

**TRANSPARENCY REPORT  
APRIL-JUNE  
2016**

**SUPPLEMENTARY REPORT**



# Introduction

Last year our office undertook a trial of transparency reporting to explore the role the Privacy Commissioner could play in promoting and facilitating transparency reporting by New Zealand companies.<sup>1</sup> The initial trial provided useful data.

This year we ran a second trial with a smaller but more diverse group of participants to gather more detailed information about government and law enforcement demands and requests for personal information. The data gathered across both trials will help us to:

- provide information to improve government and private agencies' practices in publishing guidance;
- encourage more companies to engage in their own transparency reporting using standardised metrics;
- advocate for greater transparency in the use and reporting of information gathering powers by government agencies;
- provide the public with further insight into how private sector organisations process information demands and requests from government agencies; and
- determine what the Privacy Commissioner's role is in promoting, collecting and/or publishing transparency reporting information by companies.

## Summary of trial findings

Over the trial period (April-June 2016), the eight trial participants received **10,956** demands and requests for their customers' information from government agencies. Of these, **10,517** were complied with in full, **87** required clarification before they were complied with, and **1,271**<sup>2</sup>.

Most of these requests and demands sought information relating to a single person. Of those that related to more than one person, 424 related to between two and 49 people. Only one related to more than 50 people.

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<sup>1</sup> Office of the Privacy Commissioner *Transparency Reporting Trial Aug-Oct 2015* Full Report (February 2016) : <https://www.privacy.org.nz/news-and-publications/commissioner-inquiries/transparency-reporting/>

<sup>2</sup> The total number (10,956) is smaller than the total of those complied with, declined or clarified (10,517 + 1,271 + 87 = 11,875). This could be because some are partially complied with, then coded as both complied with and declined. For example, a request could ask for data about five people. If four are declined but one is complied with, it could be coded as one request that led to one component being complied with and four being declined.

Most were complied with under statutory compulsion. Of the requests complied with on other grounds, 1,397 were complied with under the Privacy Act. Of these, 1,097 were complied with in accordance with privacy principle 11(f) – the ‘serious threat’ exception; 266 were complied with in accordance with privacy principle 11(e) – ‘maintenance of the law’. Thirty relied on privacy principle 11(d) – authorised by the person concerned.

The majority of the demands and requests came from Inland Revenue (4,465); Ministry of Social Development (2,640); Police (2,397) and the Accident Compensation Corporation (1,131).

## Key findings

- Of the three participants that participated in both trials, the comparative results revealed a downward trend in numbers of demands or requests received. This downward trend was less than 10% in two of the three trials participants that participated in both trials; the third received a much smaller number of requests and demands than the other two in both trials.
- Agencies are reporting almost all of their information releases under the Privacy Act (1,097 out of 1,397) as necessary to prevent or limit a ‘serious threat’,<sup>3</sup> under the investigation category ‘other’.<sup>4</sup>
- The number of demands and request for account, content, and transaction information (9,857, 8,027 and 8,991 respectively) is significantly higher than the total number of demands and requests (10,956). This indicates that most are seeking more than one kind of information.
- The most common reason (1,139 out of 1,272) for declining a demand or request was because the individual had no account with the organisation in question. This indicates that in this trial, organisations almost always complied when they had information that was relevant to the demand or request.

## Type of demand or request

Demands or requests for account information were the most common type of information sought. These seek all of the information held about a specified individual or individuals, for example, name, billing address, or subscriber services.

Demands or requests for transaction information, such as the number of times an EFTPOS card was used, or bank account statements, were the next most common type of information sought.

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<sup>3</sup> Information privacy principle 11(f).

<sup>4</sup> Other available investigation categories for the transparency reporting trial were assault, child abuse, fraud, missing person, murder, drugs (production or distribution) and terrorist threat.

Demand or requests for content information, such as email and telephone records, were the third most common type.

Bulk requests or demands that seek information about a class of people (such as all individuals that accessed a service over a certain date range) were relatively rare with only seven being recorded in this trial.

## **Comparison with 2015 trial**

This supplementary report included three organisations that participated in the first trial and five organisations that were new to the transparency reporting trial. This enabled us to run comparisons between time periods, as well as look for trends across different kinds of organisations.

