

THE FORM OF A LGOIMA REQUEST

Who is subject to LGOIMA?

All local authorities and public bodies listed in Schedule 1 of LGOIMA, all council-controlled organisations and all local authority trading enterprises.

Who may make LGOIMA requests?

Any person may make a request for official information under LGOIMA (s 10(1) LGOIMA).

What does a LGOIMA request look like?

There is **no set way** in which a request must be made. A LGOIMA request is made in any case when a person asks for access to official information:

- a request does not need to be in writing;
- the requester does not need to refer to LGOIMA.

However, the information requested must be “*specified with due particularity*” (s 10(2) LGOIMA). This means that the person receiving the request must be reasonably able to identify the information requested.

If the agency cannot reasonably determine what information is being requested, then there is a duty on the agency to give reasonable assistance to make a request in a manner that is specified with due particularity (s 11 LGOIMA).

Reasonable assistance is more than telling the requester that the request is not specific. Having regard to the purposes of the Act and to the principle of availability of information, all reasonable steps should be taken to provide assistance. The aim of the assistance should be to enable the requester to refine the request so that it is specific enough for the agency to identify the information sought.

What is official information?

Official information means **any information held** by a local authority subject to LGOIMA.

Official information is not limited to documentary material, and includes **material held in any format**, including:

- written documents, reports, memoranda, letters, notes, emails and draft documents;
- non-written documentary information, such as material stored on computer, video or tape recordings;
- information which is known to an agency but which has not yet been recorded in writing or otherwise.

It does not matter where the information originated, or where it is currently located, as long as it is **held** by the agency. For example, the information could have been created by a third party and sent to the agency. The information could be held in the memory of an employee of the agency.

Information held by elected members

LGOIMA applies to information held by the Mayor and councillors in their capacity as elected members of the local authority (s 2(3) LGOIMA).

Information held by officers and employees

LGOIMA also applies to information held by officers and employees of a local authority in their capacity as an officer or employee (s 2(3) LGOIMA).

Information held in personal capacity

Official information does not include information held by a member or official in their **personal capacity**.

However, if the information was originally obtained by the member or official in their personal capacity, but has then been used by that person in their official capacity, then it would be held by that person in their official capacity, and so would be official information.

Information held by independent contractors

Information which is held by an independent contractor to a local authority, and to which the local authority is entitled to have access under the contract, is deemed to be held by the local authority (s 2(6) LGOIMA).

Asking questions/seeking opinions

For LGOIMA to apply the information must be held by the agency concerned. There is **no obligation to form an opinion or create information** to answer a request. If a requester seeks information by asking a question, there is a distinction between:

- questions which can be answered by providing information already known to and held by the agency (official information); and
- questions which require the agency to form an opinion or provide an explanation and so create new information to answer the request (not official information).

Which set of rules do you use?

- A request by a natural person for information about himself or herself = **Privacy Act**
- A request for official information that is not about the requester = **LGOIMA, Part 2**
- A request by a body corporate information about itself = **LGOIMA, Part 4**
- A request for an agency's policies, guidelines, rules = **LGOIMA, Part 3**
- A request for a statement of reasons why a decision was made about the requester = **LGOIMA, Part 3 (section 22)**

Resources Available

The Office of the Ombudsmen produces a number of resources to assist agencies when responding to OIA requests:

- Practice Guidelines
- Ombudsmen Quarterly Review Newsletters
- Compendia of Casenotes
- Annual Reports
- website: www.ombudsmen.govt.nz
- free-phone: 0800 802 602

KEY PROVISIONS AND OBLIGATIONS OF LGOIMA

Section 5 - The Principle of Availability

*“The question whether any official information is to be made available ... under this Act, shall be determined...in accordance with the purposes of this Act and the principle that **the information shall be made available unless there is good reason for withholding it**”*

Section 4 – Purposes of LGOIMA

- “(a) To **provide for the availability to the public of official information** held by local authorities and to promote the open and public transaction of business at meetings of local authorities, in order –*
- (i) To enable more effective participation by the public in the actions and decisions of local authorities; and*
 - (ii) To promote the accountability of local authority members and officials, –*
- and thereby to enhance respect for the law and to promote good local government in New Zealand;*
- (b) To provide for proper access by each person to official information relating to that person;*
- (c) To **protect official information and the deliberations of local authorities** to the extent consistent with the public interest and the preservation of personal privacy.”*

Section 10. Requests

- “(1) Any person may request any local authority to make available to that person any specified official information.*
- ...*
- (2) The official information requested shall be specified with due particularity in the request.*
- (3) If the person making the request asks that that request be treated as urgent, that person shall give that person’s reasons for seeking the information urgently”*

Section 11. Assistance

“It is the duty of every local authority to give reasonable assistance to a person who –

- (a) Wishes to make a request under section 10 of this Act; or*
- (b) In making a request under section 10 of this Act, has not made that request in accordance with that section; or*
- (c) Has not made that person’s request to the appropriate local authority or Department or Minister of the Crown or organisation, –*

to make a request in a manner that is in accordance with that section or to direct that person's request to the appropriate Department or Minister of the Crown or organisation or local authority."

Section 41 – Protection Against Certain Actions.

"(1) Where any official information is made available in good faith pursuant to...this Act...

*(a) **no proceedings**, civil or criminal, shall lie against the local authority or any other person in respect of the making available of that information, or for any consequences that flow from the making available of that information.*

....

(2) The making available of, or the giving of access to, any official information in consequence of a request made under...this Act shall not be taken, for the purposes of the law relating to defamation or breach of confidence or infringement of copyright, to constitute an authorisation or approval of the publication of the document or of its contents by the person to whom the information is made available or the access is given"