



---

<b>Intended for</b>	All Ministers All Chief Executives Chiefs of Staff All Senior Private Secretaries Chief Ombudsman
---------------------	---

---

## 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 27 November 2023, when the new administration was appointed.

## Access by incumbent Ministers to records of a previous administration

### *Cabinet records*

- 2 By convention, Ministers are entitled to access the Cabinet records of a previous administration. This convention recognises that government is a continuing process and ensures that decisions may be made in the light of precedent. Ministers are provided with access on the basis that the confidentiality of the papers is respected (see [paragraphs 8.136 – 8.138](#) of the Cabinet Manual).

### *Agency papers*

- 3 Agency papers are not covered by the convention on access (see [paragraph 8.142](#) of the Cabinet Manual). Incumbent Ministers do not, therefore, have an automatic right to copies of agency papers or briefings prepared for a previous Minister.
- 4 A Minister may, however, need to gain an understanding of the advice given by the agency to their 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.
- 5 Accordingly, officials who receive requests from Ministers for agency 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 agency, or its ability to maintain the confidence of both present and future Ministers. Options may include:
  - 5.1 supplying the material that has been requested; or

- 5.2 providing a briefing summarising the advice given to a previous Minister and the decisions taken.
- 6 Each request by a Minister for information held by an agency should be individually assessed by the chief executive in relation to the Minister's needs and the sensitivity of the information, the currency of the information and the issue to which it relates, and other associated factors.
- 7 As with Cabinet records, information held by an agency is supplied to the Minister on the basis that the confidentiality of the information is respected.
- 8 Ministers should talk to the Secretary of the Cabinet if they have any queries in relation to access to agency information provided to former Ministers. Agency officials should contact the Public Service Commissioner if they have any queries in relation to this matter.

## **Release of Cabinet records of a previous opposition administration**

### ***Consultation with Leader of the Opposition***

- 9 A Minister or agency that proposes to release the Cabinet records of a previous opposition administration, in response to a request under the [Official Information Act 1982 \(OIA\)](#) 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 8.150 – 8.151](#) of the Cabinet Manual).
- 10 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 agency to consider when making the decision on release.
- 11 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, agency briefing papers) should be handled in accordance with the OIA in the usual way.

## **Release of Briefings for Incoming Ministers**

- 12 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 proactively released publicly is a matter for the Minister, not the agency, to decide (see [paragraph 3.21](#) of the Cabinet Manual).
- 13 Agencies 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***

- 14 Sometimes a request for official information that was received by a previous Minister or administration will not have been responded to before the appointment of a new Minister or administration. In these cases, the request for information continues and the new Minister must respond to the request in accordance with the provisions of the OIA.

- 15 The Minister should assess whether they, or any others who are subject to the Act, hold the information requested. If the Minister does not hold the information but believes it to be held by another agency or Minister, then the Minister should transfer the request under [section 14 of the OIA](#). It may be possible to extend the transfer deadline in accordance with [section 15A of the OIA](#), if required. If the information requested is not held by any Minister or other agency then the request can be refused under [section 18\(g\) of the OIA](#).
- 16 In the event of a complaint, the Ombudsman may inquire into the steps taken by the incumbent Minister before reaching a view on the complaint.

#### ***Incomplete reviews***

- 17 The Office of the Ombudsman has advised that, in the case of a decision under the OIA by a former Minister that was under review by the Ombudsman as at 27 November 2023, the Ombudsman will consider the future of each review on a case by case basis.
- 18 In each case that the Ombudsman treats as continuing, the new Minister may be invited to respond to the Ombudsman's investigation, either by confirming the original withholding decision or by responding to a provisional view on the matter, as seems appropriate to the Ombudsman.

#### **Distribution of circular and further guidance**

- 19 Public Service chief executives should forward copies of this circular to the heads of relevant public sector agencies within their Ministers' portfolios.
- 20 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.

Rachel Hayward  
Secretary of the Cabinet

---

#### **Enquiries:**

Nicola Purvis, Deputy Secretary of the Cabinet (Constitutional and Honours)  
Ph. (04) 831 4824  
nicola.purvis@dpmc.govt.nz

Rose Goss, Senior Legal and Constitutional Advisor  
Ph. (04) 830 6435  
rose.goss@dpmc.govt.nz