



Cabinet Office

CO (18) 4

Circular

23 October 2018

Intended for Ministers
 All Chief Executives
 All Senior Private Secretaries
 All Private Secretaries
 All officials involved with preparing and/or processing Cabinet papers

Proactive Release of Cabinet Material: Updated Requirements

Purpose

- 1 This circular sets out the requirements and procedures for the proactive release of Cabinet material (Cabinet and Cabinet committee papers and minutes). It updates and replaces previous advice.

Key points

- 2 All Cabinet and Cabinet committee papers and minutes must be proactively released and published online within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release beyond 30 business days.
- 3 This policy applies to Cabinet and Cabinet committee papers and associated minutes, and any attachments or appendices to the papers, that are lodged from 1 January 2019¹.
- 4 Only Cabinet Appointments and Honours (APH) papers and minutes are explicitly excluded from this policy.
- 5 All Cabinet and Cabinet committee papers (except APH papers) must include a Proactive Release section, which states whether or not the Minister proposes to release the material within 30 days of decisions being made by Cabinet. If a Cabinet paper is not intended to be proactively released, then the reason why must be explained.
- 6 Ministers may also decide to release related key advice papers.
- 7 A due diligence process must be undertaken by the Minister's office, department or agency before Cabinet material or key advice papers are proactively released. It is the publisher's responsibility to confirm that the quality assurance steps have been undertaken before Cabinet material is proactively released and published online.

¹ The process for publicly releasing the Cabinet material of a previous administration is set out in the Cabinet Office circular CO (17) 9: *Access to information of a previous administration*, and paragraphs 8.133 – 8.134 of the Cabinet Manual.

Background

- 8 The government has committed to improving practices around proactive release of information. Democracies thrive when citizens trust and participate in their government. Proactive release of information promotes good government and transparency and fosters public trust and confidence in agencies.
- 9 Proactive release is different from release under the [Official Information Act 1982](#)² (OIA) in that Cabinet material is published in the interests of transparency, not in response to a request under the Act.
- 10 General guidance about the proactive release of Cabinet material is provided in the Cabinet Manual ([paragraph 8.17](#)³) and the Cabinet minute relating to the decision [[CAB-18-MIN-0418](#)⁴]. This circular sets out further detail on the processes and responsibilities that follow a Minister's decision to proactively release Cabinet material and for it to be published online.
- 11 This policy does not affect the requirements set out in the Cabinet Manual regarding Cabinet decision-making processes.

Who is responsible for proactive release

- 12 Ministers have authority to approve the proactive release of Cabinet material within their own portfolios. In the case of joint papers, the agreement of joint Ministers is required. Depending on their administrative arrangements with departments or agencies, Ministers' offices may choose to review the finalised content before publication.
- 13 A publisher is the person in an agency or a Minister's office who is responsible for administering the proactive release and publication of the Cabinet material online. It is the publisher's responsibility to confirm that the due diligence steps have been undertaken before Cabinet material is proactively released and published online.
- 14 A due diligence process must be undertaken by the Minister's office, department or agency before Cabinet material or key advice papers are proactively released. Information about this process is in the due diligence section below.

When must Cabinet material be proactively released

- 15 Cabinet has agreed that Cabinet and Cabinet committee papers and minutes must be proactively released and published online within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release. Ministers can choose to release Cabinet material earlier than the 30 business days.

² <http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

³ <https://www.dPMC.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-1>

⁴ <http://www.ssc.govt.nz/proactive-releases>

- 16 The counting of the 30 business days in which Cabinet material must be proactively released starts from the day of the Cabinet meeting at which final decisions are taken. A business day is any day of the week other than:
- 16.1 Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day (if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, then the following Monday is when the holiday is observed);
 - 16.2 a day in the period commencing 25 December in any year and ending 20 January in the following year.
- 17 Regional anniversary days are counted as business days.

