

Acting in the Spirit of Service

Negotiations between political parties to form a government



Following the general election on 23 September 2017 negotiations between political parties may occur in order to form a government. As part of these negotiations political parties may request information and analysis from State sector agencies. There is a public interest in providing this assistance to parties, as it allows negotiating parties to form a government on an informed basis.

This guidance outlines the principles and processes under which assistance from agencies may be provided to political parties. It is designed to facilitate the provision of useful information to negotiating parties in a way that protects the political neutrality of the State sector, and is transparent, flexible and pragmatic.

WHICH AGENCIES DOES THIS GUIDANCE APPLY TO?

The guidance applies to all agencies within the State sector. It has been sent to Public Service departments, statutory Crown entities (excluding school boards of trustees), Crown entity companies, agencies on the 4th Schedule of the Public Finance Act, Public Finance Act Schedule 4A companies, New Zealand Police, New Zealand Defence Force, Parliamentary Counsel Office, Reserve Bank of New Zealand, State-Owned Enterprises, Crown Research Institutes, Tertiary Education Institutions, the New Zealand Security Intelligence Service, Offices of Parliament, Office of the Clerk of the House of Representatives and Parliamentary Service.

PRINCIPLE

State servants, through their chief executives, should (if requested) be made available to provide information and analysis to negotiating parties. They must not, however, be involved in, or be present for, any political negotiations.

The following key points support the principle in practice:

- Only the Prime Minister may authorise access by a political party (or parties) to State sector agencies.
- The State Services Commissioner (the Commissioner) is the contact point and facilitator between political parties and State sector agencies.

RECEIVING A REQUEST FOR INFORMATION

Political parties (including those represented in the Government) should direct all requests for information relating to negotiations to the Prime Minister, who will in turn refer the request, if authorised, to the Commissioner.

The Commissioner will act as the central contact point between political parties and State sector agencies. Ministers should not approach their departments directly for information to be used in any coalition, support or other negotiations aimed at forming a government.

If a request is received by a State sector agency directly from a political party, the agency must immediately refer the request to the Commissioner. Upon receiving a request for information from a political party, the Commissioner will confirm with the Prime Minister that the assistance may be provided.



CENTRAL AGENCY COORDINATION OF THE REQUEST

After the Prime Minister has granted a political party access to the State sector, the Commissioner and the Secretary of the Cabinet/Clerk of the Executive Council or their representatives will offer to meet with the political party to explain what assistance is available (with the Secretary to the Treasury and the Chief Executive of the Department of Prime Minister and Cabinet or their representatives consulted, and attending any meeting as required). This meeting will be used to identify precisely what assistance is required, and which State sector agencies are best placed to provide it.

Once the information required by the negotiating parties has been identified and agreed, the Commissioner will make a written request to the relevant agency or agencies. If the request involves agencies outside the Public Service, it will be copied to the chief executive of the monitoring department where applicable.

The Commissioner will keep the Prime Minister informed, in general terms, of the assistance that is being provided but will not disclose the details of the information sought and provided. The Prime Minister will, in turn, inform responsible Ministers of requests that are being processed by an agency in their portfolio area.

PROVIDING THE INFORMATION AND ANALYSIS¹

Once a request is received by an agency, the response is the responsibility of the chief executive. If the request is made to an agency outside the Public Service, that agency must involve the monitoring department (where relevant) in the development of its response. The following processes must be observed when developing the response:

1. At all times, chief executives must safeguard the political neutrality of their agencies.
2. All information and analysis must be approved by the agency's chief executive before it is provided.
3. The information and analysis will ordinarily be presented in writing but face-to-face meetings can be arranged to explain it.
4. Information and analysis may be provided only on matters explicitly identified by a political party.
5. If information and analysis is to be provided at a face-to-face meeting between a political party and an agency, the meeting should be arranged through the Commissioner. A representative of the State Services Commission (or another central agency) must attend the meeting and will take full minutes.
6. Information and analysis presented by agencies is likely to be highly sensitive, and its provision will require both judgement and discretion. Therefore only a small group of senior State servants in any affected agency should be involved in its provision.
7. If an agency is requested to provide costings of party policies, these costings must be developed in consultation with the Treasury. The Treasury's guidance on costing political party policies can be found at: www.treasury.govt.nz/publications/guidance/planning/costingpolicies.
8. Following approval by the agency's chief executive, the information and analysis should be sent directly to the political party. A copy must be simultaneously sent to the Commissioner, although it is not necessary for agencies to have the Commissioner approve or peer review their responses in advance.
9. The Official Information Act 1982 will apply to information and analysis provided to political parties negotiating to form a government.

1. Information and analysis includes: briefing on existing government policy; information relating to and analysis of a party's proposals, including costings; discussing the implications of proposed policies; and discussing the effects of modifying or combining policies and the details of their implementation.



OTHER CHANNELS THROUGH WHICH INFORMATION MAY BE SOUGHT

Political parties may seek information through channels other than those described above. This may take the form of a request under the Official Information Act (an OIA request), or, if the House has met, a written or oral parliamentary question.

If an OIA request is made, the response is the responsibility of the relevant agency, however, the State Services Commission must be informed of the request when it is received. Such requests must be handled promptly and scrupulously, to avoid any appearance of political bias or delay in the formation of a government.

CONCLUSION

This guidance has been designed to assist State sector agencies to safeguard and maintain their political neutrality throughout a period of government formation. If agencies have any concerns relating to this period, they should immediately contact the Commissioner.

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PROCESS FOR SUPPORT FROM THE STATE SECTOR

