

Our ref 030702
Contact Jane Bunworth
10 October 2025



Shay Schlaepfer
Chief Operating Officer
Environmental Defence Society
By email: shay@eds.org.nz

Dear Ms Schlaepfer

Request for clarification of the treatment of fast-track information

1. I write to you on behalf of Chief Ombudsman John Allen, in response to your letter dated 15 September.
2. You have asked us to:
 - a. Clarify the application of the Local Government Official Information and Meetings Act 1987 (LGOIMA) to information provided to local authorities as part of pre-lodgement consultation under the Fast-Track Approvals Act 2024 (FTAA). Specifically:
 - i. Whether local authorities should be proactively releasing information provided to them as part of pre-lodgement consultation under the FTAA;
 - ii. Whether non-disclosure agreements are a barrier to release; and
 - iii. Whether local authorities should expediate information requests relating to the FTAA; and
 - b. Establish a separate inquiry and complaints pathway for FTAA matters.
3. For clarity:
 - a. In relation to your questions under para 2(a)(i) – (iii) we understand you are asking specifically about the pre-lodgement consultation process only,¹ and the information that local authorities receive as part of that process; and
 - b. In relation to your question under para 2(b) this appears to be in relation to all FTAA matters, and therefore may include other parts of the process and other organisations. It may also relate to complaints we may receive under the LGOIMA, the Official Information Act 1982 (OIA), and the Ombudsmen Act 1975 (OA).
4. In our response we will:
 - a. Clarify the role of the Ombudsman, specifically in the context of your request that we direct local authorities to proactively release certain information;

¹ Sections 11 (for referral applications) and 29 (for listed projects) of the FTAA.

- b. Clarify certain provisions of the LGOIMA, including whether non-disclosure agreements are a barrier to release, and processing requirements (timeframes and urgency);
- c. Explain our complaint handling process, specifically how we prioritise genuinely urgent complaints; and
- d. Lastly, invite a complaint from you which may better address your concerns than the provision of advice and guidance in the abstract, and highlight available resources and training.

Proactive release

5. We encourage agencies to utilise proactive release as a way to deliver on the purpose of the OIA and LGOIMA 'to progressively increase the availability of information'.
6. [Our proactive release guide](#) describes some of the benefits of proactive release and identifies some good practice. You are welcome to share this with the local authorities you are engaging with. We are also aware Taituarā (formerly the New Zealand Society of Local Government Managers) has published [a similar guide, developed by Simpson Grierson, for local authorities](#).
7. Whilst we encourage agencies to utilise proactive release, it is not required under the Act, and therefore we are not in a position to direct a cohort of local authorities to proactively release a class of information.

LGOIMA provisions

Non-disclosure agreements

8. You asked specifically whether a non-disclosure agreement (NDA) is a barrier to release.
9. We refer you to [our guide on confidentiality](#), that provides a guidance on section 9(2)(ba) of the OIA and section 7(2)(c) of the LGOIMA. We also refer you to our [guide to the public interest](#).
10. The guide notes that section 9(2)(ba) of the OIA and section 7(2)(c) of the LGOIMA are subject to a 'public interest test' meaning an agency's reasons for withholding information must be weighed against the countervailing public interest in the release, and 'if the public interest in release outweighs the need to withhold, the information must be released'. This means a non-disclosure agreement is not a conclusive reason for withholding information.
11. To further expand, and provide relevant contextual information, I refer to the following information at page 8:

Agencies should think carefully before promising to keep information confidential. Confidentiality cannot be assured in an OIA context, because any need to withhold could potentially be outweighed by the public interest in release.

Before agreeing to receive information on a confidential basis, agencies should satisfy themselves that confidentiality is genuinely necessary, both because the information is of a confidential nature, and because it is in the overall public interest for it to be treated that way.

Agencies should manage expectations by including a caveat that confidentiality will be maintained, except as the law requires.

