

Reference: 20230540

1 February 2024

Chris Johnston
fyi-request-24922-3dc512e7@requests.fyi.org.nz

Dear Chris

Thank you for your Official Information Act request, received on 28 November 2023.
You requested the following:

The NZ Government provided some form of indemnity to the suppliers of the COVID-19 vaccine.

(R1) Can you please provide the value of any liability that has been estimated and/or placed on the government accounts should such indemnity need to be exercised/used.

For example, the NZ Government may need to undertake one or more of the following non exhaustive list of scenarios: (a) fund claims made to ACC that caused it to need to be recapitalised, (b) directly defend or compensate injury victims, or (c) where the suppliers require the NZ Government to defend them in court for claims of negligence, fraud or malfeasance.

(R2) Please provide any Record (e.g. document/email) that discusses the probability of such a liability clause causing a cost to the NZ Government, and/or any financial estimate of the size of such costs. We can discuss limiting the time period if there are too many documents, but if this discussion is to be entered into then you will need to provide a count and/or a list of the document titles from a reasonably undertaken keyword search of your SharePoint or similar system, and provide the keywords used.

(R3) Please provide any advice to the incoming government since the 2023 election night on options and policy recommendations around such a liability. This can include formal documents and notes of Treasury officials in the Ministerial briefings up to the point that this OIA is fulfilled.

On 15 January, I extended the deadline by 10 working days under section 15A of the Official Information Act to allow for consultations required to make a decision on your request.

Regarding question R1, please refer to the “information publicly available” table below (specifically “Item 2”).

Regarding question R2, please refer to the “previously released documents” and “information publicly available” tables below.

The Treasury previously received an Official Information Act request for all notes and documents relating to COVID-19 vaccine indemnities, and I refer you primarily to the existing response to that request (“Item 1”).

I also refer you to “Item 3”, a summary statement outlining New Zealand’s approach purchasing COVID-19 vaccines during the pandemic which was developed by the Ministry of Health (Manatū Hauora), Pharmac, and the Treasury, and in consultation with our vaccine suppliers (Pfizer/BioNTech, AstraZeneca, Novavax, and Janssen).

Specifically in reference to the probability of such a liability incurring a cost to the New Zealand Government, the statement includes the following remark:

- *“The Accident Compensation Act 2001 already provides a broad immunity from liability for adverse events arising from vaccines. Consequently, indemnities provided to vaccine suppliers were concluded on the basis that there are a very limited range of circumstances where they would be triggered.”*

Specifically in reference to estimates of the size of such a liability, the statement includes the following remark:

- *“In relation to the Crown’s financial liabilities under COVID-19 indemnities, officials considered the total maximum aggregated liabilities to be unquantifiable. However, as the potential maximum exposure of each could exceed \$10 million, the Minister of Finance presented a statement to the House of Representatives when each indemnity was granted under section 7 65ZD(3) of the Public Finance Act 1989.”*

Regarding question R3, this request is refused under section 18(e) of the Official Information Act:

- the document alleged to contain the information requested does not exist.

Previously released documents

The following information is covered by your request and is publicly available on the Treasury website:

Item	Date	Document Description	Website Address
1.	3 April 2023	OIA received 10 March 2023 – Vaccine indemnity	https://www.treasury.govt.nz/sites/default/files/2023-06/oia-20230111.pdf

Accordingly, I have refused your request for the documents above under section 18(d) of the Official Information Act:

- the information requested is or will soon be publicly available.

Information publicly available

The following information is covered by your request and is publicly available on the Treasury website or the Ministry of Health (Manatū Hauora) website:

Item	Date	Document Description	Website Address	Question(s)
2.	20 December 2023	Half Year Economic and Fiscal Update (+ supporting documents)	https://www.treasury.govt.nz/publications/efu/half-year-economic-and-fiscal-update-2023	R1
3.	18 September 2023	Summary statement of New Zealand COVID-19 vaccine procurement process and contracts with suppliers	https://www.health.govt.nz/system/files/documents/pages/summary-statement-of-new-zealand-government-contracts-with-the-covid-19-suppliers.pdf	R2

Accordingly, I have refused your request for the documents above under section 18(d) of the Official Information Act:

- the information requested is or will soon be publicly available.

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.

Jess Hewat
Manager, Health and ACC