

16 October 2023

s9(2)(a)

Our ref: OIA 107110

Tēnā koe s9(2)(a)

### Official Information Act request: Te Au Reka

Thank you for your email of 27 August 2023 to the Minister of Justice, Hon Ginny Andersen, requesting, under the Official Information Act 1982 (the Act), information relating to Te Au Reka. Specifically, you requested:

1. *Confirmation that the attached legal opinion on "Te Au Reka and jurisdictional risk" by Dr James Every-Palmer KC, has been received and read by (a) the Te Au Reka procurement team, and (b) all those with oversight and/or governance responsibilities for Te Au Reka. (Note that a link to the opinion was submitted via a question on GETS on 21 November 2022.)*
2. *All records of any discussions or assessments of this legal opinion, as well as any conclusions as to its merits or otherwise.*
3. *Any other legal opinion, legal bases, or official positions taken, relevant to the procurement for Te Au Reka, that pertain to jurisdictional risk or data sovereignty.*
4. *Whether the procurement process for Te Au Reka will - or will not - permit the storage of sensitive courts data in foreign-owned hosting providers, thereby exposing it to jurisdictional risk?*

On 29 August 2023, under section 14 of the Act, the Minister's office transferred your request to the Ministry of Justice (the Ministry) for response. On 22 September 2023, under section 15A of the Act, the Ministry extended the timeframe to respond to your request by 15 working days to 17 October 2023.

In response to the first part of your request, I can confirm that the legal opinion was received and read by the procurement and Te Au Reka leadership teams and judicial lead for Te Au Reka, Justice Goddard, on 21 November 2022. It was also sent for noting to the Secretary for Justice on 28 November 2022 (document 6 in the attached table) and the Te Au Reka Steering Group on 30 November 2022 (document 6B). For the avoidance of doubt, communications with Justice Goddard were in his role as a member of the Te Au Reka Steering Group (representing the judiciary) and were not seeking legal advice.

In response to the second part of your request, please see documents 1 to 9 in the attached table, which details the documents within scope and information that is withheld and refused. In assessing the information within the scope of this part of your request, we have excluded emails of an administrative nature. Some information has been withheld or refused under the following sections of the Act:

- section 9(2)(a) to protect personal privacy
- section 9(2)(b)(ii) where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
- section 9(2)(h) to maintain legal professional privilege
- section 18(d) on the grounds that it is publicly available.

Please note the Ministry only holds information that it has created or received. In particular, the Ministry will not have any information about internal discussions within the judiciary, and that information would not be subject to the Act (as it is judicial information under section 173 of the Senior Courts Act 2016 and section 236 of the District Court Act 2016).

In response to the third part of your request, please see documents 10 to 14 in the attached table. Some information in these documents has been released as excerpts under section 16(1)(e) of the Act. Additionally, there are four other documents, all legal opinions, that fall within the scope of this part of your request. They were dated 22 March 2019, 26 January 2022, 4 February 2022, and 31 May 2022 and are withheld in full under section 9(2)(h) of the Act.

In response to the fourth part of your request, please see documents 10 to 14 regarding hosting statements in the procurement process. I can advise that Te Au Reka will be holding primarily court information. The judiciary are responsible for, and control, court information. The judiciary are thus responsible for determining matters relating to the custody, protection and use of court information, supported by the Ministry of Justice. The judiciary require Te Au Reka to have appropriate safeguards to protect the court record from illegal access (e.g., cyber-attacks), and there must be appropriate processes to manage jurisdictional risk, i.e., the risk of lawful access by an overseas government or court to specific court files.

At present no final decision has been made by the judiciary regarding hosting of courts data by “foreign-owned hosting providers”. The decision on hosting arrangements will be made during the current scope and define phase of Te Au Reka.

Where information has been withheld under section 9, I have considered the public interest and I do not consider it outweighs the need to withhold the information at this time.

Please note that this response, with your personal details removed, may be published on the Ministry website at: [justice.govt.nz/about/official-information-act-requests/oia-responses/](https://justice.govt.nz/about/official-information-act-requests/oia-responses/).

You have the right to make a complaint to the Ombudsman under section 28(3) of the Act about my decisions to withhold and refuse information. The Office of the Ombudsman may be contacted at [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or on 0800 802 602.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Victoria McLaughlin', with a long horizontal flourish extending to the right.

Victoria McLaughlin  
**Deputy Secretary, Te Au Reka**

**Table: Documents within scope**

Doc No	Document date	Document title	Decision on release
1	21/11/2022	RE: As discussed – probity advice re question	Some information withheld under section 9(2)(a)
2	21–22/11/2022	RE: Action Required: Answers for Batch 5	Some information withheld under sections 9(2)(a) & 9(2)(h)
3	22/11/2022	RE: Publication of opinion by Catalyst Cloud	Withheld in full under s9(2)(h)
4	21–22/11/2022	RE: Approach and response to data sovereignty questions LEGALLY PRIVILEGED	Some information withheld under sections 9(2)(a) & 9(2)(h)
5	22–23/11/2022	Re: Thinking of editing question to remove link to letter	Some information withheld under sections 9(2)(a) & 9(2)(h)
6	28/11/2022	Te Au Reka – Sourcing issue	Some information withheld under sections 9(2)(a), 9(2)(b)(ii) & 9(2)(h)
6A	21/11/2022	Te Au Reka and jurisdictional risk	Refused under 18(d) as it is publicly available at: <a href="http://catalystcloud.nz/about/data-sovereignty">catalystcloud.nz/about/data-sovereignty</a>
6B	30/11/2022	Te Au Reka – IN CONFIDENCE (COMMERCIALY SENSITIVE)	Some information withheld under sections 9(2)(a), 9(2)(b)(ii) & 9(2)(h)
7	6/12/2022	FW: Initial memorandum on data sovereignty matters	Withheld in full under section 9(2)(h)
7A	Undated	Te Au Reka – Data sovereignty risk	
8	7/12/2022	FW: Initial memorandum on data sovereignty matters	
9	11/2022	Data Sovereignty questions – File Note	Some information withheld under section 9(2)(h)
10	Undated	Market Briefing Video: The digital context (and presentation slides)	Refused under section 18(d), as it is available at: <a href="http://justice.govt.nz/justice-sector-policy/key-initiatives/te-au-reka/market-briefing-information">justice.govt.nz/justice-sector-policy/key-initiatives/te-au-reka/market-briefing-information</a>
11	Undated	Response Part A of the Request for Proposal	Released as excerpts under section 16(1)(e)
12	Undated	Procurement plan	
13	Undated	Proposed Contract in Book 9 – Response Part D – Commercial Appendix 2	

		Master Services Agreement as released in the October 2022 as part of the RFP	
14	25/11/22	Request for Proposal – questions and answers batch five (answers 54 -110)	

**From:** [Peter Ashdown \(NZ\)](#)  
**To:** [Toon, Jo](#)  
**Subject:** Re: As discussed - probity advice re question  
**Date:** Monday, 21 November 2022 8:07:57 pm

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Jo, thanks for sending this through.