What is required to be proactively released

- 18 All Cabinet papers, and any attachments or appendices to those papers and associated minutes, must be released proactively and published online (excepting APH material), unless there is good reason not to publish all or part of the material. This includes minutes resulting from the consideration of oral items at Cabinet.
- 19 It is the publisher's responsibility to ensure that only the final versions of Cabinet material are proactively released and published online. Final versions are:
- 19.1 the paper approved by the Minister for lodgement on CabNet⁵, in hard copy with the Cabinet Office (for highly classified papers), or for tabling at the meeting, which has been considered by a Cabinet committee or Cabinet (subject to any final technical corrections or amendments requested by Cabinet);
 - 19.2 the minute published by the Cabinet Office on CabNet and/or distributed in hard copy following a Cabinet or Cabinet committee meeting. Cabinet committee minutes should not be released until they have been confirmed by Cabinet, as they are not final decisions until that point (unless the committee has [Power to Act](#)⁶).
- 20 Electronic copies of the final versions of Cabinet material can be downloaded from CabNet for the purposes of proactive release. The watermark on these copies should be retained.
- 21 Where information is redacted, the reasons should be clearly stated. More information about the matters that should be considered before Ministers give approval to proactively release and publish Cabinet material is discussed in the section on due diligence below.
- 22 Each release must be accompanied by a coversheet that contains, at a minimum, the information shown in the example coversheet in the appendix. The exact layout of the coversheet will depend on each agency's website and the material being released. As a protection against misuse of information, copyright statements should be included with the content of each paper published.
- 23 Ministers may also choose to proactively release related key advice papers provided to the Minister by departments or agencies. A key advice paper is a document addressed to the Minister who took the item to Cabinet, which seeks agreement from the Minister to recommendations on the matter. Ministers should consult with the Chief Executive of the

⁵ What is CabNet - <https://www.dPMC.govt.nz/publications/what-cabinet>

⁶ Information about Power to Act - <https://dPMC.govt.nz/publications/how-look-committee-power-act-cabinet>

department or agency who drafted the advice before key advice papers are proactively released.

- 24 Where possible, Cabinet papers, relevant minutes, and any key advice papers should be proactively released together so that readers have context for the decisions made by Cabinet.

Are there any exceptions to the policy

- 25 The only explicit exception to the proactive release policy are for Cabinet papers considered by APH. This Cabinet material is excluded for reasons of privacy, and because any related remuneration packages are publicly reported, where appropriate.
- 26 Cabinet material must be released proactively unless there is good reason not to publish all or part of the material, or to delay the release beyond 30 business days:
- 26.1 a decision might be made to not publish, or only publish part of the material, for matters which relate to national security, have international implications, and/or commercial, or trade or travel sensitivities;
- 26.2 a decision might be made to delay the release for reasons such as allowing for a Minister to return from overseas travel, for a public announcement planned after the 30 day period, or for a Bill to be introduced to the House of Representatives.
- 27 Where a Minister decides not to proactively release Cabinet material, to partially release, or to extend the release timeframe, the paper should clearly note the decision, set out the reasons, and, in the case of an extended timeframe, indicate when the material will be proactively released. This information should be included in the Proactive Release section of the Cabinet paper.
- 28 The policy does not apply to Cabinet Office summaries of papers, or Cabinet and Cabinet committee agendas.

Preparing for proactive release

Indicating proactive release in Cabinet papers

- 29 All Cabinet papers (except those considered by APH) must include a Proactive Release section. This section must state if the Minister intends to proactively release the paper in whole or in part, or to delay the release beyond 30 business days.
- 30 As Ministers have authority to approve the proactive release of Cabinet material in their own portfolios, papers do not need to include a recommendation noting or seeking agreement to release or not release a paper.

Matters to consider when drafting Cabinet papers

- 31 The possibility of a Cabinet paper being proactively released must not undermine the quality of advice included in the paper, and therefore the quality of the decision ultimately reached by Ministers.

- 32 Information, where possible, should be drafted so that necessary material can easily be withheld where there is good reason to do so. Specific guidelines for the presentation of legal advice is provided in the Cabinet Manual, paragraphs 4.66 - 4.67⁷.
- 33 The Ombudsman’s OIA guides⁸, including *Free and frank opinions* and *The OIA and the public policy making process*, should be used by Minister’s offices, departments and agencies.

