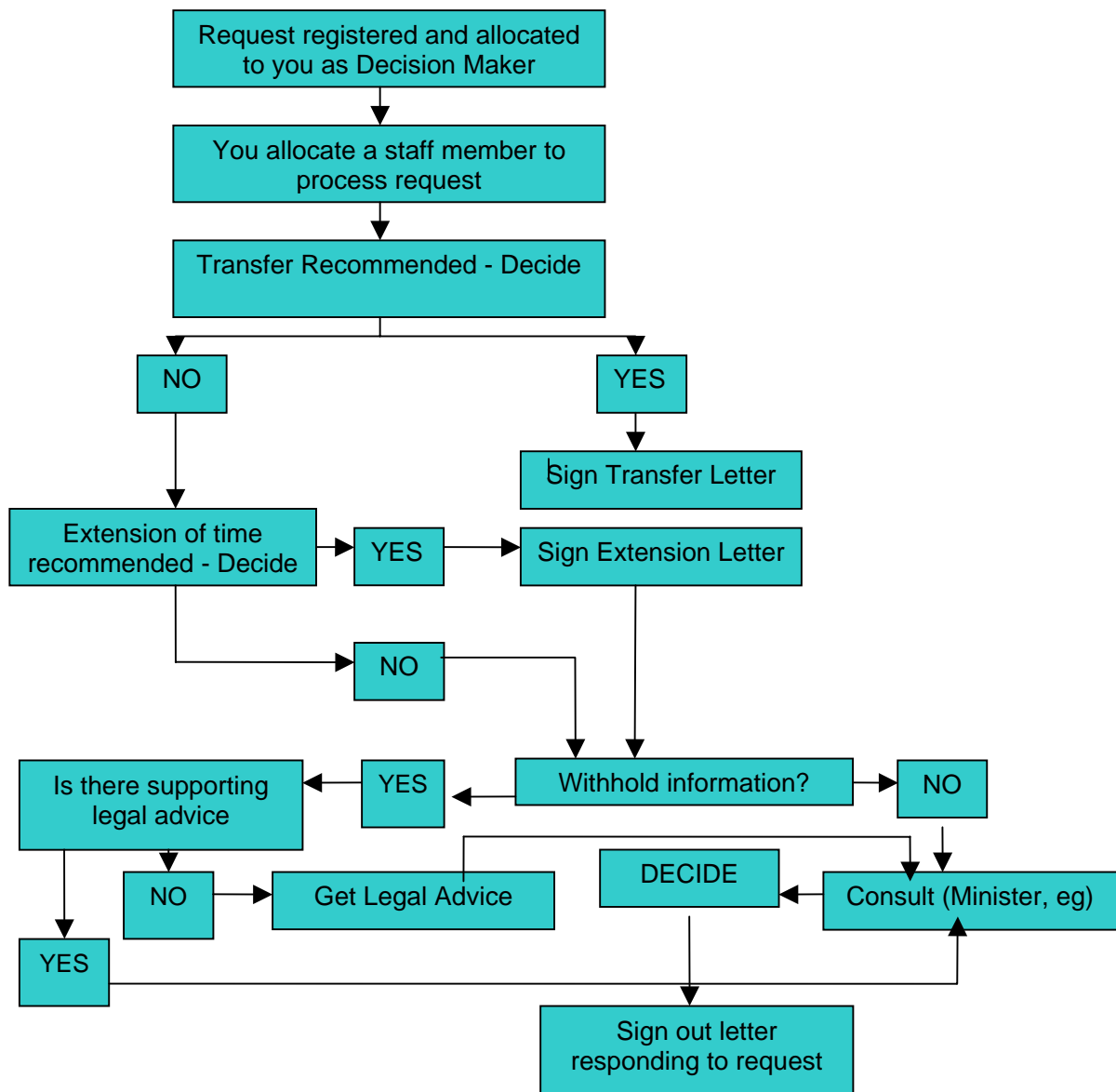
1. Register request
2. Allocate a decision maker ( who will decide nature of advice to be given to Minister)
3. Allocate someone to process request
4. Confirm it is a Privacy Act request (confirm the requester is asking for information about themselves)
5. Consider who should really answer the request
6. Consult where necessary (about who should handle the request)
7. Transfer request to Minister
8. Notify requester of transfer
9. Request re-registered as Ministerial
10. Engage with requester on Minister's behalf to clarify scope or content where any doubt
11. Assess timing requirements – is an extension of time necessary?
12. Where appropriate, arrange for Minister to extend time

#### **Subsequent Processing Steps**

13. Acknowledgement letter (if no transfer or extension, or if Minister's office have not already acknowledged receipt).
14. Assemble all relevant information
15. Assess the information and apply the Act's criteria
16. Again consider the need for an extension.
17. Make a preliminary decision
18. Get legal advice if proposing to withhold anything
19. Decision on nature of final advice to Minister made by authorised decision maker.
20. Advice, including draft response letter, to Minister's office at least 5 days before due date.