The 2015 trial highlighted that in some cases the Privacy Act was being characterised as an information request mechanism. Our first report highlighted that this is a mis-characterisation. Rather, privacy principle 11 provides a discretionary disclosure mechanism that allows disclosure where the disclosing agency is satisfied that the criteria of the relevant Privacy Act exception are met.

The Privacy Act limits the extent to which an organisation can disclose information (in the absence of a statutory demand). An agency must consider whether disclosing the information sought is covered by one of the permitted exceptions.

We asked agencies to record which principle 11 exception they relied on to release the information:

- Principle 11(d): the disclosure is authorised by the individual concerned;
- Principle 11(e): to avoid prejudice to the maintenance of the law, or as necessary to protect other legal processes;
- Principle 11(f): as necessary to prevent or lessen a serious threat to an individual or to the public generally.

This year we also asked agencies to record the type of investigation that gave rise to the request. We provided the following list:

- Assault
- Child abuse
- Fraud
- Missing person
- Murder
- Production/distribution of drugs
- Terrorist threat
- Other

## Methodology

The trial ran from April to June 2016. Eight organisations reported the number of information demands or requests they had received from government agencies, using a standardised spreadsheet.

The trial did not include demands or requests by the GCSB, the SIS or the SFO. Section 57 of the Privacy Act means that principle 11 does not limit any disclosure by, or to, an intelligence agency.<sup>5</sup>

These agencies have a statutory obligation to report on the use of specific statutory powers such as domestic intelligence warrants in their annual reports. There are some specific limits to transparency reporting in relation to the intelligence agencies. For example, section 12A of the New Zealand Security Intelligence Service Act 1969 prohibits disclosure of the details of a warrant or other authorisation by any person.

## Detailed results and analysis

### Demands, requests and outcomes

Overall, government agencies made **10,956** demands or requests to private sector trial participants for personal information. Of these, **10,517** were complied with immediately, and **87** were complied with after clarification.

There were **8,358** demands made under statutory compulsion and of these, **4,465** were made under the Tax Administration Act. This finding - of the majority being under statutory compulsion, and the majority of those being under the Tax Administration Act - is consistent with the same result we saw in 2015.

The total number of demands or requests for account, content and transaction information (9,857, 8,027 and 8,991 respectively) is significantly higher than the total number of demands and requests (10,956). This indicates that a significant number of the requests were across two or more of these categories.

This is relevant because it indicates that government agencies are not just asking for names and addresses, for example, but rather are asking for account information such as name and address, along with behavioural information (transaction information) and specific information that customers have seen or created (content information).

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<sup>5</sup> In 2016 the Commissioner recommended reform section 57 in his submission on the Intelligence and Security Bill. Those proposals had not been passed at the time the trial took place, but were made in the Intelligence and Security Act 2017.

Demands/requests					
Total	Number complied with	Bulk information	Account information	Content information	Transaction information
10,956	10,517	7	9,857	8,027	8,991

The majority of those declined were because the agency had no information about the individual concerned.

Reasons for declining		
No account	No Principle 11 disclosure grounds	Other
1,139	6	127

### Statutory compulsion

Statutory demands followed a similar pattern to that from 2015, with a small number of laws forming the bulk of the total statutory compulsion orders. The top five Acts used in 2016 are compared to the top five Acts used in 2015 below.

Statute	Number of demands	
	2015	2016
Tax Administration Act 1989, section 17	4,470	4,465
Social Security Act 1964, section 11	3,108	2,639
Search and Surveillance Act 2012, production order	962	914
Other	253	135
Customs and Excise Act 1996, Part 3A		73
Criminal Proceeds (Recovery) Act 2009		41
Customs and Excise Act 1996, section 160 or 161		26
Immigration Act 2009, section 274		30
Financial Markets Authority Act 2011, section 25		6

Anti Money Laundering and Countering Financing of Terrorism Act 2009, section 132(2)(a)	4
Companies Act 1993, section 261(1)	3
Gambling Act 2003, section 333	3
Charities Act 2005, section 51 (Internal Affairs)	2
Lawyers & Conveyancers Act 2006, s 147	1

## Principle 11 disclosure exceptions

This year, we asked trial participants to report on their principle 11 disclosures by ground and by type of investigation.