Due diligence

- 34 All material proposed for release must undergo a considered, reliable, robust, and thorough review process. The following due diligence matters should be considered by the person or agency authoring or reviewing the material before Ministers give approval to proactively release and publish Cabinet material and key advice papers online:
- 34.1 whether the document contains any information that would have been withheld if the information had been requested under the OIA;
 - 34.2 the application of the principles in the [Privacy Act 1993](#)⁹;
 - 34.3 consideration of national security. The application of the [Protective Security Requirements](#)¹⁰ (PSR) information and personnel requirements to ensure information is handled according to the PSR, the agency’s protective security standards (although these may change if the paper is subsequently declassified), and the application of the [New Zealand Government Security Classification](#) system¹¹;
 - 34.4 whether the document contains any information that must be withheld under the terms of any other legislation;
 - 34.5 whether there is any potential liability, civil or criminal, that might result from the proactive release of Cabinet material and key advice papers. Matters to be considered include:
 - 34.5.1 defamation: if the information proposed for release says or does something that may potentially harm the reputation of another person, group, or organisation, then seek legal advice;
 - 34.5.2 privacy of natural persons: if personal information is contained in the material, consider whether the information should be released at all and, if released, whether there is a need to redact the information. Consult with all individuals named in any information proposed to be released. Guidance from the Office of the Ombudsman and the Privacy Commissioner should be used when considering the release of personal information;
 - 34.5.3 interests of organisations: if information about an organisation is contained in the material, consider whether the information should be released at all and, if released, whether there is a need to redact information. Guidance

⁷<https://www.dPMC.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/4-ministers-law-and-5>

⁸ <http://www.ombudsman.parliament.nz/resources-and-publications/guides/official-information-legislation-guides>

⁹ <http://www.legislation.govt.nz/act/public/1993/0028/232.0/DLM296639.html>

¹⁰ <https://www.protectivesecurity.govt.nz/>

¹¹ <https://protectivesecurity.govt.nz/information-security/new-zealand-government-security-classification-system/>

from the Office of the Ombudsman should be used when considering release of information about organisations;

- 34.5.4 breach of copyright: if the information proposed for release is the creative work of others, their trademarks, or certain confidential business information, the owner of the information must give permission before it can be published;
- 34.5.5 whether the Attorney-General has waived privilege over any legally privileged material;
- 34.5.6 the disclosure of commercially sensitive information: consider the type of information at issue and how it came to be in the possession of the government;
- 34.5.7 breach of contract: consider whether there is a contractual interest in the information proposed for release and whether there is a need to redact information to protect contractual obligations and /or whether the information should be released at all;
- 34.5.8 whether breach of any law or statute will occur if the information were released. Consider all laws or statutes that apply to the information; and
- 34.5.9 whether a breach would constitute contempt of court.

34.6 whether there are good reasons to delay the proactive release of the information, for example where there are sensitivities around timing, where a particular action needs to occur prior to publication, or in the case of an extended policy process where release of Cabinet material may be premature while advice remains under active consideration and further decisions are pending; and

34.7 whether, in the circumstances, online publication is the best means of public release.

35 If there is good reason to do so, a summary of the contents of the Cabinet material and key advice can be published as an alternative to releasing the Cabinet material.

Publishing Cabinet material

- 36 Departments and agencies must publish proactively released Cabinet material and any related key advice on a website maintained by or on behalf of the department or agency, or provide a link to the information if it is being published on another department's or agency's website.
- 37 Papers prepared in a Minister's office should also be published on the relevant department's website.
- 38 Ministers may choose to issue a press release on the [Beehive website](https://www.beehive.govt.nz/releases)¹² linking to the release on the agency site.