I see no probity problem with your rewording.

Regards  
Peter

**Peter Ashdown**

PwC | Director, Risk Services  
Office: +64 4 4627206 | Mobile: **s9(2)(a)** | Fax: +64 4 4627001  
Email: [peter.j.ashdown@pwc.com](mailto:peter.j.ashdown@pwc.com)  
PricewaterhouseCoopers New Zealand  
PwC Centre, 10 Waterloo Quay, PO Box 243, Wellington, New Zealand  
[pwc.co.nz](http://pwc.co.nz)

On Mon, 21 Nov 2022 at 15:30, Toon, Jo <[Jo.Toon@justice.govt.nz](mailto:Jo.Toon@justice.govt.nz)> wrote:

Kia ora Peter,

As briefly discussed this afternoon, we have received the below series of questions. We are drawing up answers, including liaising with Justice Goddard.

The probity question is around how much we edit the question to preserve the identity of Catalyst (the letter that they link to is very clear which organisation it has been sent to). I have highlighted the sentences that we would need to change, and would suggest that we edit it to: "Based on a legal opinion we have received, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company."  
(i.e. removing the name of the individual providing the opinion and the link to his letter)

Are there any issues that you can see in cutting this down?

Ngā mihi  
Jo

A question has been raised by a supplier in relation to GETS RFX ID: 26443279, Te Au Reka Digital Courts Case Management Service:

Supplier

-----

Company: CATALYST CLOUD LIMITED

User: **s9(2)(a)**

Question

-----

Title: Please can you clarify your position on data sovereignty and jurisdictional risk?

Contents:

In clause 4.5, the focus for managing data sovereignty and jurisdictional risk is location of data in Aotearoa New Zealand.

a) Does the management of jurisdictional risk require access to the Te Au Reka information to be determined under New Zealand laws only?

b) In addition to data located off-shore, will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals? Based on a legal opinion we have received from Dr James Every-Palmer KC, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company. The legal opinion can be accessed here: <https://tinyurl.com/ycxhup54>

c) Given the conclusions in the legal advice that the risks are currently not manageable for Te Au Reka information where there is an offshore parent (or control), can you address whether and how you expect these risks to be managed?

d) The nature of the information that is the subject of Te Au Reka RFP and the relevance of jurisdictional risk and Māori data sovereignty, indicate certain Broader Outcomes in the Government Procurement Rules (Rules) and te Tiriti o Waitangi have high relevance for this RFP. Are you able to indicate which of the Broader Outcome are considered most relevant to this RFP and / or how you see the role of Te Tiriti o Waitangi (we refer to page 6 of the Rules)?

As the manager assigned to this project please log in to GETS and respond as soon as possible.

<https://www.gets.govt.nz//main.html>

Regards,

The GETS Team  
Ministry of Business, Innovation & Employment

GETS Helpdesk  
Free Phone: 0508 GETS HELP (0508 438 743)  
International: +64 4 901 3188  
Email: [info@gets.govt.nz](mailto:info@gets.govt.nz)

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RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



**From:** [Samuels, Karen](#)  
**To:** [Toon, Jo](#); [Price, Rebecca](#); [Walker, Cornelia](#)  
**Subject:** RE: Action Required: Answers for Batch 5  
**Date:** Tuesday, 22 November 2022 9:52:00 am

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s9(2)(h)

Keen to see what Peter says about not answering or providing something along the lines of what you have suggested.

The other option we have is asking Tina Wakefield or Steve Sim for some advice on how to respond from a ministry perspective?

Karen

Karen Samuels  
Manager, Investment & Commercial | Te Au Reka  
DDI: +64 4 494 9826 | Ext 50826  
Mob s9(2)(a)  
[www.justice.govt.nz](http://www.justice.govt.nz)

-----Original Message-----

From: Toon, Jo <Jo.Toon@justice.govt.nz>  
Sent: Tuesday, 22 November 2022 9:09 am  
To: Samuels, Karen <Karen.Samuels@justice.govt.nz>; Price, Rebecca <Rebecca.Price@justice.govt.nz>; Walker, Cornelia <Cornelia.Walker@justice.govt.nz>  
Subject: RE: Action Required: Answers for Batch 5

Justice Goddard has raised good points, and I think it is potentially going to be challenging to give a good answer (that doesn't then risk challenges or raise issues for us further down the track) in time for the answers to be provided. Even the last question may provide issues (we could give the information on Broader Outcomes from the Procurement plan, but I would not be comfortable on commenting around anything linked to the Treaty without getting wider input)

I will check in with Peter on the consequences of not answering, or giving an answer along the lines of "these are complex areas and we will explore them with the Vendors as we progress through the procurement process".

s9(2)(h)

Ngā mihi  
Jo

-----Original Message -----

From: Samuels, Karen <Karen.Samuels@justice.govt.nz>  
Sent: Tuesday 22 November 2022 8:59 am  
To: Toon, Jo <Jo.Toon@justice.govt.nz>; Price, Rebecca <Rebecca.Price@justice.govt.nz>  
Subject: FW Action Required: Answers for Batch 5

Thoughts on the below?

Karen Samuels  
Manager, Investment & Commercial | Te Au Reka  
DDI: +64 4 494 9826 | Ext 50826  
Mob s9(2)(a)

www.justice.govt.nz

-----Original Message-----

From: Goddard, Justice s9(2)(a)  
Sent: Monday, 21 November 2022 3:40 pm  
To: Samuels, Karen <Karen.Samuels@justice.govt.nz>  
Subject: RE: Action Required: Answers for Batch 5

Kia ora Karen

I can do my best to review any draft answers provided by 1pm on Wednesday, and comment on them so far as appropriate. But I have very full days sitting in the CA in Auckland on Wednesday and Thursday, so my ability to do so may be constrained.

The issues raised are complex, and involve intersecting legal and technical issues (as illustrated by para 28 of the opinion provided). I am not confident that answers can readily be provided in advance of seeing the responses of different vendors to the RFP, and exploring those responses with them. Careful consideration should in my view be given to whether the questions should be answered at all at this stage of the RFP process. s9(2)(h)

Ngā mihi,  
DG

-----Original Message-----

From: Samuels, Karen <Karen.Samuels@justice.govt.nz>  
Sent: Monday, 21 November 2022 1:44 pm  
To: Goddard, Justice s9(2)(a) >  
Subject: FW: Action Required: Answers for Batch 5  
Importance: High

Hi Justice Goddard,

Wondering if I can lean into your expertise and knowledge to help review the drafted answers to the set of questions below provided by Catalyst Cloud Limited who have sought independent legal advice on jurisdictional risk related to data location and Māori data sovereignty.

