

Official Information Policy

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Policy Owner and Approval

- The Owner of this policy is the Chief Executive.
- This Policy has been approved by the Board.
- The Committee responsible is the Audit and Risk Committee.

Review Date

March 2021

Effective Date

20 March 2013

Introduction

Purpose and Scope

The purpose of the Official Information Policy is to provide an overview of the Official Information Act 1982 (the 'OIA') and provide guidelines for dealing with information requests to ensure Southern Response and its personnel comply with the Act.

This policy applies to any Southern Response personnel (including any contractors) who deal with information requests.

This policy accords with the values and other core principles of Southern Response (the spirit of the policy).

Overview

The OIA

The OIA provides that official information held by a company such as Southern Response should be made available upon request, unless good reason(s) exist for withholding such information (see "Refusing Information Requests" and "Withholding Information" below).

The OIA does not generally cover requests for 'Personal Information' about a requester. This type of request is covered by the Privacy Act 1993. Southern Response is additionally subject to the "Letter of Expectations" which places specific obligations on the Company to advise both shareholding Ministers of all relevant (including significant, topical or potentially contentious) OIA requests.

Official Information

Official Information means any information held by Southern Response. This could include:

- documents (including drafts), reports, memoranda, letters, costings, policy papers; emails and text messages¹
- non-written information, such as video or tape recordings;
- statistical information;
- information held by contractors working on behalf of Southern Response;
- documents or manuals setting out internal rules, principles, policies or guidelines in accordance with which decisions or recommendations are made; and
- information regarding a decision or recommendation made in respect of the requester (subject to the restrictions set out below under "Information Regarding Decisions Affecting the Requester").

The Chief Archivist determined that, pursuant to the Archives New Zealand *Policy for Deciding Public Office and Local Authority Status* ², Southern Response is not a public office and is not subject to the regulatory requirements of the Public Records Act 2005. Notwithstanding that, Southern Response adheres to good business practices in recordkeeping.

¹ The Text Message Management Policy provides specific guidance on the retention of text messages

² <http://archives.govt.nz/advice/public-records-act-2005/organisations-covered>

Requests for Information

Information Requests

Southern Response operates in a transparent and open manner to provide requested information. The objective is to supply rather than withhold information. Using the *refusing* or *withholding* provisions of the OIA should be as a last resort.

When Southern Response personnel receive an official information request they should immediately pass it on to the Company Secretary who will provide a copy of the request to the Chief Executive Officer, members of the Audit and Risk Committee and the Minister's Office.

Each request received should be considered on its merits, in light of the principles set out in this policy and the OIA.

Each request received shall be recorded as being received on the date of receipt.

Under the OIA (section 12(1A)), it is Southern Response's responsibility to determine whether a request for information ostensibly brought under the OIA should in fact have been brought under the Privacy Act. The nature of the request and the identity of the requester are the bases for determining which Act properly applies. Requests that are limited to seeking a customer's own personal information are to be considered to be requests under the Privacy Act (typically the request is about the house and customer concerned and not a company position), and addressed under the Privacy Policy and responded to accordingly.

The Board considers the safety and well-being of its people is its number one priority, above all else.³ Any request made under the OIA for security-sensitive information, will be considered with respect to any of Southern Response's obligations pursuant to the Health and Safety at Work Act, which amongst other obligations, includes providing and maintaining a work environment that is without risk to health and safety.

Information held that pre-dates the change of ownership of Southern Response to the Crown (i.e. information created before 5 April 2012) may still be the subject of a request but careful consideration of the disclosure of such information is required. Information which relates to that part of AMI's business which was sold to IAG may be held by Southern Response as agent only and for that reason should not necessarily be disclosed in response to an OIA request.

Legal advice must be sought before releasing any Southern Response information that pre-dates 5 April 2012.

Time Limits for Answering Requests

A decision on whether the OIA request is to be granted (and for what cost, if any) must be communicated to the requester as soon as reasonably practicable and no later than **20 working days** after the day on which the request was received. The substantive response may follow after this period, but again as soon as reasonably practicable.

An amended or clarified request can be treated as a new request (for the purpose of calculating the timeframe) unless the clarification was sought by the agency and this clarification or amendment was not sought within 7 working days of receiving the original request.

