



Commonwealth Human Rights Initiative

ACCESS TO INFORMATION LAWS IN OVERSEAS TERRITORIES OF THE COMMONWEALTH

COMPARATIVE TABLE

The Right

<u>Cook Islands</u>	S 11: Any "qualified person" may request a Ministry or Minister of the Crown or organisation for specified official information, which means: <ul style="list-style-type: none">- a Cook Islander who is resident in the Cook Islands;- a permanent resident in the Cook Islands;- any other natural person who is resident in the Cook Islands for not less than 3 years;- a body corporate, wherever incorporated, with place of business in the Cook Islands for not less than 3 years.
----------------------------	---

Applicability/Scope of the Law

<u>Cook Islands</u>	S 2: Any Government Ministry, including a department of the Government set out in Schedule 1, and a Ministry or department established after the Act comes into force unless it is specifically excluded.
----------------------------	---

Private Bodies

<u>Cook Islands</u>	No provisions
----------------------------	---------------

Suo Moto/Proactive Disclosure

<u>Cook Islands</u>	S 22: Publish for each Ministry – its structure, functions, and responsibilities; what categories of documents are available; descriptions of manuals and similar types of documents which contain directions in accordance with which decisions or recommendations are made; statement of information which must be available to public. May also publish on internet, and have regard for the need to assist the public to effectively exercise their rights. Update every 2 years. Part 6- Independent Consultant to look at enlarging categories of official information to be available as of right.
----------------------------	---

Request

<u>Cook Islands</u>	S 11: Request to be made to Ministry or Minister of the Crown or organisation, with due particularity. Section 12 requires reasonable assistance to be offered to those making request/direct to appropriate place. Does not specify form, but practice in New Zealand has been to accept oral requests. (Same as NZ provision).
----------------------------	---

Exemptions

<u>Cook Islands</u>	<p>S 6: <i>Conclusive</i> reasons for withholding info:</p> <ul style="list-style-type: none">- security/defence/international relations- prejudice the entrusting of information on basis of confidence- prejudice the maintenance of law- endanger to personal safety- damage to economy <p>S 7: <i>Special</i> reason – regarding the special relationship with NZ</p> <p>S 8: <i>Other</i> reasons, subject to public interest override: protect privacy, trade secrets, prejudice to commercial position, supply of information, health and safety, economic interests, prevent material loss to public, constitutional conventions, free and frank expression of opinion, improper pressure or harassment, legal professional privilege, commercial activities, commercial/industrial negotiations, prevent improper gain from OI.</p> <p>S 18: <i>Additional</i> grounds – where contrary to an Act, would be in contempt of court, soon to be publicly available, doesn't exist/can't find, too hard to collate, information not held, or request is frivolous/vexatious. Not subject to public interest override.</p> <p>(Same as NZ provisions).</p>
----------------------------	--

Public Interest Disclosure

<u>Cook Islands</u>	S 8: 12 exemptions subject to a public interest override as noted under S 8 exemptions above. (Same as NZ provision).
----------------------------	---

Partial Disclosure/Severability

<u>Cook Islands</u>	S 17: Provide a copy of the document with such deletions or alterations as are necessary. (Same as NZ provision).
----------------------------	---

Fees and Waiver

<u>Cook Islands</u>	S 14: No mention of application fee, may incur a reasonable charge regarding the cost of labour/materials in making information available. (Same as NZ).
----------------------------	--

Time for Compliance

<u>Cook Islands</u>	<p>S 14: Give or post notice of decision as soon as reasonably practicable, and no later than 20 working days from receipt of request.</p> <p>S15: time can be extended where large quantity requested/consultations required. Must specify extension period, give reasons, notify of right to complain, provide any other necessary information to requestor. (Same as NZ).</p>
----------------------------	--

Urgent Requests

<u>Cook Islands</u>	S 11: specify reasons for urgency – may affect cost of information (S 14(3)) (Same as NZ).
----------------------------	--

Decision

<u>Cook Islands</u>	S 14: Decision made by Ministry/Minister/organisation to whom request made. Where request made/transferred to a Ministry, decision made by permanent head of Ministry or authorised officer/employee, unless transferred elsewhere. S 21: Where request refused, must give reasons in writing, and grounds in support of reasons (if not prejudicial to Ss 6, 7 or 8 (subject to pub int)) and the right to complain/seek investigation/review.)
----------------------------	---

Review/Appeals

<u>Cook Islands</u>	S 30: Applicants can appeal to the Ombudsman who can investigate/review: a refusal to make information available, how information was supplied, the charge for the information, any conditions imposed on the use of information, refusal to confirm/deny existence of information, or extension of time limit. Failure to comply with time/undue delay counts as a refusal. S 32: Order of the Ombudsman for information during an investigation must be complied with within 20 working days. Option to extend time limit for reasons to be given to Ombudsman. S 33: Ombudsman reports any contrary opinion with reasons and recommendations to Ministry, copying to requestor and any other appropriate Minister. S 34: Can't recommend disclosure if PM certifies otherwise, but can recommend further consideration. S 35: Public duty for Ministry to observe recommendation from 21 st working day of recommendation unless Executive passes an Order to the contrary. S 37: Requestor can apply to High Court for review of Executive Order within 21 days of publication in the Gazette on the grounds it was wrong in law. Unclear who will bear costs of review. Further right of appeal to the Court of Appeal.
----------------------------	--

Penalties

<u>Cook Islands</u>	S 32: If fail to provide requested information to the Ombudsman during investigation, Ombudsman can report failure to Prime Minister and Speaker.
----------------------------	---

Protection for Whistleblowers

<u>Cook Islands</u>	S 48: no civil/criminal proceedings will lie against a person who provides information (or the author) where it is made available in good faith. Specific whistleblower protection is not provided, and it does not appear that there is separate whistleblower protection in the Cook Islands, by way of a Protected Disclosures Act, for example, such as in NZ.
----------------------------	--

Reporting and Ongoing Monitoring

<u>Cook Islands</u>	S 41: if no adequate/appropriate action is taken within a reasonable time after reporting opinion to the relevant Ministry or organisation, the Ombudsman can send a copy of the report and recommendations to Prime Minister and report to Parliament. Part 6: Independent Consultant to keep Act under review.
----------------------------	---

Implementation- Public Education, Training for Officials etc.

<u>Cook Islands</u>	Part 6: Independent Consultant assesses if other Acts protect information in a reasonable and compatible way, keeps track of the implementation of the Act, listens to public and Ministries/organisations regarding issues affecting access to or supply of information and recommends changes, inquires and reports on anything impeding access to information, consults and receives reports regarding problems encountered by officials, publishes information regarding the access to or supply of information.
----------------------------	--