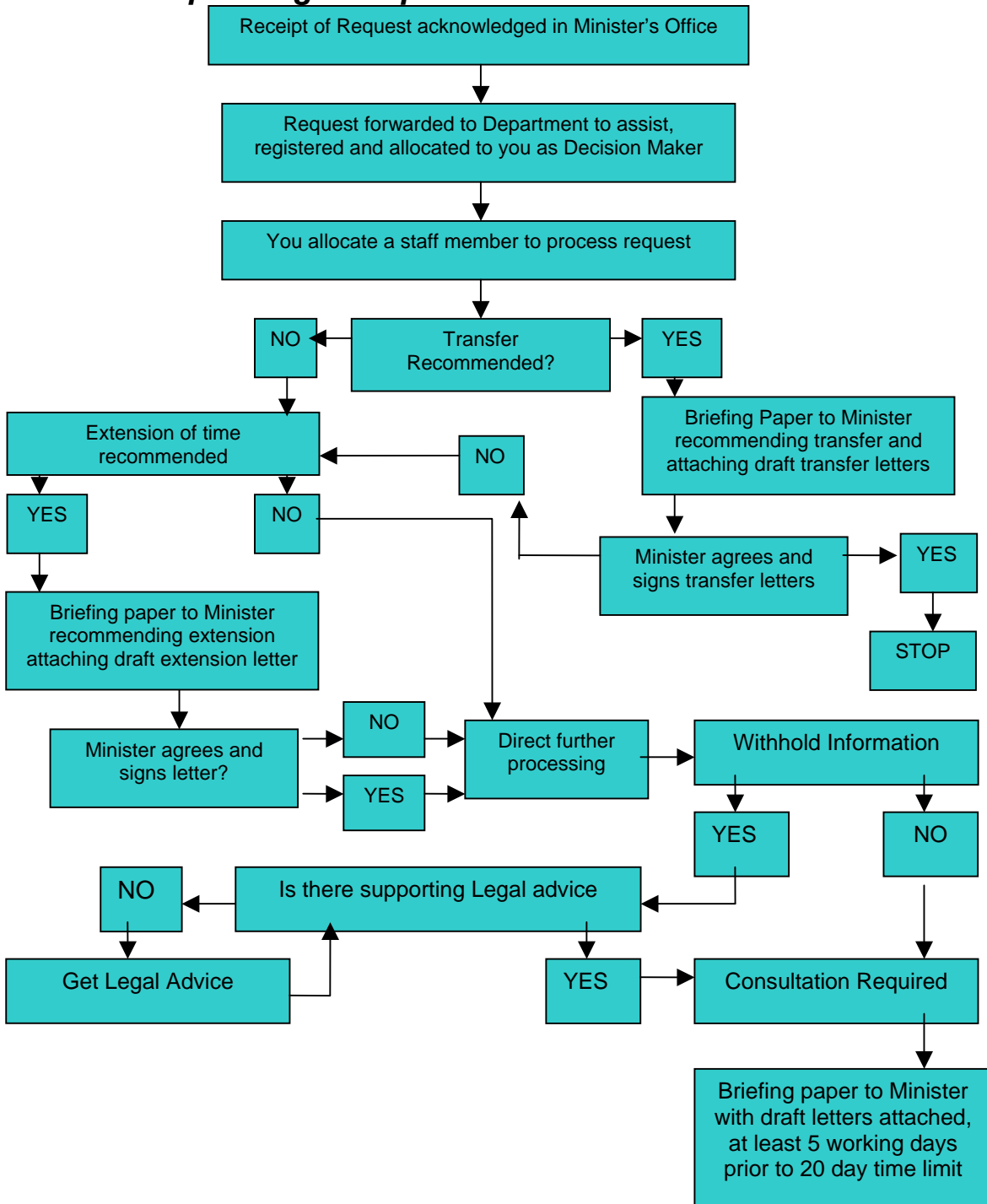
# PRIVACY ACT FLOWCHART 1

*For Managers with responsibility for oversight of requests to DoL*



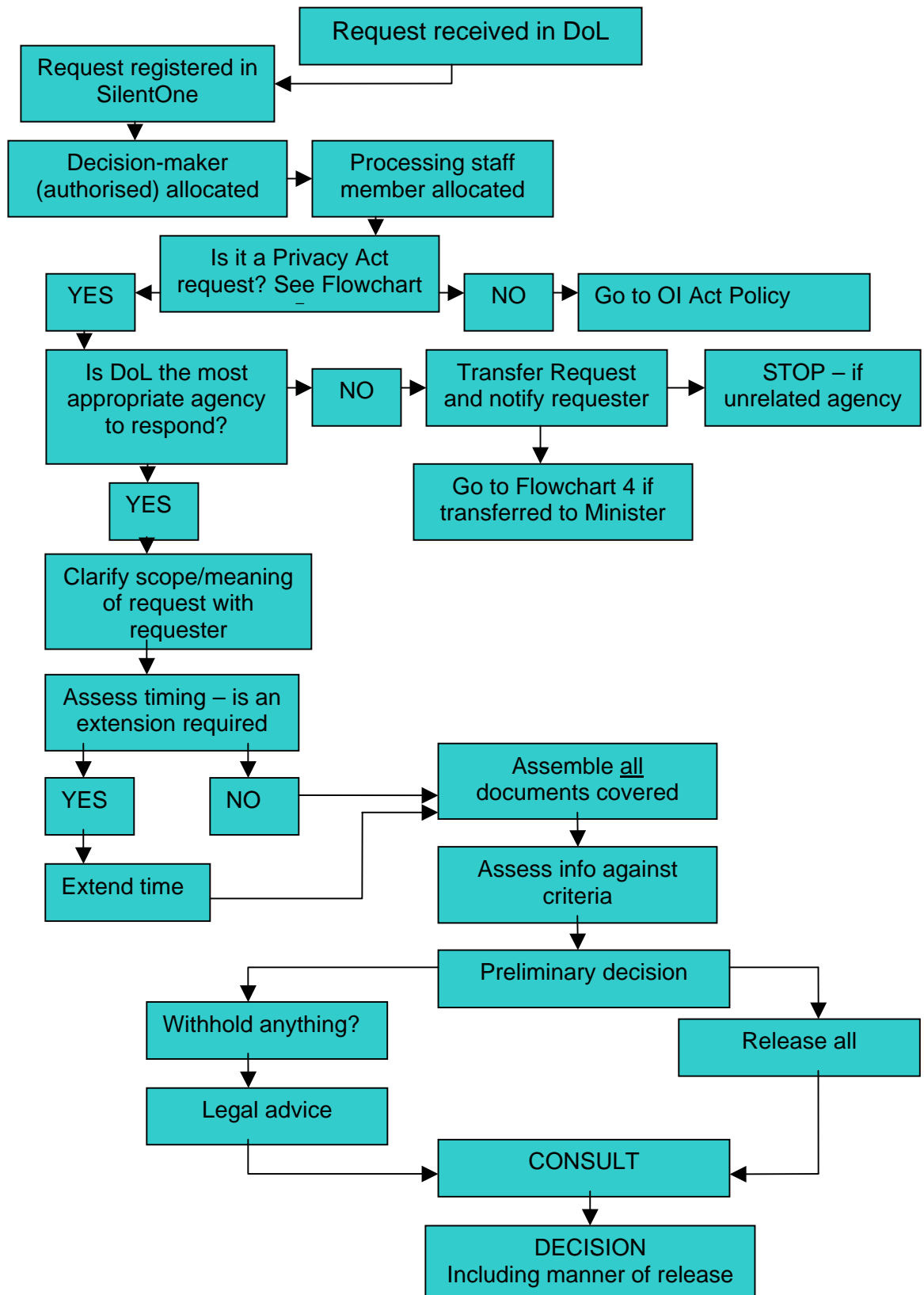
# PRIVACY ACT FLOWCHART 2

**For Managers with responsibility for providing support to Minister's Office in responding to request**



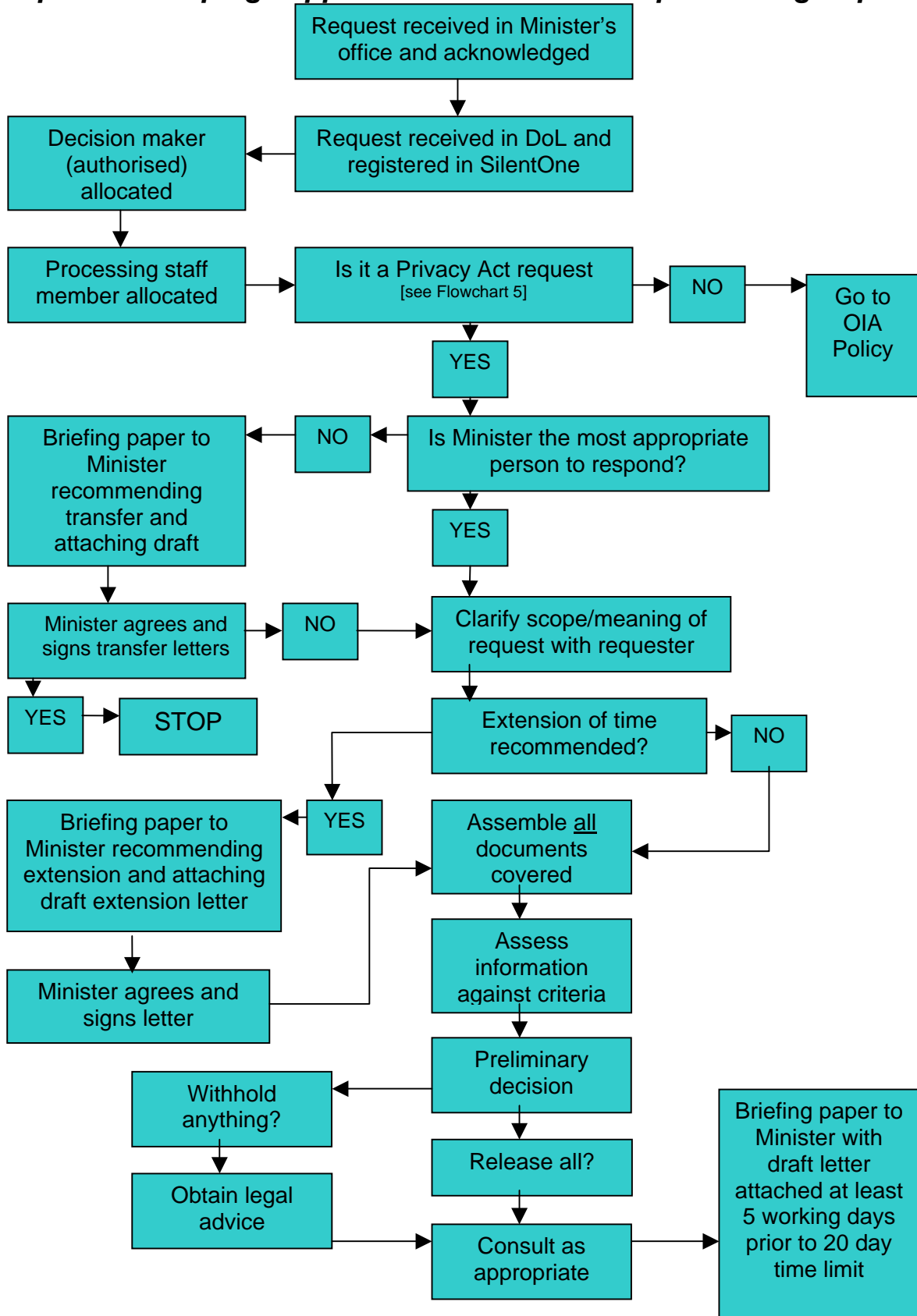
# PRIVACY ACT FLOWCHART 3

*For persons processing requests to DoL*



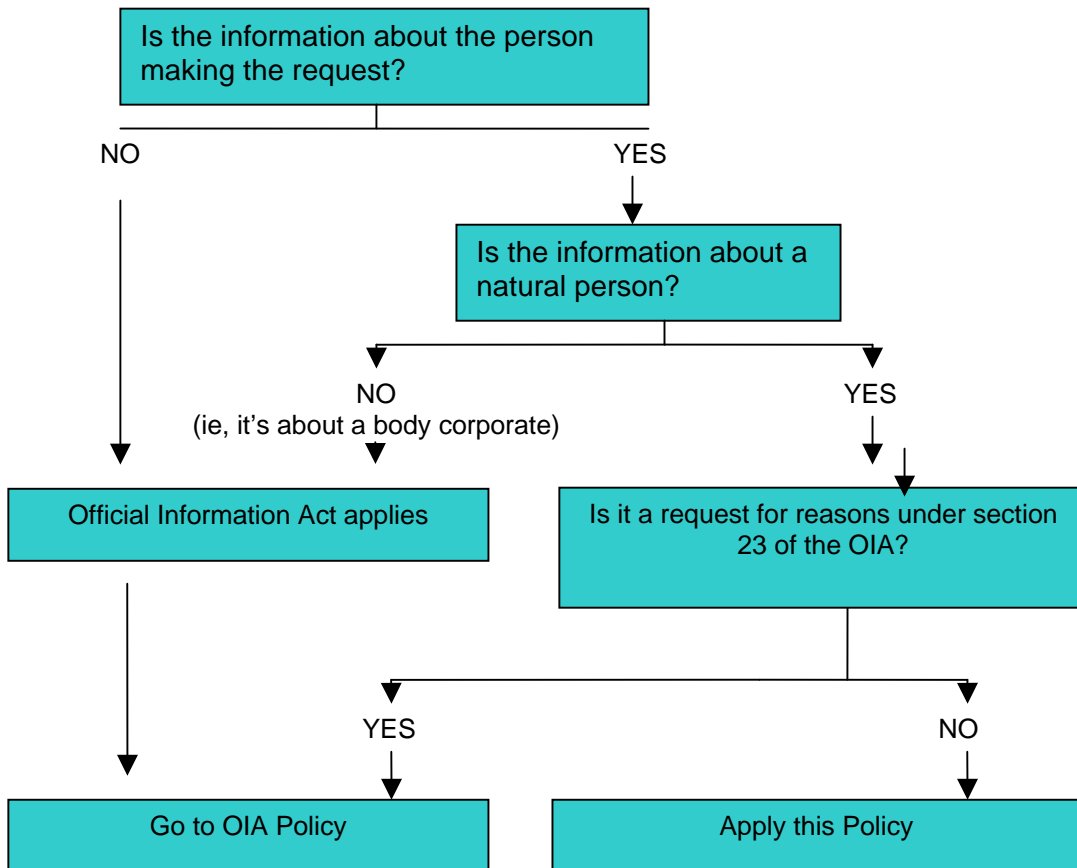
# PRIVACY ACT FLOWCHART 4

*For persons helping support Minister's Office in processing requests*



# OFFICIAL INFORMATION ACT FLOWCHART 5

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# ***A. General Information – Background***

## ***A.1 What is the Privacy Act?***

The Privacy Act 1993 is intended to promote and protect personal privacy by imposing rules on the ways that agencies collect, store, use, and disclose personal information. It also gives people a legal right to have access to information about themselves, and a right to request correction of any incorrect or misleading personal information.

The main emphasis of this policy is on the individual's right of access to information about himself or herself. To see where this right fits in the context of other privacy principles, a brief summary of the principles is included at paragraph A.9 ([A.9 Other parts of the Privacy Act – the information privacy principles](#)). When people think about the Privacy Act, they often see it as mainly being about non disclosure of personal information. For this reason, this policy also briefly discusses the disclosure of personal information other than when it has been requested by the person it is about – refer to Part H ([Part H. Disclosure of Personal Information - Information Privacy Principle 11, other legislation](#)).

The Department of Labour is committed to meeting its obligations under the Act and to properly providing “information services” to those who are entitled to expect them.

## ***A.2 What is a Privacy Act Request?***

Any request made by or on behalf of a person to the Department for information about that person, is a privacy request ([C.4 Choose the Right Act – OI or Privacy](#) to decide whether it is an Official Information Act request or a Privacy Act request).

- A valid request can be made orally or in writing. It is good practice to request that an oral request be made in writing. If an oral request is insisted on you should make a written record of it and the time it was made.
- Requesters do **not** need to mention the Privacy Act (indeed, many refer to the Official Information Act, or fail to mention any legal authority for their request). All they have to do is ask for information.
- The Department is **not** required to create information which doesn't already exist [although note clause D.2 [D.2 Assemble all Information](#) in relation to information which exists, but which has not yet been written down].
- In addition to being required to provide copies of files and documents we hold, the Department can also be required to assemble the reasons for a decision about a person and the relevant facts under section 23 of the Official Information Act (see “Policy for Handling Official Information Requests” Part G)

## ***A.3 Who can make a Privacy Act Request?***

The following persons are entitled to make a Privacy Act request:

- A New Zealand citizen (whether in NZ or not)
- A New Zealand permanent resident (whether in NZ or not)
- Any other person who is actually in New Zealand

If a person making a request does not fall within any of those categories then they are not entitled to make the request and the Department has no obligation to provide any information.

If they:

- get someone else who is eligible to make a request to make the request instead of making it themselves, it will be an Official Information Act request, and must be dealt with under the “Policy for Handling Official Information Act Requests” [and accordingly there may be issues about whether the information can be released to that other person, as it would breach the privacy interests of the person to whom the information relates. However, this can be overcome if that person consents to their information being released]; or
- appoint someone to act on their behalf, then the request is made under the Privacy Act, and should be processed as if the person actually making the request and the person about whom the information relates, were one and the same person.

In immigration matters, where the Department has made a decision on a person’s application for a permit or a visa, the Department’s policy is to respond to requests as if the person were eligible to make a request, even where they are not a New Zealand citizen or resident, and are outside New Zealand.

If the request is made by an ineligible person, it is still necessary to provide a response and explain the reason for refusing the request. Even in that situation we are obliged to advise the requester of their right to seek a review of the refusal by the Privacy Commissioner.

[\[Letter to Person Not Entitled to Make Request\]](#)

#### ***A.4 Requests on behalf of individual concerned – Lawyers, representatives, advocates, consultants.***

Where a request is made by someone other than the individual client, for example, by an immigration consultant, lawyer, or employee’s representative, in the majority of circumstances, the client’s written authorisation to make the file available to the agent is required. Section 45(c) of the Act requires

Where an information privacy request is made pursuant to ... principle 6, the agency—  
(c) Shall ensure that, where the request is made by an agent of the individual, the agent has the written authority of that individual to obtain the information or is otherwise properly authorised by that individual to obtain the information.

Where a copy of the written authorisation is not able to be kept on file, a file note should be kept explaining the reasons why it was believed that the person had authorised the request. These reasons could also be recorded in the acknowledgement letter.

#### ***A.5 Requests on behalf of individual concerned – Members of Parliament and their staff***

Where a request is made by a member of Parliament, or an electorate secretary, the Department’s policy is to take a slightly different approach to individual authorisation.

Constituents often contact their MPs’ offices by telephone, and requiring written authorisation in all cases would be overly burdensome. However a distinction can be made between giving advice on the constituent’s case, and providing a full copy of the file.

The Department is able to disclose information to the electorate secretary or MP where we believe that the person concerned has authorised the electorate secretary or MP to receive the information on their behalf. To be satisfied that they are authorised, we should ask the following questions and record the answers on the file:

- Has the person concerned authorised you to make enquiries on their behalf?
- If not, has someone acting in the person's interests authorised you to make enquiries on the person's behalf (for example where the person concerned is unable to communicate because of illness, disability or language, a relative or adviser might have asked the MP to take up the case for the person.)
- Is the authority just to find out information about the person's current circumstances or complaint, or has the person asked the electorate secretary or MP to obtain a full copy of their file for the person?
- If the authority is to provide a full copy of the file to the electorate secretary or MP, what is the reason for not being able to obtain a written authority?

### ***A.6 What Information is Covered or What Amounts to "Personal Information"***

Individuals have a right of access to "personal information". "Personal information" is defined as "information about an identifiable individual". The right is to *information*, regardless of the form in which the information is held.

That means it covers **everything** on our paper filing systems, on our electronic systems, and (to the extent it can be accurately remembered) any departmental information in the memory of officials that is not otherwise physically recorded somewhere. **No categories of information or document are excluded. For example, it covers drafts!**

Given the comprehensive nature of the above, it can be misleading to try and list types of documents. But the list below of **things that you might not think are covered** is intended to demonstrate that **everything** we have is or might contain something that contains "personal information":

- Drafts of papers or letters, if still held
- Emails (including those dealing with routine processes such as setting up meetings)
- Media logs
- Computer disks
- Magnetic tapes
- Notes of meetings/interviews
- Information held by an agent of the Department doing work on our behalf (eg, a consultant or contractor)
- Oral advice (whether internally or externally, such as to a Minister)
- Recollections of an un-minuted meeting
- Information provided to the Department by others
- Aide memoirs
- Documents not on letterhead.

Creating “dummy” files, or storing personal information in a separate location from the main file, does not affect the Department’s obligations to review and provide access to that information.

