

20 November 2020

S Rowe
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Dear S Rowe

Official Information Act 1982 Request

Thank you for the request you made on 13 October 2020 under the Official Information Act 1982 (the OIA). You have requested information about the operating arrangements between EQC and Southern Response.

In considering your request we have taken it to run from the time since EQC and Southern Response entered the Agency Agreement on, 1 January 2020 to the date of your request. We have also taken your request to only relate to claims where EQC is acting as Southern Response's agent under the Agency Agreement. We note that claims may also be dealt with directly by Southern Response outside of that agreement.

Given the large number of questions you have posed, and that there is a degree of overlap to aspects of them, we have grouped them by topic or issue. This has been done to ensure we can most efficiently and effectively answer all of your questions (to the extent we are able to). Our response is set out accordingly below.

Complaints against EQC and information shared about those

"When someone makes a complaint against EQC, EQC provides Southern Response with the details of those complaints.

*How many complaints about EQC have been shared with Southern Response?
How many times has EQC communicated to Southern Response about those complaints?"*

EQC is aware of seven complaints involving claims where EQC is acting as Southern Response's agent that had been notified to Southern Response at the time of your request.

Information about complaints arising from claims managed by EQC is provided monthly by EQC staff to Southern Response by entering it into a spreadsheet saved on a Southern Response database (the Aggressive/Unacceptable Behaviour or Accident/Incident report). EQC has access to that spreadsheet solely for the purpose of providing those updates. The information shared relates only to claim management and complaints about EQC staff are not included in this spreadsheet.

The sharing described above is undertaken in accordance with the Agency Agreement and is consistent with our obligations under the Privacy Act.

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Communication about aggressive and unacceptable behaviour and accidents and incidents

“EQC also sends claimant data to Southern Response via “Aggressive/Unacceptable Behaviour or Accident/Incident reports” lists.

How many times has EQC communicated claimant data to Southern Response through these lists?”

Please refer to our answer above.

Official Information Act requests

“EQC is required by the Agency Agreement with Southern Response to send Official Information Act requests it receives to Southern Response (Agency Agreement Section 17.3).

How many times has EQC communicated with Southern Response in relation to Official Information Act requests?

How many times has EQC also communicated claimant data to Southern Response along with the details of the Official Information Act request?”

We have received a total of 10 such requests during the time the Agency Agreement has been in place with Southern Response. Each of these were transferred to Southern Response as the most appropriate agency to deal with them.

Communication in that situation is normally limited to notification and acknowledgement of a transfer. There is usually no broader communication than that unless consultation is required to determine whether transfer is appropriate in the circumstances.

Subject matter expert

“A single policy subject matter expert from Southern Response is available to EQC (Agency Agreement Section 8.3).

Has Southern Response appointed this single point of contact to EQC?

How many of the communications between EQC and the prescribed point of contact have shared claimant personal data?”

While clause 8.3 does provide for such a subject matter expert, there has not been an appointment under that provision of the Agency Agreement. Southern Response does however make a variety of different experts available to EQC where the Commission is acting as Southern Response’s agent. Where that is the case the contact can take many forms including emails, phone calls and discussions.

There may be instances where claimant information is shared for the purpose of giving and receiving such advice and this is conducted in accordance with the Agency Agreement (discussed below). However, given the extent of that contact, we do not hold information on the volume of that exchange of information (for example we do not hold a tally of such contact). It follows that this aspect of your request has been refused under Section 18(e) of the OIA as the information you seek does not exist. In taking that position we note that the OIA does not require an agency to create new information to provide a response to a request for information.

Sharing information

“EQC appears to not be required or allowed to provide personal data about a claimant, excepting data related to final sign-off of settlements (Agency Agreement Section 6.6).

How many claimants have been provided privacy waivers that allow EQC to communicate personal data to Southern Response?

How many of the claimants whose information has been shared with Southern Response were not told that their information was going to be shared before it was shared?

