



OIA18-0630

5 OCT 2018

Steve Glassey
fyi-request-8602-9173bdfc@requests.fyi.org.nz

Dear Steve Glassey

OFFICIAL INFORMATION ACT REQUEST

I refer to your official information request on 3 September 2018 relating to the responsibilities and policies of the Ministry for Primary Industries (MPI) with regards to the Public Records Act 2005. Under the Official Information Act 1982 (OIA), you specifically requested:

Information pertaining contractor email records policy, specifically:

- 1. Standard terms/conditions for contractors that outline how they comply with the Public Records Act. This may be included in a standard contractor agreement template.*
- 2. Copy of policies that ensure emails and other official MPI documents are stored, archived and managed by contractors (i.e. that contractors are not to use non-official email accounts for official business, and/or any such use of non-official email accounts, such emails are transferred to storage to MPI for public record keeping.*

The following information is released to you under the OIA:

1. Contractors are employed by MPI using three different contracts, depending on whether they are employed via an All of Government agreement, a Government Model Contract for Services or via a Work Authorisation. Each of these have slightly different terms and conditions, but each contain wording around the obligations of contractors to comply with New Zealand law, and also MPI standards and policies about information management. Relevant extracts from the first and second of these contract types can be found in Appendix One to this letter. The standard purchase terms, which form the terms and conditions of a Work Authorisation, are enclosed.
2. MPI does not have separate or specific advice for contractors around information security or management, as they are subject to the same MPI policies, and therefore are provided the same guidance, as MPI employees. Page 9 of the Information Security Manual states "At no time should MPI

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information be sent to your home email account.” This advice is also embedded in the document *Security and Privacy @ MPI*, an excerpt of which can be found in appendix two.

I trust this information satisfies your request.

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping, fluid strokes that form the name 'Matt Gillbanks'.

Matt Gillbanks
Director Security and Privacy (Acting)

Appendix One

Standard Terms and Conditions for Contractors regarding Information Management
(including the Public Records Act 2005)

Government Model Contract for Services

Schedule 2, Clause 5

5. Information management

Information and Records

5.1 The Supplier must:

- a. keep and maintain Records in accordance with prudent business practice and all applicable laws
- b. make sure the Records clearly identify all relevant time and Expenses incurred in providing the Services
- c. make sure the Records are easy to access, and
- d. keep the Records safe.

5.2 The Supplier must give information to the Buyer relating to the Services that the Buyer reasonably requests. All information provided by the Supplier must be in a format that is usable by the Buyer, and delivered within a reasonable time of the request.

5.3 The Supplier must co-operate with the Buyer to provide information immediately if the information is required by the Buyer to comply with an enquiry or it's statutory, parliamentary, or other reporting obligations.

5.4 The Supplier must make its Records available to the Buyer during the term of the Contract and for 7 years after the End Date (unless already provided to the Buyer earlier).

5.5 The Supplier must make sure that Records provided by the Buyer or created for the Buyer, are securely managed and securely destroyed on their disposal.

Reports

5.6 The Supplier must prepare and give to the Buyer the reports stated in Schedule 1, by the due dates stated in Schedule 1.

All of Government Agreement for Recruitment Services

Clause 8.1

Provider general responsibilities:

In addition to its other obligations under this Agreement (including the performance of the Services), the Provider will:

...

- c) use its reasonable endeavours to ensure that its Candidates engaged by a Participating Agency on a Temporary or Contractor basis through the Provider adhere to the Participating Agencies' policies and procedures applicable to the Assignment

...

- g) obtain, maintain and comply with any governmental, legal, regulatory or other approvals, permissions, consents, licences, and requirements necessary to provide the Services and perform its obligations under this Agreement;

- h) comply with all Laws in so far as they relate to the provision of the Services at all times during the Term, including, without limitation, the information privacy principles under the Privacy Act 1993 and the Human Rights Act 1993...

Clause 13.2

Provider's warranties:

The Provider represents, warrants and undertakes that:

...

- c) it will comply with the requirements of all Law as it relates to the provision of Services by the Provider;
- d) all Documentation (and any other information or advice supplied by it to a Participating Agency) and any information and data reported to the CoE will be accurate, complete and Fit for Purpose...

Clause 20.11

Governing law and jurisdiction:

- a) This agreement is governed by, and will be construed in accordance with, the laws of New Zealand.

