



24 July 2018

Tova O'Brien
Newshub

by email

Dear **Ms O'Brien**

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your Official Information Act 1982 ("**OIA**") request to the Guardians of New Zealand Superannuation ("**Guardians**"), which we received on **26 June 2018**.

Your Request

Your request, as clarified in a phone conversation with our Head of Communications on 27 June 2018, was for:

- **All material briefings, advice and reports (internal or provided by external partners/advisers/consultants) relating to the NZ Super Fund's proposal relating to Auckland's light rail network.**
- **All correspondence, such as emails, between the Guardians and the Minister of Finance's and Minister of Transport's offices relating to the NZ Super Fund's proposal relating to Auckland's light rail network.**

Thank you for agreeing to refine the scope of the request; it has been of great assistance to us in processing our response.

Based on agreement, and for administrative reasons, please note that we have not included:

- duplicates (e.g. emails duplicated in email correspondence chains or duplicates of documents released to you under the OIA);
- publically available research, reports and documents; and
- drafts of reports, advice or briefings. We have focused on the final versions.

Background

The Guardians, the manager of the NZ Super Fund ("**Fund**"), is a double-arms-length Crown entity that makes investment decisions independently of the Government of the day. All investment decisions are made on a purely commercial basis.

The Guardians has a successful track record in infrastructure investment, and direct domestic infrastructure of scale is a focus area for us. Following the change of Government in 2017 the Guardians reassessed potential investment opportunities, noting the new Government's policy platform and priorities. Our interest in the Auckland Light Rail project stemmed from this reassessment.

For the avoidance of doubt, we restate that the Guardians' April 2018 proposal to invest in Auckland light rail was unsolicited. There was no invitation from the Government to submit such a proposal nor any pressure to do so. Prior to submitting its proposal, the Guardians discussed the proposal with Sir Brian Roche and Sir Michael Cullen and, together with them, corresponded with and sought meetings with Ministers, to explain the concept and the Guardians' intentions, and seek information from Ministers on their willingness to consider it. These meetings were initiated by the Guardians.

Our Response

It is important to consider this request in the context of the process that is being run by the NZ Transport Agency to establish possible procurement, financing for the delivery, and operation of a light rail network in Auckland. The NZ Super Fund's proposal has been made on a commercial basis and is competing against other bids, including private sector organisations that are not subject to the OIA. Disclosure of any part of our proposal, including its title, structure, format and length, could be used for commercial advantage by our competitors, and would therefore be prejudicial to our commercial interests. There is a strong public interest in NZ Super Fund being able to compete on a level playing field with other bidders and ultimately maximise Fund returns.

We are also conscious that, should the NZ Super Fund come to an agreement with the Government, the Guardians (the Crown entity that manages the Fund) will need to undertake negotiations with various parties. Disclosure of certain non-public, confidential information within the scope of your request would be prejudicial to those negotiations.

We note that the Guardians has publicly released the following information about the Fund's proposal:

- <https://www.nzsuperfund.co.nz/news-media/nz-super-fund-statement-auckland-light-rail-project>
- <https://www.nzsuperfund.co.nz/news-media/op-ed-published-nz-herald-matt-whineray-why-light-rail-fits-super-funds-mandate>.

Information Released

We have withheld portions of certain documents on the basis that we have good reason for doing so under section 9 of the OIA. Where we have done so, we considered whether the public interest in favour of disclosure outweighs our reasons for withholding it and concluded that it does not.

In **Appendix 1** we have identified the particular grounds that apply to each document. The documents we have found which we consider to be within the scope of your request are **attached** in **Appendix 2**.

The general bases on which it is necessary for us to withhold the information, and the grounds under the OIA that we refer to, are as follows.

- A. Section 9(2)(a) – “protect the privacy of natural persons”.** In the interests of protecting the privacy of individuals, we have redacted the names of individuals mentioned in the documents other than the names of senior managers / officials. We cannot see any public interest in, or public benefit from, the release of this personal information. Information regarding the identity of these individuals is not required for the purposes of transparency and accountability of the Guardians' activities. There is no good reason why these individuals in particular should be subjected to potential public scrutiny.
- B. Section 9(2)(k) – “prevent the disclosure or use of official information for improper gain or improper advantage”.** Given the current NZ Transport Agency process, and the possibility of further commercial negotiations and activities beyond that, withholding the Guardians' covering note and proposal, and certain other non-public information pertaining to the status, nature and contents of the proposal, is necessary to prevent them from being used for improper gain or improper advantage by participants in the NZ Transport Agency process, or other potential market participants in the future. Disclosure of this information would enable competitors and counterparties of the Guardians to obtain an improper advantage through deriving insights into the nature and status of the Guardians' proposal in circumstances where similar information about those competitors and counterparties is not available to the public. Furthermore, disclosure of the proposal would provide to other parties who might wish to be

involved in the Auckland light rail project, the improper gain and advantage of the proposal's information without having had to contributed to its cost.