For context, Catalyst are the only NZ Data Centre owned and hosted in NZ (<https://catalyst-group.co.nz/about-catalyst>) and belong to Ngati Whatua o Orakei Marae with the iwi welcoming our team and have in house specialists in the area of Māori data sovereignty.

The team are currently seeking probity advice on whether to release the opinion/legal advice with the questions and answers being sent out this week as well as drafting the answers which we are aiming to have completed by 1pm on Wednesday which is when we would like to get them to you if that's possible? We have to release the Q&A's on Friday

Look forward to hearing from you.

Karen

Karen Samuels  
Manager Investment & Commercial | Te Au Reka  
DDI: +64 4 494 9826 | Ext 50826  
Mob s9(2)(a)  
www.justice.govt.nz

-----Original Message-----

From: MoJ\_TeAuReka <MoJ\_TeAuReka@justice.govt.nz>

Sent: Monday, 21 November 2022 12:17 pm  
To: Samuels, Karen <Karen.Samuels@justice.govt.nz>; Walker, Cornelia <Cornelia.Walker@justice.govt.nz>; Duffin, Catherine <Catherine.Duffin@justice.govt.nz>; Dilks, Sharon <Sharon.Dilks@justice.govt.nz>; Houghton, John <John.Houghton@justice.govt.nz>  
Cc: Toon, Jo <Jo.Toon@justice.govt.nz>; Parsons, Matthew <Matthew.Parsons@justice.govt.nz>; Field, Kelsey <Kelsey.Field@justice.govt.nz>  
Subject: Action Required: Answers for Batch 5  
Importance: High

Kia ora koutou,

We have received four questions below from a vendor and we think a team effort may be required to provide a fulsome answer.

#### Actions

Karen - can you please confirm whether you think Justice Goddard will need to review any of these answers before release?

Catherine, Sharon, Cornelia - can you please liaise and let me know which question is assigned to who?

Ideally we are looking to have all draft answers in by 1pm Wednesday so that we can start the review process in order to meet the Friday release deadline.

The deadline for questions is now officially closed!

Nga mihi,  
Rebecca

Rebecca Price (she/her)  
Senior Advisor | Commercial Services  
Ministry of Justice | Tāhū o te Ture  
M s9(2)(a)  
National Office – Justice Centre | 19 Aitken Street | Wellington Rebecca.price@justice.govt.nz

A question has been raised by a supplier in relation to GETS RFX ID: 26443279, Te Au Reka Digital Courts Case Management Service:

#### Supplier

-----

Company: CATALYST CLOUD LIMITED  
User: s9(2)(a)

#### Question

-----

Title: Please can you clarify your position on data sovereignty and jurisdictional risk?

#### Contents:

In clause 4.5, the focus for managing data sovereignty and jurisdictional risk is location of data in Aotearoa New Zealand.

- a) Does the management of jurisdictional risk require access to the Te Au Reka information to be determined under New Zealand laws only?
- b) In addition to data located off-shore, will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals? Based on a legal opinion we have received from Dr James Every-Palmer KC, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign

parent company. The legal opinion can be accessed here: <https://tinyurl.com/ycxhup54>

c) Given the conclusions in the legal advice that the risks are currently not manageable for Te Au Reka information where there is an offshore parent (or control), can you address whether and how you expect these risks to be managed?

d) The nature of the information that is the subject of Te Au Reka RFP and the relevance of jurisdictional risk and Māori data sovereignty, indicate certain Broader Outcomes in the Government Procurement Rules (Rules) and te Tiriti o Waitangi have high relevance for this RFP. Are you able to indicate which of the Broader Outcome are considered most relevant to this RFP and / or how you see the role of Te Tiriti o Waitangi (we refer to page 6 of the Rules)?

As the manager assigned to this project please log in to GETS and respond as soon as possible

<https://www.gets.govt.nz//main.html>

Regards,

The GETS Team  
Ministry of Business, Innovation & Employment

GETS Helpdesk  
Free Phone: 0508 GETS HELP (0508 438 743)  
International: +64 4 901 3188  
Email: [info@gets.govt.nz](mailto:info@gets.govt.nz)

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**From:** [Toon, Jo](#)  
**To:** [Goddard, Justice](#)  
**Cc:** [Samuels, Karen](#)  
**Subject:** RE: Approach and response to data sovereignty questions LEGALLY PRIVILEGED  
**Date:** Tuesday, 22 November 2022 5:22:20 pm

---

Kia ora Justice Goddard,

Thank you so much for such a quick response.

Ngā mihi  
Jo

-----Original Message-----

**From:** Goddard, Justice s9(2)(a)  
**Sent:** Tuesday, 22 November 2022 5:19 pm  
**To:** Toon, Jo <Jo.Toon@justice.govt.nz>  
**Cc:** Samuels, Karen <Karen.Samuels@justice.govt.nz>  
**Subject:** RE: Approach and response to data sovereignty questions LEGALLY PRIVILEGED

Kia ora Jo

I don't have any concerns about the proposed response, or any feedback about its content, on a quick review.

Ngā mihi,  
David Goddard

-----Original Message-----

**From:** Toon, Jo <Jo.Toon@justice.govt.nz>  
**Sent:** Tuesday, 22 November 2022 5:15 pm  
**To:** Goddard, Justice <Justice.Goddard@courts.govt.nz>  
**Cc:** Samuels, Karen <Karen.Samuels@justice.govt.nz>  
**Subject:** Approach and response to data sovereignty questions LEGALLY PRIVILEGED

Kia ora Justice Goddard,

Thank you for looking at the proposed response for the questions raised around data sovereignty. We have had a meeting with Peter Ashdown from PWC (probity) s9(2)(h)

We are therefore proposing to respond as a single response to all four parts of the question posed by Catalyst. We are still needing to circulate this response internally, however as I am aware that you have full days on both

Wednesday and Thursday, I wanted to send you over our thinking ahead of time to ensure that we can incorporate your feedback into the response.

From a probity perspective, Peter is comfortable with the approach that we are taking.

The response we are proposing to send is:

Thank you for your questions – these are matters which the Ministry and judiciary are considering as part of the procurement process.

As mentioned in section 4.5 of the Request for Proposal (RFP), proposed vendors are required to demonstrate a strong understanding of the wider governmental policies relating to data protection and security, and the requirements of the judiciary in relation to court and judicial information. Each proposed solution will be required to meet the data sovereignty requirements in place at the time, which includes an ability to respond to changes in data sovereignty requirements (for example, changes in law and the continuing dialogue concerning Māori data sovereignty).

In relation to Broader Outcomes, please refer to section 4.7.6 of the RFP.

Please could you let me know if you have any feedback or concerns with what we are proposing to send?