### **A.7 Further Relevant Guidance**

This Policy sets out how we in the Department of Labour **must** deal with privacy requests and associated matters. It does not seek to cover every eventuality. The links below are more comprehensive.

Further material that may be relevant in particular cases can be found at:

- [www.privacy.org.nz](http://www.privacy.org.nz)  
This site contains the Privacy Commissioner’s casenotes and other material.
- Department of Labour Information Security policy This policy is relevant when classified information is involved.

The Privacy Act itself may be found at:

- Privacy Act 1993

Important sections of that Act have their own direct link in the text of this Policy.

### **A.8 A legal right**

Whereas in the Official Information Act the guiding principle for assessing access to official information is “the principle of availability”, the starting point under the Privacy Act is that everyone has a legal right to have confirmation that a department holds information about them, and to have access to that information. A legal right is much more forceful than a presumption of availability.

The right is not absolute, as various other interests compete with individuals’ right of access to information about themselves, for example, information might be about more than one person, and the privacy of other people needs to be taken into account. Also, interests such as the maintenance of the law mean that people’s right of access might be deferred until an investigation has been completed, or overridden altogether by the need to protect an informant or an investigative technique. These reasons are reflected in the section on Refusal of Requests – Substantive Reasons [[Part F. Refusal of Requests – Substantive Reasons](#)].

### **A.9 Other parts of the Privacy Act – the information privacy principles**

The Privacy Act contains a lot more than just an individual’s right of access to personal information. Other parts of the Act include provisions regulating information matching (such as the information matching that occurs between NZIS and MSD), public registers (such as the motor vehicle register and the companies registers), and the routine sharing of information in the law enforcement sector (note – none of the law enforcement functions of the Department are included in the provisions of the Fifth Schedule of the Act which allow common access to computer systems by the Ministry of Justice, Police and Corrections etc).

This Policy does not deal in detail with those parts of the Act, or with all the information privacy principles. However, it is necessary for all staff to have a basic familiarity with the

information privacy principles and to take them into account whether they are developing new policies, or engaged in operational functions that require the collection, use, storage, or disclosure of personal information. In relation to information privacy principle 11, see also, Part H [[Part H. Disclosure of Personal Information - Information Privacy Principle 11, other legislation](#)]

### **Principle 1: Collection**

The Department must not collect personal information unless it is for a lawful purpose connected with a function or activity of the Department and the collection of the information is necessary for that purpose.

Has it got something to do with us doing our business? And do we need it to do our job? If “no” to both, then we shouldn’t be gathering the information.

### **Principle 2: Source**

Personal information must generally be collected directly from the individual concerned.\*

### **Principle 3: Openness**

This principle describes what the Department has to tell an individual when we collect personal information from them. This includes the purpose of collection, who will hold it, and whether the collection is voluntary or mandatory etc.\*

### **Principle 4: Lawful and fair collection**

Information should not be collected by unlawful means, or means that are in the circumstances unfair or intrude to an unreasonable extent upon the personal affairs of the individual concerned.

### **Principle 5: Storage and security**

Information must be protected by such security safeguards as it is reasonable in the circumstances to take against loss and unauthorised access, use, modification, or disclosure and other misuse.

### **Principle 6: Access**

Individuals are entitled to request access to personal information held about them. (This is the Principle that most of the remainder of this Policy deals with.)

### **Principle 7: Correction**

An individual can also request that the information held about them be corrected. [[Part G. Correction of personal information](#)].

### **Principle 8: Accuracy & relevance**

Before using personal information, the Department must take such steps as are reasonable given the proposed use of information to ensure the information is complete, accurate, up-to-date, relevant and not misleading.

### **Principle 9: Retention**

Information must not be kept for longer than is required for the purposes for which the information may be lawfully used (subject in the Department to the Public Records Act 2005).

### **Principle 10: Use\***

Information that was collected for one purpose, should not normally be used for any other purpose\*.

**Principle 11: Disclosure\***

Personal information shall not be disclosed unless it is believed on reasonable grounds that the disclosure is the purpose for which the information was obtained, or a directly related purpose [[Part H. \*Disclosure of Personal Information - Information Privacy Principle 11, other legislation\*](#)]\*.

**Principle 12: Unique Identifiers**

This principle specifies how unique identifiers (such as an IRD number) may be used.

\* Note that these principles are subject to exceptions, such as where not complying with the principle is authorised by the individual concerned, or where compliance would prejudice the maintenance of the law.

## ***B. How to Approach Privacy Act Requests***

### ***B.1 Departmental “Core Business”***

The Department has a statutory responsibility to meet the requirements of the Privacy Act.

So, meeting our obligations under the Act is just as important to the Department as is meeting our obligations as the Department which administers such Acts as the Employment Relations Act, and the Health and Safety in Employment Act.

But more than that, we regard these obligations as another service to the public that we take pride in!

Accordingly, **staff must treat the handling of Privacy Act requests as core business, not a chore**. This means it is of equal importance to their other everyday work, and indeed, because of the statutory timeframes and the timeframes required by this Policy, it may often have to take priority.

It also means that this Policy must be adhered to by all staff involved in actioning Privacy Act requests so that the Department can be better assured of consistently meeting its statutory obligations and our Ministers can be assured we will assist them to meet their statutory obligations.

In addition, unlike the Official Information Act, a failure to properly process a Privacy Act request can result in an award of damages against the Department.

### ***B.2 Duty of assistance***

Under **section 38** the Department has a duty to **assist** anyone who:

- wishes to make a request under the Privacy Act, and
- has not made a request in accordance with the Act or
- has not made a request to the appropriate agency.

The right of access applies only to information which is “readily retrievable”.

If the person has not specified which part of the Department would be likely to hold the information, (making it difficult for us to know whether, for example, they are a former employee, a client, or were prosecuted under the Health and Safety in Employment Act) rather than refusing the request the Department must assist the requester in better defining it.

Remember too that a requester’s motive in asking for the information, or the use to which you think it might be put, are both largely irrelevant.

If it is difficult to understand what the person is requesting, or you are having difficulty locating information they are seeking, **explain the situation to the requester, and ask for their help**. This is often best done by phone. (Keep a record of the outcome of the conversation, and/or record it in the acknowledgement letter – refer clause C13).

### ***B.3 If unsure seek guidance***

Because the Privacy Act requires a case-by-case approach, all of the general points made in this Policy may not apply in particular cases.

This Policy does not anticipate every possible circumstance that might arise in Privacy Act cases.

Several laws deal with information held by departments. The two main Acts that deal with access to information are the Official Information Act 1982 (official information) and the Privacy Act 1993 (personal information).

The Privacy Act deals with individuals' rights of access to information about themselves. The Official Information Act deals with access by third parties to information held by government departments, ministers, and organisations, and with companies' rights of access to information about them.

If you are ever in doubt about how to proceed in handling a request you should seek the assistance of your manager or team leader and, in the case of legal issues, Legal Services.

If you are proposing to refuse a request or withhold any information you **must** check with Legal Services. [\[D.5 Get Legal Advice if Withholding\]](#)

## **C. Processing Steps : Days 1-3**

### **C.1 Summary**

**All of these steps must occur within three working days of the request being registered as received.** Registration itself must happen straight after receipt:

- Appropriately authorised decision maker assigned responsibility for request
- Choose right Act (Official information Act or Privacy Act)
- Decide who properly holds information
- Transfer request (or part of it) where appropriate
- Clarify scope/content with requester if necessary
- Assess time required to answer
- Consider the need to extend time if 20 working days is unlikely to be sufficient.

### **C.2 Registering Request**

#### **C.2.1 In local branch offices**

Any request received must be logged in accordance with the system that the manager of the office has put in place.

Every such system must:

- Require registration as soon as possible after receipt
- Record the name of the requester, and if the requester is not the person who is the subject of the requested information, check that there is a written authority from the subject for that request.
- Record the date the request is received
- Record a processing timeframe for the request
- Record who has been given responsibility for handling the request
- Record when the response has been sent
- Record any deviations from the processing requirements of this Policy.

#### **C.2.2 In national offices**

Any request received must be registered in the Department's Silent One system as soon as it is received in the Department.

### **C.3 Decision Maker**

The Act requires any decision to withhold or release information or to extend time to be made by a "decision maker authorised by the Chief Executive to make such decisions". The Department also requires that transfer decisions be made by such authorised persons.

The Chief Executive has authorised all persons in second, third, and fourth tier management positions to make such decisions and has approved further sub-delegation by the Strategic Leadership Team members to fifth tier managers and particular officers who are experienced and trained in the requirements of the Act

The authorised decision maker is responsible for ensuring, in relation to any particular Privacy Act request, that the requirements of the Act, and of this Policy, have been met.

The decision maker (or, in an appropriate case, a Strategic Leadership Team member) must sign any letter going to the requester, whether to release or withhold or a mixture of both, or to extend the time or transfer the request.

#### **C.4 Choose the Right Act – OI or Privacy**

When you get a request for information, you have to decide whether it is a request for personal information under the Privacy Act, or a request for official information under the OIA. Sometimes the request can cover both. For example, a victim in an industrial accident might ask for a copy of the Workplace investigation or prosecution file. That file will contain both information about the victim (covered by the Privacy Act) and about the defendant employer (covered by the OIA).

The difference is important because different rules apply.

To decide which Act applies, use flowchart 5.

- The Official Information Act deals with any official information, which includes information about a company or other body of persons.
- The Privacy Act deals with information about any natural person, other than a deceased natural person.

- SO...**
- ◆ A request for information by a company for information about itself is dealt with under the Official Information Act (Sections 24 - 27) (OIA Policy applies).
  - ◆ A request by a natural person for personal information about another person also falls under the Official Information Act.)
  - ◆ A request by a natural person for personal information about themselves is dealt with under the Privacy Act

- BUT...**
- ◆ A request by a natural person for reasons for a decision made about themselves is dealt with under the Official Information Act (s.23) whether or not it comes from an individual or a company

Sometimes the requester mentions one of these Acts in the request. That will not be definitive. Our duty is to decide which Act is properly applicable and this may mean that:

- Even if the Privacy Act is referred to it may be an Official Information Act request (see Flowchart above).
- Even if the Official Information Act is referred to it may be a Privacy Act request (see Flowchart above).

- One request may require some aspects to be dealt with under the OI Act and some under the Privacy Act. (For example, an injured employee might ask for a copy of the report of the interview she had with the Health and Safety Inspector (Privacy Act – information about her) and the Department’s file on her employer (Official Information Act – information about the company).) A template letter for this sort of situation can be found at [\[Letter where both OI Act and Privacy Act Involved\]](#).

### **C.5 Transfer Request (or part of it) where appropriate**

The decision about whether to transfer a request (or part of it) must be made by reference to the issues dealt with below. It should also generally be made at the beginning of the process, and thus must at least be considered within the first three working days after the receipt of the request. (The Act itself requires a maximum of 10 working days). [\[Letter to Requester Transferring Request and Template 4 – Letter to Transferee\]](#)

**Section 39** of the Privacy Act provides that requests may be transferred where the information is either:

- Not held by the Department (or the Minister), but is believed to be held by another agency; or
- Believed by the person dealing with the request to be more closely connected with the functions of another agency.

This provision, together with the duty of assistance [\[B.2 Duty of assistance\]](#) means the Department should **always** transfer the request when we do not hold the information requested but believe it may be held by another agency.

This preliminary decision needs to be made whether the request comes direct to the Department or whether it comes to us as part of the process for preparing a response to a Ministerial correspondent (for example, the Minister’s appropriate response may sometimes be to transfer the request to the Department).

Just because the Department physically holds the information isn’t enough to answer the question.

If we created the information as part of our normal day-to-day operations (for example in investigating a workplace injury, or processing an Immigration application) then the request should generally be processed within the Department.

If we created the information on the Minister’s request, and for the Minister’s signature, or in relation to a decision to be made by the Minister then we may need to transfer the request to the Minister’s Office.

In practice, section 39 also means that requests should usually be transferred in the following situations:

- **When the Department only holds documents that were authored in another agency**, or which are properly the information of such an agency and have been given to us by that agency.

You may wish to consult with the original agency as to which agency should progress the request.

- **When the Department holds information that it believes to be more closely connected with the functions of the Minister**

Sometimes the information requested may be a mixture.

- SO...**
- ◆ If the information is more closely connected with the Department, the Department must answer the request in its own right (but may in some cases consult the Minister or another agency)
  - ◆ If the information is more closely connected with the Minister's functions, the Department should transfer the request to the Minister (but then continue to support and advise the Minister in answering it).
  - ◆ If the information is partly connected to the Minister and partly connected to the Department, that part of the request that is connected to the Minister must be transferred to the Minister (on the same basis as above).
  - ◆ If the information is more closely connected to another agency, the Department should transfer the request (or that part of it) to that agency.

Where it is not clear how or whether a particular piece of information is covered by the above Policy, consultation with relevant ministers or agencies will normally resolve the issue quickly.

