

31 October 2023

Section 9(2)(a)
Section 9(2)(a)

Ref: OIA 107224

Tēnā koe Section 9(2)(a)

Official Information Act request: Security information

Thank you for your request under the Official Information Act 1982 (the Act) on 4 September 2023 to the Ministry of Justice (the Ministry). Specifically, you requested:

... that you reconsider and/or clarify two aspects of a recent OIA response to me. This was part 1 of your response numbered OIA 105295 (cover letter attached), disclosing consultation responses from New Zealand agencies relating to the development of the Security Information in Proceedings Act 2022 (Act). ... I wanted to give you the opportunity to reconsider two (partly linked) aspects of your response:

- 1. Section 9(2)(h) redactions: you have withheld various material on the basis this is apparently necessary to maintain legal professional privilege (and this interest is not outweighed by countervailing public interest considerations). This includes correspondence from legal counsel at Crown Law, the Ministry of Foreign Affairs and Trade, and other public agencies. The context in which the withheld material was sought and provided, however, indicates that these agencies were providing policy rather than legal advice. Such policy advice does not fall under s 9(2)(h), as the Cabinet Manual confirms at [4.65] and [4.67]. Could you please therefore reconsider this use of s 9(2)(h)?*
- 2. Attachments to email correspondence: you have withheld most, but not all, email attachments. From the cover emails you have disclosed, it is apparent that these attachments are relevant as they detail consultation responses from public agencies on the Act. While some attachments have apparently been drafted by legal counsel, others appear not to have been: see, for example, the documents attached to the DPMC email at pages 53-54 of the 'Combined material 1' PDF—other material disclosed indicates similar (at least) DPMC attachments have also been withheld. If the omitted attachments were withheld under s 9(2)(h), could you please reconsider the use of this withholding ground here for the reasons given above? Alternatively, if these attachments were withheld under other grounds, could you please specify which grounds apply to each attachment?*

On 27 September 2023, the Ministry extended the time frame to respond to your request to 31 October 2023 under section 15A(1)(b) of the Act as consultations necessary to make a

decision on the request were such that a proper response to the request could not reasonably be made within the original time limit.

In response to the first part of your request, the Ministry has reconsidered its decisions to withhold some material under section 9(2)(h). Following consultation with agencies and upon review of the information withheld, the Ministry has reviewed and confirmed these decisions. These decisions were made to maintain legal professional privilege from staff who are lawyers, or who are summarising legal advice. This has also been reviewed and confirmed by the respective legal departments of all agencies who contributed to the consultation for this request. Where we have reconsidered the use of this ground and found section 9(2)(h) does not apply, we have decided to withhold this information under section 9(2)(g)(i) to maintain the free and frank expression of opinions. We have not reconsidered any decisions related to the use of sections 6(a), 9(2)(a), 9(2)(f)(iv) and 9(2)(g)(i).

In response to the second part of your request, we initially excluded draft documents from our release of material to you, as final versions of documents have been provided to you in previous requests. However, these documents are attached here, following their respective email chains. Please note that two attachments from Crown Law are withheld in full under section 9(2)(g)(i) and two attachments from the Ministry of Foreign Affairs and Trade are withheld in full under 9(2)(h). We have also withheld information where it is out of scope.

In accordance with section 9(1) of the Act, the Ministry has considered again the public interest in making available the information being withheld and has determined that it does not outweigh 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

You have the right under section 28 of the Act to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at ombudsman.parliament.nz or call 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, consisting of a stylized, flowing script that starts with a large loop and ends with a long, sweeping underline.

Sam Kunowski

General Manager, Courts and Justice Services Policy

Documents for release

Document name	Decisions on release
Material pack 1 – email chains with respective attachments	Some information withheld under sections 6(a), 9(2)(a), 9(2)(g)(i), 9(2)(f)(iv) and 9(2)(h)
Two attachments from material pack one, email dated 11 October 2019 – Crown Law	Withheld in full under section 9(2)(g)(i)
Email chain from material pack 1: RE: Security information in Proceedings Bill – an update	Withheld in full under section 9(2)(h)
Material pack 2 – email chains with respective attachments	Some information withheld under sections 6(a), 9(2)(a), 9(2)(g)(i) and 9(2)(h)
Two attachments from material pack two, MFAT: emails dated 8 July 2019 and 4 September 2019	Withheld in full under section 9(2)(h)