12. It may also be useful to refer to subsection 'A word on confidentiality clauses' at pages 8 and 9 of [our guide on confidentiality](#):
 - a. This highlights that whilst an organisation can provide an agency information with a written obligation of confidence, there are other boxes that need to be ticked before there are good reasons for withholding:
 - i. The release must be likely to prejudice the future supply of information that is in the public interest, or damage the public interest in some other way; and
 - ii. And, as at paras 10 and 11, the need to withhold must not be outweighed by the public interest in release.
 - b. It also notes that *'an agency cannot be sued for breach of confidence for releasing information in good faith under the OIA. This is because of section 48 of the OIA...'*
13. We are limited on the specific guidance we can provide in the abstract. We encourage you to submit a complaint if you believe a local authority has improperly withheld information. This will allow us to, amongst other things, look at the nature of the information that is subject of the NDA, and the decision-making process to determine whether the local authority was permitted to withhold the information.

Processing requirements

TIMEFRAMES

14. We refer you to our guide the [LGOIMA for local government agencies](#) and [our guidance on making requests](#).
15. In regards to your statement that the LGOIMA's 20-working day timeframe is not responsive enough, we note that the requirement is for an agency make a decision and communicate it to the requester *'as soon as reasonably practicable'* and no later than 20 working days after the request is received.
16. It can be a common misconception that the 20-working day timeframe is a de facto goal as opposed to the maximum upper limit (unless extended² appropriately). An agencies primary legal obligation is to notify the requester of the decision on the request *'as soon as reasonably practicable'*.

² An agency may extend the maximum time limits for both transferring a request and making a decision and communicating it to the requester where specific criteria are met. See [LGOIMA for local government agencies guide](#) at page 21 for the criteria.

17. You can also ask for your request to be treated urgently, but if you do you must give reason for seeking the information urgently.³ A request for urgency will also influence what is considered ‘*as soon as reasonably practicable*’.
18. We note, an agency may decide to charge for information provided under urgency.

Form

19. It may also be useful to review page 19 of the [guidance on making requests](#) on the different ways an agency can make information available to you. Asking for information in a different form may enable an agency to share the information with you that may still fulfil your purposes. For example, it may be that an agency is able to provide you with a summary of information that provides you the information you need for your purposes, where the agency could otherwise reasonably withhold the information in full (i.e., in non-summary form).

Our complaint handling prioritisation process

20. You asked us to consider establishing a separate inquiry and complaints pathway for FTAA matters. We do not consider this necessary, as we can consider requests for urgent progression of complaints on a case-by-case basis in accordance with our usual approach to requests for urgency.
21. When we receive a complaint, it is assessed for urgency, risk, priority and complaint handling approach. Assessments are not static and are regularly reviewed, as circumstances may change during the complaint handling process.
22. We consider a number of different factors when assessing for urgency, including:
 - a. time sensitivity that is likely to adversely affect the complainant, other parties, and/or the public at large;
 - b. the degree of public interest in the subject-matter of the complaint, and any corresponding need for urgency; and
 - c. the likelihood that a number of similar complaints will be made to the Ombudsman in future, and whether it is desirable to take up a ‘precedent’ case to consider novel issues.
23. If you do have a complaint that is urgent, we ask you to clearly mark it urgent and to include details that will help us effectively determine the urgency of the complaint (as outlined above). In this particular context it would be useful to include why you need the information urgently, for example, is the information required to enable to you to meaningfully exercise a legal right to make a submission under the FTAA? Please also include details of any relevant timeframes.
24. Recent changes to our handling of official information complaints have meant that complaints are generally able to be allocated and progressed promptly after receipt.

³ S 12(3) OIA and s 10(3) LGOIMA.

Submitting a complaint, requesting urgency, and available training

25. As noted above, we are limited in the advice we can provide you in the abstract. If you think that a local authority has made an incorrect decision, we invite you to submit a complaint for our consideration.
26. You asked whether we could provide training to local authorities. We can and do provide training to agencies when asked by the agency, and also publish online learning through our online learning service, [Te Puna Mātauranga](#).
27. If you would like training for EDS, please let us know. Alternatively, you can access our free online learning course [Te Puna Mātauranga](#).

Yours sincerely



Emma Leach
Senior Assistant Ombudsman