



THE MANAGEMENT AGENCY

AMERICAN FOULBROOD NATIONAL PEST MANAGEMENT PLAN

Policy Document

Policy Number: AFB/22/0/11 - 047

Policy Title: Policy for responding to Official Information Act 1982 Requests

Purpose: This policy describes how the Management Agency National American Foulbrood Pest Management Plan ("**the Management Agency**") will process requests for official information in accordance with the requirements of the Official Information Act 1982 ("**the OIA**") to:

- 1 Provide transparency about Management Agency decisions.
- 2 Provide for proper access to official information.
- 3 Protect beekeepers private and commercially sensitive information.
- 4 Protect the Management Agency's ability to implement the Biosecurity (National American Foulbrood Pest Management Plan) Order 1998 ("**the Management Plan**") effectively and efficiently.

Policy Statement: The Management Agency will make official information available unless there is a good reason (as described in the OIA) for withholding it.

Processing Official Information Act Requests:

Requests for official information will be processed in accordance with the timeframes and processes described below.

Days 1 – 3

1. Register the request and record the date of receipt.
 - a. Check for similar requests (i.e. by the same or different requester).
2. Check that section 12 of the OIA applies:
 - a. Is the requester eligible to make a request?
 - i. Even if the requester is not eligible under the OIA (i.e. they are a company incorporated outside of New Zealand), the Management Agency will still duly consider the request.
 - b. Has the requested information been specified with due particularity?
 - i. If not, the Management Agency will seek further clarification as to the scope of the request with the requester in accordance with section 13.
 - ii. If so, but the request is overwhelmingly large, the Management Agency will consider negotiating the scope of the request down with the requester in accordance with sections 15(1AA) and (1AB).



- c. Is the request seeking an opinion or the creation of information rather than information held by the Management Agency?
 - d. Consult requester and provide reasonable assistance, if the request is not made in accordance with section 12.
- 3. Calculate and record the relevant maximum time limits. Please refer to paragraph 6 below for further information.
 - a. For seeking clarification, if any amendment or clarification that is received is to be treated as a new request (7 working days).
 - b. For transferring to another agency (10 working days).
 - c. For extending the maximum time limits for decision and transfer (20 working days).
 - d. For deciding whether to grant the request, in what manner and for what charge (as soon as practicable, but no later than 20 working days).
- 4. Confirm which set of rules applies:
 - a. Is it a general Part 2 request for official information?
 - b. Is it a Part 3 request for internal rules, policies, or guidelines (section 22 of OIA)?
 - c. Is it a Part 3 request for reasons for a decision (section 23 OIA)?
 - d. Is it a Part 4 request by a corporate entity for access to personal information?
 - e. Is it a Privacy Act 2020 Request by an individual for information about themselves?
- 5. Send email or letter to requestor acknowledging receipt of request.
 - a. If section 12 of the OIA does not apply, or it is a Privacy Act 2020 request, respond to the requester accordingly.
 - b. The Management Agency will advise the requester at this stage whether it intends to publish its response to the request online. The Management Agency will look to publish requests made pursuant to the OIA wherever practicable.

Days 1 - 7

- 6. Determine whether request needs to be amended or clarified. Note that:
 - a. The OIA timeframes are reset if clarification is sought prior within 7 working days and clarification or amendment is received. By way of example, should the Management Agency seek clarification from a requester on “working day 2” and the requester clarifies the request on “working day 4”, the Management Agency will have a further 20 working days (as from “working day 4”) to respond to the request (noting that the Management Agency will respond as soon as reasonably practicable).
 - b. The Management Agency can still request clarifications after 7 working days, but the OIA timeframes are not reset if clarification or amendment is received.

Days 1- 10

- 7. Determine what information is held that is relevant to the request:
 - a. Confirm the scope of the information requested.
 - b. Is a full or partial transfer of the request necessary?
 - c. Locate and assemble the information held by the Management Agency

- d. Are there any administrative difficulties in locating, assembling or providing the information (section 18 OIA)?
 - i. However, the Management Agency will first consider seeking an extension from the requester (section 18A(1)(B)) consulting with the requester (section 18B), or fixing a charge for the supply of the information (section 18A(1)(a)).
 - e. Is an extension of time to transfer the request or to make a decision, necessary?
8. If necessary:
- a. Transfer the request or part of the request:
 - i. Requests must be transferred if some or all of the information requested:
 - Is not held by the Management Agency but is believed to be held by another agency; and
 - Is believed to be more closely connected to the functions of another agency.
 - ii. Consult with the other agency to enable appropriate arrangements for the transfer
 - Have they already received the same request?
 - Are they the right agency to receive the transfer?
 - Who should the transfer be addressed to?
 - Does the Management Agency need to transfer information it holds with the request?
 - iii. In the event that the other agency has received the same request:
 - Consult with the requester to ask them to withdraw their request.
 - In the event that they do not withdraw their request – make the decision to refuse the request.
 - b. Notify the requester of an extension of the maximum time limit to transfer the request and/or make a decision on the request:
 - i. There must be a valid reason for the extension, either:
 - The request is for a large amount of information or necessitates a search through a large quantity of information, and meeting the original time limit would unreasonably interfere with the operations of the Management Agency; or
 - Consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.
 - ii. The extension must be for a reasonable period of time having regard for the circumstances.
 - iii. The decision to extend the time limit must be communicated to the requestor within 20 working days after the day that the request was first received by the Management Agency.