How many of the claimants whose information has been shared with Southern Response were not told the specific information that would be shared with Southern Response before it was shared?

How many claimants have had personal data shared by EQC to Southern Response that wasn't part of a final-settlement process?

Which members of the EQC Executive Leadership team are aware that EQC is sharing personal data with Southern Response without privacy waivers?”

Clause 5 of the Agency Agreement acknowledges that both parties will share data by allowing each other operational access to their respective information systems. This sharing is subject to the Privacy Act 1993 and Clause 17 of the Agency Agreement.

EQC generally does not require privacy waivers to share information with Southern Response (about a Southern Response Claim). Nor does EQC generally need to consult with claimants before sharing information with Southern Response (about a Southern Response Claim). It follows that this aspect of your request must be refused under section 18(e) of the OIA as the information you seek does not exist.

Legal advice

“EQC has received legal advice through Southern Response about claimants.

Does EQC have legal advisors other than Southern Response?

How many times has EQC sought legal advice from Southern Response?

Are the occasions of EQC seeking legal advice from Southern Response approved by or with the awareness of EQC's Chief Strategy Officer whose role includes providing advice and support on legal services?

Which members of the EQC Executive Leadership team are aware that EQC is seeking legal advice from Southern Response?”

This aspect of your request appears to be based on a misapprehension that there is an issue with EQC seeking legal advice from Southern Response. Where EQC is acting as Southern Response's agent on a claim, EQC is able to seek legal advice from Southern Response (while this isn't common it does occur from time to time). EQC also has an internal legal team and external legal advisors (such as national law firms).

Regarding your question on how many times EQC has sought legal advice from Southern Response, we do not hold information on the volume of such advice (for example a tally of that). As such this aspect of your request has been refused under Section 18(e) of the OIA as the information you seek does not exist. In taking that position we note that the OIA does not require an agency to create new information to provide a response. For the sake of completeness, we note that as there is no issue

with EQC seeking such legal advice, it is not a matter that has been flagged to members of the Executive Leadership Team in the manner you appear to anticipate.

Claims reallocated to Southern Response

“Southern Response has reallocated claims back to Southern Response from EQC.

How many claims have been reallocated from EQC back to Southern Response?

How many of those claims were on the complaints lists that EQC sends to Southern Response?

How many of those claims were on the “Aggressive/Unacceptable Behaviour or Accident/Incident reports” lists that EQC sends to Southern Response?

How many of those claims were of claimants that made Official Information Act requests to EQC?”

The numbers involved in respect of each of the questions set out above are so small, that providing a definitive answer has the potential to interfere with the privacy of any individuals concerned. On that basis we can advise that the number in question is less than four in respect of each of the questions you have raised. This decision has been made under 9(2)(a) of the OIA and after carefully taking into account the public interest considerations under section 9(1) of the Act.

Independent damage assessments

“EQC is required to “In respect of each SR Claim allocated to EQC under this agreement, EQC will: (a) assess, and prepare a description of: (i) the natural disaster damage; (ii) any proposed repair or rebuild methodology for that damage”. (Agency Agreement Section 6.1)

Does EQC work independently of Southern Response in the handling of claims?

Has EQC ever communicated to any claimant that EQC works closely with Southern Response to the point where they should be considered one team?

How many independent damage assessments has EQC made?

How many claimants have requested independent damage assessments and not been provided them?”

As will be apparent from earlier aspects of our response, when acting as Southern Response’s agent under the Agency Agreement, EQC works collaboratively with Southern Response within the terms of that agreement. We are aware that staff have previously referred to EQC and Southern response as “one team” when referring to claims managed under the EQC and Southern Response agreement. That statement is a generalisation that simply reflects that collaborative approach, however, the relationship is governed by the Agency Agreement which is obviously more detailed than the “one team” generalisation.