A requester may ask that the request be treated as urgent, but must give reasons for seeking urgency.

The time limit for answering requests can be extended in certain circumstances, but the requester will need to be advised of the extension and the reasons for it within the initial 20 working day period.

Southern Response endeavours to respond to all requests as soon as reasonably practicable. The process set out below is carried out when responding to all requests. The timeframes set out below are indicative of the timing of various steps in the response process where the full 20 working days is in fact taken to respond.

³ Southern Response Earthquake Services Limited Statement of Intent from 1 July 2018 to 30 June 2019 and the following two years, dated 15 February 2019.

Escalation

If the Company Secretary is not available, the Legal and Strategy team will continue the process.

Response to Information Requests

Providing Information

There are a number of different ways that a request can be satisfied, for example, the information could be:

- released in its entirety (i.e. full copies provided);
- provided with deletions or alterations as are necessary to preserve the interests protected by the withholding grounds; or
- released in its entirety subject to an agreement to pay a reasonable charge.

In general, the information should be released in the form requested by the requester, unless this would:

- impair efficient administration;
- be contrary to a legal duty in respect of the document; or
- prejudice the interests protected by the “Withholding Information” grounds set out below.

Where the information is not provided in the way preferred by the requester, reasons should be provided to the requester for not providing it in that way.

Alternative methods of providing information

Information can also be:

- provided by making arrangements for the requester to hear or view any relevant sounds or images;
 - provided by way of a transcript, excerpt, summary or oral briefing;
 - made available by giving the requester a reasonable opportunity to inspect.
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Conditions relating to future use by requester

In some circumstances, information may be released subject to certain restrictions regarding the use, communication or publication of the information made available pursuant to a request which could include a condition that it be kept confidential or that the information may not be republished without a specific contextual statement.

Refusal to provide information/ Withholding of information

The grounds under which information can be refused or withheld are outlined in the relevant sections of the Policy below.

Charge for Providing Information

Most requests will be answered free of charge but the OIA allows Southern Response to impose a reasonable charge, having regard to the cost of labour and materials involved in fulfilling the request.

Charging for significant or onerous preparation or collating time, that may be required to provide the official information, is at the discretion of Chief Executive Officer. Any proposed charge for supplying the information will be advised to the requester as soon as reasonably practicable and no later than 20 working days after the date the request was received.

For guidance on when, what and how to charge, see the Ombudsman’s *Guide: Charging* June 2017.

Southern Response payments to third parties who are consulted in relation to information requests are discussed in the “Third Party Consultation” section of this Policy below.

Right to review decision

If a request is to be refused, in full or in part, the requester must be told the reason for the refusal and given information about the right to seek an investigation and review of the decision by the Ombudsman.

If the request is to be granted, but charges or conditions applied, the requester must be told the reason for the decision and given information about the right to seek an investigation and review of the decision by the Ombudsman.

Refusing Information Requests

Administrative Reasons for Refusal

Under the OIA (s. 18), requests for information may be refused if:

- the making available of the information would be contrary to the provisions of a specified enactment or constitute contempt of Court or the House of Representatives;
 - the information is, or will soon be, publicly available;
 - the information requested does not exist or despite reasonable efforts to locate it, cannot be found;
 - the information cannot be made available without substantial collation or research;
 - the information is not held and the person dealing with the request has no grounds for believing that the information is either held or more closely connected with the functions of another Department, Minister of the Crown, Organisation or local authority; or
 - the request is frivolous or vexatious or the information requested is trivial.
-

Consultation with the requester

If a request is likely to be refused on one of the grounds listed above, Southern Response must (before the request is refused), consider whether consulting with the requester would assist the requester to make the request in a form that would remove the reason for the refusal.

Withholding Information

Conclusive Reasons for Withholding Information

Requested information may be withheld where there is a conclusive reason.

