

# KVH POLICY



## Official Information Act Policy

### Introduction:

The Official Information Act 1982 provides that official information held by a body such as Kiwifruit Vine Health (KVH) should be made available, unless good reason exists for withholding such information.

### Purpose:

The purpose of this policy (including Appendix 1, Official Information Act Guidelines) is to set out KVH's responsibilities:

- under the Official Information Act (OIA) and the Privacy Act, in relation to releasing and withholding official and personal information; and
- with respect to investigations by the Ombudsman or the Privacy Commissioner into KVH's decisions under the Official Information Act, the Privacy Act and generally.

### Definitions:

Most information created or held by KVH is "official information" under the OIA. The Privacy Act 1993 applies to "personal information" held about an identifiable individual.

### Scope:

The Privacy Act 1993 applies to all requests from individuals for access to and correction of their personal information, even if the Act is not mentioned in the request from:

- a New Zealand citizen; or a permanent resident of New Zealand or a person who is in New Zealand;
- any body corporate (e.g., a company or a trust or incorporated society) that is incorporated in the NZ Companies Office or that has a place of business in New Zealand.

However, the OIA does not apply to requests for information from persons that do not fall within section 12 of the OIA and KVH have no obligation to provide any information. In such a case, it is still necessary to provide a response and explain the reason for refusing the request.

The OIA essentially covers any information KVH has created or holds or what is held on our behalf. This includes:

- paper filing systems
- electronic systems
- archive storage
- information held by independent contractors working on KVH behalf
- recollections of information from employees not otherwise physically recorded anywhere.

This includes information:

- in draft form
- not on KVH letterhead
- a label, marking or other writing that identifies/describes any thing of which it forms a part or to which it is attached by any means

- presentations, maps, graphs, articles, plans or drawings
- photographs, negatives, tapes, video film or any other device that stores visual or audio content
- diary notes, informal meeting or discussion notes and oral advice given.

### **Delegations:**

Although the KVH Office Manager will be responsible for processing any OIA requests, the following information may only be released or withheld upon the KVH Chief Executives authority:

- make decisions to withhold or to release official or personal information
- extend time limit in respect of decisions
- fix a charge payable for official information.

### **Procedures:**

#### **1. Requests for Information:**

a) Requests for KVH official information should be addressed to:

The Office Manager  
KVH  
PO BOX 4246  
Mt Maunganui South 3149

- b) Requests should be made in writing (email is acceptable).
- c) The Office Manager will log the request in an electronic database, acknowledge the request, determine if an extension is required or a charge applicable and process the request accordingly.
- d) A request must be answered as soon as reasonably practical and no later than 20 working days. A requestor may ask that the request be treated as urgent, but reasons should be provided for seeking urgency.
- e) The time limit for answering requests may be extended in some cases, but the applicant will be told of the extension and the reason for it.
- f) Most requests will be answered free of charge however if considerable research and/or resources are required for a particular request then KVH have the option to charge an appropriate fee for this request.
- g) If a request is refused, (see Section 3) the applicant will be told the reason for refusal and the process to be followed in regard to lodging an appeal with the Ombudsman.

KVH will endeavour to provide the information in the form requested (unless to do so would be contrary to a legal duty, or prejudice the interests protected by withholding grounds). For example, KVH could:

- provide reasonable opportunity to inspect the document
- provide a copy of the document
- make arrangements for the person to hear or view any relevant sounds or images
- provide a transcript, excerpt, summary or oral information with respect to words recorded or in a document
- provide information with deletions or alterations as are necessary to preserve the interests protected by the withholding grounds.

#### **2. Timing and extension of timeframe for responding to requests**

- KVH will ensure that any OIA requests are processed within the 20 working day timeframe as set out in S12. If considerable research is warranted then KVH may extend the time required to respond to the request provided.

- If an extension is required then KVH will ensure that the person making the request has been advised of the period of extension, the reason for the extension and Ombudsman Complaint procedures and other information as necessary.