Section 39 requires that when you transfer a request, you notify the requester that their request has been transferred. [[C.6 Implications of transfer decision and Template 3 Letter to Requester Transferring Request](#)]

Transfers of Privacy Act requests to the Minister will be relatively rare. It may be necessary to transfer a request that has been made by someone the Minister nominated for appointment to a position through the Appointments and Honours Committee, or in relation to information given to the Minister to assist him or her in exercising discretion in relation to an applicant under the Immigration Act.

## ***C.6 Implications of transfer decision***

If the request is transferred **to another agency** then our responsibilities in respect of that request will generally cease (although we may sometimes be consulted as the request is progressed).

If the request is transferred **to a Minister**:

- The Department must provide support and advice to enable the Minister to respond to the request.
- The Minister is the one who decides whether to withhold or release the information.
- If there is a complaint to the Privacy Commissioner, the Minister (with our assistance if requested) deals with the Privacy Commissioner's Office.

If the request is **not transferred**:

- The Department must make a preliminary decision to withhold or release the information (see [\[D.4 Making a Preliminary Recommendation\]](#)).

The decision whether to transfer a request (or part of a request) is the Department's – no other agency can require us to transfer the request if we don't believe there are valid reasons for doing so under the Act.

The practicalities of transferring a request are as follows:

- A letter to the requester [\[Letter to Requester Transferring Request\]](#)
- A letter to the person or agency to whom the request is being transferred [\[Letter to Transferee\]](#).

## **C.7 Timing Obligations**

The Privacy Act contains certain requirements about how soon any request has to be answered. To ensure the Department meets those timing obligations, this Policy sets some additional processing times, particularly for the first 3 days after the request has been received [\[C10. Key time obligations\]](#).

The **general statutory obligation** is to answer all requests "as soon as reasonably practicable". That means getting on with processing it as it is an important part of your job – not putting it off till the last minute.

The **default statutory obligation** is to answer it by giving or posting the answer to the person **at least within 20 working days**. But where the Minister's office is to see the final decision made by the Department, and the information to be released, a copy of the response must be in the Minister's office no later than 15 working days after receipt.

If you are going to need more time and have **to extend** the timeframe, the Act gives 20 working days to notify the requester of the extension of time [\[C.9 Extension of time limits\]](#) and the new timeframe, but this Policy requires extensions to be considered **in the first 3 working days**. There will be situations when the need to extend only becomes apparent after three working days. This will usually be when the volume of information covered by the request is revealed outside the three working days, or when in the course of processing the request, the need for wider consultation is identified.

If you are going **to transfer** the request to another agency or to a Minister you have a statutory maximum of 10 working days to notify the requester that the request is being transferred [\[C.5 Transfer Request \(or part of it\) where appropriate\]](#), but this Policy requires consideration to be given to transferring the request **within the first 3 working days**.

If you **receive a request that is transferred** from another agency or a Minister you have a maximum of 20 working days (from when this Department receives the request on transfer) to respond.

If this Department is **actioning** the request **on behalf of a Minister** this Policy requires the response to be in the Minister's office for consideration **no later than within 15 working days** of the Minister receiving the initial request. (This is to enable the Minister's office adequate time to consider the suitability of the proposed response and to make or require any changes while still meeting the 20 working days obligation).

If the requester indicates the request is urgent, you are entitled to ask for supporting reasons. Those reasons need to be assessed on a case by case basis in determining how the needs of the requester can be met, remembering that the obligation is to answer the request as soon as **reasonably** practicable. In other words, what is reasonable must take account of both the practicalities for us and the needs of the requester.

If we can't meet the urgent timetable expected by the requester, we should explain why. Alternatively consider splitting the request into that part that can be provided earlier, and that part that will take more time. [i.e. explain that the request can be split to try and at least provide something within the urgent timetable.]

### **C.8 How to count time**

Time limits are expressed in "working days" – any day that is not a Saturday, a Sunday, a public holiday, or a day between 25 December and 15 January inclusive. Also note that regional Anniversary Day holidays are not excluded from "working day", so they must still be counted.

To count working days available, day 1 is the first working day after the day on which the request is received.

So, if a request is received on a Monday, the last and 20<sup>th</sup> working day available to send out the response is the 4<sup>th</sup> Monday after that (unless a public holiday or the Christmas holiday period adds some time to the deadline).

If a request has been made orally, then later confirmed in writing, you must count the working days from the date of the oral request, not from the receipt of the written confirmation.

### **C.9 Extension of time limits**

Under **section 41**, the 20 working day time limit for actioning a request may be extended if:

- The request is for a large quantity of information, or a large quantity of information must be searched, **and** meeting the original time limit would unreasonably interfere with other work, or
- Any consultations (with external agencies or a Minister) necessary to make a decision on the request cannot reasonably be made within the original time limit.

Any extension must be "for a reasonable period of time having regard to the circumstances". It must be made by giving or posting notice of the extension to the requester within 20 working days of the original request at the latest. But see the requirements of this Policy [\[C.7 Timing Obligations and C10.Key time obligations\]](#) which seek to have such extension decisions made in the first 3 days where possible.

Notification of time extensions must specify:

- The length of the extension
- Reasons why the deadline is being extended; and
- The right to complain to the Privacy Commissioner about the extension.

Make sure that the extension will allow you sufficient time to collate the information and undertake all necessary consultation. You cannot further extend a time limit if you have already extended it.

A template letter for notifying an extension can be found at [Template 6 Letter Extending Time](#).

### **C10. Key time obligations**

- This Policy requires extension and transfer decisions to be made, where possible, within 3 working days of receiving a request.
- The general obligation for answering a request is to respond “**as soon as reasonably practicable**”.
- Ministerial responses, and other responses that are to be seen by the Minister’s office, must be in the Minister’s office for consideration at the latest **within 15 working days of receipt**.
- Other final responses must be sent at the latest **within 20 working days**.

#### **C.11 Clarify scope/content with requester if necessary**

It will usually be clear what people are looking for. If they are a defendant in a prosecution, they will write and ask for all information about the prosecution. If they are an immigration client, they (or their agent) will write to the immigration officer they have been dealing with asking for a copy of their file, or a copy of some of the documents contained on their file. If they are or were an employee, they will give details of their employment and ask for their personnel file.

Where someone writes and without otherwise identifying themselves asks for “*all information the department holds about me*”, it may be necessary to ask the requester to clarify what information they are seeking, for example, by finding out what dealings they have had with the Department, or where they would expect to find information .

#### [\[B.2 Duty of assistance\]](#)

### **C.12 Charging for the release of personal information**

Government departments are NOT entitled to charge individuals for information released under the Privacy Act.

However, reasonable charges can be made where companies and other non human legal persons exercise their right to have access to information about them which is held by the department. These requests are made under part 4 of the OIA, which provides that any charge “shall be reasonable and regard may be had to the cost of the labour and materials involved in making the information available”. Any costs incurred in order to meet a request for urgency can also be recovered.

In the rare cases where charging for a company's access to its own information is an option, refer to paragraph C14 of the Official Information Act Policy

As an alternative to charging, perhaps consider providing the information in an alternative form (such as giving electronic copies by email or disk), or giving the person an opportunity to inspect the originals where compliance with the request would otherwise involve a lot of photocopying. (Note – we can refuse to provide information in the form sought (e.g. copies) where to do so would “impair efficient administration”.) This is seldom likely to be applicable, however, in relation to an individual's files.

### **C.13 Acknowledgement**

At the end of the 3 day period mandated by this Part of this Policy the processing staff member should prepare an Acknowledgement Letter [[Acknowledgement Letter](#)] to the requester for signature by the relevant Manager.

Obviously you need not send an Acknowledgement Letter if you have already responded in full to the Privacy Act request!

The purpose of the letter is to:

- Demonstrate that the request has been received and is being actioned.
- Provide access to a contact point in the Department.
- Confirm any discussions that have already occurred with the requester
  - about the scope or content of the request
  - about proposed timing.

## ***D. Subsequent Processing Steps***

### ***D.1 Summary***

The following steps must always occur (unless we are proposing to refuse the request on the grounds that the information requested is “not readily retrievable”): [[E.7. Not Readily Retrievable](#)]

- Assemble all the actual information
- Assess the information against the Act’s criteria
- Make a preliminary recommendation – withhold or release
- Get legal advice if withholding contemplated
- Consult where appropriate
- Consider whether an extension is required
- Authorised decision maker makes final decision
- Consider appropriate manner of release.

Separate Flowcharts [[above](#) ] describe (for both processing staff and managers) how the following steps occur in the case of:

- A request made or transferred to a Minister
- A request to the Department.

### ***D.2 Assemble all Information***

You **must always** start by assembling all the information that is sought by the requester (unless you are intending to refuse on the grounds that the information is “not readily retrievable”).

To assemble the information you need to know where to look, who to ask and how to ask. If you are not too familiar with the type of information requested, you need to get advice on these matters from someone who is. Or perhaps someone else should be actioning the request?

Finding and assembling the information will be a different experience each time, depending on the nature of the information sought. Sometimes the information will already be assembled, in the sense that it will all be stored on the same file. Sometimes it will all be held within the same work group. But sometimes it may be held in a number of places or groups and you need to be able to identify where or who they might be.

It is a key responsibility of the manager (or other authorised decision maker) involved to make sure that this aspect of the process is systematically and thoroughly completed.

Depending on the circumstances, some of the following tips may be relevant:

- **Where to look?**
  - Hard copy files are obvious, but don’t forget email folders and other electronic document storage places. Also, sometimes staff have their own files of

- information before it gets put into the formal records system.
- If having searched thoroughly and made all reasonable enquiries (including confirmation from the requester of the subject matter of his or her interaction with the Department) the information still cannot be found, the request can be refused under section 29(2)(b) on the basis that the document that is alleged to contain the information does not exist or cannot be found. [[Part E. Refusal of Requests – Administrative Reasons](#)].
- **Who to ask?**
  - In a Department with as many different, but often connected, interests as ours, you need to think about whether colleagues in other areas may have related information, e.g., a person might have had interactions with the department in different capacities, as an employee, and subsequently working as an immigration consultant. Don't assume you're the only source!
- **How to ask?**
  - You should not use a scatter-gun approach, but email can often be the most effective way to get to a diverse group of people. Make sure you quote the request, rather than paraphrasing it in your own words! And make sure you ask people to give you a "nil return" where appropriate so that you can be sure the request has been actively considered.

Finally, note that sometimes we know that the information exists but we just can't find it. This is usually a case of the hard copy file being misplaced.

The Act envisages this situation and provides a basis (in section 29(2)(b)) for refusing that part of the request – on the basis that the document that is alleged to contain the information does not exist or cannot be found. [[E.6 Information Cannot be Found](#)].

Also, remember that a request may cover information that has not yet been written down, but which an official remembers. In such a case it is often easiest to ask the official to write it down so that it can be assessed.

## ***D.3 Assess the Information***

### ***D.3.1 Information, not documents***

The crucial thing to remember at this stage is that you are assessing information, not documents. Documents contain information, but each part of a document may have to be treated differently, and so must be assessed in its own right.

So, for example, a single document might contain information needing to be protected for privacy reasons, for national security (such as in the case of New Zealand Security intelligence Service information) or legal advice needing to be protected to maintain legal professional privilege, but the information constituting other parts of the document, if it doesn't attract those same protections or any other relevant protections, will need to be released.

A request for "all information about me" will also mean we have to assess draft documents, "informal notes" and other items of information whatever their status, or wherever stored.

### ***D.3.2 Presumption of release***

The Act's purposes focus on the individual's right to have access to information that is about him or her, but recognise the need for protection of interests that compete against the individual's right.

So this Department approaches all requests from the presumption that the individual is entitled to know what information we hold about them unless there is a good reason to withhold. In other words, you should not embark on the assessment from the point of view of looking to withhold.

### **D.3.3 Applying the Act's criteria**

Decisions about withholding information can only be made with reference to the reasons or criteria listed in the Act.

There are two types of reasons:

- Those categorised in Part E of this Policy as “**Administrative Reasons**” [[E. Refusal of Requests – Administrative Reasons](#)]. These relate to such things as imminent public availability, the necessity for substantial collation or research, or the inability to find the information (section 29(2)).
- Those categorised in Part F of this Policy as “**Substantive Reasons**” [[Part E. Refusal of Requests – Substantive Reasons](#)]. These are the ones that deal with situations where there are conclusive or good reasons for withholding information (section 27 – 29(1)).

Each part or element of the information must be assessed in its own right.

## **D.4 Making a Preliminary Recommendation**

Following the assessment of the assembled information you should then decide what you think should happen – should the information be released or withheld, or a bit of both?

Depending on the working arrangements in your office, you may need to discuss your preliminary recommendation with your manager or team leader.

## **D.5 Get Legal Advice if Withholding**

This Policy requires every withholding decision to be supported by legal advice. So, once you have made a preliminary recommendation to withhold any information you must refer that recommendation to Legal Services. Any such referral must:

- Be made on the Request for Legal Services form
- State your (reasonable) deadline for legal input
- Be accompanied by a copy of the request and of the actual information that is proposed to be withheld
- Identify the withholding reason or reasons that you think applies to that information
- If it is not obvious, provide an explanation of why you think the relevant withholding reason applies to the information.