Under the OIA (section 6), a conclusive reason will exist for withholding information where the making available of that information would be likely to:

- prejudice the security, defence or international relations of New Zealand;
- prejudice the trusting of information to the Government of New Zealand from the Government of another country or an international organisation;
- prejudice the maintenance of the law (including the prevention, investigation, detection of offences and right to a fair trial);
- endanger a person's safety; or
- damage seriously the economy of New Zealand by disclosing prematurely decisions to change or continue Government economic or financial policies relating to certain areas.

Once it has been decided that section 6 (conclusive reasons) applies, the information can be withheld automatically. It is not necessary to have regard to public interest factors in favour of release.

Good Reasons for Withholding Information

Subject to the qualification set out below, under the OIA (section 9), a good reason for withholding information also exists if the withholding of the information is necessary to:

- protect the privacy of natural persons (including deceased natural persons);
- protect trade secrets or information that would be likely to prejudice unreasonably the commercial position of the person who supplied or who is the subject of the information;
- protect information which is subject to an obligation of confidentiality or which, if released, would prejudice the supply of such similar information or damage the public interest;
- avoid prejudice to measures protecting the health or safety of members of the public;
- avoid prejudice to the substantial economic interests of NZ;
- avoid prejudice to measures that prevent or mitigate material loss to members of the public;
- maintain constitutional conventions which protect collective and individual ministerial responsibility and the political neutrality of officials;
- maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers or officials and the protection of Ministers and officials from improper pressure or harassment;
- maintain legal professional privilege;
- enable a Minister of the Crown, Department or organisation to carry out, without prejudice or disadvantage, commercial activities or negotiations; or
- prevent the disclosure or use of official information for improper gain or improper advantage.

Public Interest Balancing Exercise

Once it has been decided that section 9 (good reason to withhold) applies, the information can only be withheld if, in the particular circumstances, the reason for withholding of the information is not outweighed by other public interest considerations which render it desirable to make the information available.

The OIA does not set out any criteria that should be considered when making this assessment. However as a guide, the following is a list of matters that should normally be considered when deciding whether public interest considerations outweigh the withholding of the information (but these are not determinative of the outcome):

- ability of the public to participate in state processes;
- accountability of Ministers and officials;
- the context in which the information was generated including:
 - the policy/decision making process to which the information relates;
 - the stage of development of the policy/decision making process;
 - the relevance of the information - is it still useful to the process or any other policy/decision making process?;
 - is any of the information sought already in the public domain?; and
 - what decisions have been made in relation to the information being sought?.

Third Party Consultation

Southern Response sometimes receives requests for third party information, which includes:

- information Southern Response has received from third parties (including, for example, commercial information provided to Southern Response by entities engaged in business with Southern Response);
- information Southern Response holds about third parties (including, for example,

internal Southern Response communications); and

- information held by third party contractors relating to Southern Response.

Whenever possible and practical to do so, Southern Response consults with the third parties concerned to provide them with an opportunity to advise Southern Response:

- whether disclosure of the third party information would harm the third party;
- if so, the nature and extent of the harm;
- how the harm would be caused by the release of the third party information; and
- whether the harm relates to an interest protected under one of the withholding provisions of the OIA (section 6 conclusive reasons or section 9 good reasons).

Southern Response takes third party concerns into account when deciding whether to withhold Third Party Information. However, Southern Response is not bound by the third party's views when deciding whether to release the Third Party Information under the OIA.

Payments to Third Parties

As a general rule, Southern Response does not pay third parties for time, effort or cost incurred consulting with Southern Response about requests under the OIA for third party information.

However, in exceptional circumstances, Southern Response may reimburse a third party for some or all of their time, effort, or cost if payment is authorised in writing by either the Chief Executive Officer or the General Manager Legal and Strategy.

For example, where Southern Response receives an OIA request for information that is held by or relates to an independent contractor, it may be appropriate, in exceptional circumstances, for Southern Response to reimburse the contractor for the time or expense incurred searching for or collating information requested under the OIA from Southern Response.

Authority for Southern Response payments to third parties will be rare. The general expectation is that contractual arrangements between Southern Response and third parties will require appropriate administrative arrangements to ensure that official information held by third parties is either transferred to Southern Response for processing or otherwise stored in a manner that makes such work unnecessary.