### **3. The request may be refused for the following reasons:**

- prejudice to security, defense or international relations of New Zealand
- prejudice to the maintenance of the law
- endangerment of a person's safety or to damage seriously the NZ economy including overseas trade agreements
- endangering the safety of any person(s)
- protect the privacy of natural persons (including deceased)
- the health and safety of the public
- avoid prejudice to the substantial economic interests of New Zealand
- commercial sensitivity and trade secrets
- is subject to an obligation of Confidence (this does not protect against any briefing or advice to Ministers)
- avoid prejudice to measures that prevent or mitigate material loss to members of the public
- free and frank expression of opinion(s)
- legal professional privilege
- protecting officers and employees from improper pressure or harassment
- carry out commercial activities without prejudice or disadvantage
- carry out commercial and industrial negotiations without prejudice
- prevent the disclosure or use of official information for improper gain or improper advantage
- the information requested will soon be publicly available
- the document alleged to contain the information requested does not exist or cannot be found
- the information requested cannot be made available without substantial collation or research
- the information is not held by KVH and the person dealing with the request has no grounds for believing it is held elsewhere
- the request is frivolous or vexatious or the information requested is trivial.

Should a request be declined then the reasons for the refusal be advised to the applicant (unless the giving of the grounds would in itself prejudice the interests sought to be protected by the refusal of the request); and give the applicant the information regarding the applicants' right to seek an investigation and review by way of complaint to the Ombudsman.

### **4. Charging for release of information**

The OIA provides the ability to charge the applicant for reasonable administrative costs associated with retrieving, collating and releasing the information. KVH will adhere to the Ministry of Justice *Charging Guidelines for Official Information Act Request*.

The current rate for fees is:

- an initial charge of \$38.00 for the first chargeable half hour or part thereof; and
- then \$38.00 for each additional half hour or part thereof.

Photocopying or printing on standard A4 or foolscap paper where the total number of pages is in excess of 20 pages will be charged out as follows:

- 20c for each page after the first 20 pages.

All other costs incurred will be at an amount which recovers up to the actual costs involved. This could include:

- provision of documents on computer discs
- retrieval of information off-site
- reproducing a film, video or audio recording

- arranging for an applicant to hear or view an audio or visual recording
- providing a copy of any map, plan or other document larger than foolscap size.

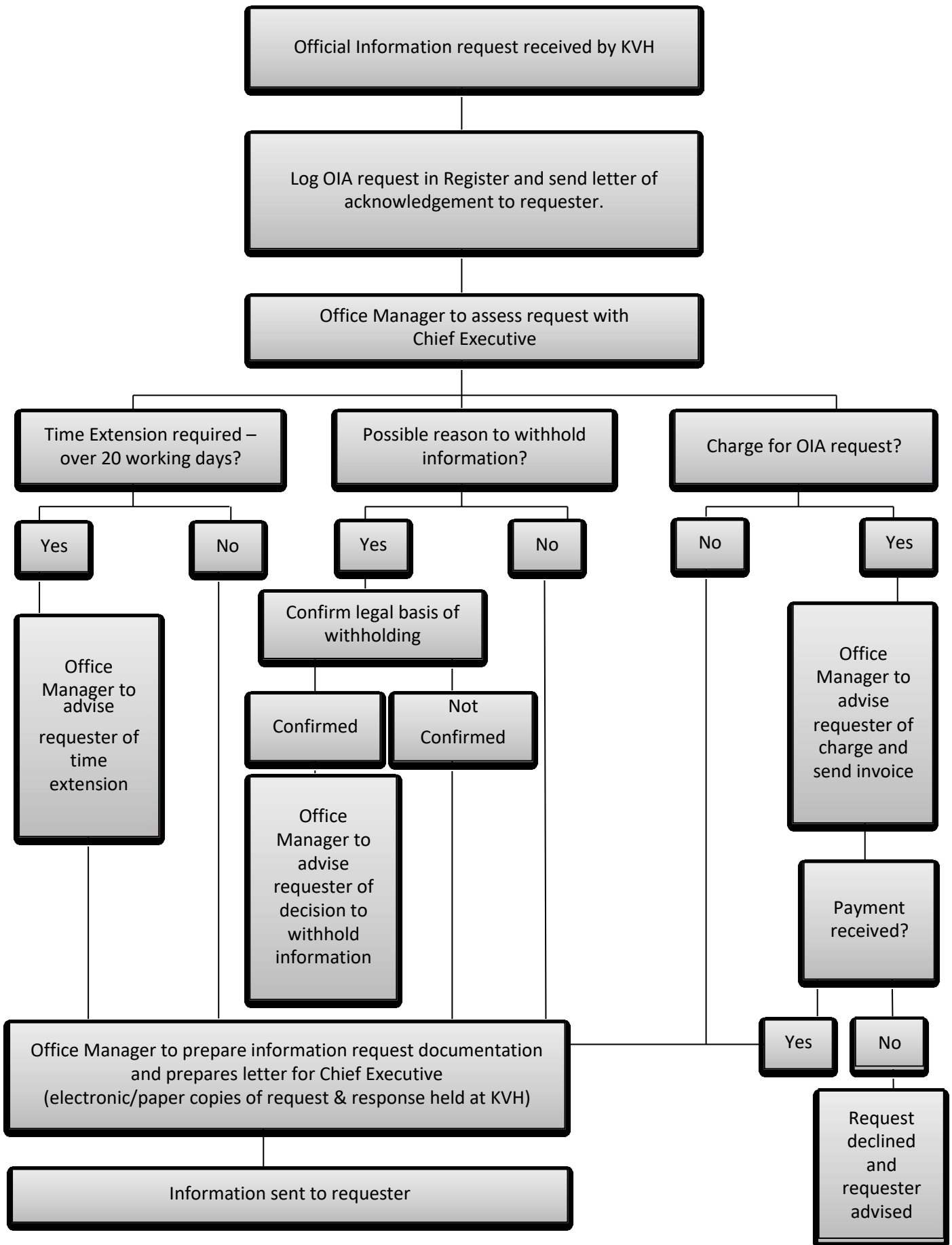
Whether a request should be charged for is at KVH Chief Executive's discretion. Once KVH provides notice of a charge, the 20-day period stops as a decision has been made about their request. Upon confirmation of payment the information must be released to the applicant.