- C. Section 9(2)(b)(ii)** – *“protect information 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”*. The Guardians of New Zealand Superannuation, the Crown entity that manages the NZ Super Fund, strongly believes that the release of this information would prejudice its commercial position relative to the current NZ Transport Agency process, and in respect of potential commercial negotiations beyond that. The Guardians has invested in developing its proposal. Releasing this information would make it available to other potential bidders and interested parties in the current NZTA process, giving them a competitive advantage and prejudicing the NZ Super Fund's position. Furthermore, the proposal also contains information supplied to the NZ Super Fund by its proposed partner, Caisse de dépôt et placement du Québec (CDPQ). In developing this and other investment proposals we compete in a global market for access to the best investment partners. Our investment partners, such as CDPQ, are commercial entities in their own highly competitive markets. They will not work with us if we cannot uphold the confidentiality of commercially sensitive information that they provide to us. As the Fund is for the benefit of all New Zealanders, we strongly believe that it is in the public interest that it can maintain the highest standards of commercial sensitivity with those it works with.
- D. Section 9(2)(ba)(i)** – *“protect information which is subject to an obligation of confidence... where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied”*. Certain information was provided to Guardians, and/or by the Guardians to the Government, in confidence. The NZ Super Fund operates in a competitive market for investment opportunities. In the event this confidential information was disclosed, it is likely that entities in which the Guardians might wish to invest, other parties with which the Guardians might wish to enter into a substantive commercial arrangement with (such as CDPQ) or advisors / industry experts who provide valuable information and insights, will be reluctant to engage with the Guardians, because of the risk that their confidential information could be disclosed. If it cannot uphold the confidentiality of commercially sensitive information, the future supply of such information to the Government will be jeopardised. Given the NZ Super Fund is investing for the benefit of all New Zealanders, it is in the public interest that it can maintain the highest standards of confidentiality and commercial sensitivity with those it works with, in order to compete on a level playing field with other investors and maximise Fund returns.
- E. Section 9(2)(i)** – *“enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities”*. Investing the Fund is a commercial activity. When the Guardians invests the Fund it is competing in a global market for access to the best investment opportunities and partners. Given the current NZ Transport Agency process, the NZ Super Fund's commercial position would be seriously prejudiced and disadvantaged if non-public information concerning its strategy and likely future investment actions were made known to competing bidders. Similarly, should the Government decide to proceed with the proposal, the Guardians' ability to implement it could also be prejudiced or disadvantaged if non-public information concerning its strategy and likely future investment actions were made known to the relevant market participants ahead of any such actions. It would also be prejudicial to the Guardians' negotiating position for information to be disclosed that gives potential future counterparties insights into the basis on which the Guardians is prepared to transact.

- F. Section 9(2)(j)** – “enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)”. This project would require the Guardians and the Crown to engage and negotiate with each other and with other parties. Disclosing additional details of the Guardians’ proposal at this point would undermine the effectiveness of both the Government’s and the Guardians’ potential future negotiations.
- G. Section 9(2)(g)(i)** – “maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty”. It is important for our efficient and effective operations that our staff, officers and advisers are able to express their opinions freely and frankly. The information you have requested includes various statements of opinion. The release of such information is likely to inhibit frankness and candour in the future which will be detrimental to good investment decision making and contrary to the public interest.

General

You have the right to seek a review by the Ombudsmen's Office of our decision to withhold the information. Contact details for the Ombudsmen's Office can be found at: <http://www.ombudsmen.parliament.nz>.

Please note that we may choose to publish our response to your request on our website at www.nzsuperfund.co.nz.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Fennell', is written over a horizontal line. The signature is enclosed in a thin black rectangular border.

Mark Fennell
Acting Chief Investment Officer

Appendix 1

Pg.	Reference	Document Date ¹	Document Title	Sections Relevant to Request	Status	Withholding grounds if applicable
1	2493786	05/05/2018	RE: Fwd: NZ Super Comms and Mayor Goff Emails between Guardians and the Offices of the Minister of Finance and Minister of Transport	Disclosed sections	Partially released	Section 9(2)(a) – Privacy Final two paragraphs of 2:53pm email from NZSF to Minister of Finance Offices are out of scope.
3 8	2494067 (attachment)	07/05/2018	RE: NZ Super Comms and Mayor Goff Emails between Guardians and the Office of the Minister of Transport Draft Super Fund Release	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations
10	2494066	08/05/2018	RE: NZ Super Comms and Mayor Goff Emails between Guardians and the Office of the Minister of Transport	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations

¹ In the case of an email chain, the date is of the most recent email

16	2494009	08/05/2018	Confidential - ALR procurement process - NZ Super Fund	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
17	(attachment)		Email from Guardians to the Office of the Minister of Transport			
18	(attachment)		2493325-2-NZSF ALR Project Statement Draft NZSF press release 2493596-2 Govt statement ALR Procurement Draft press release by Minister of Transport and Minister of Finance			
20	2527498	08/05/2018	Re: Confidential - ALR procurement process - NZ Super Fund Email from Guardians to the Office of the Minister of Transport	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
22	2527500	08/05/2018	RE: Confidential - ALR procurement process - NZ Super Fund	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
24	(attachment)		Emails between Guardians and the Office of the Minister of Transport Super Fund Release			
26	2527501	08/05/2018	Re: Confidential - ALR procurement process - NZ Super Fund Emails between Guardians and the Office of the Minister of Transport	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy

