

Reference: 20230237

28 June 2023

Liz Blue
fyi-request-22814-35dacebd@requests.fyi.org.nz

Dear Liz

I refer to your Official Information Act request, received on 16 May 2023. You requested “any internal emails or other correspondence relating to the Royal Commission of Inquiry into Covid 19.”

On 23 May 2023, we advised you that our initial estimate of approximately 10,000 items would need to be reviewed for this request. We suggested that you refine your request, as answering it in its current form would require substantial collation and research. You replied the same day, and amended your request, limiting to material dated from 1 December 2022. As the Royal Commission was established at the start of December 2022, this does not reduce the scope of your request in any material way.

In responding to your request, we have taken into account the following:

- Much of the information you seek is not covered by the Official Information Act. The definition of ‘official information’ in the Official Information Act expressly *excludes* evidence and submissions to a Royal Commission. A large proportion of the documents potentially covered by your request were produced in the course of developing evidence or submissions for the Royal Commission.
- We would withhold many of the documents on the grounds set out in section 9(2) of the Official Information Act, such as maintaining legal professional privilege and maintaining the effective conduct of public affairs.
- The Royal Commission (with which we have consulted) has also provided guidance to agencies as to how agencies should approach Official Information Act requests when there is overlap with its work.¹ The Royal Commission indicates in its guidance that it considers that correspondence between agencies and the Royal Commission falls within its minute on interim non-publication

¹ [https://www.dia.govt.nz/diawebsite.nsf/Files/Royal-Commission-of-Inquiry-into-COVID-19-Lessons/\\$file/Royal-Commission-of-Inquiry-into-COVID-19-Lessons-Guidance-for-Agencies-subject-to-the-Official-Information-Act-1982.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Royal-Commission-of-Inquiry-into-COVID-19-Lessons/$file/Royal-Commission-of-Inquiry-into-COVID-19-Lessons-Guidance-for-Agencies-subject-to-the-Official-Information-Act-1982.pdf)

orders² preventing release of that material. The Royal Commission also indicates that information prepared for the Inquiry should remain confidential until it has had the chance to consider it and has been reported. In that guidance, it quoted earlier advice from the Ombudsman, that:

... there is clearly a high public interest in ensuring that the public can have confidence in the findings of an inquiry. Premature release of certain information which an agency will need to produce to an inquiry, which is central for the inquiry to make its findings, has the potential to undermine the investigation being undertaken.

Taking these matters into account, were we to work through your request, it seems highly likely that the only material that we would release would be information around setting up meetings and other similar administrative matters. We would not release, for instance, drafts of evidence or submissions to the Royal Commission, or material that was prepared to help develop those drafts. Further, release of correspondence with the Royal Commission would prejudice the maintenance of the law (see section 6(c) of the Official Information Act), and so we would not release that either.

Moreover, sorting through the material, classifying individual items, and preparing relevant material for release would be administratively burdensome. There is a large volume of material, there is only a very small team available to undertake the review, and they are all busy preparing material for the Royal Commission.

I have therefore decided to decline your request under section 18(f) of the Official Information Act, as the information requested cannot be made available without substantial collation or research. In declining your request, I have also taken into account that your amended request has not materially reduced the scope of your initial request.

In declining your request, I considered charging for this process, for example by hiring an additional person to review the material. This would not reduce the load in any substantial way, as that person would require supervision by Treasury staff, in particular those responsible for responding to the Royal Commission. This would substantially affect the Treasury's ability to provide the Royal Commission the material it needs, in a timely fashion. In reaching this view, I have also taken into account the limited public interest in the disclosure of meeting arrangements and similar administrative matters.

Finally, I note that one other course of action open to me is to summarise the information you have sought, in preference to providing copies of documents that contain the information you have sought. This course of action is provided for by section 16(2) Official Information Act. Were I to summarise the information that you have sought, that we would not otherwise withhold on the grounds set out above, I would summarise it as information around administrative tasks such as setting up meetings, circulating drafts, seeking guidance on matters arising, and the like.

² <https://www.covid19lessons.royalcommission.nz/assets/Uploads/Minute-1-Interim-non-publication-evidence-and-submissions-received.pdf>

Please note that this letter (with your personal details removed) may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

A handwritten signature in blue ink, appearing to read "John Beaglehole". The signature is fluid and cursive, with the first name "John" and last name "Beaglehole" clearly distinguishable.

John Beaglehole
Director, COVID 19 Royal Commission