Days 1 – 20

9. Consider the information at issue, with reference to the principle that information must be made available unless there is good reason to withhold it:

- a. Is consultation within the Management Agency, a third party, another agency, or the requester required?
 - b. Does the maximum time limit for making a decision or transferring the request need to be extended (in accordance with the permissible reasons for extensions pursuant to the OIA - see 8b above).
10. If necessary:
 - a. Consult on the request.
 - b. Notify the requester of an extension to the maximum time limit to make a decision on the request and/or transfer the request (see 8b above).
11. Identify potential harm in release of the requested information:
 - a. Consider any concerns with reference to the relevant reasons for refusal;
 - b. If any reasons in section 9 of the OIA are being considered, identify and assess any public interest factors that favour release of the requested information;
 - c. Consider whether sections 16 and 17 are of assistance:
 - i. Consider the possibility of a conditional release; or
 - ii. Consider the possibility of releasing the information in an alternative medium (if permissible in accordance with section 16).
12. Make a decision
 - a. Decide whether to grant the request.
 - b. If the request is granted, in what form will the information be released?
 - c. If the request is granted, will there be a charge?
13. Advise the requester of the Management Agency's decision:
 - a. Ensure the decision complies with the requirements in the part of the OIA it was requested under.
 - b. Include the information, where relevant and if it's practical to release the information to the requestor at the same time as the decision. The Management Agency notes that pursuant to the OIA, staggered release or future release of information is permissible so long as the release of information occurs 'without undue delay'.
 - c. If there is to be a charge to prepare the information for release after the requester has confirmed in writing that they will pay the charges. The information will be released without undue delay after payment has been received.
14. Keep a record of the final decision, including why it was made, the steps taken, and what information was released and/or withheld. To this end, the Management Agency will utilise Archives New Zealand's internal search template (copy **attached**).

Making a decision

Considering whether to grant the request

All requests for official information will be granted unless there are grounds to:

- Refuse the request for "administrative reasons" - section 18.
- Refuse the request for "conclusive reasons" – sections 6 and 7.

- Refuse the request for “good reasons” – section 9 (including, but not limited to):
 - protecting beekeepers and the implementation of the Management Plan from harm.
- Release the requested information in an alternative format – section 16.

Refusal of requests for administrative reasons

The Management Agency may refuse information requests for administrative reasons, section 18.

The Management Agency is a small financially constrained organisation funded by levy payers. The Management Agency is obliged to make good use of limited levy payer funding to implement the Management Plan effectively and efficiently. This may require that some information requests are refused for administrative reasons.

Administrative reasons that may result in the refusal of requests include:

1. The information is or soon will be publicly available, section 18(d).
2. The request is made by or on behalf of a defendant, for information that could be sought under the Criminal Disclosure Act 2008, section 18(da).
3. The document does not exist or cannot be found despite reasonable efforts to locate it, section 18(e).
 - a. Note that prior to declining requests under section 18(e) the Management Agency must consider whether consulting with the requester on alternative information will enable the request to be met.
4. The information cannot be made available without substantial collation or research, section 18(f):
 - a. Note that prior to declining a request under section 18(f) the Management Agency must consider whether:
 - i. Charging or extending the timeframe would enable the request to be met; and
 - ii. Consulting the requestor would enable the Management Agency to meet the request in a way that does not require substantial collation or research.
 - b. Note that the Management Agency may collate multiple requests received from one requestor into one.
 - c. ‘Research’ means **finding** the information and ‘collation’ means **bringing** it together. These terms can encompass the following tasks:
 - i. Identifying the requested information;
 - ii. Determining whether the requested information is held;
 - iii. Searching for the requested information;
 - iv. Retrieving the requested information;
 - v. Extracting the requested information; and
 - vi. Assembling or compiling the requested information.
 - d. Time required to make a decision on withholding or release of information that has already been found and brought together does not go toward establishing ‘substantial collation or research’. Where the following tasks relate to decision making on withholding or release, they should not be taken into account:
 - i. Reading, review, and assessment;

- ii. Consultation (including consultation with legal advisors, or affected third parties); and
 - iii. Redacting information that the Management Agency has decided there is good reason to withhold.
- 5. The information is not held by the Management Agency, and there are no grounds to believe that the information is held by another agency or more closely connected with the functions of another agency, section 18(g).
- 6. The request is frivolous or vexatious, or the information requested is trivial, section 18(h).