Principle 11 disclosures					
Investigation	Total Requests	Disclosure ground			
		Principle 11(d) 'authorised disclosure'	Principle 11(e) 'maintenance of law'	Principle 11(f) 'serious threat'	Other
Assault	70	9	59	0	2
Child abuse	13	0	13	0	0
Fraud	18	18	0	0	0
Missing person	15	0	0	15	0
Murder	2	0	2	0	0
Drugs <sup>6</sup>	24	0	24	0	0
Terrorist threat	1	0	1	0	0
Other	1254	3	167	1082	2
<b>Total</b>	<b>1397</b>	<b>30</b>	<b>266</b>	<b>1097</b>	<b>4</b>

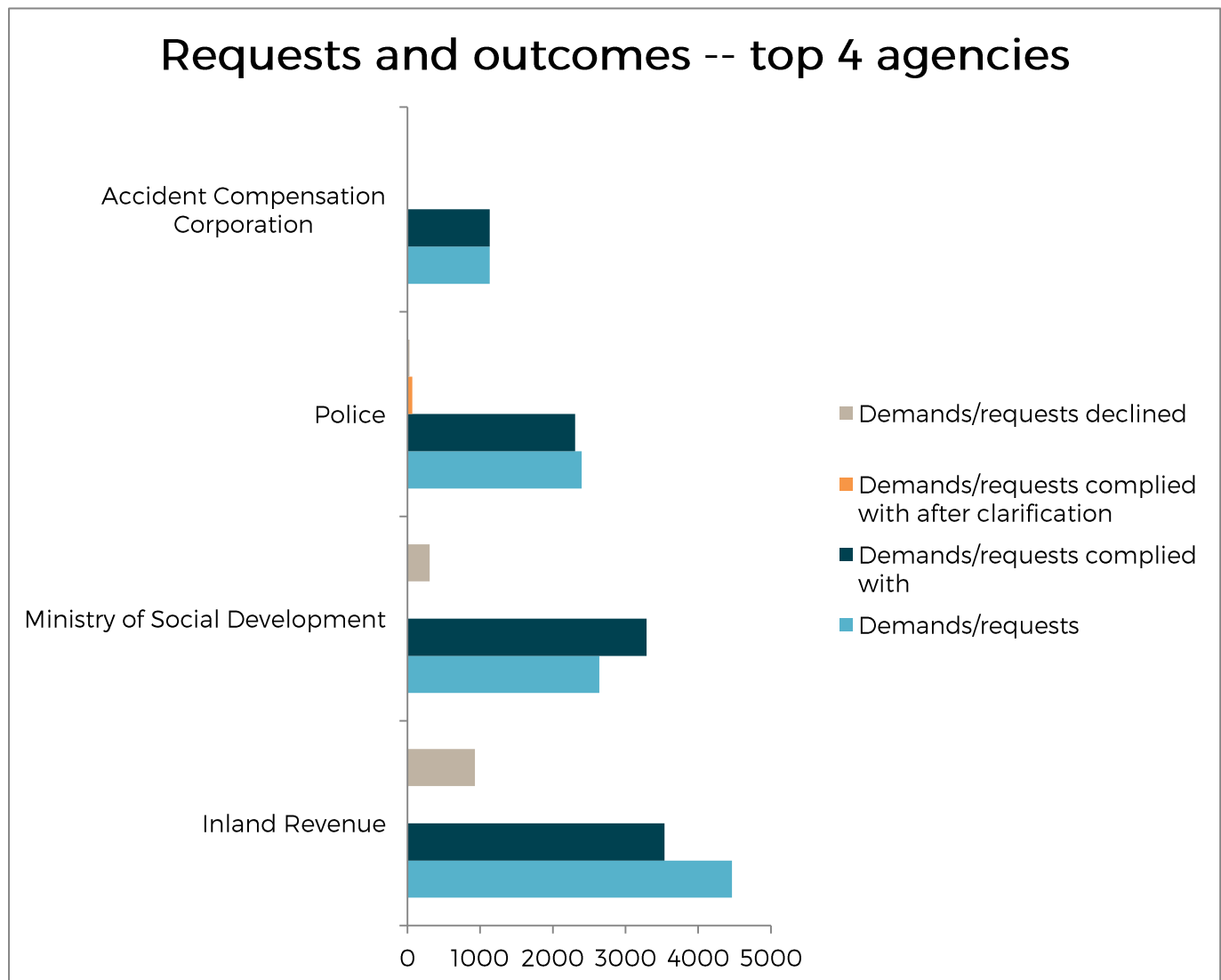
<sup>6</sup> Production and/or distribution.