Ngā mihi nui  
Jo

-----Original Message-----

From: Goddard, Justice s9(2)(a)  
Sent: Monday, 21 November 2022 3:40 pm  
To: Samuels, Karen <Karen.Samuels@justice.govt.nz>  
Subject: RE: Action Required: Answers for Batch 5

Kia ora Karen

I can do my best to review any draft answers provided by 1pm on Wednesday, and comment on them so far as appropriate. But I have very full days sitting in the CA in Auckland on Wednesday and Thursday, so my ability to do so may be constrained.

The issues raised are complex, and involve intersecting legal and technical issues (as illustrated by para 28 of the opinion provided). I am not confident that answers can readily be provided in advance of seeing the responses of different vendors to the RFP, and exploring those responses with them. Careful consideration should in my view be given to whether the questions should be answered at all at this stage of the RFP process. s9(2)(h)

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DG

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To: Goddard, Justice s9(2)(a)  
Subject: FW: Action Required: Answers for Batch 5  
Importance: High

Hi Justice Goddard,

Wondering if I can lean into your expertise and knowledge to help review the drafted answers to the set of questions below provided by Catalyst Cloud Limited who have sought independent legal advice on jurisdictional risk related to data location and Māori data sovereignty.

For context, Catalyst are the only NZ Data Centre owned and hosted in NZ (<https://catalyst-group.co.nz/about->

[catalyst](#)) and belong to Ngati Whatua o Orakei Marae with the iwi welcoming our team and have in house specialists in the area of Māori data sovereignty.

The team are currently seeking probity advice on whether to release the opinion/legal advice with the questions and answers being sent out this week as well as drafting the answers which we are aiming to have completed by 1pm on Wednesday - which is when we would like to get them to you if that's possible? We have to release the Q&A's on Friday.

Look forward to hearing from you.

Karen

Karen Samuels  
Manager, Investment & Commercial | Te Au Reka  
DDI: +64 4 494 9826 | Ext 50826  
Mob **s9(2)(a)**  
www.justice.govt.nz

-----Original Message-----

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Sent: Monday, 21 November 2022 12:17 pm  
To: Samuels, Karen <Karen.Samuels@justice.govt.nz>; Walker, Cornelia <Cornelia.Walker@justice.govt.nz>; Duffin, Catherine <Catherine.Duffin@justice.govt.nz>; Dilks, Sharon <Sharon.Dilks@justice.govt.nz>; Houghton, John <John.Houghton@justice.govt.nz>  
Cc: Toon, Jo <Jo.Toon@justice.govt.nz>; Parsons, Matthew <Matthew.Parsons@justice.govt.nz>; Field, Kelsey <Kelsey.Field@justice.govt.nz>  
Subject: Action Required: Answers for Batch 5  
Importance: High

Kia ora koutou,

We have received four questions below from a vendor and we think a team effort may be required to provide a fulsome answer.

Actions

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Nga mihi,  
Rebecca

Rebecca Price (she/her)  
Senior Advisor | Commercial Services  
Ministry of Justice | Tāhū o te Ture  
M **s9(2)(a)**  
National Office – Justice Centre | 19 Aitken Street | Wellington Rebecca.price@justice.govt.nz

A question has been raised by a supplier in relation to GETS RFx ID: 26443279, Te Au Reka Digital Courts



Case Management Service:

Supplier

-----

Company: CATALYST CLOUD LIMITED

User: s9(2)(a)

Question

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As the manager assigned to this project please log in to GETS and respond as soon as possible.

<https://www.gets.govt.nz//main.html>

Regards,

The GETS Team  
Ministry of Business, Innovation & Employment

GETS Helpdesk

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**From:** [Toon, Jo](#)  
**To:** [Samuels, Karen](#); [Carlaw, Ben](#); [Walker, Cornelia](#)  
**Subject:** RE: Thinking - editing of question to remove link to letter  
**Date:** Wednesday, 23 November 2022 5:07:33 pm

Definitely happy to have a discussion, and I'd love for this to be led by someone else

As part of making sure that our working around any potential risks for Te Au Reka is documented, I'll write up my thinking and circulate. **[Note - this information is attached as document 9]**

As part of the risk management, though – just letting you know that Karen and I had a chat **s9(2)(h)**  
 As I read it, I am  
 concerned that we do run a greater risk of getting a complaint that we deliberately edited the question to then shift the meaning away from the original intentions.

As a result, after all the back and forth, I would feel more comfortable in leaving the question as it is, barring the edit to remove the KC's name and the link to the question – which is the version that Peter A has already said he is comfortable with from a probity perspective (or we could remove that sentence in its entirety). This doesn't impact on the answer that we provide.

Are you happy with this decision?

Ngā mihi  
 Jo

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**From:** Samuels, Karen <Karen.Samuels@justice.govt.nz>  
**Sent:** Wednesday, 23 November 2022 1:45 pm  
**To:** Toon, Jo <Jo.Toon@justice.govt.nz>; Carlaw, Ben <Ben.Carlaw@justice.govt.nz>; Walker, Cornelia <Cornelia.Walker@justice.govt.nz>  
**Subject:** RE: Thinking - editing of question to remove link to letter

Hey,

I agree that we probably need to have a wider conversation – given the topics all relate back to data and information, this is probably something that should be done from Suzanne Jones team, rather than leading it from Te Au Reka. From a Te Au Reka perspective, we are answering the questions and our requirements determine what we need, and we follow whatever the govt and ministry standards, policies and frameworks that are in place at the time. From a risk to Te Au Reka – **s9(2)(h)**

There is a risk of Catalyst sharing their publication widely, but that is up to them, if it comes back to the Ministry via media or OIA's it will be managed by CDS and DIA team or the IGC Group – but this is also why we are getting Tina to review the responses.

I could have a discussion with Steve Sim about this and ask him to explore? There is already a team working with DIA about data sov, and messaging around how the ministry and the courts met their obligations around the treaty – Te Au Reka makes no change to any of that more that we have a dependency on whatever the new requirements and assurance practices will be in the future.

May be easier to discuss....

Thanks  
 K

**Karen Samuels**



Manager, Investment & Commercial | Te Au Reka  
DDI: +64 4 494 9826 | Ext 50826  
Mot **s9(2)(a)**  
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**From:** Toon, Jo <[Jo.Toon@justice.govt.nz](mailto:Jo.Toon@justice.govt.nz)>  
**Sent:** Wednesday, 23 November 2022 12:12 pm  
**To:** Carlaw, Ben <[Ben.Carlaw@justice.govt.nz](mailto:Ben.Carlaw@justice.govt.nz)>; Samuels, Karen <[Karen.Samuels@justice.govt.nz](mailto:Karen.Samuels@justice.govt.nz)>; Walker, Cornelia <[Cornelia.Walker@justice.govt.nz](mailto:Cornelia.Walker@justice.govt.nz)>  
**Subject:** RE: Thinking - editing of question to remove link to letter

Kia ora koutou,

Thanks for the conversation on this this morning (Ben this is FYI) – I'm very comfortable with where we ended up.

