



19 January 2024

Anon

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fyi-request-25061-adc9111e@requests.fyi.org.nz

Kia ora

Your Official Information Act request, reference: GOV-029592

Thank you for the below emails of 14 December 2023, asking for information under the Official Information Act 1982 (the Act). We have numbered the paragraphs in your emails for ease of reference, and will respond to each of them in turn.

Email 1

- 1. Please provide me with the true and accurate communications from the ICRA and FairWay where they state they do not hold any information (policies, processes, guidelines, rules, instructions, tutorials, or any other information) pertaining to their legal obligations under Part 5 of the Act, and in particular section 140, 141 and 145 of the Act, which details how reviews are to be held and decision made.*
- 2. You have referred to GOV-029419; however, I cannot find your response GOV-029419. It is not on the ACC website, and a search of FYI.org.nz does not reveal a response with that number. Please provide me with more specific information as to where I can find GOV-029419 (e.g., web address).*
- 3. The Review Specialist Induction Guide (GOV-028422) states the claimant may call witnesses, and cross-examine the witness (p 70). However, there is information as to how a claimant goes about summoning a witness so that the claimant may cross-examine the witness during the review. Please provide me with that information - held by ACC, the ICRA and FairWay. If no documentation exists, then I request an honest answer to my question (from your legal team, the ICRA and FairWay), in accordance with right 1 of the Code, as to how a claimant is to call witnesses (e.g., decision makers at ACC, External Clinical Advisers, etc.) and information on how the claimant may cross-examination of those witnesses during the review process.*

Email 1 response

Paragraph 1

We understand that this question is seeking communication between ACC and Fairway and ICRA in connection with your requests of 16 October 2023 and 24 November 2023 (OIA Ref: GOV-028422 and GOV-029177, respectively).

The communication in these cases is our consultation with those parties for the purposes of making a decision on your requests. Our decision is to withhold such information in full under free and frank grounds (section 9(2)(g)(i)) of the Act. We consider the need to withhold this information is not outweighed by the public interest in release.

We note that our decision is consistent with the general position outlined by the Ombudsman, which you can view at www.ombudsman.parliament.nz/resources/request-comments-generated-during-oia-decision-making-process.

Paragraph 2

Our response to GOV-029419 is our email dated 12 December 2023 here: <https://fyi.org.nz/request/25061-witness-summons-for-review-hearings#outgoing-41380>.

Paragraph 3

As noted, there is no right to summon a witness for a review hearing. However, both ICRA and Fairway allow parties to a dispute to bring a witness or expert. We have provided you the information we hold on this matter, as well as on the subject of cross examination, in our 14 November 2023 response (GOV-028422).

In addition to this, we note that there is information available to the public on preparing for a review on both Fairway and ICRA's websites, which notes that parties need to let the review services know of anyone who will be attending the hearing. This is provided at the following links:

<https://icra.co.nz/process-options/acc-review-and-adr/>

<https://www.fairwayresolution.com/help-for-you/acc/acc-reviews/getting-ready>

Email 2

4. *Your response appears to be inconsistent with the ACC response in GOV-029177, GOV-028422 and GOV-027824. In GOV-027824, you attached the Responding to a witness summons Policy (p 47). At section 4 of this policy, it states: "You can get a copy of the Dealing with a Witness Summons leaflet from your team manager (TM) or branch manager (BM). TMs and BMs can contact the Manager Litigation in the General Counsel team for further information." Clearly your statement "There are no circumstances where a witness is served with a summons to attend an ACC review hearing" was wrong, as it is inconsistent with both the Review Specialist Induction Guide and Responding to a witness summons Policy.*
5. *I request all documents, rules, policies, guides, advice or any other information, pertaining to ensuring the claimant's right to call (summon) and cross-examine ACC witnesses (i.e., claims assessors, review specialists, resolution specialists, and external clinical advisers). If the information is held in the minds of persons at ACC (e.g., Manager Litigation in the General Counsel team), then I request that information to be provided in writing.*
6. *I request honest answer to my questions, from your Manager Litigation in the General Counsel team, the ICRA and FairWay, pursuant to rights 1 & 8 of the Code, which are as follows:*
 - (1) *What steps must a claimant take (including forms filled in) in order to exercise their legal right to call or summon an ACC witnesses? Please attach the form or details of the information that must be included as well as the email address and physical to which the forms must be sent (e.g. Legal.Services@acc.co.nz).*
 - (2) *What steps must a claimant take (including forms filled in) in order to exercise their legal right to cross-examine ACC witnesses?*

To be clear, when I say an ACC witness, I am referring to the specific ACC employees who were decision makers, or to the persons contracted to ACC (e.g., external clinical advisers) who provided reports which informed ACC's decisions.

Email 2 response*Paragraph 4*

The 'Responding to a witness summons Policy' states at the top that this will usually happen in criminal prosecutions. This process does not relate to review hearings.

Paragraphs 5 and 6

Please refer to our response to Email 1, Paragraph 3 above.

If you have any questions about this response, please get in touch

You can email me at GovernmentServices@acc.co.nz.

If you are not happy with this response, you can also contact the Ombudsman via info@ombudsman.parliament.nz or by phoning 0800 802 602. Information about how to make a complaint is available at www.ombudsman.parliament.nz.

Ngā mihi



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Government Engagement