Appendix Two – Excerpt from Security and Privacy @ MPI

Manage and share all MPI information in accordance with:

MPI guidelines (available on Kotahi).
The Code of Conduct.
Official Information and Privacy Acts, and others (such as the Biosecurity Act), as required.

Keep personal use of equipment within acceptable limits

Some personal use of work PCs, mobiles and other IT equipment is okay.
Don't use personal webmail and personal mobile phones to send any MPI information.
Don't send MPI information to your home email accounts.

Never use email or the internet (including via mobile devices) for anything inappropriate, unlawful or objectionable

Never be in possession of information that would be considered discourteous, vexatious, objectionable, defamatory, fraudulent, pornographic, offensive, or which discloses personal information.
Don't send, read or delete messages on behalf of another person without their permission.
Don't download, copy, send or store copyrighted material (e.g. music, software) without appropriate authorisation.
Don't undertake any activities that would violate NZ law or bring the NZ Government or MPI into disrepute.
Always use a professional MPI Account to post MPI Information on the Internet, ensure you read the code of conduct and have your manager's approval to do so.
Always run virus scan on any files downloaded from a mobile device or the internet, if in doubt seek advice.

MPI has an obligation to investigate any instances of inappropriate sharing or accessing of information.

STANDARD PURCHASE TERMS

All MPI purchases for goods and services are subject to these terms, unless a separate written contract is agreed. These terms may be changed in MPI's sole discretion, and any such changes will apply to Orders made after the date of the change, or if there is no Order then with immediate effect.

1. Defined terms

Agreement means these terms, together with each Order (if any) sent to you.

Business Day means any day not being a Saturday or Sunday, a public holiday observed in Wellington, or the period from 26 to 31 December each year.

Goods means the goods (and any other result of the Services) to be provided by you, including as set out in an Order.

HSW Legislation means the Health and Safety at Work Act 2015 and any regulations made under it.

MPI means the Sovereign acting by and through the Ministry for Primary Industries.

Order means any order, work authorisation letter, email, or other document sent to you by MPI describing matters such as the Goods, Services, and price.

Services means the services to be performed by you, including as set out in an Order.

2. Duration

These terms apply during the period of time specified in any Order, or otherwise during the period of time when you supply Goods or Services to MPI.

3. Payment

You may issue invoices (which must be valid for tax purposes) at the times set out in any Order, and otherwise when the Goods or Services that will be the subject of the invoice have been provided to MPI's satisfaction (as notified by MPI to you). Except to the extent MPI reasonably disputes an invoice, MPI will pay you by the 20th day of the month following the month in which MPI receives the invoice.

4. Title, risk, and delivery

Risk in the Goods will pass to MPI on the later of delivery of or payment for the Goods. Title to the Goods will pass to MPI on the earlier of delivery of or payment for the Goods.

If MPI notifies you in writing that the Goods are not to its satisfaction, the Goods will be held by MPI until you have picked them up and provided a refund for them, at which time title will revert to you. Risk in the Goods will revert

to you on the earlier of the Goods being picked up, or the refund being provided.

Shipment and delivery of Goods must be achieved within any timeframes specified in the Order (and otherwise within 15 days of MPI ordering from you); and if that does not happen then MPI may (without limiting its other rights) cancel any unfulfilled part of the purchase. MPI is not required to receive partial or incomplete deliveries. Receipt of any part of a purchase shall not bind MPI to accept any future deliveries. Neither MPI's receipt of a delivery nor any signature given at the time will be taken to imply that the Goods or Services are satisfactory to MPI.

5. Warranties

You warrant that:

- (a) the Goods will conform in all respects with any description and samples provided;
- (b) the Goods will be well packaged and securely stored until delivery;
- (c) the Goods will be free from any defect (including any latent defect);
- (d) MPI will take clear title to the Goods;
- (e) if you install the Goods, the Goods will be properly installed and integrated into MPI's systems and property, and will be compatible with and not damage them;
- (f) the Goods will satisfy MPI's requirements, be fit for MPI's expected use and purpose, and meet MPI's stipulated specifications;
- (g) MPI's use of the Goods and receipt of the Services in accordance with this Agreement will not infringe the rights of any other person;
- (h) you have all necessary consents, licences, and authorities to provide the Goods and Services;
- (i) the Services will be performed promptly with due diligence, care, and skill by appropriately trained, qualified, experienced, and supervised persons;
- (j) all information provided by you in connection with this Agreement is accurate, complete, and true;
- (k) you do not have any conflicts of interest in relation to this Agreement.