## **D.6 Consult Where Appropriate**

If you think that another agency or individual might have an interest in the way you are answering the request, particularly if you are releasing information in which they may have an interest, you should consult them about your proposed response to the request. This should occur as soon as you reach your preliminary recommendation. Template letter 5 should be

used for written consultations, but similar points should be made where consultation is undertaken by telephone.

The purpose of such consultation is to hear the views of the person or agency approached, so that should be clear when you approach them. They should not be given the impression that they have any opportunity to veto release of any information. Their views will be considered in making a final decision.

The point of such consultation is to ensure that all relevant factors have been taken into account when the final decision on the request is made. It recognises that we may not always have all the relevant information within the Department.

After the consultation, decide whether any change to your preliminary recommendation is necessary.

If a change is to be made, is it of such an extent that legal advice needs to again be sought?

Record all these steps, and what your preliminary recommendation is, for the final decision maker to consider.

### ***D.7 Final Decision***

The final decision **on any request to the Department**, whether to release or withhold or a bit of both, **must be made** by a person who has been authorised by or through the Chief Executive to make such decisions [[Links to Authorisation and Delegation](#)].

If the request was made or transferred to the Minister, then the final decision should be made by the Minister and not the Department, but the decision about what advice is given to the Minister must be made by an authorised decision maker.

The final decision should ensure that:

- The input from consultation has been properly factored in
- Legal advice supports any decision to withhold information
- All relevant matters are properly recorded
- The proposed decision is the correct one.

The decision maker must sign the record of the decision [[J.3 Record Keeping](#)], and complete the Checklist [[above](#)].

### ***D.8 Consultation with Minister's Office prior to release***

Although rare in relation to requests for personal information, some requests being answered by the Department may nevertheless involve releasing information that will be of interest to the Minister. The responsible manager needs to actively make a judgement call about whether this is the case.

The process in such cases requires a copy of the letter to the requester, and of the information to be released, to be provided to the Minister's office **at least 5 working days** before the information is proposed to be sent to the requester.

## ***D.9 Method of Release***

The letter conveying the decision **must** inform the requester of the right to seek review by the Privacy Commissioner if we are refusing to release personal information to an individual (or extending time, imposing conditions on release, or giving access to the information in a form other than that requested). If the request is from a company or other legal entity for information about that entity, we should advise of their right to ask the Ombudsman to investigate any of those decisions, as well as any decision to charge. [\[Letter Withholding Information\]](#)

Where information is being released, section 42 deals with the way in which that can occur. The starting point is to make it available in the way preferred by the requester. This will usually be by providing copies of the relevant information.

Other ways can include:

- Giving the requester an opportunity to inspect the documents containing the information
- Giving an excerpt or summary of the contents (there should be legal advice to support this approach)
- Giving a transcript of any recording or shorthand or code
- Allowing the requester to hear or see a recording (or giving them a copy of it).

The Department is only able to give access to the information in a way other than that requested if to accede to the requester's preference would prejudice one of the interests protected by the withholding reasons, or if to do so would impair efficient administration. For example, if the requester says they want to see their original file, but letting them see it would disclose references to or material from NZSIS, or information that would involve the unwarranted disclosure of the affairs of another person, their request can be refused, and access given instead by making a copy of the file with those parts omitted or deleted.

**Note:** The Department's requirements about keeping accurate records of what you release [\[J.3.2 Released information\]](#).

## ***E. Refusal of Requests – Administrative Reasons***

### ***E.1 Introduction***

Sections 27, 28 and 29 of the Act set out the reasons that are available for refusing a privacy request. Section 30 of the Act says that a request cannot be refused for any other reason.

The Act specifies who is entitled to make a request (see s.34) as follows;

- A New Zealand citizen; or
- A permanent resident of New Zealand; or
- An individual who is in New Zealand.

However, care should be taken before refusing a request on the grounds that the requester is ineligible. For example, despite section 34, the Department's policy is to allow individuals in respect of whom the department has made a decision on an immigration matter, to have the same rights to request personal information as an ineligible person.

Like the Official Information Act, there are administrative reasons for withholding, and substantive reasons. However, there are fewer of both. Individuals have a legal right of access to information about them. This is a higher right than the general public has to access to official information, which is governed by the principle of availability, not a legal right.

This Part of the Policy deals with the administrative reasons for refusal. These will not be used very often to refuse or limit an individual's right of access to personal information.

**Note that when any of these administrative reasons are used to refuse a request the requester must still be told that they can seek a review by the Privacy Commissioner of that refusal.**

### ***E.2 Neither Confirm Nor Deny***

Section 32 allows an agency to neither confirm nor deny the existence or non-existence of the information requested.

This reason for refusal is used extremely rarely and in the Department may only be used if the Chief Executive or a direct report of the Chief Executive agrees. Legal advice is necessary.

### ***E.3 Contrary to an Enactment***

The Privacy Act does not override provisions in other legislation that impose a prohibition on the making available of any personal information.

For example, in relation to employment disputes that use mediation services, section 148 of the Employment Relations Act requires that the Department:

must keep confidential any statement, admission, or document created or made for the purposes of the

mediation and any information that, for the purposes of the mediation, is disclosed orally in the course of the mediation

Therefore, if parties to a dispute, “A” and “B” discuss co-worker “C” in the course of mediation, and “C” later writes to the Department seeking all information the Department holds about her, so much of the request as related to information created during mediation would be refused as being contrary to an enactment.

#### ***E.4 Contempt of Court or Parliament***

Section 29(1)(i) deals with this possibility. This might arise where there is a court suppression order over evidence in proceedings, or where the information might disclose details of a select committee’s consideration of a report. If you think this provision might be relevant discuss the matter with Legal Services.

#### ***E.5 Information Doesn’t Exist***

Section 29(2)(b) allows refusal of a request if the information requested does not exist.

This might seem an obvious reason – you can’t give someone something that you don’t have. Section 29(2)(b) just provides the legal basis for making that refusal.

Before declining under this provision, you should consider whether it would be appropriate to consult with the requester – they may have inadvertently incorrectly worded their request, or might be able to give you more information to enable you to locate the information they are seeking.

#### ***E.6 Information Cannot be Found***

Section 29(2)(b) also allows refusal of a request if the information requested can’t be found.

This will be relevant where you know or believe that the Department does hold documents that contain the information requested, but you can’t locate them after a diligent search.

From time to time files do get misplaced, particularly when they have to be moved between offices or sections. If the information really can’t be located, the requester should be told the known details when the refusal is made.

A request being refused on this ground must be reported in writing by the authorised decision maker to their manager. This is to ensure that action to find the file remains on the agenda.

#### ***E.7. Not Readily Retrievable***

Section 29(2)(a) allows a request to be refused on the basis that “the information requested is not readily retrievable”.

This may come into play if the information sought is not indexed in a way that would allow it to be readily identified. For example, if an immigration consultant or employee representative asked for all information the department held about them, it might not be possible to easily locate all the files which might contain information about them. The files might only be indexed by client name.

This section might also apply where a staff member asked for a copy of an email concerning

them that they knew to have been sent 2 – 3 years ago. It may be that a copy of the email has been kept on backup tapes or on servers somewhere, but if it has not been properly saved to a file or directory, it might not be readily retrievable.

Whether section 29(2)(a) does apply will depend on the particular case. But it should be remembered that the ability to reasonably extend time limits means that this reason has to be saved for the unusual case. We need to consider extending the limit before relying on this section.

### ***E.8 Not Held***

Section 29(2)(c) deals with the situation where we don't hold the information but also don't know who does hold it.

So it is different from section 29(2)(b) where we are saying it doesn't exist. And it is different from a transfer situation where we are saying we know who does hold it.

### ***E.9 Frivolous or Vexatious***

Section 29(1)(j) allows refusal of a request that is "frivolous or vexatious". This expression is a legal one and not necessarily one that takes an everyday meaning. Put another way, this is quite a high test.

For it to be applicable, you must be able to say that you have grounds for believing that the requester is **patently abusing** the rights granted by the legislation rather than exercising those rights in good faith. No reasonable person would see the request as being in good faith.

**Very few cases will meet this test!** It is not enough, for example, that the requester has already made numerous, time consuming requests. Those previous interactions may be relevant to a judgement about this issue, but will not be determinative. Each request (rather than each requester) must be looked at on its own merits.

Multiple requests from the same person for the same information might approach this threshold, but even then, care needs to be taken. For example, an immigration client might make several requests for the file as they move from one adviser to the next. The mere fact that they have previously requested the information does not make a subsequent request vexatious.

### ***E.10 Trivial***

Section 29(1)(j) also allows a request to be refused on the basis that "the information requested is trivial".

This section might, for example, be used to refuse aspects of a request that deal with administrative arrangements (eg, meetings) related to the individual.

# F. Refusal of Requests – Substantive Reasons

## F.1 Introduction

This Part of this Policy does not set out to deal with all the substantive withholding reasons in detail. This is because Legal Services are available to provide advice and **must be** involved before a decision to withhold is finalised [[D.5](#) [Get Legal Advice if Withholding](#)].

This Part deals generally with the approach to withholding under section 27 and section 29 and then deals briefly with those particular withholding reasons that commonly arise in the course of Privacy Act requests to this Department.

In all cases the exercise of deciding whether withholding reasons apply involves considering what prejudice or harm would result if the information were released and then how that prejudice or harm is prevented by any particular withholding provision.

## F.2 Good Reasons for Withholding

Section 27 deals with a series of reasons that will apply if the predicted harm “would be likely” to arise. They are typically quite grave matters, over which considerable care must be taken.

In practice, two questions need to be asked under section 27:

- *How would disclosure prejudice the interests protected by subsections 27(a) to (d)?*  
This requires identification of the nature of the prejudicial effect in this particular case and explanation of how it is anticipated it will occur.
- *Would that predicted prejudice be “likely” to occur?*  
“Likely” means – there is a real and substantial risk that it will occur.

Only two of the section 27 reasons commonly arise in the context of this Department’s operations.

### F.2.1 Maintenance of the Law

Section 27(1)(c) says there is good reason to withhold if the release would be “likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial”.

In this Department, this situation tends to arise where we are investigating possible criminal activity and have not reached the stage of laying charges. But it will only provide a reason to withhold if release is likely to undermine or compromise the investigation process and thus potentially the prosecution for breach of the law.

It can also apply (in the context of the detection of offences) to protect an informant’s identity.

### **F.2.2 Danger to Safety**

Section 29(1)(d) provides good reason for withholding where the release is “likely to endanger the safety of any individual”.

This can, for example, apply in an immigration context, particularly where a person has had a history of violence against their partner and is seeking information about what their partner has said to the Immigration Service about the person’s application.

### **F.3 Good Reasons for Withholding**

Sections 28 and 29 contain a further series of reasons for withholding information from the individual concerned.

For each of the reasons in these sections to be applicable, the withholding must be **necessary** to protect the relevant interest.

#### **F.3.1 Commercial interests**

Section 28 provides that a request for personal information can be refused where the disclosure of that information either:

- Would disclose a trade secret; or
- Would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;

and

- Where the need to withhold the information is not outweighed by a public interest in the release of the information.

“Public interest considerations” are not the same as considerations the public are interested in. What is “in the public interest” are things that promote the overall public good.

#### **F.3.2 The privacy of other people**

Sometimes information can be about two people at once. For example, a statement such as “Brian hit Murray” is information about both people. Each has a legal right of access to that information.

Section 29(1)(a) permits the withholding of information where the disclosure would involve “the unwarranted disclosure of the affairs” of another person. To establish whether this reason will permit information to be withheld, consider:

- Does the information disclose the affairs (their business, or their concerns) of another natural (i.e. human, rather than corporate) person whether or not that person is alive or dead? If yes;
- Would that disclosure be unwarranted?

Disclosing someone else’s affairs might be unwarranted where the information was given in a confidential relationship, for example, it was given to a doctor or counsellor; or where the information is particularly intimate, for example, it reveals what the other person thinks or feels.

Disclosing information about someone else’s affairs might be warranted where the information is adverse in respect of the requester, and the department intends to rely on that information in some way, or where it is more about the requester than the other person.

If there is information about another person on a file that has been requested, and there is no record of that other person's views as to whether the requester should be able to see it, we should generally seek to consult the person concerned.

Consent to release by the other person will be enough to mean you can't rely on section 29(1)(a). But on the other hand that other person's view that the information should be withheld cannot be treated as a veto on release – that (and their reasoning) is one factor to weigh up in determining whether the disclosure would be an unwarranted disclosure of that other person's affairs.

Also, on occasion you might consider that there has been an implied waiver of privacy interests where that other person, or their representative, has discussed the information publicly. You should not assume, though, that because a person has placed some of their personal information into the public arena, they have implicitly authorised us to release all the personal information that we hold about them to the requester. Alternatively the information may already have been placed in the public arena in some other way, which will reduce any claim that our giving the information to the requester would involve the unwarranted disclosure of their affairs.