In summary – we will edit the question **s9(2)(h)** provided, so (barring any changes to the wording of the answer as circulated last night), the Q&A will read:

*A Vendor has requested the Ministry clarify its position on data sovereignty and jurisdictional risk, including how the Ministry proposes to manage such risks. The Vendor also queried which of the Broader Outcomes are most relevant to the RFP and/or how the Ministry see the role of Te Tiriti o Waitangi in the RFP process.*

*These are matters which the Ministry and judiciary are considering as part of the procurement process.*

*As mentioned in section 4.5 of the Request for Proposal (RFP), proposed vendors are required to demonstrate a strong understanding of the wider governmental policies relating to data protection and security, and the requirements of the judiciary in relation to court and judicial information. Each proposed solution will be required to meet the data sovereignty requirements in place at the time, which includes an ability to respond to changes in data sovereignty requirements (for example, changes in law and the continuing dialogue concerning Māori data sovereignty). In relation to Broader Outcomes, please refer to section 4.7.6 of the RFP.*

To respond to the risk that I raised yesterday around the information being available on Catalyst's website, we discussed that this is information which has been commissioned by a private organisation (compared to the government information that was released accidentally via Treasury). We therefore do not have an obligation to ensure that Vendors are aware that this information is there (or to search out other information to pass on to them) – and if we were to include it, we could be seen to imply that we endorse / agree with the information, and we do not have the authority to do this.

However – Ben and I have had a more detailed conversation this morning about wider risks / consequences of this series of questions. I'm going to do some thinking to start us off, but we will want to have a whiteboard discussion along the lines of the one that Victoria ran over Treasury – we need to lift our thinking up a bit and see what wider risks we may need to be aware of. As some of these areas have a potential to impact wider than just Te Au Reka (the questions have implications for the wider data sovereignty conversation and our obligations around the Treaty/Te Tiriti), is this a conversation that we need to have more people in the room for than just the Te Au Reka lens? Obviously, the more people we have in the room, the harder it is to find a time, but I also don't want to end up having multiple spin off conversations or leave someone important out...



Ngā mihi  
Jo

**From:** Toon, Jo

**Sent:** Tuesday, 22 November 2022 6:11 pm

**To:** Carlaw, Ben <[Ben.Carlaw@justice.govt.nz](mailto:Ben.Carlaw@justice.govt.nz)>; Samuels, Karen <[Karen.Samuels@justice.govt.nz](mailto:Karen.Samuels@justice.govt.nz)>; Walker, Cornelia <[Cornelia.Walker@justice.govt.nz](mailto:Cornelia.Walker@justice.govt.nz)>

**Subject:** Thinking - editing of question to remove link to letter

Kia ora koutou,

Yesterday, I reached out to Peter around the way that Catalyst had phrased their question on the legal opinion, given that it linked to the letter, and therefore identified Catalyst as the asker of the question.

I proposed editing the yellow highlight in question b:

b) In addition to data located off-shore, will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals?

Based on a legal opinion we have received from Dr James Every-Palme KC, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company. The legal opinion can be accessed here: <https://tinyurl.com/ycxhup54>

so that it read:

Based on a legal opinion we have received, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company." (i.e. removing the name of the individual providing the opinion and the link to his letter)

Peter agreed to this (email attached)

However, now that we are aware that the letter has been made public, should we revisit this approach? At the moment, this information is not easily findable through searching, but this could change over the next week or so, depending on any search engine optimisation that gets put across the pages. We will not know who has ended up accessing this advice.

Once the question/answer is published, we may have different organisations who actively look for further information (which could then bring up the publicly available legal advice). Do we need to work through the potential risks/consequences (in the same vein as we did for the un-redacted financial information)?

My questions, which I'd like us to have a think about prior to me going back to Peter for his further advice if we did decide to change our approach (which I would need to do tomorrow or Thursday morning. Peter has already said he is not available Wednesday afternoon):

- How could reading this advice, particularly in the week prior to submission of the responses, potentially impact on how an organisation decides to submit a bid?
  - Are there risks that if we actively point people to this information, they may choose to read between the lines and not submit a bid?
- Are there issues if one organisation reads it and another doesn't? i.e. do we need to actively ensure that everyone sees it?
  - Or, given that the advice is not Government issued (unlike the Treasury information), are we comfortable with not actively pointing organisations to the information?

My current thinking is that, given we will be reiterating the requirements of the RFP as part of our answer (i.e. not referring to the legal advice provided), and the information is not authorised by us (i.e. we did not have any say in the writing or publishing of it), we should be ok in continuing with removing the link to the opinion, and thereby protecting the commercial confidentiality of Catalyst as an interested party in this

process.

However, I would like to get your thinking on this, too, as I may not be seeing the whole picture.

s9(2)(h)

Ngā mihi

Jo



Jo Toon FCIPS (She/Her)  
Commercial Portfolio Manager  
s9(2)(a)  
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From: Samuels Karen  
 To: Kibblewhite Andrew  
 Cc: Crafar Carl; McLaughlin Victoria; Turner Shelley  
 Subject: Te Au Reka - Sourcing issue  
 Date: Monday, 28 November 2022 11:49:10 am  
 Attachments: Opinion re Te Au Reka and jurisdictional risk 21 November 2022.pdf  
 Importance: High

Hi Andrew,

Wondering if you have 15 minutes to discuss a sourcing issue that has arisen and discuss the next steps as I need to reach out to DIA and potentially the CJ's office to give them a heads up.

As part of the final week of Q&A we have had catalyst consulting submit a series of questions on Monday 21 November, which they supplemented with their own legal opinion. We have assumed based on their approach and their lack of formal registration to respond to the RFP that they have not been able to partner with another organisation as they do not have the digital capabilities as part of their main service offerings.

**On Monday 21 November: The questions submitted by Catalyst:**

Company: CATALYST CLOUD LIMITED

User: s9(2)(a)

Title: Please can you clarify your position on data sovereignty and jurisdictional risk?

In clause 4.5, the focus for managing data sovereignty and jurisdictional risk is location of data in Aotearoa New Zealand.

- Does the management of jurisdictional risk require access to the Te Au Reka information to be determined under New Zealand laws only?
- In addition to data located off-shore, will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals? Based on a legal opinion we have received from Dr James Every Palmer KC, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company. The legal opinion can be accessed here: <https://tinyurl.com/ycxhup54>
- Given the conclusions in the legal advice that the risks are currently not manageable for Te Au Reka information where there is an offshore parent (or control), can you address whether and how you expect these risks to be managed?
- The nature of the information that is the subject of Te Au Reka RFP and the relevance of jurisdictional risk and Māori data sovereignty, indicate certain Broader Outcomes in the Government Procurement Rules (Rules) and te Tiriti o Waitangi have high relevance for the RFP. Are you able to indicate which of the Broader Outcome are considered most relevant to this RFP and / or how you see the role of Te Tiriti o Waitangi (we refer to page 6 of the Rules)?