These warranties are additional to any other warranties and guarantees implied by law.

6. Health and Safety

6.1 The Parties will:

- (a) perform and ensure their personnel perform their respective obligations under this Agreement in compliance with the HSW Legislation; and
- (b) consult, cooperate and coordinate with each other to the extent reasonably required to ensure their respective compliance with HSW Legislation.

6.2 In relation to this Agreement you will:

- (a) comply with your health and safety policies and practices, and all reasonable directions of MPI relating to health and safety; and
- (b) ensure that:
 - (i) all "Notifiable Events" arising during this Agreement are reported to Worksafe in a timely manner in accordance with HSW Legislation;
 - (ii) all such events, together with any notice issued or other investigation or enforcement action taken by Worksafe or any other person under HSW Legislation, are reported to MPI within three Business Days of you becoming aware of the event, notice, or action.

7. Access, security, and conduct

MPI will allow your personnel access to MPI's premises to the extent necessary for your provision of the Goods and Services. You will ensure your personnel comply with MPI's security and operational requirements, code of conduct, and other relevant policies and procedures, all as notified to you from time to time. MPI may refuse your personnel access if they do not satisfy those requirements. You must promptly notify MPI in writing if you become aware that in such premises:

- (a) any hazard may or does exist, or any situation may arise or has arisen where any person may not be safe or harm may result to any person;
- (b) any accident or serious harm to any person has occurred (in which case you must promptly notify MPI of the preventative action taken or proposed);
- (c) any improvement or prohibition notice is likely to be, or has been, issued.

8. Confidentiality

Each party will keep confidential the other's confidential information, except:

- (a) pursuant to applicable law;
- (b) where the information becomes part of the public domain through no fault of the party receiving the information;
- (c) for disclosure to its professional advisers or personnel;
- (d) for MPI, in accordance with parliamentary rules or convention, Ministerial request, or procurement rules or guidance endorsed by Cabinet.

9. Intellectual property

Ownership of intellectual property existing prior to this Agreement is not affected by this Agreement. Ownership of all intellectual property you create or discover in performing this Agreement will vest in MPI on creation. For all intellectual property provided to MPI that is not owned by MPI, you grant MPI a non-exclusive, worldwide, royalty free, perpetual, irrevocable and sub-licensable licence to use, copy, distribute, sub-licence, reproduce, modify, adapt, publish, transmit, translate, create derivative works from, display and perform, whether publicly or otherwise, that intellectual property.

10. Liability

If MPI is liable to you under or in connection with this Agreement (including in contract, tort, or equity), MPI's maximum liability to you is limited to an amount equivalent to the amount actually paid to you under this Agreement. You hereby indemnify MPI against all damage, cost, loss, and expense suffered or incurred by MPI arising under or in connection with this Agreement, including due to any third party claim against MPI.

11. Force Majeure

Neither party will be liable for failure to fulfil its obligations due to an event beyond its reasonable control, which for clarity does not include strikes or any form of labour dispute. The party suffering from the event will exercise all reasonable endeavours to avoid the event or remove its cause, and perform its obligations.

12. Termination

Without limiting any other rights, MPI may terminate this Agreement on written notice (i) if there is a material breach of this Agreement, (ii) if an event which is the subject of clause 10 continues for more than 5 days, or (iii) if in MPI's reasonable opinion you suffer or will likely suffer a material financial problem.

At the end of this Agreement, each party will return all property and information of the other's. The end of this Agreement will not prejudice any rights that arose prior to the end of this Agreement, nor affect any part of it which expressly or by its nature survives.

13. Communication with MPI

All notices to MPI in connection with this Agreement must be directed to:

Manager, Procurement and Commercial Management
Ministry for Primary Industries
25 The Terrace
Private Bag 2526
Wellington

14. General

You may not assign any of your rights under this Agreement to a third party. You must keep full and accurate records of all matters pertaining to this Agreement, and make these available to MPI on request. No waiver under this Agreement is effective unless in writing. Nothing in this Agreement creates a partnership, agency, or employee/employer relationship. This Agreement is the entire agreement between the parties in relation to the Goods and Services. This Agreement will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982