As the results show, the majority of these disclosures were made to prevent or lessen a 'serious threat' for investigations coded 'other'.

## Where to from here?

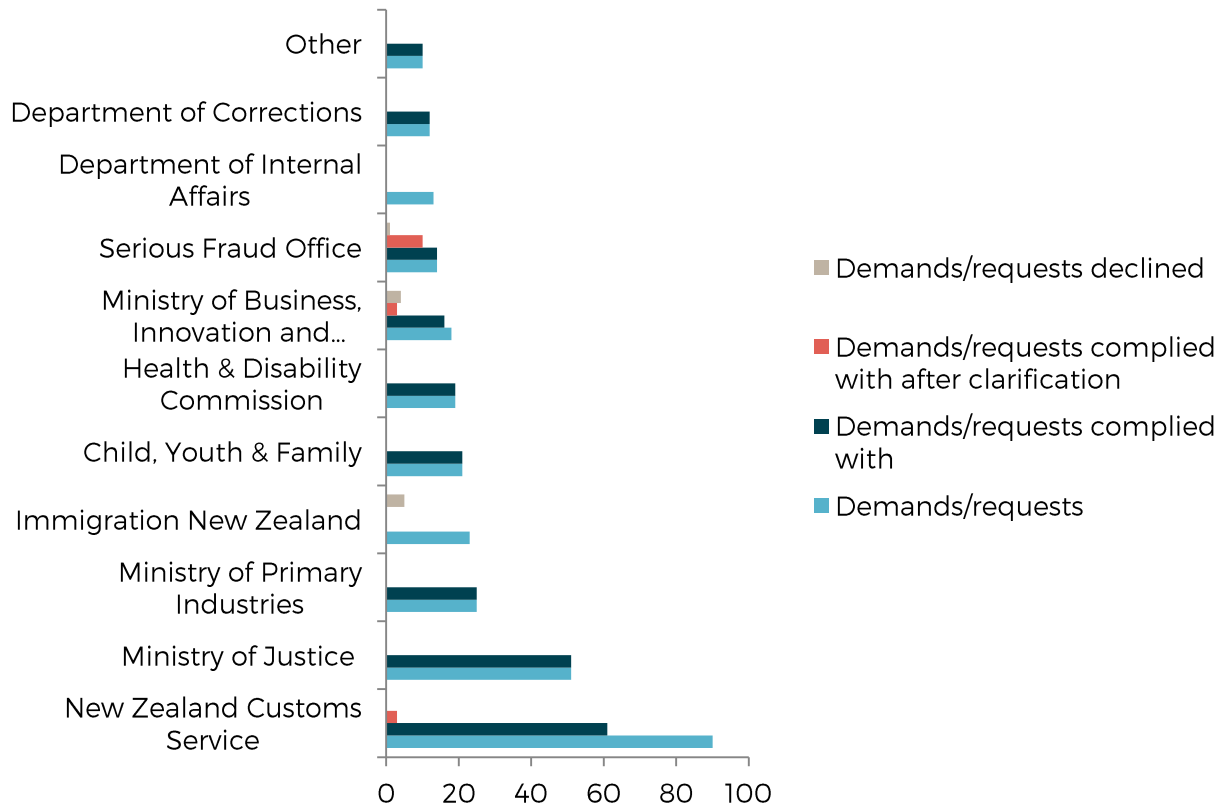
This report highlights a number of areas for further exploration that we will examine in deciding whether to carry out a further trial in 2017. To inform this decision, we will be consulting with the companies that participated in both the 2016 and 2015 trials. Our overall aim remains to increase the number of companies producing transparency reports, whether this is through our Office or individually.