29	2527504	09/05/2018	RE: Confidential - ALR procurement process - NZ Super Fund Email from Guardians to the Office of the Minister of Transport	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
32 33 35	2527515 (attachment) (attachment)	22/05/2018	NZ Super - light rail comms FYI Email from Guardians to the Offices of the Minister of Transport and Minister of Finance and Treasury 2505767-2-QA for Board on Auckland light rail 2503662-2-MW opened light rail infra	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
37	n/a	Various	Text Messages from Guardians to Minister of Finance Note: the text messages we have released were provided to us, upon our request, by Vodafone NZ. Vodafone NZ would not provide us with text messages from the Minister of Finance to the Guardians, as it considers these text messages to be personal information.	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain

39 40	2536578 (attachment)	06/03/2018	Letter for Hon Phil Twyford - NZ Infrastructure Email from NZSF to the Offices of the Minister of Transport Letter to Hon Phil Twyford - March 2018	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Commercial Activities Section 9(2)(i) – Prejudice Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
41	2536577	06/03/2018	RE: Letter for Hon Phil Twyford - NZ Infrastructure Email from Offices of the Minister of Transport to NZSF	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
43	2536576	12/03/2018	Confidential. NZ Super - Information Request Email from NZSF to the Offices of the Minister of Transport	All	Attachment withheld in full	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
44	2536575	13/03/2018	RE: Confidential. NZ Super - Information Request Email from Offices of the Minister of Transport to NZSF	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy Earlier redacted email is a duplication of document on page 43

46	2536571	15/03/2018	RE: Call with Minister Twyford Emails between NZSF and the Office of the Minister of Transport	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
48	2536550	03/04/2018	RE: Infra meeting on Thur Emails between NZSF and the Office of the Minister of Transport	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
51	2536546 (attachment) (attachment)	13/04/2018	Letter & Proposal - Auckland Light Rail [Restricted Commercial In Confidence] Email from NZSF to the Office of the Minister of Transport ALR Proposal Cover Memo ALR Proposal	All	Attachments withheld in full	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
52	2536544	13/04/2018	RE: Letter & Proposal - Auckland Light Rail [Restricted Commercial In Confidence] Emails between NZSF and the Office of the Minister of Transport	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
54	2536528	25/04/2018	RE: Call with Minister Twyford and Sir Brian Roche Emails between NZSF and the Office of the Minister of Transport	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy

56	2536526	26/04/2018	RE: Call with Minister Twyford and Sir Brian Roche Emails between NZSF and the Office of the Minister of Transport	All	Released in full other than staff names and contact details	Emails between NZSF and the Office of the Minister of Transport
59	2536524	30/04/2018	Notes for the minister	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
61	2536514	12/05/2018	RE: Call with Minister Twyford	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
63	2536512	12/06/2018	RE: Call with Minister Twyford	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy

64	2536511 (attachment)	12/06/2018	Confidential - ALR update 12062018114719-0001 (Gouvernement du Quebec [...] Agreement respecting public infrastructures Guiding principles)	Attachment already publicly available (https://www.cdpqinfra.com/sites/default/files/pdf/full_text_agreement.pdf) – not included	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
65	2536506	21/06/2018	Re: Confidential - ALR update	All	Partially released	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
73	2536504	21/06/2018	Re: Confidential - ALR update	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy Remainder of the email chain is a duplicate of the document commencing on page 65

N/A	2528429	26/02/2018	NZ Infra Priorities Backgrounder 2018-02-26 AM	All	Withheld in full	Section 9(2)(a) – Privacy Section 9(2)(b)(ii) – Commercial Prejudice Section 9(2)(ba)(i) – Obligation of Confidence Section 9(2)(g)(i) – Free and Frank Section 9(2)(i) – Prejudice Commercial Activities Section 9(2)(j) – Prejudice Negotiations Section 9(2)(k) – Improper Gain
N/A	2462161	12/04/218	Letter & Proposal - Auckland Light Rail [Restricted Commercial In Confidence]	All	Withheld in full	
N/A	2528471	XX/05/2018	NZ Auckland Infrastructure Overview	All	Withheld in full	
N/A	2536585	04/03/2018	Draft Letter	All	Withheld in full	
N/A	2536584	04/03/2018	Re: Confidential - Notes for Minster Twyford	All	Withheld in full	
N/A	2536579	05/03/2018	Re: Draft Letter	All	Withheld in full	
N/A	2536574	14/03/2018	Investment proposal	All	Withheld in full	
N/A	2536560 (attachment)	19/03/2018	RE: Rationale for Response to Initiative SUPERDOCS-#2462161-v1-Letter_to_Hon_Phil_Twyford_-_19_March_2018	All	Withheld in full	

N/A	2536549 (attachment)	11/04/2018	NZ Super – Drafts ALR Proposal Master Slide Set (002) ALR Proposal Cover Memo AM Edit	All	Withheld in full	
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