

Proactive Release Policy

To be read in conjunction with the Toitū Te Whenua Proactive Release guidelines, process map, delegations and approval memo to ensure standards and controls are maintained.

Purpose

This policy sets out our approach on how to conduct the proactive release of official information. It should be read in conjunction with:

- Proactive release guidelines and process map, which sets out the process that should be followed when conducting proactive releases;
- Approval delegations for proactive releases, which advises who in Toitū Te Whenua can authorise the proactive release of information; and
- Proactive release coversheet, which outlines the process that was undertaken, and shows the proactive release has been authorised.

Information held by the public sector often holds a high degree of public interest, especially when it concerns the decisions made by officials on their behalf. Proactively releasing official information promotes good government and accountability of officials, demonstrates our commitment to openness and transparency and fosters public trust. Proactive release is part of a wider move to improve the availability of official information across government.

Toitū Te Whenua will consider proactively releasing information based on the following principles:

- Increase transparency and openness, resulting in increased public participation in decision-making processes and fostering public trust;
- Balance the principles of availability and provide meaningful information, while minimising administrative burden and risk; and
- Ensure the public interest outweighs any risks from releasing information.

According to Section 9 of the Official Information Act 1982 (OIA) agencies must balance the public interest in disclosing information against the need to withhold it. Public interest does not mean 'interesting to the public', but that the issue is one of legitimate public concern.

Proactive Release Policy

Effective Date: 24/06/2024

Policy Owner: Toitū Te Whenua Ministerial and Government Services

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Toitū Te Whenua considers it is of public interest to release information that:

- Is useful or meaningful to the public that they may not know to ask for;
- Provides insight into the work we do; and
- Promotes the purposes of the OIA, being:
 - transparency and openness;
 - accountability of officials and Ministers; and
 - enables the public to participate in decision making.

The quality of the advice that is provided to Ministers must remain the priority and should not be compromised in anticipation of a proactive release.

Scope

This policy applies to all Toitū Te Whenua Kaihautū, statutory officers, managers, staff (including temporary employees), consultants and contractors.

Definitions

Proactive release is publishing:

- Cabinet documents on behalf of a Minister or Ministers, in accordance with the Cabinet circular Proactive Release of Cabinet Material: Updated Requirements [CO (18) 4 refers];
- Documents that have previously been released by Toitū Te Whenua under the OIA; and
- Documents held by Toitū Te Whenua, without a request from an external party.

Official Information is defined in section 2 of the OIA. It includes any information held by a government department, a Minister in their official capacity or a government organisation.

For Toitū Te Whenua, this means information that is held, either because it's been provided to, or created, by Toitū Te Whenua.

The Policy

Cabinet papers and minutes

Cabinet papers and minutes must be proactively released within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release beyond 30 business days.

Ministers make the final decision on what gets released and may decide not to publish all or part of the material, or to delay the release beyond 30 business days. Ministers may also decide to release related key advice papers. Only Cabinet Appointments and Honours papers and minutes are explicitly excluded.

The cabinet circular Proactive Release of Cabinet Material: Updated Requirements [CO (18) 4 refers] sets out the requirements and procedures for the proactive release of Cabinet material.

Documents previously released under the OIA

OIA responses are published on the Toitū Te Whenua website unless there is a good reason not to. OIA responses will be published at the end of the subsequent month after they've been released to the requester.

Reasons not to publish an OIA response may include where publishing the response would:

- release personal information; and
- release commercially sensitive information concerning the requester and/or third parties which is known to the requester but unlikely to be widely publicly known.

Framework to determine whether material should be proactively released

The framework for considering whether material (other than Cabinet papers and minutes and OIA responses) should be released is outlined below. The term 'public value' is used to clarify that material should be released if it is valuable for the public to be able to find easily, not because it is 'interesting to the public'.

Information released by default, with due diligence applied – information which is:

- **High Public Value – Low Risk:** information which is likely to be of high value to the public and there is little risk from releasing it.

Information released on a case-by-case basis – information which is:

- **High Public Value – Higher Risk:** information which is likely to be of high value to the public, but the associated risks will require consideration before the information is published.

Not proactively released – information which is:

- **Low Public Value – Low Risk:** The low public value does not justify the administrative burden.
- **Low Public Value – High Risk:** information is not released as the costs of managing risks are outweighed by the limited value to the public.

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Material to publish and who approves releases

Ministerial documents (other than Cabinet papers and minutes)

Ministerial documents considered for release include:

- Briefings, including aide memoires and memos;
- Overseas Investment recommendation reports for Ministerial decisions;
- Survey and Title Enhancement Project Quarterly Reports; and
- Public Works Act decisions.

Documents produced on behalf of, or for, Ministers will receive Ministerial approval prior to information being published. The Ministerial and Government Services (MAGS) team will provide guidance on what is required in receiving this approval.

Toitū Te Whenua documents

Toitū Te Whenua documents are those not intended for a Minister, and include:

- A business case;
- A departmental OIA response;
- Overseas Investment delegated recommendation reports;
- Crown Pastoral decisions relating to consented activities on Pastoral Lease;
- Decisions by statutory officers; and
- Information on business group operational activities.

Toitū Te Whenua staff with approval delegations will authorise the proactive release of documents held by Toitū Te Whenua.