## Appendix: Graphs of findings

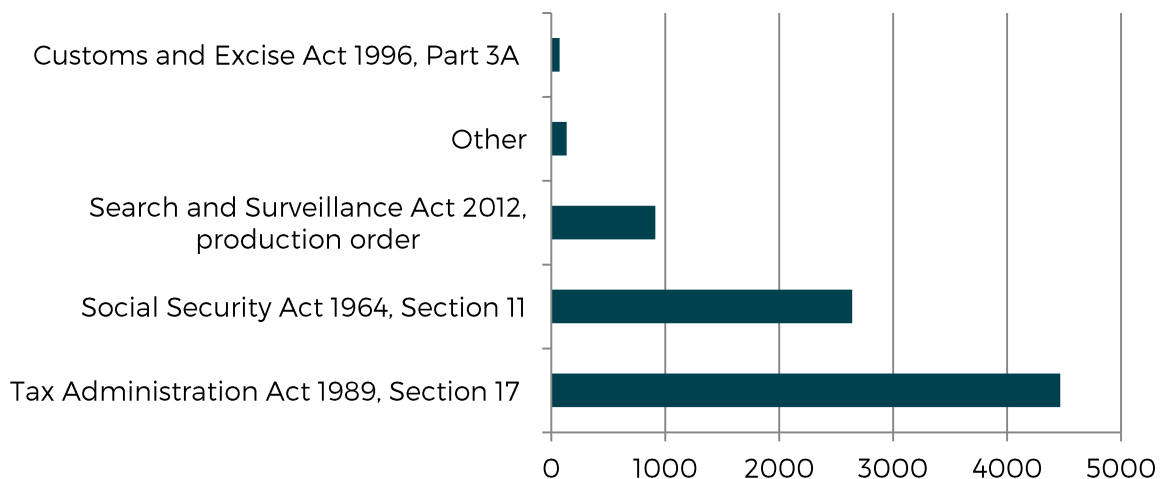




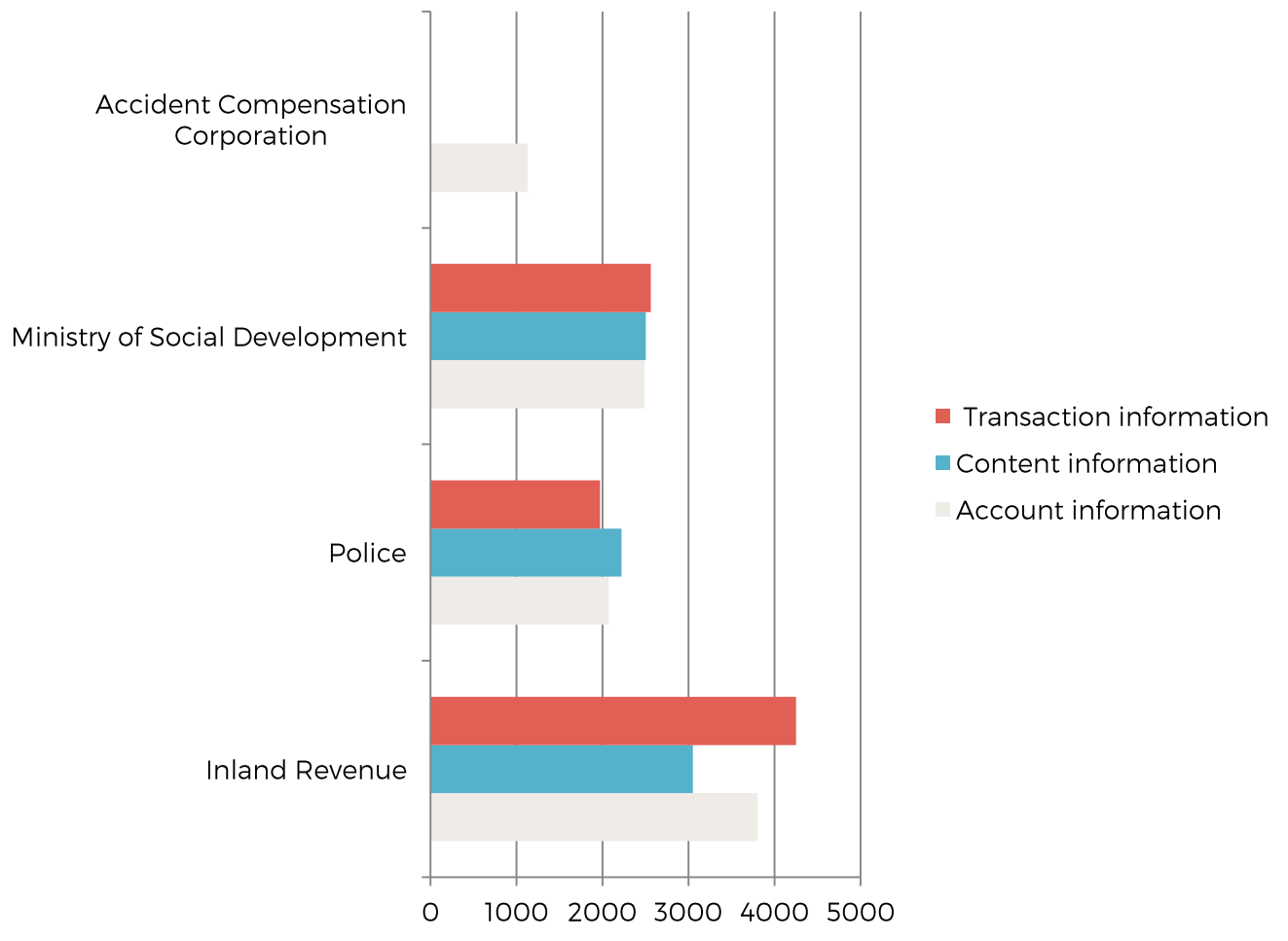
## Requests and outcomes -- 5th-10th ranked agencies