In relation to personal information about staff on requesters' files, the Department's policy is that generally all managers' names will be released, but generally names of employees below manager level will be withheld (of course unless the circumstances mean that disclosing that information is not "unwarranted", or if their name and involvement in the matter is already in the public domain). Personal information about all employees (such as phone numbers, home addresses etc) will generally always be withheld, irrespective of the person's seniority within the Department.

### ***F.3.3 Evaluative material***

Reference checks undertaken in the process of making employment appointments, or awarding contracts, grants or scholarships can be withheld from the person they are about where necessary.

Section 29(1)(b) protects information where:

- The information is evaluative material; and
- It was supplied pursuant to an express or implied promise that;
  - the information, or
  - the identity of the person who supplied it,
  - or both

would be held in confidence.

The term "evaluative material" is defined as "evaluative or opinion material **compiled solely** for the purposes of assessing the suitability, eligibility, or qualifications of the individual to whom the material relates--

- For employment, promotion, continuance or removal to/from appointment or office; or
- For the awarding (continuing, modifying or canceling) of contracts, awards, scholarships, honours, or other benefits; or
- For the purpose of deciding whether to insure any individual or property or to continue or renew the insurance of any individual or property.

The words “compiled solely” are important. If a client or colleague makes a complaint about an employee, that information may be necessary for determining what disciplinary action, staff training or resourcing action (if any) is required. It is not “compiled solely” for the purposes of assessing their continuance or removal from office. There is a mixed purpose, so the information will not be able to be withheld under this section.

#### ***F.3.4 Prejudice the physical or mental health of the person***

On rare occasions, the Department may hold personal information which relates to the person’s physical or mental health which, if given to the person concerned, might prejudice their physical or mental health.

Because this will always be a clinical judgement, section 29(1)(c) of the Act requires that where practicable before withholding information to avoid prejudice to the person’s health, the Department must consult with the person’s medical practitioner.

#### ***F.3.5 Contrary to the interests of the person (where the requester is under 16)***

There is no age limit on who can make a request under the Privacy Act. A 12 year old is entitled to find out what information the Department holds on them.

If there is information on the file that, if disclosed, would be contrary to an under 16 year old requester’s interests, that information may be withheld (section 29(1)(d)).

#### ***F.3.6 Prejudice safe custody or rehabilitation***

Information that relates to a person who has been convicted of an offence, or who has been or is likely to be detained, may be withheld from them if disclosure of the information to them would be likely to prejudice their safe custody or rehabilitation (section 29(1)(e)).

This is a fairly rarely used section, and legal advice should be sought before it is employed.

#### ***F.3.7 Legal Professional Privilege***

Section 29(1)(f) protects information in order to maintain legal professional privilege.

This includes all communications with a lawyer for the purposes of giving or obtaining legal advice, whether the advice is from the Crown Law Office, a Crown Solicitor, or the Department’s in-house legal team.

In a general sense, the recipient of legal advice is entitled to decide whether anyone else should have access to it. The Department holds a significant amount of information that is legal advice, so careful judgement has to be made about whether it might be in the public interest to release it.

Legal professional privilege not only applies to legal advice you have received, but also to your communications with a lawyer for the purposes of seeking legal advice. It also applies to information gained in preparation for proposed litigation.

Often release might compromise the position the Department seeks to take on a particular issue, or put a Court case or contract at risk. That needs to be weighed against the individual's right to have access to their personal information.

You must always seek legal advice before releasing anything that might be covered by legal professional privilege.

#### ***F.4 Requests by Companies About Themselves***

If a **company** asks for **information about itself** it should be dealt with under section 27 of the Official Information Act

#### ***F.5 Unacceptable Reasons for Withholding***

The following things are **not** reasons in themselves for withholding information:

- That the information requested is “informal”, such as an email, or a scribbled note.
- That the information was created by, or provided to the Department by, a third party.
- That the information would reflect badly on, or embarrass, the person who wrote it, the Department or the Minister.
- That another agency has vetoed its release for reasons we don't accept as valid under the Privacy Act.

(Note that there may be reasons for withholding the information but they must be reasons provided for in the Act.)

# ***G. Correction of personal information***

## ***G.1. Introduction***

Information privacy principle 7 gives people a right to have information corrected. It says, in full:

### Correction of personal information

- (1) Where an agency holds personal information, the individual concerned shall be entitled--
  - (a) To request correction of the information; and
  - (b) To request that there be attached to the information a statement of the correction sought but not made.
- (2) An agency that holds personal information shall, if so requested by the individual concerned or on its own initiative take such steps (if any) to correct that information as are, in the circumstances, reasonable to ensure that, having regard to the purposes for which the information may lawfully be used, the information is accurate, up to date, complete, and not misleading.
- (3) Where an agency that holds personal information is not willing to correct that information in accordance with a request by the individual concerned, the agency shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the information, in such a manner that it will always be read with the information, any statement provided by that individual of the correction sought.
- (4) Where the agency has taken steps under subclause (2) or subclause (3) of this principle, the agency shall, if reasonably practicable, inform each person or body or agency to whom the personal information has been disclosed of those steps.
- (5) Where an agency receives a request made pursuant to subclause (1) of this principle, the agency shall inform the individual concerned of the action taken as a result of the request.

Requests for correction often follow requests for access. The person obtains access to their records, considers that there is an error, and asks for the error to be corrected. When releasing personal information, we also have an obligation to advise the person that they have the right to request correction of that information under information privacy principle 7.

## ***G.2 Process***

The Act requires that agencies treat requests for correction of personal information under information privacy principle 7 in the same way as access requests under information privacy principle 6 are treated.

This means that the same time limits, and the processes set out in paragraphs C7 – C10 apply.

## ***G.3 Correction vs. attachment of a statement***

Information privacy principle 7 differentiates between factual matters (such as an address, or date), and matters of opinion. Matters of fact can and should be corrected on the file if the person asking for the correction can demonstrate that the Department's record is wrong.

Where the disputed information is a matter of opinion, or simply a different interpretation of an event or situation, rather than correcting our records by substituting the requester's record for our own, we should ensure that the requested statement of correction is kept together with the disputed record to ensure both versions are clear to anyone who views the file.

On electronic systems, this may involve placing a “flag” to draw the user’s attention to the fact and location of the statement of correction.

#### ***G.4 Duty to notify***

If we have accepted that a record is incorrect and have agreed to correct the record, we need to check whether any other agencies have access to, or have been given a copy of the disputed information and, if possible, let them have a copy of the correction statement.

#### ***G.5 Correction does not require deletion***

A person who has had access to their personal information is not entitled to insist that the Department delete or destroy that information.

#### ***G.6 Notify the requester of the outcome of their request for correction***

Regardless of the outcome of our consideration of the person’s request, we need to advise the requester what we have done (or not done).

#### ***G.7 Right of Complaint to Privacy Commissioner***

In any case where we have not dealt with a correction request in the way sought by the requester, we must advise the requester of their right to make a complaint to the Privacy Commissioner.

# H. Disclosure of Personal Information - Information Privacy Principle 11, other legislation

## H1. Introduction

There are many layers of legal obligation in relation to personal information. For example, information privacy principle 11 governs department initiated disclosures. Information privacy principle 6 governs disclosure on the request of the individual concerned.

Where a request is made by a third party, the request is generally dealt with under the Official Information Act, and nothing in the Privacy Act prevents the disclosure where necessary under the OIA. Although where necessary, the Department *can* refuse to give a requester access to information about a third party “*to protect the privacy of a natural person including a deceased natural person*” (OIA s.9(2)(a), OIA Policy para F.3.2)

If that third party is another government agency, we need to look for another legal authority, and if there is none, fall back on privacy principles. For example:

- the Inland Revenue Department might ask for information under section 16 or 17 of the Tax Administration Act 1994. We must then disclose the information. Disclosing the information is not a breach of the Privacy Act.
- the Ministry of Social Development might ask for information under section 11 of the Social Security Act 1964. We must then disclose the information. Disclosing the information is not a breach of the Privacy Act.
- The Department of Child Youth and Family might ask for information under section 66 of the Children Young Persons and their Families Act 1989 in relation to a child or young person who may be in need of care and protection. We must then disclose the information. Disclosing the information is not a breach of the Privacy Act.
- Agencies such as the Police may obtain a warrant from the Court requiring the production of information. We must then disclose the information. Disclosing the information is not a breach of the Privacy Act.
- The Ombudsmen and the Privacy Commissioner can compel the production of personal information, as can Select Committees. Acceding to those authorities will not be a breach of the Privacy Act.

## H2. Information Privacy Principle 11

In the absence of any other legal requirement or authority to disclose personal information, the question of whether the Department can disclose personal information will depend upon information privacy principle 11.

The main principle says “*An agency that holds personal information shall not disclose the information to a person or body or agency*”, but there are exceptions (see below).

It will not be a breach of the principle where the agency “believes on reasonable grounds” that one of the exceptions to the principle applies. The phrase “believes on reasonable grounds” incorporates both subjective and objective elements. That is, the agency must

genuinely believe it is entitled to rely on an exception, and the basis for this belief must be objectively verifiable, that is, it must stand up to independent scrutiny.

The exceptions to the principle are:

**H.2.1 Disclosure for one of the purposes in connection with which the information was obtained**

It should be easy to determine the purpose for which the information was obtained.

It is important to note that the purpose for which the information is obtained by the Department, and the purpose an individual has in mind in giving the information might not always be perfectly aligned. Therefore, the individual's objection to a proposed disclosure might not mean the Department cannot disclose it. However, under information privacy principle 3, the Department ought to have informed the person concerned, among other things, of the purpose of collection, and of the intended recipients.

**H.2.2 Disclosure for a directly related purpose in connection with which the information was obtained**

In addition to allowing the disclosure of the information for the purpose for which it was obtained, the Act allows an agency to disclose personal information to other agencies where the purpose of the disclosure is "directly related" to that primary purpose.

If one of the purposes of collecting information about a prospective employee's, or immigration applicant's educational qualifications is to verify their authenticity with the educational institution, providing information to those institutions to enable that verification will not be prohibited under information privacy principle 11 because the disclosure to the specific agency is directly related to the purposes for which the information was obtained.

**H.2.3 Disclosure where the source of the information is a publicly available publication**

Note that the disclosure will be permitted where it is believed on reasonable grounds that the source of the information is a publicly available publication. This exception will only be available where the Department obtained the information directly from a publicly available source, not where the Department obtained information from the individual concerned which is subsequently published, for example, in a newspaper.

**H.2.4 Disclosure is to the individual concerned**

For the avoidance of doubt, the principle provides an explicit exception to state that it cannot be a breach of the prohibition on disclosure where the disclosure is to the individual concerned, either in response to a request under information privacy principle 6, or at the Department's initiative.

**H.2.5 Where the disclosure is authorised by the individual concerned**

Refer to paragraphs A4 [[A.4 Requests on behalf of individual concerned – Lawyers, representatives, advocates, consultants.](#)] and A5 [[A.5 Requests on behalf of individual concerned – Members of Parliament and their staff](#)] in respect of policies for disclosing personal information to different types of agent. As a general rule the department requires the written authorisation of the individual concerned to disclose full copies of files or documents, but is able to pass on information about the process in which a person is involved, the reasons for decisions, and the options available to them without written authorisation, provided the person dealing with the request is satisfied that the person asking the questions has been authorised by the person concerned (whether or not in writing).

**H.2.6 Disclosure is necessary to avoid prejudice to the maintenance of the law including the prevention, detection, investigation, prosecution, and punishment of offences or for the enforcement of a law imposing a pecuniary penalty**

Giving information to the Police or Customs to assist them in a specific inquiry will not be a breach of the principle, whether or not they have a warrant.

This would include forwarding to the Police details of apparent employee fraud, immigration scams, or giving a local authority information about breaches of bylaws noticed by a Health and Safety Inspector.

Where officers of the Department whose job involves enforcement of the law, e.g. Immigration Act, or the Health and Safety in Employment Act, encounter people reluctant to give them information because they are concerned they might be breaching the Privacy Act, the person concerned can be told that assisting the investigation will not be a breach of the Privacy Act for this reason.

Seek advice from Legal Services before relying on this exception to disclose personal information.

**H.2.7 Disclosure is necessary for the protection of the public revenue**

Note that this exception refers to “revenue”, not expenditure. This is the Government’s revenue collection process, through taxes and duties. Information sought by an officer of Inland Revenue or Customs can be disclosed under this exception. In other words, it will not be a breach of information privacy principle 11 where the Department provides information to an Inland Revenue or Customs employee who is investigating a revenue matter.

Seek advice from Legal Services before relying on this exception to disclose personal information.

**H.2.8 Disclosure is necessary for the conduct of proceedings before any court or Tribunal (being proceedings that have been commenced or are reasonably in contemplation)**

This section applies not only to permit disclosure necessary to enable the Department to carry out necessary enquiries and preparations for court cases it is involved in, but also to disputes between other parties. The exception only applies in respect of cases that have been commenced, or that are reasonably in contemplation. It will not be enough that we are having a preliminary look at an allegation without any idea as to whether the matter will result in court proceedings.