¹² <https://www.beehive.govt.nz/releases>

- 39 It is the publisher's responsibility to confirm that the following actions have been undertaken before Cabinet material is proactively released and published online:
- 39.1 the Minister's office, department or agency has conducted a due diligence process, as described in paragraph 34 above;
 - 39.2 the Minister has approved the material for proactive release and publication online;
 - 39.3 it is the correct and final version of the paper approved by the Minister for lodgement on CabNet that is being published, subject to any final amendments requested by Cabinet, and redactions that may be necessary;
 - 39.4 the Cabinet committee minute has been confirmed by Cabinet;
 - 39.5 the title and other reference information is accurate;
 - 39.6 the related Cabinet material (paper and minute and any appendices and attachments) is included; and
 - 39.7 a coversheet for the material has been provided.
- 40 All material published should be in a text searchable version. If a key advice paper contains important handwritten contextual information, a PDF version of the paper may also be published, or the contextual information can be included in the coversheet that is released with the official information.
- 41 The [New Zealand Government Web Accessibility Standard](#)¹³ should be taken into account by the publisher. If the content is in formats other than HTML, commonly used formats should be selected and made as accessible as possible. Publishers may need to provide an accessible alternative of some of the information.
- 42 Where any of the information included in the material has already been released, the publisher can choose to link to the previously released material balancing this against ease of accessibility and usability.

Review of security classification

- 43 Once Cabinet material is published online, the security classification of the original document may no longer apply. Unless some information has been withheld from the version proactively released, departments or agencies should review the security classification of the original version stored on their document management system. The [CabGuide](#)¹⁴ contains further advice about applying security classifications.

Keeping records of released information

- 44 A record of what has been released and reasons for withholding any information must be kept to ensure that all relevant factors have been taken into account and to enable future verification of what was done and why.

¹³ <https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/web-accessibility-standard-1-0?rf=1>

¹⁴ Secure handling of Cabinet material - <https://www.dpmc.govt.nz/publications/secure-handling-cabinet-material>

Amending published material

- 45 Consideration can be given to updating published material if the material is subsequently released in another way e.g. where more published material is released as sensitivities have reduced, such as where information that was once commercially sensitive is now public knowledge.

Where an OIA request is made for Cabinet material that hasn't yet been proactively released

- 46 It is possible that from time to time material in scope of this policy may be requested under the OIA, and be due a response, before it has been proactively released. Where the Minister already has a clear plan to proactively release the information requested within the 30 business day default timeline, and there is a high certainty that this will occur, the Ombudsman's advice is that on a case-by-case basis:
- 46.1 section 18(d) of the OIA may justify refusing the request on the grounds that the same information is soon to be publicly available; or
- 46.2 if the requester is notified within the OIA's maximum statutory time limit for responding that the Minister has decided to grant the request, then the section 28(5) requirement in the OIA to release information without undue delay may be satisfied if the information is released to the requester at the same time it is published proactively.

Complaints

- 47 If a department or agency receives a complaint about Cabinet material or key advice papers that have been proactively released, the relevant Minister must be advised and consulted about any response.

Further advice

- 48 The State Services Commission is available to provide further advice on the implementation of the policy on the proactive release of Cabinet material and key advice papers and publishing online.
- 49 The Cabinet Office is available to provide further advice as required in relation to specific Cabinet material.

Michael Webster
Secretary of the Cabinet

Enquiries:

State Services Commission, Integrity, Ethics and Standards Team
Ph: 021 861 260
commission@ssc.govt.nz

Appendix: Example of a coversheet

The exact layout of the coversheet will depend on each agency's website and the material being released.

[Name of Minister and Portfolio]

[Name of package]

[Date of issue]

This/these documents have been proactively released.

[Date, title, author e.g. Office of XX Minister, Cabinet Office for minutes, agency for key advice]

[Explanation of material redacted e.g. some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.]

Key to Redaction Codes:

[Insert Official Information Act section and the explanation for that section]

Insert a Copyright statement

For Cabinet material and any public service departmental advice use this copyright statement

[© Crown Copyright, Creative Commons Attribution 4.0 International \(CC BY 4.0\)](#)

For key advice and other papers from agencies other than public service departments you will need to select the appropriate copyright statement for this information