**On Tuesday 22 November**

- We notified DIA – GCDS and GCD0 to the questions that were submitted and the potential for the vendor to reach out to them given their leadership role in Maori Data Sovereignty.
- We discovered that Catalyst had published their legal opinion on their website.
- We engaged Justice Goddard and Tina's office.

**On Wednesday 23 November**

Catalyst consulting contacted the Minister and shared the legal opinion – this is now in the Official Correspondence process MIN 101165 - s9(2)(a) - Due 15/12/2022

"Kia ora Minister Allan,

As you know, the Ministry of Justice and the judiciary have issued a large RFP for the procurement of a new integrated digital integrated case management service (Te Au Reka) for the nation's courts and tribunals <https://www.gets.govt.nz/MOJ/ExternalTenderDetails.htm?id=26443279>. This will be a nationally important system, and one in which there must be absolute trust, because our courts and tribunals are the custodians of some of the most sensitive information in the country.

As it stands, the RFP has vague and narrow requirements around data sovereignty and managing jurisdictional risk.

We have received a legal opinion from Dr James Every-Palmer KC which states that the Te Au Reka RFP, as it stands, does not adequately address matters of data sovereignty and jurisdictional risk. This poses a serious risk to the future integrity and trustworthiness of our justice system, and is not something that can be ignored.

I have attached the legal opinion for your reference.

Would you be available to discuss this issue in more detail? If so, please let me know when you may have availability.

With best regards

Ngā mihi

Doug"

I contacted the Ministers office directly and let them know that we will be responding to the Vendor on the Friday as part of the formal sourcing process and provided the Q&A table above – just in case. The Ministers office has responded wanting to know at what point would it be appropriate for the Minister to meet with them? Do we have a time frame. I am seeking advice on this today.

**s9(2)(h)**

Responses were drafted by the group and then shared with Justice Goddard as Judicial Lead to review from a Judicial perspective and Tina Wakefield & Suzanne Jones from a Ministry perspective (Suzanne's team are involved in the Maori Data Sov work being lead by DIA - GCDS). Following everyone's review the questions and answers were published on GETS on Friday afternoon at 4.30pm.

**Published on GETS – Friday 25 November**

Note – we removed statements and the reference to the legal opinion and are within the rules to do this. We also summarised the response to directed them back to where the information/answers are in the material provided to them as part of the RFP release.

110 Refers to Data Sovereignty and Broader Outcomes

**Question**

- Does the management of jurisdictional risk require access to the Te Au Reka information to be determined under New Zealand laws only?
- In addition to data located off-shore, will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals? Based on a legal opinion we have received, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company.
- Given the conclusions in the legal advice that the risks are currently not manageable for Te Au Reka information where there is an offshore parent (or control),

can you address whether and how you expect these risks to be managed?

d) The nature of the information that is the subject of Te Au Reka RFP and the relevance of jurisdictional risk and Māori data sovereignty, indicate certain Broader Outcomes in the Government Procurement Rules (Rules) and te Tiriti o Waitangi have high relevance for this RFP. Are you able to indicate which of the Broader Outcome are considered most relevant to this RFP and / or how you see the role of Te Tiriti o Waitangi (we refer to page 6 of the Rules)?

**Answer**

These are matters which the Ministry and judiciary are considering as part of the procurement process. As mentioned in section 4.5 of the Request for Proposal (RFP), Vendors are required to demonstrate a strong understanding of the wider governmental policies relating to data protection and security, and the requirements of the judiciary in relation to court and judicial information. Each proposed solution will be required to meet the data sovereignty requirements in place at the time, which includes an ability to respond to changes in data sovereignty requirements (for example, changes in law and the co-design of an approach to Māori data governance led by the Data Iwi Leaders Group and Stats NZ). In relation to Broader Outcomes, please refer to section 4.7.6 of the RFP.

**Next steps**

- Give a heads up to Justice Goddard and Cate Brett and separately to DIA (GCDS & GCDO) that Catalyst may reach out to them or their ministers offices.
- Currently seeking advice from Digital Office on current and future data hosting organisations for example that Catalyst is a “public cloud service” which is 100% owned in NZ vs s9(2)(b)(ii)
- s9(2)(h)
- Advise the Te Au Reka Steering Group.

Sorry it's a bit of a long email – but thought its best to give you the facts as they are ahead of a discussion.

Thanks  
Karen



**Karen Samuels**  
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Mobs9(2)(a)  
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**From:** Samuels, Karen  
**To:** Te Au Reka - Steering Committee; Colin MacDonald; Peter Ashdown (NZ)  
**Cc:** Kibblewhite, Andrew  
**Subject:** Te Au Reka - IN\_CONFIDENCE (COMMERCIAL SENSITIVE)  
**Date:** Wednesday, 30 November 2022 6:34:19 pm

Good evening,

Please keep the following information confidential.

#### Issue summary

On Monday 21 November a Vendor submitted a set of questions as part of the last notice period for Q&A's accompanied with a legal opinion.

On Tuesday 22 November the Vendor published their legal opinion on their website.

On Wednesday 23 November the Vendor emailed Minister Allan directing her to our RFP on GETS and raising concern that the RFP "has vague and narrow requirements around data sovereignty and managing jurisdictional risk". They shared their legal opinion and requested to meet to discuss their concerns.

#### The questions raised

Please can you clarify your position on data sovereignty and jurisdictional risk?

In clause 4.5, the focus for managing data sovereignty and jurisdictional risk is location of data in Aotearoa New Zealand.

- Does the management of jurisdictional risk require access to the Te Au Reka information to be determined under New Zealand laws only?
- In addition to data located off-shore, will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals? Based on a legal opinion we have received from Dr James Every-Palmer KC, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company. The legal opinion can be accessed here: <https://tinyurl.com/yckxhup54>
- Given the conclusions in the legal advice that the risks are currently not manageable for Te Au Reka information where there is an offshore parent (or control), can you address whether and how you expect these risks to be managed?
- The nature of the information that is the subject of Te Au Reka RFP and the relevance of jurisdictional risk and Māori data sovereignty, indicate certain Broader Outcomes in the Government Procurement Rules (Rules) and te Tiriti o Waitangi have high relevance for this RFP. Are you able to indicate which of the Broader Outcome are considered most relevant to this RFP and / or how you see the role of Te Tiriti o Waitangi (we refer to page 6 of the Rules)?

#### What we published on GETS – Friday 25 November

##### s9(2)(h)

The drafted response was reviewed by Tina Wakefield and Suzanne Jones and Justice Goddard. As the response is published on GETS to be made available to all Vendors we removed statements and the reference to the legal opinion and are within the rules to do this. We also summarised the response to directed them back to where the information/answers are in the material provided to them as part of the RFP release. Note that more detailed information on the topics are explored and provided at different stages of the sourcing process.