Should the Management Agency refuse a request for administrative reasons the reason for the refusal must be given and the requestor informed of their right to make a complaint to the Ombudsman.

Refusal of requests for good reasons, section 9

The Management Agency will consider whether the release of the information requested would prejudice interests protected by section 9, including:

1. Privacy, section 9(2)(a).
2. Commercial activities, section 9(2)(b).
3. Information subject to an obligation of confidence, section 9(2)(ba).
4. Legal professional privilege 9(2)(h).
5. Enabling the Management Agency to carry out commercial activities without disadvantage, section 9(2)(i).
6. Enabling the Management Agency to carry out negotiations, section 9(2)(j).

When considering whether to refuse a request for “good reasons” (section 9), the Management Agency will conduct a public interest test to assess whether the public interest in releasing the information outweighs the need to withhold the information.

Refusal of requests to protect beekeepers and the implementation of the Management Plan from harm

The Management Agency is committed to protecting beekeepers’ personal, commercial and confidential information insofar as sections 9(2)(a), 9(2)(b) and 9(2)(ba) respectively permit. Beekeeper confidence that the Management Agency will keep their information safe and secure is essential for the continued supply of information that is critical to the effective and efficient implementation of the of the Management Plan.

The Management Agency considers that the harmful effect of releasing beekeeper information protected by section 9 of the OIA will typically outweigh any public interest in the release of this information, including:

- Privacy, section 9(2)(a), including name, address, email, telephone numbers, and candidate numbers.
- Commercial activities, section 9(2)(b), including apiary and colony information.
- Information subject an obligations of confidence, section 9(2)(ba) including AFB notifications, apiary and colony information.

However, the Management Agency will consider whether there is a public interest in the release of this type of information (pursuant to section 9(1)) on a case-by-case basis.

The Management Agency will typically withhold this information by either redacting this information or declining the request.

Note on requests made under Parts 3 and 4 of the OIA

Requests made under Parts 3 and 4 of the OIA can only be refused for one of the reasons referred to in those Parts, namely:

- reasons for refusing requests for internal rules affecting decisions (section 22);
- reasons for refusing requests for statements of reasons for decisions (section 23); and
- reasons for refusing requests by corporate entities for personal information (section 27).

Deciding how to release the information

The Management Agency must release the information in the way preferred by the requestor unless to do so would:

- impair efficient administration, section 16(2)(a);
- be contrary to any legal duty the agency has in respect of the information, section 16(2)(b); or
- prejudice the interests protected by sections 6, 7 or 9 of the OIA (and in the case of the interests protected by section 9, there is no countervailing public interest), section 16(2)(c).

Where the information requested is not provided in a way preferred by the requestor, the Management Agency must provide the reasons for not providing the information in that way, and, if requested, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by sections 6, 7, or 9.

Charging

The Management Agency is obligated to spend levy funding provided by beekeepers on the implementation of the Management Plan.

Administratively challenging requests have the potential to divert resources funded by levy payers from their core mission of eliminating AFB. The Management Agency will look to mitigate the impact of dealing with administratively challenging requests by considering (on a case-by-case basis) whether it will require requestors to pay \$38 per half hour for every half hour of staff time in excess of the first hour required to retrieve, collate, and prepare the information for release in accordance with section 15(1)(a). \$0.20 per page for photocopying and printing may also be charged for every page in excess of 20 pages.

The Management Agency will consider remission of charges when there is a significant public interest in making the information generally available, or the request relates to Management Agency decisions and actions specific to the requestor.

If the Management Agency decides to charge for the request the Management Agency will advise the requester at the same time as the decision to grant the request is communicated of:

- the decision to charge;
- the maximum amount of the charge;
- how the charge has been calculated;
- whether full payment of the charge is required in advance of release of the information; and
- that the requester has the right to complain to the Ombudsman about the decision to charge.

The Management Agency may elect not to start work to make the information available until the requestor has accepted any charges (if applicable) and paid any monies (that may be required) in advance.

Communicating the Decision

The Management Agency will include the following information in the notice of the decision:

- whether the request has been granted; and if so;
- in what manner; and
- for what charge (if any).

If the decision is to refuse the request the Management Agency will:

- communicate the reasons and grounds for refusing the request including reference to the OIA subsection relied upon the refuse the request.
- advise the requestor of the right to complain to the Ombudsman.

When the Management Agency grants the request, the information requested will be released at the same time as the decision is communicated. When this is not possible the Management Agency will communicate the timeframe for release to the requestor and release the information without undue delay.

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Russell Marsh
Chairman AFB PMP Management Board

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