



Intended for	All Ministers All Chief Executives Chiefs of Staff All Senior Private Secretaries Chief Ombudsman
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Access to information of a previous administration

Purpose

- 1 This circular sets out the principles that guide Ministers' access to the records of the previous administration. It also provides guidance for officials handling requests for official information received before 26 October 2017, when the new administration was appointed.

Access by incumbent Ministers to records of a previous administration

Cabinet records

- 2 Recognising that government is a continuing process and to ensure that decisions may be made in the light of precedent, by convention incumbent Ministers are entitled to access the Cabinet records of a previous administration. Ministers are provided with access on the basis that the confidentiality of the papers is respected (see [paragraphs 8.128 and 8.129](#) of the *Cabinet Manual*).
- 3 For documents lodged outside of the CabNet system, the CAB 100 consultation forms should be removed from any Cabinet records provided to the Minister, as they contain information that is confidential to the previous administration.

Departmental papers

- 4 Departmental papers are not covered by the convention on access (see [paragraph 8.127](#) of the *Cabinet Manual*). Incumbent Ministers do not, therefore, have an automatic right to copies of departmental papers or briefings prepared for a previous Minister.

- 5 A Minister may, however, need to gain an understanding of the advice given by the department to his or her predecessor, in order to understand fully the nature of an issue. When making a request for information of this kind, a Minister should be cognisant that such information can be politically sensitive.
- 6 Accordingly, officials who receive requests from Ministers for departmental papers dating from a previous administration should advise their chief executive. The chief executive will, in consultation with the Minister, determine how to meet the Minister's need for information without compromising the political neutrality of the department, or its ability to maintain the confidence of both present and future Ministers. Options may include:
- 6.1 supplying the material that has been requested; or
- 6.2 providing a briefing summarising the advice given to a previous Minister and the decisions taken.
- 7 Each request by a Minister for information held by the department should be individually assessed by the chief executive in relation to the Minister's needs, the sensitivity of the information, the currency of the information and the issue to which it relates, and other associated factors.
- 8 As with Cabinet records, information held by a department is supplied to the Minister on the basis that the confidentiality of the information is respected.
- 9 Ministers should talk to the Secretary of the Cabinet if they have any queries in relation to access to departmental information provided to former Ministers. Departmental officials should contact the State Services Commissioner if they have any queries in relation to this matter.

Release of Cabinet records of a previous administration

Consultation with Leader of the Opposition

- 10 A Minister or department that proposes to release the Cabinet records of a previous administration, in response to a request under the OIA or for any other reason, should advise the Cabinet Office as soon as possible. The Cabinet Office, on behalf of the Prime Minister, will consult the Leader of the Opposition about the proposed release (see [paragraphs 8.133 – 8.134](#) in the *Cabinet Manual*).
- 11 If the Leader of the Opposition has any concerns about the proposed release, in terms of the OIA or any relevant laws or rules, the Cabinet Office will pass them on to the Minister or department to consider when making the decision on release.
- 12 Requests from members of the public or members of Parliament, including former Ministers, for official information that is not covered by the convention (for example, departmental briefing papers) should be handled in accordance with the OIA in the usual way.

Release of Briefings for Incoming Ministers

- 13 Departments and agencies are reminded that while briefings for incoming Ministers are subject to the OIA, there is no presumption that they will be released. Whether a briefing is released publicly is a matter for the Minister, not the department or agency, to decide (see [paragraph 3.19](#) of the *Cabinet Manual*).
- 14 Departments should make decisions on any requests for drafts of the briefings to incoming Ministers. Ministers should be provided with a copy of any information that is released.

Current requests for official information and complaints to the Ombudsman

Unprocessed requests for official information

- 15 The Office of the Ombudsmen has agreed that unprocessed requests for official information received before the new administration was appointed on 26 October 2017 may be handled in the following way:
 - 15.1 Requests which have not yet been processed should generally be treated as continuing.
 - 15.2 A request for information that is personal to the previous Minister (such as recollections or personal records), however, cannot be treated as continuing. In such a case, the requesters should be asked to withdraw the request or to submit a fresh request to the new Minister.
 - 15.3 A request for information to which the incumbent Minister may not have access, as outlined in paragraphs 4-9 above, should be handled by the department. The department should advise the Minister if it plans to release any such information, but should not provide the Minister with copies of any withheld information of this nature.

Incomplete reviews

- 16 The Office of the Ombudsmen has advised that in the case of a decision under the OIA by a former Minister that was under review by the Ombudsmen as at 26 October 2017, the Ombudsmen will consider the future of the review on a case by case basis. The general approach, however, will be similar to that recommended for current requests for official information in paragraph 15 above.
- 17 In each case that the Ombudsmen treats as continuing, the new Minister will be invited to respond to the Ombudsmen's investigation, either by confirming the original withholding decision or by responding to a provisional view on the matter, as seems appropriate to the Ombudsmen.
- 18 If the requested information is personal to the previous Minister, the Ombudsmen will advise the requester that the complaint is closed, and that the requester may send a fresh request to the new Minister. Such a request would be handled in the usual way by the Minister and, if necessary, by the Ombudsmen on review.

Distribution of circular and further guidance

- 19 The State Services Commissioner will provide copies of this circular to agencies in the State sector, including non-Public Service departments, statutory Crown entities, Crown entity

companies, organisations listed in [Schedule 4](#) and companies listed in [Schedule 4A](#) of the Public Finance Act 1989, the Reserve Bank of New Zealand, tertiary education institutions, and State Owned Enterprises.

- 20 Public Service chief executives should forward copies of this circular to the heads of other agencies within their Ministers' portfolios that do not form part of the State sector.
- 21 Further guidance on the application of the convention on access to Cabinet records of a previous administration can be found in [Chapter 8](#) of the *Cabinet Manual*.
- 22 The Cabinet Office will be issuing further guidance about the resumption of Cabinet business shortly.

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