110	Refers to Data Sovereignty and Broader Outcomes
<b>Question</b>	
<p>a) Does the management of jurisdictional risk require access to the Te Au Reka information to be determined under New Zealand laws only?</p> <p>b) In addition to data located off-shore, will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals? Based on a legal opinion we have received, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company.</p> <p>c) Given the conclusions in the legal advice that the risks are currently not manageable for Te Au Reka information where there is an offshore parent (or control), can you address whether and how you expect these risks to be managed?</p> <p>d) The nature of the information that is the subject of Te Au Reka RFP and the relevance of jurisdictional risk and Māori data sovereignty, indicate certain Broader Outcomes in the Government Procurement Rules (Rules) and te Tiriti o Waitangi have high relevance for this RFP. Are you able to indicate which of the Broader Outcome are considered most relevant to this RFP and / or how you see the role of Te Tiriti o Waitangi (we refer to page 6 of the Rules)?</p>	
<b>Answer</b>	
<p>These are matters which the Ministry and judiciary are considering as part of the procurement process.</p> <p>As mentioned in section 4.5 of the Request for Proposal (RFP), Vendors are required to demonstrate a strong understanding of the wider governmental policies relating to data protection and security, and the requirements of the judiciary in relation to court and judicial information. Each proposed solution will be required to meet the data sovereignty requirements in place at the time, which includes an ability to respond to changes in data sovereignty requirements (for example, changes in law and the co-design of an approach to Māori data governance led by the Data Iwi Leaders Group and Stats NZ).</p> <p>In relation to Broader Outcomes, please refer to section 4.7.6 of the RFP.</p>	

#### Actions taken to date

- We have escalated and discussed this with Andrew Kibblewhite as Executive Sponsor.
- We have given the Chief Justice office a heads up that this Vendor may contact them directly.
- We have given DIA – GCDO & GCDS a heads up that this Vendor may contact them directly or their Minister, and they have notified their offices.
- We have drafted media messages.
- We are pulling together some additional information about organisations that provide Infrastructure as a Service, those that are NZ owned and operated, and a view future opportunities s9(2)(b)(ii)
- We will review the information provided and planned to provide around Maori Data Sovereignty to look for how we can make that more clear to vendors.

#### Next steps

- Provide advice to the Minister office about the request to engage and work with Ministerial Services and Probity/Procurement on the official response (MIN 101165 Dixon - Due 15/12/2022)
- Continue our assessment and analysis on this issue.
- Work with DIA on the additional information: Data hosting organisations and Maori Data Sovereignty.
- s9(2)(h)

Should you have any concerns with the above approach or questions please touch base.

Thanks  
 Karen

Karen Samuels



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## Data Sovereignty questions – File Note

On 21 November at 11:41am<sup>1</sup>, we received a series of questions from Catalyst Cloud Limited asking us to clarify our position on data sovereignty and jurisdictional risk.

The questions received were:

Title: Please can you clarify your position on data sovereignty and jurisdictional risk?  
 Contents: In clause 4.5, the focus for managing data sovereignty and jurisdictional risk is location of data in Aotearoa New Zealand.

a) Does the management of jurisdictional risk require access to the Te Au Reka information to be determined under New Zealand laws only?

b) In addition to data located off-shore, will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals? Based on a legal opinion we have received from Dr James Every-Palmer KC, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company. The legal opinion can be accessed here: <https://tinyurl.com/ycxhup54>

c) Given the conclusions in the legal advice that the risks are currently not manageable for Te Au Reka information where there is an offshore parent (or control), can you address whether and how you expect these risks to be managed?

d) The nature of the information that is the subject of Te Au Reka RFP and the relevance of jurisdictional risk and Māori data sovereignty indicate certain Broader Outcomes in the Government Procurement Rules (Rules) and te Tiriti o Waitangi have high relevance for this RFP. Are you able to indicate which of the Broader Outcome are considered most relevant to this RFP and / or how you see the role of Te Tiriti o Waitangi (we refer to page 6 of the Rules)?

### Action taken and advice received

We recognised that the nature of the questions would impact both on the Te Au Reka procurement process, and the wider impact on the ongoing government conversations on data sovereignty.

We therefore contacted Justice Goddard to alert him to the questions and to ask for his support in reviewing the answers. Justice Goddard responded, saying that:

- The issues involved are complex and involve intersecting legal and technical issues
- It would be difficult to provide answers in advance of seeing the responses and exploring those responses with the Vendors

s9(2)(h)

We s9(2)(h)

had a meeting on 22<sup>nd</sup> December at 11.30, with:

- Peter Ashdown (PWC) – Probity
- s9(2)(h)

<sup>1</sup> The deadline for questions was 12 noon on 21<sup>st</sup> November



- Jo Toon, Ben Carlaw and Rebecca Price – Procurement
- Karen Samuels – Acting SRO

The purpose of the meeting was to discuss the questions and how we respond.

s9(2)(h)

We therefore decided to respond as a single response to all four parts of the question posed by Catalyst.

From a probity perspective, Peter confirmed that he was comfortable with this approach

#### Response

As Catalyst provided a link to the letter as part of their question, and this letter identified Catalyst as a potential Vendor, we edited question b to remove the link and the name of the lawyer who provided the opinion:

*In addition to data located off-shore will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals? Based on a legal opinion we have received, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company.*

s9(2)(h)

. Tina worked with Suzanne Jones, and requested a minor change to include the detail of the co-design of the approach to Māori data sovereignty.

The final agreed wording of the response was:

*These are matters which the Ministry and judiciary are considering as part of the procurement process.*

*As mentioned in section 4.5 of the Request for Proposal (RFP), Vendors are required to demonstrate a strong understanding of the wider governmental policies relating to data protection and security, and the requirements of the judiciary in relation to court and judicial information. Each proposed solution will be required to meet the data sovereignty requirements in place at the time, which includes an ability to respond to changes in data sovereignty requirements (for example, changes in law and the co-design of an approach to Māori data governance led by the Data Iwi Leaders Group and Stats NZ).*



*In relation to Broader Outcomes, please refer to section 4.7.6 of the RFP.*

The questions and answers were released on 25<sup>th</sup> November within the final Q&A batch.

#### **Wider action taken by Catalyst Cloud Limited**

Whilst we were developing the answer to the questions, we discovered (Tuesday 22<sup>nd</sup>) that Catalyst had made the legal opinion available on their website. This became 'publicly searchable' on 28<sup>th</sup> November.

Over the course of the week prior to publishing the question/answer, we discussed whether this had an impact on the information that we provided, and whether we had an obligation to let all Vendors know that this information was available (i.e. whether or not we should then include the link within the question rather than editing it)

Our conclusion was that we should remain with the agreed edited version of the question. Unlike the release of the information on Treasury's website, which was "government released" and therefore could be seen as official information pertinent to the response, this information was commissioned by a private company from a private lawyer. It is a legal opinion, rather than a statement of government policy. We are therefore under no obligation to share this, and doing so could be seen as an endorsement or support of the opinion.