Request for Information Regarding Decisions Affecting the Requester

Official information includes information regarding a decision or recommendation made in respect of the requester based on a wide policy. For example, a requester could request information regarding a decision by Southern Response to turn down their insurance claim.

Usually, the reason and explanation would be included within the declinature decision and provided under the Privacy Act.

In this situation, a requester has the right under the OIA (section 23) to receive a written statement of:

- the findings on material issues of fact;
- a reference to the information on which the findings were based (unless there is a reason for not providing this information (as set out below); and
- the reasons for the decision or recommendation.

Such a request must be made within a reasonable time of the making of the decision or recommendation.

Non-disclosure of Information on which Findings Were Based

In respect of a request, a reference to information on which the findings were based does not have to be given if:

- the information is evaluative material (as defined below) and the disclosure would breach an express or implied promise:
 - which was made to the person who supplied the information; and

- which was to the effect that the information or the identity of the person who supplied it or both would be held in confidence; or
- the disclosure of the information (being information that relates to the physical or mental health of the person making the request) would be likely to prejudice the physical or mental health of that person (after consultation, where practicable, with the requester's medical practitioner); or
- in the case of a natural person under the age of 16, the disclosure of that information would be contrary to that person's interests; or
- the disclosure of that information (being information in respect of a person who has been convicted of an offence or is or has been detained in custody) would be likely to prejudice the safe custody or the rehabilitation of that person.

Definition of Evaluative Material

Evaluative material is material compiled solely for the purpose of determining the suitability, eligibility, or qualifications of the person to whom the material relates for:

- employment or for appointment to office;
- promotion in employment or office or for continuation in employment or office;
- removal from employment or office;
- the awarding of contracts, awards, or other benefits;
- the purpose of determining whether any contract, award, honour, or benefit should be continued, modified, or cancelled; or
- the purpose of deciding whether to insure any person or property or to continue or renew the insurance of any person or property.

Relevant Links

Procedures

- Information Request Process
- Information Gathering Policy
- Text Message Management Policy
- Privacy Policy

Relevant References and Resources

- Privacy Act 1993
- Official Information Act 1982
- Ombudsmen Act 1975
- Southern Response's Privacy Policy
- Southern Response's Annual Report
- Southern Response's Statement of Intent
- Cabinet Manual
- Office of the Ombudsman
- Office of the Privacy Commissioner
- Ombudsman's *Guide: Charging* June 2017

Version Control

Version	Date	Description
0.1	29/07/2012	Policy created
0.2	13/08/2012	Updated with feedback from Legal Counsel and CERA Liaison Manager
0.3	20/8/2012	Updated with feedback from Chief Corporate Officer
1.0	25/9/2012	Updated to Board policy
1.1	21/1/13	Updated to address Privacy Act relationship
1.2	20/02/13	Updated to address Privacy Act relationship V2
1.3	15/03/13	Updated with feedback from Governance Committee
1.4	22/3/2013	Approved by Board
2.1	10/6/2014	Updated according to Policy Review Cycle
2.2	17/6/2014	Approved by the Governance Committee subject to amendments agreed.
2.3	20/6/2014	Amended Policy approved by the Board
3.0	27/05/2015	Scheduled review. Amendments to align with the changes to the Ombudsmen Act and official information legislation. effective 26 March 2015
3.1	15/06/2015	Governance Committee approved and recommended to the Board.
3.2	19/06/2015	Board approved.
4.0	20/11/2015	Review to clarify the references in the Policy to the relevant sections of the Act.
4.1	31/12/2015	Review in preparation for proactive release.
4.2	25/01/2016	Legal review
4.3	03/02/2016	Governance Committee reviewed and recommended to the Board
4.4	19/02/2016	Board approved.
5.1	17/06/2016	Renewal approved by the Board with no change.
6.0	19/06/2017	Scheduled review (GM - Legal & Strategy)
6.1	14/07/2017	Governance Committee reviewed and recommended to the Board
6.2	21/07/2017	Board approved.
7.0	05/03/2019	Review to incorporate text messaging, Ombudsman's guide for charging and to reflect the composition of Board Committees (Senior Legal Advisor)
7.1	25/03/2019	CEO and GM - Legal & Strategy review
7.2	18/04/2019	Board approved.