#### **5. Review of an OIA by the Ombudsman**

Following a letter from the office of the Ombudsman, KVH will promptly furnish to the Ombudsman all information, documents, paper or things within 20 days of the request being received.

All KVH responses to the Ombudsman must be checked and signed off by the KVH Chief Executive.

## Official Information Act Flowchart



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|  | <p><b>APPENDIX 1</b></p> <p><b>Kiwifruit Vine Health Incorporated</b></p> <hr/> <p><b>Introductory User Guide to the<br/>Official Information Act (OIA)</b></p> |
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| <p>Official Information is <b>ANY information</b> held by KVH (s. 2) which includes:</p> <ul style="list-style-type: none"> <li>- internal policies, principles, rules or guidelines;</li> <li>- meeting agendas and minutes, including meetings not open to the public;</li> <li>- notebooks, scraps of paper, notes comments written down the side of letters etc; and</li> <li>- even information in your memory</li> </ul> <p><b>Information shall be made available unless there is good reason for withholding it (s. 5)</b></p> | <p>Everything held by KVH is <b>subject to disclosure</b> under the OIA.</p> <p>Includes <b>information received from third parties</b> – need to know <u>(1) who has supplied the information and (2) whether commercially sensitive. <b>Third Parties need to be advised of this situation.</b></u></p> <p><b>Information and Document control</b> needs to be instituted and complied with – <u>so that (1) information can easily be located and so that (2) there is not more than one version of the information.</u></p> <p><b>OIA document and information control needs to be instituted.</b></p> |
| <p>The <b>purposes of OIA</b> (s. 4) are:</p> <ul style="list-style-type: none"> <li>- increase the availability of official information to promote more effective public participation in the making and administration of laws and policies;</li> <li>- to promote the accountability of Ministers of the Crown and government officials and KVH Staff; and</li> <li>- protect sensitive information where necessary in the public interest or to preserve personal privacy.</li> </ul>  | <p>Note this is NOT only about information disclosure it also covers:</p> <ul style="list-style-type: none"> <li>- <b>Public participation in KVH’s affairs.</b></li> <li>- <b>Increased KVH staff accountability.</b></li> </ul> <p><b>Good record keeping and keeping applicants informed are the key to the OIA.</b></p>  |
| <p><b>Anyone who is in New Zealand can request official information (s.12).</b></p> <p>New Zealand citizens overseas, and corporate bodies with a place of business in New Zealand can also apply (s.12).</p> <p><b>Request can be in writing or verbal.</b></p>   | <p>The official information requested shall be specified with <b>due particularity in the request</b> (s. 12(2)).</p> <p>Reasons must be given for asking that a request be treated <b>urgently</b> (s. 12(3)).</p> <p>KVH needs a <b>process for recording verbal requests</b> and ensuring that full details of the applicant are noted and full details of the information requested.</p>   |