Regarding your questions on independent damage assessments, we do not hold information on the volume of assessments (for example a tally of that). As such this aspect of your request has been refused under Section 18(e) of the OIA as the information you seek does not exist. As we have noted previously, the OIA does not require an agency for create new information to provide a response.

Vulnerable claimants

“Southern Response was required to make EQC aware of vulnerable persons. (Agency Agreement Section 6.7)

Was EQC provided with a list of vulnerable persons when the claims were allocated to EQC? How many claimants have told EQC that they are vulnerable where EQC had not already been informed by Southern Response?”

Southern Response does not provide EQC a specific list of vulnerable claimants in the manner you have described. Having said that, EQC does have access to Southern Response’s database and that notes claimant vulnerability.

EQC is not aware of any instance where the Southern Response data base would not reflect claimant vulnerability.

Breach of insurance industry code of ethics

“Southern Response has been found guilty of a significant breach of the insurance industry accepted code of ethics (Fair Insurance Code) on at least one claim that was allocated to EQC, which Southern Response was required to communicate to ICNZ before claims were allocated to EQC.

Was EQC informed by Southern Response about ethics violations on any claims as part of the handover process?

Was EQC informed that any of those claims also involved vulnerable persons?

If not as part of the handover then did EQC first learn of the ethics violations and vulnerable persons status from Southern Response or the claimants?

How many claims is EQC aware of where Southern Response was found to have made significant ethical violations?

How many claims is EQC aware of where Southern Response was found to have made significant ethical violations and the claimants are vulnerable individuals?

What measures were taken in relation to the claims, such as making sure an independent assessment of the claim was done, or isolating the claim from communication from Southern Response?

What steps were taken to prioritise the claims as per the Agency Agreement Section 6.7(b)?

After learning of these claims and violations of ethics did EQC communicate any details of the claims, outside of the final settlement agreement, to Southern Response?

How many of these claims had the claimants been told that EQC was making final settlement agreements?

For one of these claims EQC sought legal advice from Southern Response when the claimants asked the question. "Is there a more complete and formal definition of the role of EQC Settlement Specialist that you can provide me with?" Shortly after the claim was reallocated back to Southern Response. Does EQC know if these two events are related?

Did EQC consider any alternatives to asking Southern Response legal advice about a claim that Southern Response had been found to have committed ethical violations against?

Has EQC continued to communicate with Southern Response about these claims after the claims were reallocated back to Southern Response?”

After carefully considering the questions you have raised here, we have taken the view that we have to refuse to provide the information you seek under section 9(2)(a) to protect the privacy of the

individuals concerned. While some of your questions seem to be reasonably generic, when assessing them as a whole, they appear directed at identifying a particular claim or claimant. In those circumstances, we have decided to take a cautious approach and consider refusal is warranted under the Act.

Knowledge of Executive Leadership Team and Minister

Which members of the EQC Executive Leadership team are aware that EQC staff have received legal advice through Southern Response in order to be able to answer what the role of EQC Settlement Specialist is?

Is Hon Grant Robertson, the Minister Responsible for the Earthquake Commission, aware that EQC staff have received legal advice through Southern Response in order to be able to communicate their job duties?"

As we have advised, EQC is able to seek legal advice from Southern Response where it is acting as Southern Response's agent and for the reason set out below can only take our answer that far.

We note that this aspect of your request also appears to be directed at particular claims or claimants. It would not be appropriate for us to comment more broadly on individual claims or claimants and so we must refuse this aspect of your request under section 9(2)(a). That decision has been reached after carefully taking into account the public interest considerations under section 9(1) of the Act.

Please note that we do not intend to publish our response to your official information request. However I note that since you have made your request via the FYI website, it will be published there.

This response completes your request for information. You have the right to ask the Ombudsman to investigate and review my decision. The Ombudsman can be contacted at PO Box 10 152, Wellington 6143, or on Freephone 0800 802 602, or at <http://www.ombudsman.parliament.nz>.

Yours sincerely



Jason Tamm
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