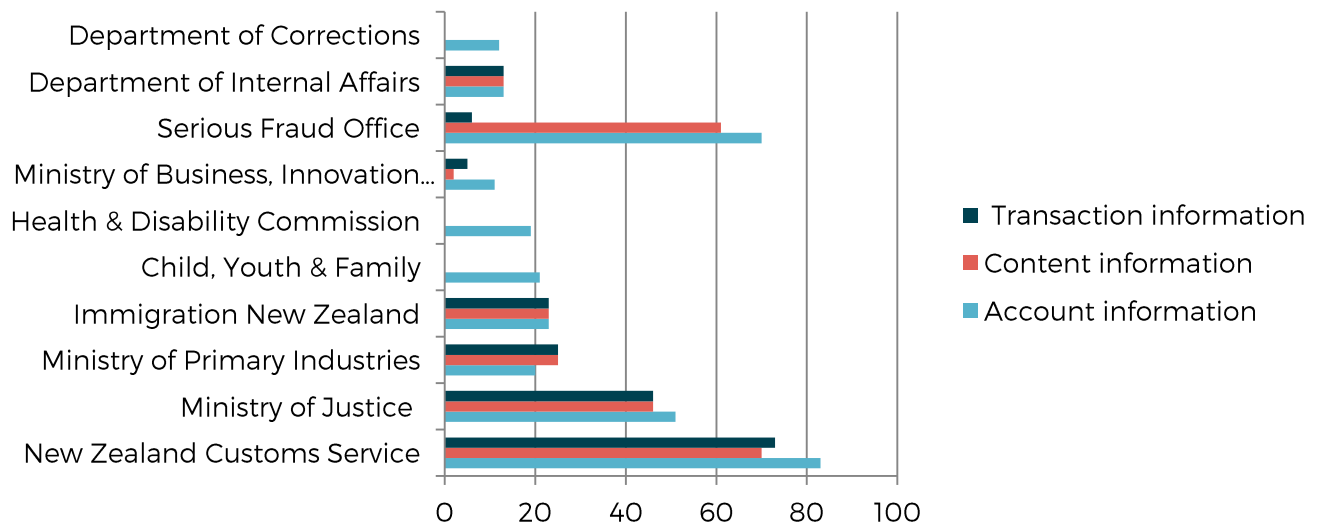
## Legal basis for disclosure



## Types of information sought -- top 4 agencies



## Types of requests -- 5th-10th ranked agencies



## Reasons for declining