On Friday 25<sup>th</sup>, the Official Correspondence team emailed to let us know that Catalyst had also raised the data sovereignty question with the Minister, including the legal opinion and requested to meet with her. An initial (informal) response was sent to the Minister's office to ensure that they were aware that the question had also been asked as a formal part of the RFP process.

We met on Monday 28<sup>th</sup> November to discuss the request to meet with the Minister and what risks that could raise to the procurement process.

Given the Te Au Reka RFP had not yet closed, there was a risk that a meeting with the Minister could be perceived by the wider market to be an attempt to influence the outcome of an active sourcing process. The impact of this perception could lead to complaints or challenges to the process and the attendant delays.

There was a risk that we could create the perception that only onshore owned and operated hosting would be acceptable. As these questions were being raised less than two weeks before the RFP closed, the impact of this perception on potential Vendors' responses could be to cause them to reassess their approach, look to rewrite elements of their proposal, or to withdraw from the process.

There was a wider risk that this could be perceived to be setting precedents around the wider data sovereignty conversations being led by GCDO and Statistics New Zealand. The impact of this perception could ultimately make those conversations harder.

On 15<sup>th</sup> December, we communicated with the Minister / Minister's office to provide supporting information in relation to the query. We also advised that, due to the commercial sensitivity of the procurement process, we recommended that the Minister did not meet with Catalyst Cloud until the procurement process had concluded.

No further correspondence was received to the MoJ Te Au Reka inbox on this topic as a result of the RFP questions being released.

Excerpt from book nine, Response Part A:

Book nine Response Part A of the Request For Proposal laid out the questions that Vendors needed to respond to relating to data hosting and data sovereignty:

#### 1.5. Data hosting options

Your response to these questions will be used as an evaluation finding, as described in the Request for Proposal in section 3.2. The information will be provided alongside your overall weighted scores and will assist the Evaluation Sub-committee to determine which Proposals represent the best public value and proceed to Stage Two of the sourcing process.

1.5.1 All judicial, court and Ministry of Justice information (1) should preferably always remain in New Zealand. The Ministry and the judiciary may consider data transiting through or at rest in Australia if there is a material benefit from doing so and appropriate safeguards are in place.

(a) Can all judicial, court and Ministry data (transiting and at rest) be hosted in New Zealand?

(b) If not, can all judicial, court and Ministry data (transiting and at rest) be hosted in Australia? Are there significant material benefits in functionality, delivery approach, on-going support, and/or commercial arrangements from hosting outside New Zealand?

(c) Provide evidence that your data centres and backup data centres in New Zealand (or Australia) are supported by the appropriate processes and safeguards to manage data-related risk (2) and jurisdictional risk. (3)

(d) Detail your understanding of existing data sovereignty requirements in New Zealand. How will you respond to changes in data sovereignty requirements?

#### DEFINITIONS

(1) Court information, judicial information, Ministry information: The Senior Courts Act 2016 and the District Court Act 2016 define court information, as well as judicial information, and Ministry of Justice information. Court information in the courts outside the Senior Courts and the District Court may not be defined in legislation but for the purposes of Te Au Reka, the definition from the 2016 Acts can be used.

(2) Data-related risk: the harm that can arise from unwanted access, modification, and destruction of an organisation's data.

(3) Jurisdictional risk: the risk that an overseas law enforcement agency or other person may be able to obtain lawful access to data stored, processed or transmitted through servers and other infrastructure located outside New Zealand, or that are operated by a service provider with a presence outside New Zealand that may be required to comply with directions by an overseas government or court in relation to that data.

Excerpt from Procurement Plan

Section 3.12 laid out the Commercial Principles around Data Sovereignty:

Factors	Principle	Considerations
Data protection and Information security	Compliance with Ministry, wider governmental policies and the requirements of the judiciary pertaining to data protection and information security is mandatory. This includes privacy and security compliance and data sovereignty requirements.	<p>The Vendor can demonstrate their understanding of (or have experience in working with) the wider governmental policies relating to data protection and information security and the requirements of the judiciary in relation to courts and judicial information.</p> <p>The Vendor can provide a suitable solution to meet data sovereignty requirements, including demonstrating awareness and ability to be responsive to changes in data sovereignty, for example, in response to changes in law and the continued dialogue associated with Māori data sovereignty.</p>

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Excerpt from the Proposed Contract in Book nine: Response Part D – Commercial Appendix 2: Master Services Agreement as released in October 2022 as part of the RFP

## 11. DATA SOVEREIGNTY

11.1 Data transfer and storage: Subject to clause 10.2, the Delivery Partner will not, without the Ministry's prior written consent, transfer, store or make available, or permit the transfer, storage or making available of any Information outside:

- (a) New Zealand; or
- (b) if locations or computing facilities are agreed in writing in a Statement of Work or Service Agreement, such locations or computing facilities.

11.2 Data sovereignty: The Delivery Partner acknowledges and agrees that the Ministry is subject to whole-of-government and judicial policies and directions relating to the access, transfer, processing and storage of Information, and the Delivery Partner will comply with any directions given by the Ministry in relation to such Information and data sovereignty matters.

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Refers to Data Sovereignty and Broader Outcomes

**Question**

- a) Does the management of jurisdictional risk require access to the Te Au Reka information to be determined under New Zealand laws only?
- b) In addition to data located off-shore, will the existence of an offshore parent (or offshore company that otherwise has control of a vendor) also be treated as a jurisdictional risk for the purpose of the proposals? Based on a legal opinion we have received, the apparent focus on location is too narrow as jurisdictional risk also arises where information is held in New Zealand but a provider has a foreign parent company.
- c) Given the conclusions in the legal advice that the risks are currently not manageable for Te Au Reka information where there is an offshore parent (or control), can you address whether and how you expect these risks to be managed?
- d) The nature of the information that is the subject of Te Au Reka RFP and the relevance of jurisdictional risk and Māori data sovereignty, indicate certain Broader Outcomes in the Government Procurement Rules (Rules) and Te Tiriti o Waitangi have high relevance for this RFP. Are you able to indicate which of the Broader Outcomes are considered most relevant to this RFP and / or how you see the role of Te Tiriti o Waitangi (we refer to page 6 of the Rules)?

**Answer**

These are matters which the Ministry and judiciary are considering as part of the procurement process.

As mentioned in section 4.5 of the Request for Proposal (RFP), Vendors are required to demonstrate a strong understanding of the wider governmental policies relating to data protection and security, and the requirements of the judiciary in relation to court and judicial information. Each proposed solution will be required to meet the data sovereignty requirements in place at the time, which includes an ability to respond to changes in data sovereignty requirements (for example, changes in law and the co-design of an approach to Māori data governance led by the Data Iwi Leaders Group and Stats NZ).

In relation to Broader Outcomes, please refer to section 4.7.6 of the RFP.