Because it may be difficult for the Department to judge whether any given information is necessary for proceedings with which it is not involved, it may be preferable to advise parties seeking information to use in court proceedings either to seek an order from the Court, or to make a request under the OIA, specifying what they believe to be the public interest in having the information released.

Seek advice from Legal Services before relying on this exception to disclose personal information.

**H.2.9 Disclosure is necessary to prevent or lessen a serious and imminent threat to public health or public safety or the life or health of the individual concerned or another individual**

This exception provides a high threshold. The threat to public health or safety, or the life or health of an individual, must be both “serious”, and “imminent”.

There may be grounds for disclosing information in reliance on this section where, for example, a recent arrival from a risk area exhibits symptoms of SARS. However, a disclosure must be “necessary”, which incorporates concepts of proportionality and appropriateness.

Advising health authorities, who are in a position to do something, might be permitted in the example above, however contacting the media or a Member of Parliament about a client’s health status almost certainly would not.

Except where precluded by situations of utmost urgency, legal advice should be sought before relying on this exception to disclose personal information.

**H.2.10 Disclosure in form where individual not identifiable**

Information that could not identify an individual ceases to be personal information, so the Privacy Act does not prevent disclosing aggregate and statistical data.

Identifiable information can also be disclosed under information privacy principle 11(h)(i) where it is to be used in a form in which the individual concerned is not identified.

**H.2.11 Disclosure for statistical or research purposes**

Under information privacy principle 11(h)(ii), an agency can disclose personal information to researchers, provided that they are not going to publish information in a form that could reasonably be expected to identify an individual.

**H.2.12 Disclosure in accordance with an authority granted under section 54 of the Act.**

In rare cases the Privacy Commissioner can grant a one off authorisation to disclose personal information. This will seldom be relevant to the Department and any approach to the Privacy Commissioner must be made through Legal Services.

**H3. Disclosure to Agents**

The Department is entitled to give personal information to people acting as agents for the Department (for example an IT contractor or a company doing a client survey for us), provided those agents do not use or disclose the information for their own purposes. In such cases the information is deemed to be held by the Department at all times and not to have been disclosed, so the giving of information is not a breach of information privacy principle 11. (see Privacy Act section 3(4))

# ***I. Review by the Privacy Commissioner***

## ***I.1 Introduction***

Requesters have the right to complain to the Privacy Commissioner about:

- Any refusal to release personal information (which may also arise where a response is perceived by the requester as incomplete).
- A decision to extend the time available for responding to a request, including the length of the extension.
- A failure to comply with time limits, which is treated as a refusal to release.
- A refusal to correct information, or to note a request that it be amended.
- An improper collection, use or disclosure of personal information that is in breach of the information privacy principles, and which has caused the complainant some harm.

This Part of this Policy deals with how the Department is to participate in, and co-operate with, the review by the Privacy Commissioner.

## ***I.2 Privacy Commissioner's Process***

When the Privacy Commissioner receives such a complaint she then writes to the Chief Executive outlining the nature of the complaint and the details made known to her by the complainant.

She will usually ask for the following things to happen:

- That we provide her with copies of all the information requested (ie, anything released or withheld in response to the request).
- That we provide her with any papers/information relevant to our initial decision on the request.
- That we explain the basis upon which we withheld any information (or, as the case may be, why the time limit has been extended). More particularly, in this regard she asks us to focus as precisely as possible on the prejudice or harm that we believe would be likely to result if the information were disclosed, and how that prejudice or harm is protected by the withholding provisions we have relied on.
- That we inform her of whether any third party was consulted and, if so, whether they had any separate concerns about disclosure.

Usually the Privacy Commissioner expects to receive copies of all of this information as soon as practicable, but will specify a maximum timeframe of 20 working days. Extensions to that timeframe can be negotiated in appropriate circumstances (eg, where the issues are complex and/or require further consultation). Such extensions should be sought **before** the maximum timeframe expires.

At all stages of her investigation, the Privacy Commissioner may seek to settle the complaint. In complaints involving withheld information, this might include reviewing the decision to withhold information, seeing whether information can be made available in any other form, or

perhaps more fully explaining the reason for withholding. If the Department has made a mistake, and incorrectly withheld information, the Privacy Commissioner might suggest that the Department apologise, or correct some procedure, or in very rare cases, make a payment of some kind to the requester.

After considering the written material the Privacy Commissioner may sometimes request a meeting to discuss the matter, but more usually will arrive at a provisional opinion about whether the complaint has any merit.

Generally, if the Privacy Commissioner's provisional opinion is that we have made a correct decision, the complainant will be advised of that and asked to comment. We will be told in writing that the Privacy Commissioner is in further correspondence with the complainant.

On the other hand, if the Privacy Commissioner's provisional opinion suggests that the Department has made an error, the provisional opinion will be sent to the Department for any comments.

After receiving any final comments from relevant parties (Department or complainant), the Privacy Commissioner will then prepare her final opinion on the matter and convey that to both parties.

### ***1.3 Departmental Contribution to Process***

#### ***1.3.1 Full and Expeditious Cooperation***

This Policy requires those Departmental staff involved with any Privacy Commissioner's review to give full cooperation to the Privacy Commissioner and to do so in the quickest practicable time.

#### ***1.3.2 Settlement***

The Privacy Act requires the Privacy Commissioner to attempt to settle any complaint. Where the complaint is one of improper withholding of personal information, often the release of the information will be enough to resolve the matter.

There will be occasions where the Privacy Commissioner suggests additional steps, such as an apology, or even an *ex gratia* payment. Any such suggestion should be seriously considered, however advice from Legal Services should be sought prior to agreeing to any such resolution.

#### ***1.3.3 Register the Review Notification***

The review by the Privacy Commissioner must be registered on SilentOne. This will normally occur when the letter notifying the review comes to the Chief Executive.

#### ***1.3.4 Managerial Involvement***

A manager, more senior than the one who signed off the original decision now being reviewed, must take oversight of and responsibility for the interactions with the Privacy Commissioner. This is unless the original decision was signed out by a Deputy Secretary, in which case that Deputy Secretary may manage the review.

The above interactions may include having discussions with the Privacy Commissioner about the substantive issues involved. Discussions with the Privacy Commissioner on such matters can also occur with a departmental Solicitor or other person authorised to make decisions on Privacy Act requests.

In any case where informal or formal discussions occur with the Privacy Commissioner or her staff on substantive issues the departmental person involved must keep a written record of key points and outcomes.

Any formal correspondence with the Privacy Commissioner must be signed out at Deputy Secretary level on behalf of the Secretary of Labour and must be copied to the Secretary. We expect correspondence from the Privacy Commissioner to be addressed to the Chief Executive as Secretary of Labour.

The Manager should consider whether the Minister's office needs to be made aware of the review.

The Manager should consider early involvement of Legal Services because legal advice will be required before a response goes to the Privacy Commissioner.

### ***1.3.5 Management of Other Informal Contact***

Any informal contact with the Office of the Privacy Commissioner other than that authorised under clause 1.3.4, should be for administrative purposes, should be by staff who have managerial authority for that purpose, and should not deal with the substantive issues involved in the review. Any such informal contact should be recorded – time and nature of contact – and minuted to the manager overseeing the process.

### ***1.3.6 Providing the Information***

The Privacy Commissioner has an **absolute right to see all the information** that is covered by the request. Because this should have been assembled in order to answer the request it should be readily available. The only exception to this is where the request has been refused because the information is “not readily retrievable”.

The manager overseeing the review should assure him/herself that the information was indeed assembled, and if it is discovered that it wasn't then immediate action needs to occur to internally review the adequacy of the original response. The Privacy Commissioner should also be informed of any such development and of the process then put in place.

A copy should be made of the information covered (including copies of the letters sent by and to the requester) and the Privacy Commissioner given the originals. A copy of the letter to the Privacy Commissioner accompanying the material should be kept on file.

**No relevant information should be withheld from the Privacy Commissioner.**

### ***1.3.7 Providing the Reasoning***

Two things must also happen:

- The Privacy Commissioner should be given access to any internal documents that record or discuss how the Department made its decision on the request in the first place. This includes any emails or memos or notes of any meetings or conversations, including any legal advice.
- The Department should reconsider the basis for its original decision and either ensure it is robust and correct or determine whether to adjust or reverse its earlier decision. Obtaining legal advice should be part of this process.

The Privacy Commissioner must then be provided with the original documentation leading to the decision and any defence of, or change to, that as a result of our reconsideration of the

decision. The letter to the Privacy Commissioner should be signed out at Deputy Secretary level and copied to the Secretary. A contact person for the Privacy Commissioner's representative to get in touch with also needs to be identified.

### ***1.3.8 Responding to a Preliminary Opinion***

If the Department receives a preliminary opinion from the Privacy Commissioner that seeks to have us change our decision, or an aspect of it, we will have a nominated number of working days to respond.

Preparation of the response should include early involvement of Legal Services.

Responding to the preliminary opinion is not usually an opportunity to provide new arguments or evidence. Rather it is an opportunity to ensure the Privacy Commissioner has understood our arguments or to ensure the Privacy Commissioner can see why we emphasise certain matters over others.

If the preliminary opinion is persuasive, then usually we should move to act in accordance with it rather than wait for the final opinion.

Again, the considered response should be signed out at Deputy Secretary level.

The Privacy Commissioner's opinion will most often be on whether the Department's decision to withhold information (or refusal to correct information) has resulted in an interference with privacy, and will typically not include recommendations as to damages or other such remedies.

### ***1.3.9 Failure to meet Privacy Commissioner's Timeframes***

Failure to meet the time limits for responding to the Privacy Commissioner during any such review can result in the failure being formally reported to Parliament.

## ***1.4 Privacy Commissioner's Final Opinion***

If the Privacy Commissioner makes a finding that the Department should not have withheld the information she will usually recommend that the information is released. If the Department disagrees, and declines to make the information available, the Privacy Commissioner can either refer the file to the Proceedings Commissioner to bring a proceeding in the Human Rights Review Tribunal, or the requester can make a claim in the Tribunal themselves.

The Tribunal can make orders that the information should be released, and can also award damages and costs.

## ***1.5 Review of Ministerial Decisions***

Most of the above process will be relevant to a review of a decision on a request made, or transferred to, a Minister. Our role will be to support the Minister's handling of the complaint to the extent required. This may involve administrative support and advisory support (including legal advice) as necessary.

In this situation, of course, all decisions are made by the Minister and all correspondence is with the Minister's office.

## ***1.6 Learnings***

Clearly, the process of managing a dispute about how a request was answered can be both resource intensive and time consuming.

From the successful complainant's point of view, the whole process can look either like incompetence or deliberate withholding of information. For these reasons three things are imperative:

- That the appropriate resources go into the handling of the original request to ensure the right decision is made.
- That authorised decision makers are involved at the required times throughout the process.
- That if we are found to make a mistake, we fix it as early as possible and ensure that we all learn from it.

Accordingly, where the Privacy Commissioner makes a recommendation to the effect that the Department had wrongly withheld information or otherwise not complied with the Act, the Deputy Secretary - Legal will consider whether:

- Any changes to this Policy are required; and/or
- Discussion with the relevant Deputy Secretary is required; and/or
- To otherwise draw the issue to the attention of the Strategic Leadership Team.

# ***J. Miscellaneous Issues***

## ***PRACTICALITIES OF RESPONSES***

### ***J.1 Deletion of Information***

If there is good reason to withhold information then there is good reason for making sure it is properly deleted from the copy released.

Text blacked out can sometimes still be visible after photocopying. Accordingly the proper way to delete information is either tape over it or cut it out before photocopying or to create a new version of the document with deletions.

The copy of the document released should usually show on its face where any deletions have been made so the requester can understand what they receive. A standard way of doing this is to put square brackets around the space from which deletions were made.

In some circumstances, the number of deletions may mean that the document is very hard to read. Also, where many deletions are being made, the risk of inadvertently releasing information (for example the oft repeated name of an informant) increases. In these circumstances, it might be wise to consider releasing a summary of the document, containing all the information that does not need to be withheld, instead of making the deletions.

### ***J.2 Information not Covered***

Sometimes a document that is being released pursuant to a request contains other information that is not covered by the request.

You are releasing the relevant information (portion of the document) but you are not withholding the other information – you are simply treating it as not relevant to the request.

If it will be obvious that information has been removed from a document in such circumstances, you should advise the requester of the reason – “Information that is not relevant to the request has been deleted”.

### ***J.3 Record Keeping***

Because any decision to withhold personal information can be reviewed by the Privacy Commissioner it is important to keep clear and accurate records of what has been released, what has been withheld, and which reasons for withholding apply to which pieces of information.

#### ***J.3.1 All information***

We need to keep a record of all information that was considered to be covered by the request. This means we must keep copies of the three elements discussed in more detail below:

- Released Information
- Withheld Information
- Reasons for withholding.

### **J.3.2 Released information**

This should be a photocopy of the actual information released to the requester.