Documents involving an external party

Documents containing content provided by an external party, such as another government department, or documents produced by other government departments, cannot be proactively released without their permission. Consultation is required with other departments if we intend to proactively release information they have provided to Toitū Te Whenua.

External parties will be provided copies of the redacted document(s) and given the opportunity to comment on what we intend to release.

Due Diligence

When the decision has been made for information to be proactively released, the relevant documents must undergo due diligence. There are four parts to due diligence.

Reviewing to assess liability

Proactive Release Policy

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Reviewing the relevant documents to establish their appropriateness for release to ensure information will not expose Ministers or Toitū Te Whenua to civil and criminal liability.

Identifying and mitigating risks

Assessing the content to identify any media, political and/or reputational risks and establishing how the risks can be mitigated.

Consulting affected parties

Individuals and organisations outside of Toitū Te Whenua, including other government agencies, need to have the opportunity to comment if we intend to release information about them, or provided by them that is not already publicly available.

No surprises

It should not come as a surprise to the Chief Executive, the Kaihautū or Ministers that information is being proactively released. They need to be informed, with enough notice, if there are any matters of significance in the documents that have been considered for release, particularly where these matters may be controversial or may become the subject of public debate.

Responsibilities

Kaihautū are responsible for:

- Ensuring their business group treat proactive release as a core business function and as a priority, as necessary;
- Ensuring they and their staff are aware of their roles and responsibilities when proactively releasing information;
- Ensuring employees comply with Toitū Te Whenua policies, procedures, and standards for proactive release; and
- Making decisions about proactive releases in accordance with their delegation.

Managers are responsible for:

- Ensuring they and their staff are aware of their roles and responsibilities when proactively releasing information;
- Ensuring employees comply with Toitū Te Whenua policies, procedures and standards for proactive release;
- Making decisions about proactive releases in accordance with their delegation;
- Reviewing and/or approving all proactive releases prepared by their staff;
- Ensuring their staff have the capacity and capability to prepare proactive releases;
- Ensuring their staff attend training about proactive releasing information, when required;

Proactive Release Policy

Effective Date: 24/06/2024

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- Escalating any significant operational or reputational issues and risks, including alerting Strategic Communications; and
- Cooperating with any investigations by the Privacy Commissioner and ensuring their staff do so too.

All staff are responsible for:

- Complying with Toitū Te Whenua policies, procedures and standards for proactive release;
- Raising any issues or risks with their manager;
- Completing proactive releases by the date specified;
- Consulting with all relevant internal and external stakeholders on documents proposed for release prior to the final approval and sign-out;
- Managing the approval and sign-off of their proactive release, including completion of the Proactive release approval coversheet;
- Converting the relevant documents to PDF format and adding the proactive release watermark;
- Uploading all relevant documentation to the relevant Objective folder; and
- Complying with any investigations by the Privacy Commissioner.

MAGS is responsible for:

- Stewardship over the proactive release policy and procedures. This includes developing and maintaining templates, relevant written guidance material and process documentation for business groups to prepare proactive releases;
- Providing support and advice for business groups preparing proactive releases;
- Preparing OIA responses for publishing including undertaking due diligence;
- Ensuring senior managers are aware of intended proactive releases and any issues through performance reporting;
- Maintaining and facilitating relationships with the Minister's office on behalf of Toitū Te Whenua about the handling and management of proactive releases by Toitū Te Whenua;
- Registering and tracking proposed proactive releases to monitor deadlines, sending reminders as required and escalating if necessary; and
- Assuring the quality of proactive releases that are going to be published on the Toitū Te Whenua website.

Legal Services is responsible for:

- Providing legal advice to all staff in relation to what information should be proactively released and if the proactive release of information would expose Ministers or Toitū Te Whenua to civil or criminal liability;
- Dealing with inquires by the Privacy Commissioner;

Proactive Release Policy

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- Having oversight of, and responsibility for, the formal and informal interactions with the Privacy Commissioner concerning any investigations; and
- Encouraging compliance with relevant legislation.

Customer Engagement / Communications is responsible for:

- Advising the relevant business group on mitigating any communications risks that have been identified;
- Communications planning and support as required; and
- Providing advice on the brief description accompanying published documents to ensure they are written in plain English.
- Maintaining the proactive release webpages on the Toitū Te Whenua website;
- Uploading documents to Toitū Te Whenua website; and
- Regularly reviewing content on the webpages to determine what can be archived, in consultation with MAGS and the relevant business groups.

Publishing proactive releases

Where proactive release documents are published

The Toitū Te Whenua website has a dedicated page for documents to be published for members of the public and media to easily locate. MAGS administers the webpage and is responsible for assuring the quality of material that is published on it. All material that has been approved for release will be published on this webpage.

Format of documents

Documents that have been approved for release will be published in a PDF format on the Toitū Te Whenua website. Documents will include a watermark stating they've been proactively released. The document will be published with a title and brief description, so the information can be easily located for those interested in it.

Toitū Te Whenua references

- Toitū Te Whenua Proactive Release Guidelines (reference A3857690) and promapp.
- Toitū Te Whenua Approval delegations for proactive release (reference A4298056)
- Toitū Te Whenua Proactive release approval memo (reference A3858927)

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