

## The OIA and inquiries

The interaction between the OIA and the  
Inquiries Act 2013

*This guide aims to answer questions about how the Inquiries Act 2013 interacts with the Official Information Act 1982 (OIA).*

*It is intended to help:*

- *inquiries deciding how to regulate their procedure;*
- *agencies dealing with OIA requests for information about the subject of an inquiry; and*
- *members of the public seeking information about inquiries.*

*This guide is only about Inquiries Act inquiries, not other types of inquiry, like Auditor-General inquiries, Parliamentary inquiries or internal agency inquiries.*

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## Introduction

Sometimes the government will decide to appoint an inquiry to examine a matter of public importance. Inevitably, people will want to access information about the matters under inquiry.

The application of the OIA to these requests is not always straightforward. This guide explains when and how the OIA applies to these requests.

There are three questions to consider:

1. Is the information held by an agency that is subject to the OIA?
2. If so, is the information '*official information*'?
3. If so, is there a '*good reason*' for withholding that information?

This guide discusses:

- the background to the Inquiries Act;
- some key provisions of the Inquiries Act;
- information held by inquiries, and when that might be subject to the OIA;
- information held by other government agencies;
- information that is excluded from the OIA (to which the OIA will not apply, even if it is held by an agency subject to the Act); and
- reasons for refusal that are likely to be relevant in this context.

If you're short on time, refer to our [summary on the OIA and inquiries](#).

## Background to the Inquiries Act

Historically, public inquiries were governed by the Commissions of Inquiry (COI) Act 1908.

The COI Act provided for the appointment of commissions of inquiry to inquire into matters of public importance. It also applied to royal commissions of inquiry established by the Governor-General under the Letters Patent.

In 2006, the Law Commission reviewed the law relating to public inquiries, and identified three broad problems:

1. The COI Act was antiquated and confusing.
2. Royal commissions and commissions of inquiry were costly and legalistic.
3. As a result, non-statutory '*ministerial inquiries*' were increasingly preferred, but these took place outside a statutory framework, and lacked coercive powers.

The Law Commission's report, *A New Inquiries Act*, recommended a new law.

## Key provisions of the Inquiries Act

The Inquiries Act largely replaced the COI Act.<sup>1</sup> It recognises three types of inquiry:<sup>2</sup>

1. royal commissions;
2. public inquiries; and
3. government inquiries.

All three types of inquiry have the same powers. The main difference is their perceived status:<sup>3</sup>

- royal commissions are 'reserved for the most serious matters of public importance';
- public inquiries are for 'significant or wide-reaching issues that cause a high level of concern to the public and to Ministers'; and
- government inquiries 'typically deal with smaller and more immediate issues where a quick and authoritative answer is required from an independent inquirer'.

Other differences relate to how they are established, and how they report back.<sup>4</sup>

The purpose of an inquiry is to inquire and report on matters of public importance.<sup>5</sup> Inquiries cannot make determinations about the civil, criminal or disciplinary liability of a person, but they can (subject to their terms of reference) make findings of fault or recommendations that further steps be taken to determine liability.<sup>6</sup>

Inquiries have wide powers to determine their own procedure, subject to the rules of natural justice and their terms of reference.<sup>7</sup> For example, they can decide whether to call witnesses, whether to hold hearings, and whether to receive oral or written evidence and submissions.<sup>8</sup>

<sup>1</sup> The COI Act remains in force because a lot of statutory bodies derive their powers from that Act (for example, the Waitangi Tribunal, Broadcasting Standards Authority, Refugee Status Appeals Authority and Social Security Appeal Authority). However, commissions of inquiry can no longer be appointed under the COI Act, and it no longer applies to royal commissions. These types of inquiry can only be done under the Inquiries Act now.

<sup>2</sup> See s 6(1) Inquiries Act.

<sup>3</sup> Cabinet Office. *Cabinet Manual 2017* at paragraphs 4.81, 4.83 and 4.85.

<sup>4</sup> Public inquiries are established by, and report back to, the Governor-General, after which the report is tabled in Parliament (see ss 6(2), 12(1)(a) and 12(3) Inquiries Act). Government inquiries are established by, and report back to, the relevant Minister(s) (see ss 6(3) and 12(1)(b) Inquiries Act).

<sup>5</sup> See s 3(1) Inquiries Act.

<sup>6</sup> See s 11 Inquiries Act.

<sup>7</sup> See s 14 Inquiries Act.

<sup>8</sup> See s 14(4) Inquiries Act.

Inquiries can also forbid the publication of certain matters, restrict public access to the inquiry, or hold the inquiry in private.<sup>9</sup> Before doing so, they must take into account certain specified criteria, such as privacy and the benefits of open justice.<sup>10</sup> Offence provisions enable inquiries to deal with behaviour that constitutes an abuse of their processes.<sup>11</sup>

Inquiries cannot make orders for general discovery, but they can require information that is received from one person to be provided to another person who is participating in the inquiry.<sup>12</sup>

Legislation is not retrospective,<sup>13</sup> so the Inquiries Act does not apply to historic inquiries conducted under the COI Act.

## Inquiries under the State Sector Act

Relevant parts of the Inquiries Act can also apply to investigations and inquiries under the State Sector Act 1988, where the State Services Commissioner certifies that this is reasonably necessary.<sup>14</sup> Some of the guidance in this document will also apply to this type of inquiry.

## Information held by inquiries

Inquiries under the Inquiries Act are **not subject to the OIA**.

The OIA only applies to Ministers and listed *'departments'* and *'organisations'*. Inquiries under the Inquiries Act are not *'departments'* or *'organisations'*.<sup>15</sup> Therefore, people cannot make OIA requests to inquiries for the information that they hold.

However, the Inquiries Act makes it clear that **once an inquiry has reported, all documents** created or received during the course of the inquiry, **are official information**, apart from any matter subject to a non-publication order, and any documents relating to the inquiry's internal deliberations.<sup>16</sup>

This does not mean that OIA requests can be made to an inquiry after it reports. Once an inquiry reports, its job is done, and it ceases to exist. However, the inquiry's records will be held by the administering public agency, which is usually the Department of Internal Affairs (DIA).

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<sup>9</sup> See [s 15\(1\)](#) Inquiries Act.

<sup>10</sup> See [s 15\(2\)](#) Inquiries Act.

<sup>11</sup> See [s 29](#) Inquiries Act.

<sup>12</sup> See [s 22](#) Inquiries Act.

<sup>13</sup> See [s 7](#) Interpretation Act 1999.

<sup>14</sup> See [ss 9A](#) and [9B](#) State Sector Act.

<sup>15</sup> See [s 2\(6\)\(ea\)](#) OIA.

<sup>16</sup> See [s 32](#) Inquiries Act.