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| <p>The <b>request must be answered within 20</b> working days (s. 15).</p> <p><b>Reasonable assistance</b> must be given to the applicant (s. 13)</p> <p><b>Reasonable charges</b> may be made (s.15(1A))</p> <p>Applicant can ask in request for the <b>information to be supplied in a particular way</b> (s.16) by:</p> <p><i>Being provided copies of document(s); sight document(s); listen to a tape recording or see a film or videotape and be provided a transcript; computer printout; <b>by excerpt or summary; or by furnishing oral information.</b></i></p>  | <p><b>20 days can be extended</b> (s. 15A(1)) for (a) large quantity of information or (b) consultation but must be told of right to complain to Ombudsman (s. 15A(4)(c)).</p> <p><b>Seek payment in advance</b> (s.15(3)) but must be related to the cost of the labour and materials involved in making the information available (s. 15(2)).</p> <p>Key point is <b>applicant needs to be satisfied</b> as to the way in which information is provided can decline if (a) impair efficient administration or (b) contrary to legal duty or (c) prejudice interests where no countervailing public interest (s. 16(2))</p> <p>Excerpt or summary and telling them the information – especially in cases of urgency – can be timely and useful.</p>  |
| <p><b>Requests can be refused</b>, but only if good reason exists under the OIA for not releasing the information which are:</p> <ul style="list-style-type: none"> <li>• the national security or defence of New Zealand (s. 6(a));</li> <li>• the entrusting of information to the Government from International Governments and organisations (s. 6(b));</li> <li>• the maintenance of the law (s. 6(c));</li> <li>• <u>endangering the safety of any person</u> (s. 6(d));</li> <li>• seriously damage NZ’s economy – focused on Government but includes <u>overseas trade agreements</u> (s. 6(e));</li> <li>• <u>personal privacy</u> (s. 9(2)(a));</li> <li>• <u>trade secrets and commercial confidentiality</u> (s. 9(2)(b) &amp; (ba));</li> <li>• <u>the health and safety of the public</u> s. 9(2)(c));</li> <li>• <u>avoid prejudice to the substantial economic interests of NZ</u> (s. 9(2)(d));</li> <li>• <u>avoid prejudice to measures that prevent or mitigate material loss to members of the public</u> (s. 9(2)(e));</li> <li>• <u>legal professional privilege</u> (s. 9(2)(h));</li> <li>• the effective conduct of the decision making through <u>free and frank expression of opinions</u> (s. 9(g)(i));</li> <li>• the effective conduct of the decision making <u>protecting officers and employees from improper pressure or harassment</u> (s. 9(g)(i));</li> <li>• <u>legal professional privilege</u> (s. 9(2)(h));</li> <li>• <u>carry out commercial activities without prejudice or disadvantage</u> (s. 9 2(i));</li> <li>• <u>carry out commercial and industrial negotiations</u></li> </ul> | <p><b>Applicant must to be told of reason for refusal</b> (s. 19) and of right to complain to the Ombudsman (s. 28(3)).</p> <p>The main grounds for refusing disclosure are repeated here – but this is not an exhaustive list</p> <p>The grounds that have been underlined may have some applicability to KVH.</p> <p><b>Note in particular</b> the provisions relating to:</p> <ul style="list-style-type: none"> <li>- improper pressure or harassment</li> <li>- commercial activities</li> <li>- commercial and industrial negotiations</li> <li>- improper gain or improper advantage</li> <li>- frivolous or vexatious or trivial requests</li> </ul> <p><b>Legal Professional Privilege</b> only operates when lawyers with practicing certificates are involved and litigation (court action) is imminent</p> <p><b>Duty to consult</b> (s. 18B) so that form of the request</p> |

