

Our ref 600749 (Complaint ground: 600751)  
Contact Helen Copsey  
11 July 2023



Mr Garth Mathieson  
By email: [garth@gmlaw.nz](mailto:garth@gmlaw.nz)

Dear Mr Mathieson

**Official information Act investigation  
Department of Internal Affairs (the Department)  
Request for information about support for the extension of the Tauranga City Council  
Commissioners' terms**

I refer to my letter of 21 June 2023, concerning your complaint about the decision of the Department to partially refuse your request for information.

I advised you that I had written to the Department seeking some further comments. I have now received a response from the Department, and I am able to advise you of my final opinion on your complaint.

Having considered all the issues raised, I have now formed the opinion that the Department's decision on your request was unreasonable in the circumstances.

I **attach** details of my opinion.

I have recommended that the Department:

- apologise to you for the manner that it handled your request; and
- make a new decision on your request.

The Department has told me that it accepts my opinion and action my recommendations by 20 July 2023.

I have now completed my investigation.

Yours sincerely

Peter Boshier  
Chief Ombudsman

## Appendix 1. Details of my opinion

### Analysis

#### Does section 18(e) apply to part 2 of the request?

The Department has explained that it does hold information about persons and organisations who supported the extension of the Tauranga City Council Commissioners' (the Commissioners) terms. However, the Department has said that it does not have this information in the form of a list, so the request was appropriately refused under section 18(e).

Section 18(e) of the OIA provides that:

*A request [...] may be refused [if] the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found.*

The Department have advised that:

*Prior to completion of the Tauranga City Council Commission's first term, local iwi and members of the Tauranga business community met with the Te Tari Taiwhenua to share their views on the performance of the Commission and its impact of businesses and wider communities. Te Tari Taiwhenua and the then Minister of Local Government also received correspondence providing views about the Tauranga Commissioners. Formal feedback was not collated from these interactions, and no list of supporters was created.*

My Office inquired whether any minutes or records were kept of the meetings between the Department, local iwi, and members of the Tauranga business community. The Department advised that no records were kept as the meetings were kept informal. It also advised that it holds 'letters to the Minister in which individuals and organisations expressed support for the extension of the Commission'.

I am satisfied that the Department does not hold a list of supporters of the extension of the Commissioners' terms in a literal sense. However, I am not satisfied that it does not hold 'the document alleged to contain the information requested'.

You were clearly seeking to understand who then-Minister of Local Government, Hon. Nanaia Mahuta, was referring to when she stated 'The Commissioners have gained wide support from the local business community and iwi'. It seems that this information would be contained in the letters of support from individuals and organisations that the Department has advised it holds.

When asked by my Office why a list of individuals and organisations who supported the extension could not have been collated from the letters held by the Department, it advised that this would require creating information rather than providing official information.

'Official information' is defined as 'any information held' by an agency or Minister that is subject to the OIA, and the OIA does not oblige an agency or Minister to create new information in order to respond. Rather, an agency is required to consider whether or not to release documents or information already held.

I do not consider that simply reviewing the correspondence to collate a list of those that expressed support for the extension of the Commissioners' terms would be creating new information. The information is clearly held by the Department. The process of bringing it together does not amount to the creation of new information.

It is my opinion that the Department was not entitled to refuse part 2 of the request under section 18(e) of the OIA.

### **Interpretation of the request**

Even if I had been persuaded that the use of section 18(e) was valid in this case, I considered that the decision to refuse the request under section 18(e) was unreasonable.

In this case, the Department have advised that:

*To our mind, this was a straightforward question that did not require clarification with the requester. Therefore, the question was answered with an appropriate ground within the OIA and explanation was provided.*

I consider the Department took an unreasonably narrow interpretation of the request. As stated above, you were clearly seeking to understand who the Minister was referring to when she talked about support for the Commissioners. For the Department to interpret the request to mean that you only wanted this information if it had already been reduced to the form of a list was unreasonable.

I am also concerned that the Department told you when responding to your request on 17 January 2023 that:

*Regarding point two of your request, Te Tari does not hold **records** [my emphasis] of persons or organisations who supported the appointment of the Commissioners for a further term.*

However, the Department has confirmed to me it does hold such records, i.e. letters of support from individuals and organisations expressing support. It seems the Department's comments to you were, at best, inadvertently misleading.

### **Obligations to consider consulting and give reasonable assistance**

Even if I had been persuaded that the use of section 18(e) was valid in this case and Department's interpretation was reasonable, I consider the Department has failed in its obligations to consider consulting you and to provide you with reasonable assistance.

Section 18B of the OIA holds that, prior to refusing a request under section 18(e), the agency must consider consulting with the requester. The purpose of this consultation is to assist the requester to make their request in a manner that would remove the reason for it being refused under section 18(e).

The Department also has obligations under section 13 of the OIA, which states that agencies have a duty to:

*Give reasonable assistance to a person, who [...] wishes to make a request in accordance with section 12 [...] to make a request in a manner that is in accordance with that section.*

This should be read in conjunction with the purpose sections 4 and 5 of the OIA when considering how to respond to an OIA request. If an agency is unclear about what information was requested, it is open to them to clarify with the requester. Also relevant is the overarching '*principle of availability*' at section 5 of the OIA.

As explained in my 'Information not held' guide<sup>1</sup>, when refusing a request under section 18(e) of the OIA, it is good practice to explain the steps taken to try to locate the document, or the reasons why the document is believed not to exist. It is also good practice to consider whether there is any other information that can be released that might satisfy the requester.

While I do not consider that section 18(e) of the OIA applies, nevertheless consultation with you about the intended scope of your request may have removed any uncertainty and prevented frustration about how the Department responded to your request.

In the context of the Department's belief that section 18(e) applied to the request, and of the Department's obligation to provide '*reasonable assistance*' to requesters, it appears that it would have been reasonable for the Department to provide further explanation to you. The Department could have explained that while it does not have a pre-existing list of all persons and organisations who supported the extension of the Commissioners' terms, it does hold records of the persons and organisations expressing support in the form of correspondence.

---

<sup>1</sup> [Information not held – a guide to sections 18\(e\) and \(g\) of the OIA and sections 17\(e\) and \(g\) of the LGOIMA](#)