When releasing personal information we need to advise the requester that they have the right to request correction of information under information privacy principle 7.

### **J.3.3 Withheld information**

This should be recorded in the form of a copy of the full original document either indicating that it was completely withheld or with the bits that were not released highlighted in some way. This is best done with highlighter or by outlining the passage or sentence in ink.

### **J.3.4 Rationale for withholding**

This has to be recorded in the accompanying letter that tells the requester what he or she is or is not getting [[Letter Withholding Information](#)]. Where possible, we should advise the requester how much information has been withheld for various reasons. Consideration should be given to compiling a table that shows “Document”, “Information withheld [i.e. one paragraph/five pages]”, and “Reason”. However, if that exercise is too onerous, we are entitled simply to advise what has been withheld in more general terms. Care should be taken not to prejudice maintenance of the law and security interests, for example by saying, “we have withheld ten pages relating to security issues under s.27(1)(a)”. This might prejudice security by disclosing that we have an extensive file, and therefore have an interest in the person.

It is important, for any later discussion with the Privacy Commissioner that may occur, to be able to accurately report not just which withholding reason was applied but also how it was applied to each piece of withheld information.

This means that each piece of withheld information should have written alongside it in our records the relevant section reference that we relied on in withholding it. This can be written in the margin of the copy which has the highlighted withheld bits. It is not appropriate to use yellow “stickies” to do this because they can easily be displaced.

### **J.3.5 Record of Managerial and Legal input**

The record kept should include evidence of relevant decisions by the authorised decision-maker and of any legal advice received. [[J.6 Legal Advice](#)]

## **J.4 Contents of Letter**

The letter responding to the request must:

- Be signed by an authorised decision maker [see sign-off]
- Quote the section or sections of the Act which are being relied on to refuse any aspect of a request
- Identify what each section relates to [[List of Standard Descriptions for Withholding Sections](#) ]
- Be accompanied by the information being released
- Advise the requester of the right to complain to the Privacy Commissioner if, for example, information is being withheld.

A template letter can be found at [[Letter Withholding Information](#)].

### ***J.5 Sign-off***

All responses to Privacy Act requests, whether to release or withhold, must be approved and signed by the appropriate manager or other person who has been authorised by the Chief Executive.

### ***J.6 Legal Advice***

If it is proposed to withhold any information then this Policy requires that proposal to be checked by the Department's Legal Services Group.

### ***J.7 Dissatisfied Clients***

If a requester responds to our decision by coming back to us and wishing to discuss the decision (instead of immediately complaining to the Privacy Commissioner), you should listen to what they have to say.

Then consider whether what they have said means that you should reconsider the original decision or at least raise it with your manager.

## Template 1

### Letter to Person Not Entitled to Make Request

Dear...

I am responding to your request for information which was received by the Department on [...date.....].

The request related to *[state nature of information requested]*.

Unfortunately you are not a person who is entitled to make a request for information under the Privacy Act 1993. This is because you are not, as we understand it, a NZ citizen, a NZ permanent resident, or a person who is actually in NZ.

Accordingly, your request is refused because it is not made in accordance with information privacy principle 6 of the Privacy Act 1993.

You may contest this decision by complaining to the Privacy Commissioner, whose address for contact purposes is:

The Privacy Commissioner  
Office of the Privacy Commissioner  
P O Box 10-094  
WELLINGTON

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, you are encouraged to contact [\[Name\]](#), [\[Position\]](#) on [\[DDI\]](#).

Yours sincerely

...  
for **SECRETARY OF LABOUR**

## Template 2

### **Letter where both OI Act and Privacy Act Involved**

Dear .....

I am responding to your request for information which was received by the Department on [date].

The request related to *[state nature of information requested]*.

Your request falls under both the Privacy Act and the Official Information Act.

In relation to that information which is covered by the Privacy Act (ie, the information which is about you), *[here state the outcome of the decision under the Privacy Act – release or withhold, or both, and relevant sections if withholding involved]*.

*[If personal information released add]* You are entitled to request correction of any personal information you believe is inaccurate or misleading.

In relation to that information which is covered by the Official Information Act (ie, the information which is not directly about you), *[here state the outcome of the decision under the OI Act release, withhold, or both and relevant sections if withholding involved]*.

*[If information withheld under the Privacy Act]*

You have the right to contest the decision to withhold information about you under the Privacy Act by seeking a review of that decision by the Privacy Commissioner who may be contacted at:

Privacy Commissioner  
Office of the Privacy Commissioner  
P O Box 10-094  
WELLINGTON

*[If information withheld under the OI Act]*

You have the right to contest the decision to withhold information under the Official Information Act by seeking a review of that decision by the Ombudsman, who may be contacted at:

Chief Ombudsman  
Office of the Ombudsmen  
P O Box 10-152  
WELLINGTON

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, you are encouraged to contact [\[Name\]](#), [\[Position\]](#) on [\[DDI\]](#).

Yours sincerely

...  
for **SECRETARY OF LABOUR**

## Template 3

### Letter to Requester Transferring Request

*[NOTE: Only possible within 10 working days of receipt of request]*

Dear ... ..

I refer to your Privacy Act request dated ...

This letter is to notify you that the Department is transferring your request to *[insert details of Minister or Department or other organisation]*.

This transfer is occurring because the information to which your request relates:

*[Delete one of the following]*

*[Either]*

- Is not held by this Department but is believed by us to be held by *[insert as above]*

*[Or]*

- Is believed by the Department to be more closely connected with the functions of *[insert as above]*.

Further correspondence on this request will therefore come to you from *[insert as above]*. Note that the time limit for responding will be 20 working days from when *[insert as above]* receives this transfer from us.

Yours sincerely

...  
for **SECRETARY OF LABOUR**

**Template 4**  
**Letter to Transferee**

Dear ... ..

**TRANSFER OF PRIVACY ACT REQUEST**

I attach the following:

- A request for personal information from [xx] dated ...
- Our letter to [xx] dated ... notifying [xx] that the request is being transferred to you for response.

This letter serves as a formal transfer under section 39 of the Privacy Act of this request to you to respond directly to the person who made the request.

Please handle the request accordingly.

Yours sincerely

...  
for **SECRETARY OF LABOUR**

## **Template 5**

# **Consultation with third parties**

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Dear ... ..

### **Request under the Privacy Act**

I am writing to inform you that [*name of requester*] has requested information about them as they are entitled to do under the Privacy Act.

The information the Department holds about [*name of requester*] includes information [*obtained from/about*] [*you/your organisation*]. Before deciding whether or not there is any good reason to withhold the information, we seek your comments as to whether you believe that any of the information should be withheld for one or more of the reasons set out in sections 27-29 of the Privacy Act 1993.

To enable us to respond to the request within the statutory timeframe, please reply to this letter by [*date*].

We will take your comments into consideration when making our decision whether or not to release the information. Please note that even where you might object to the release of some information, we may nonetheless be under a legal obligation to allow the requester to have access to it.

Yours sincerely

...  
**for SECRETARY OF LABOUR**

## **Template 6**

# **Letter Extending Time**

Dear ... ..

I refer to your request for personal information dated ...

This letter is to notify you that the Department is extending the time available to it to answer your request. The Department's response will now be made *[specify date, or number of working day]*.

The reason for the extension is that:

*[Delete all but one of the following]*

*[Either]*

- Your request is for a large quantity of information and meeting the 20 working day time limit would unreasonably interfere with the operations of the Department.

*[Or]*

- Your request necessitates a search through a large quantity of information and meeting the normal 20 working day time limit would unreasonably interfere with the operations of the Department.

*[Or]*

- Consultations necessary to make a decision on your request are such that a proper response to your request cannot be reasonably made within the normal 20 working day time limit.

You have the right to contest this extension by complaining to the Privacy Commissioner who may be contacted at:

Privacy Commissioner  
Office of the Privacy Commissioner  
P O Box 10-094  
WELLINGTON

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, you are encouraged to contact [\[Name\]](#), [\[Position\]](#) on [\[DDI\]](#).

Yours sincerely

...  
for **SECRETARY OF LABOUR**

**Template 7**

**Acknowledgement Letter**

[For use at end of 3 working day initial processing period]

Dear .....

This letter is to acknowledge receipt of your Privacy Act request dated [.....] relating to [.....*nature of information requested*].

Your request is the responsibility of [*name*], [*title*], who can be contacted on [*DDI*] or [*e-mail*] if you have any queries in relation to it.

*[I also record the telephone discussion we have already had regarding the scope of your request. The position reached was that.....]*

Please direct any enquiries to the abovenamed, but you can expect to receive a response by [*date*].

Yours sincerely

...  
for **SECRETARY OF LABOUR**

## Template 8

### Letter Withholding Information

[This applies whether all or just some of the information is being withheld]

Dear ... ..

I refer to your request for personal information dated ...

*[I attach copies of the following information which is covered by your request. You are entitled to request correction of any information you believe is inaccurate or misleading.]*

Certain *[or All]* information is being withheld in reliance on section *[insert relevant references to withholding provisions including a brief description of what the provisions relate to. For some standard descriptions of that nature refer to last page of this Policy].*

*[Insert as necessary any further explanation of the grounds for refusal]*

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, you are encouraged to contact *[Name]*, *[Position]*, on *[DDI]*.

You have the right to contest the decision to withhold information by seeking a review of that decision by the Privacy Commissioner, whose address for contact purposes is:

The Privacy Commissioner  
Office of the Privacy Commissioner  
P O Box 10-094  
WELLINGTON

Yours sincerely

...  
for **SECRETARY OF LABOUR**

**Template 9**  
**Letter of response to request to correct personal  
information**

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Dear ... ..

I refer to your request for correction of personal information dated ...

Your request to have personal information corrected has been *accepted/declined*.

*If accepted*

Please find enclosed a copy of the corrected record.

*If declined*

Your request for correction has not been accepted, but in accordance with information privacy principle 7, your request for correction has been attached to the information at issue.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, you are encouraged to contact [*Name*], [*Position*], on [*DDI*].

You have the right to contest the decision on your request for correction by seeking a review of that decision by the Privacy Commissioner, whose address for contact purposes is:

The Privacy Commissioner  
Office of the Privacy Commissioner  
P O Box 10-094  
WELLINGTON

Yours sincerely

...  
for **SECRETARY OF LABOUR**

## **Template 10**

# **Letter Releasing Information**

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Dear ... ..

I refer to your request for personal information dated ...

I attach copies of the following information which is covered by your request.

You are entitled to request correction of any information you believe is inaccurate or misleading.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, you are encouraged to contact [*Name*], [*Position*], on [*DDI*].

Yours sincerely

...  
for **SECRETARY OF LABOUR**

## **List of Standard Descriptions for Withholding Sections**

The following descriptions are for use in Template 8, Letter Withholding Information, in order to better and consistently inform requesters about the nature of the withholding section being relied on:

- Section 27(1)(a) – which relates to prejudice to the security or defence of New Zealand or the international relations of the Government of New Zealand.
- Section 27(1)(b) – which relates to prejudice to the confidential entrusting of information to the Government of New Zealand by other governments or by international organisations.
- **Section 27(1)(c)** – which relates to prejudice to the maintenance of the law.
- **Section 27(1)(d)** – which relates to the safety of a person being endangered.
- Section 28 which relates to trade secrets and unreasonable prejudice to the commercial position of a person.
- **Section 29(1)(a)** – which relates to the unwarranted disclosure of the affairs of another person.
- **Section 29(1)(b)** – which relates to the evaluative material such as referees' reports.
- Section 29(1)(c) – which relates to the information that could prejudice the physical or mental health of the requester.
- Section 29(1)(d) – which relates to information about requesters who are under 16.
- Section 29(1)(e) – which relates to the safe custody and rehabilitation of the individual.
- **Section 29(1)(f)** – which relates to legal professional privilege.
- **Section 29(1)(i)** – which relates to contempt of court or of the House of Representatives.
- **Section 29(1)(j)** – which relates to frivolous or vexatious requests, or requests for trivial information.
- **Section 29(2)(a)** – which relates to requests for information that is not readily retrievable.
- **Section 29(2)(b)** – which applies when the information requested does not exist or cannot be found.
- **Section 29(2)(c)** – which relates to requests where the information requested is not held by the agency and the person dealing with the request has no grounds for believing that the information is either held by another agency; or connected more closely with the functions or activities of another agency.

**Note:** Those section numbers not in bold are those that are seldom relevant to requests processed by this Department.

## **Authorisation**

In terms of section 40(3) of the Privacy Act 1993, I hereby authorise all persons holding managerial and team leader positions within the Department of Labour to make decisions on requests for personal information made under that Act.

James Buwalda  
**SECRETARY OF LABOUR**

## **Delegation**

Pursuant to section 41 of the State Sector Act 1988 I delegate to all members of the Department's Strategic Leadership Team, the power to authorise employees of the Department to make decisions, as envisaged by section 40(3) of the Privacy Act 1993, on requests for personal information made under that Act.

James Buwalda  
**SECRETARY OF LABOUR**