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| <ul style="list-style-type: none"> <li>• <u>without prejudice or disadvantage</u> (s. 9 2(j));</li> <li>• <u>prevent the disclosure or use of official information for improper gain or improper advantage</u> (s. 9 2(k));</li> <li>• <u>the information requested will soon be publically available</u> (s. 18(d));</li> <li>• the document alleged to contain the information requested does not exist or cannot be found (s. 18(e));</li> <li>• the information requested cannot be made <u>available without substantial collation or research</u> (s. 18(f));</li> <li>• the information is not held by KVH <u>and the person dealing with the request has no grounds for believing it is held elsewhere</u> (s. 18(g)) (if that is the case the request must be transferred); or</li> <li>• the request is frivolous or vexatious or the information requested is trivial (s. 18(h)).</li> </ul> | <p>can be changed if that would change decision to decline release where document does not exist (s. 18(e)) or substantial collation or research required (s. 18(f)).</p>  |
| <p>Conditions for <b>trade secrets and commercial confidentiality</b> (s. 9(2)(b) &amp; (ba)) requirements:</p> <ul style="list-style-type: none"> <li>- would disclose a trade secret; or</li> <li>- would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; or</li> <li>- protect information which is subject to an obligation of confidence.</li> </ul> <p><b>Person</b> includes a corporation sole, and also a body of persons, whether corporate or unincorporated (s. 2)</p> <p><b>Personal information</b> means any official information held about an identifiable person (s. 2)</p>  | <p><b>Requirements are NOT easily met:</b> third parties supplying information that the third party wishes to protect must be supplied under an obligation of confidence which if breached:</p> <ul style="list-style-type: none"> <li>- would be likely to prejudice the supply of similar information, or information from the same source, <b>and</b></li> <li>- it is in the public interest that such information should continue to be supplied; <b>OR</b></li> <li>- would be likely otherwise to damage the public interest.</li> </ul> <p>To make this reason for non-disclosure to work best to have <b>an express agreement between KVH and the supplier of the information.</b></p> <p><b>Difficult to envisage a situation where KVH would be able to protect commercially sensitive information.</b></p> |
| <p><b>Deletion of Information from Documents</b> (s.17):</p> <ul style="list-style-type: none"> <li>- sensitive parts can be deleted</li> <li>- reasons must be given</li> </ul>  | <p><b>Ombudsman likes this approach</b> – reluctant for a s. 9 withholding reasons to exclude whole documents but for s. 9 withholding reasons the <b>no countervailing public interest</b> must be taken into account (s. 17(2)(b)).</p>  |
| <p><b>Conditions on use may be imposed</b></p> <p>NO express power in the OIA to impose</p> <p>Subject to review by the Ombudsman (s. 28(1)(c))</p>   | <p>Examples: (1) information released could only be published with the agencies explanation and (2) where information was to be used for court proceedings undertakings that it would not be released to the media.</p>  |



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| <p>Action to be taken <b>if request refused</b></p>  | <p><b>Duty to consult</b> (s. 18B) so that form of the request can be changed if that would change decision to decline release where document does not exist (s. 18(e)) or substantial collation or research required (s. 18(f)).</p> <p><b>Reasons to be given</b> to applicant along with notice advising <b>right to complain</b> to the Ombudsman (s. 19).</p> |
| <p>The <b>applicant can complain to Ombudsman</b> if (s. 28):</p> <ul style="list-style-type: none"> <li>• access is refused;</li> <li>• the person handling the request does not reply within the time limit;</li> <li>• the applicant is not happy with the length of an extended time limit;</li> <li>• the applicant believes they have been charged an unreasonable amount for the information;</li> <li>• the applicant is not happy with the way the information has been made available: or</li> <li>• the applicant is not happy with any conditions placed on the use of the information.</li> </ul> |  |

If the applicant is requesting **personal information about someone other than themselves** this is covered by the Official Information Act otherwise this request is processed under the Privacy Act

As at 24 January 2013