

22 March 2019

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REF: OIA-4754

Dear Andrea

Request made under the Official Information Act 1982

Thank you for your email of 26 February 2019 requesting the following information under the Official Information Act 1982 (the Act):

- 1. All communications, correspondence, briefings, aides memoire, reports or other documents, since 2015, relating to a conflict of interest or perceived conflict of interest in Optimus Group owned companies, JEVIC and VINZ inspecting and certifying cars.*
- 2. All correspondence - written and verbal including details of telephone calls, and times from: The Optimus Group, Chen Palmer, JEVIC, VINZ and Nichibo on the proposed NZTA Conflict of Interest provisions, in the last year. For the avoidance of doubt, I am requesting the correspondence, not summaries of the correspondence.*
- 3. All correspondence - written and verbal including details of telephone calls, and times from: The Optimus Group, Chen Palmer, JEVIC and VINZ, and Nichibo on the submission process on the draft conflict of interest policy. I am especially interested in any direct communications with Michael Stiassny.*
- 4. Information on whether the board's decision was unanimous, and how many members were in opposition. And what were the reasons for extending the submission period.*
- 5. All submissions from The Optimus Group, Chen Palmer, JEVIC and VINZ, and Nichibo, on the submission policy and the date they were received.*

Request One

Request One is framed very broadly. If it was interpreted to cover every document relating to a conflict of interest or perceived conflict of interest in Optimus Group companies, I would have determined that the information you requested could not be made available without substantial collation and research and would have had to refuse your request under section 18(f) of the Act.

However, I have interpreted Request One in a more focussed way, as covering documents held by the Transport Agency that are substantively responsive to Request One and interpreting this topic to include official information relating to the proposed changes to the operational policy *Managing Integrity of Vehicle Certification Inspection and Inspection Organisations - Operational Policy*, and the associated public consultation which began in late 2018.

The information and documents within the scope of Request One as interpreted above are detailed in the attached **Schedule One** and copies are enclosed.

Some information has been withheld:

- because making available of that information would be likely to prejudice the maintenance of the law; and
- in order to:
 - protect the privacy of natural persons;
 - protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;
 - protect information which is subject to an obligation of confidence, where the making available of the information—
 - would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or
 - would be likely otherwise to damage the public interest;
 - maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials;
 - maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty and some information that is out of scope; and
 - maintain legal professional privilege.

The applicable withholding ground is identified either in the attached document **Schedule One** and/or marked at the point of redaction on the relevant document within the attachment.

With respect to the information that has been withheld I do not consider that the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

Requests Two and Three

The information and documents within the scope of Request 2 and Request 3 are detailed in the attached **Schedule Two** and copies are enclosed.

Some information has been withheld in order to:

- protect the privacy of natural persons;
- protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest; and

- enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

The applicable withholding ground is identified in the attached document **Schedule Two** and/or marked at the point of redaction on the relevant document within the attachment.

With respect to the information that has been withheld I do not consider that the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

Request Four

It is not clear from Request Four which decision of the Transport Agency Board it refers to.

If Request Four is in respect of the decision of the Board in November 2018 to extend the submissions period to 20 February 2019, you have received this material as part of the documents provided to you in response to Request One. If Request Four concerns a different decision of the Board, please provide further details of the information you are requesting.

Request Five

Request Five is refused on the basis that the information sought does not exist, pursuant to section 18(e) of the Act.

Under section 28 of the Act, you have the right to ask the Ombudsman to review my decision to refuse or withhold some of the information under this request. The contact details for the Ombudsman can be located at www.ombudsman.parliament.nz.

If you would like to discuss this response with the Transport Agency, please contact Andrew Knackstedt, Senior Manager – Media, by phone on 04 894 6285, or by email to andrew.knackstedt@nzta.govt.nz.

Yours sincerely



Jenny Chetwynd
General Manager – Strategy, Policy & Planning

Schedule One

Relevant Board documents

	Document	Date	Details of release /withholding /refusal
1.	Board paper 2018/10/1292 <i>Managing Vehicle Inspection Conflicts of Interest</i>	5 October 2018	Released in full
2.	Supplementary paper to 2018/11/1303 <i>Managing Vehicle Inspection Conflicts of Interest</i>	9 November 2018	Released with some information withheld (by redaction) under s9(2)(h) to maintain legal professional privilege.

Emails and correspondence relating to current consultation

	Document	Date	Details of release /withholding /refusal
3.	Internal NZTA emails	n/a	Released with some information withheld (by redaction) under: <ul style="list-style-type: none"> • s 6(c) because making available of that information would be likely to prejudice the maintenance of the law, • s9(2)(a) to protect the privacy of natural persons, some information withheld (by redaction); • s 9(2)(b) to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; • s 9(2)(ba)(i) and (ii) to protect information which is subject to an obligation of confidence, where the making available of the information— <ul style="list-style-type: none"> ○ would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information

	Document	Date	Details of release /withholding /refusal
			<p>should continue to be supplied; or</p> <ul style="list-style-type: none"> ○ would be likely otherwise to damage the public interest; • s 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty and some information that is out of scope; • s 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials; • s 9(2)(h) to maintain legal professional privilege.
4.	Emails between NZTA Board and NZTA Management	n/a	<p>Released with some information withheld (by redaction) under:</p> <ul style="list-style-type: none"> • s 9(2)(a) to protect the privacy of natural persons and some information withheld (by redaction); • s 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty; • s 9(2)(h) to maintain legal professional privilege.

Other documents and information (including attachments to emails) relating to current consultation

	Document	Date	Details of release /withholding /refusal
5.	Internal Advice to Fergus Gammie	15 August 2018	Released in full.
6.	COI powerpoint presentation produced by Mark Rounthwaite	n/a	Released with some information redacted because it is out of scope.
7.	Ministerial Briefing Note	2 November 2018	Released in full.

Correspondence and documents relating to industry concerns about JEVIC and VINZ conflicts of interest

8.	ARA Committee paper 2018/03/A259 <i>Industry Concerns about ownership of VINZ</i>	1 March 2018	Released in full.
9.	ARA Committee paper 2018/05/A269 <i>Dealing with Concerns about Ownership of Vehicle Inspection New Zealand and JEVIC New Zealand Limited</i>	11 May 2018	Released with some information withheld (by redaction) under s 9(2)(h) to maintain legal professional privilege.
10.	Minutes of the ARA Board Committee meeting of 1 March 2018	1 March 2018	Released with some information redacted because it is out of scope.
11.	Minutes of the ARA Board Committee meeting of 11 May 2018	11 May 2018	Released with some information redacted because it is out of scope.
12.	Correspondence between Anderson Creagh Lai, Glenie Legal Limited, and the Transport Agency	n/a	Released with some information withheld (by redaction) under s 9(2)(a) to protect the privacy of natural persons.

Documents withheld in full under grounds in sections 6 and/or 9 of the OIA

	Document	Date	Details of release /withholding /refusal
13.	Legal advice from Dave Whiteridge to Fergus	10 July 2018	Document withheld in full under s 9(2)(h) to maintain legal professional

	Document	Date	Details of release /withholding /refusal
	Gammie entitled "Industry concerns regarding ownership of VINZ and JEVIC"		privilege.
14.	Board paper 2018/07/1265 Other Updates – Regulatory Activity and Compliance Interventions Update	20 July 2018	Document withheld in full. Some information withheld under s9(2)(h) in order to maintain legal professional privilege, and the remainder of the document is out of scope.
15.	Memorandum from Meredith Connell dated 23 July 2018	dated 23 July 2018	Document withheld in full under s 9(2)(h) to maintain legal professional privilege.
16.	Letter for advice from Meredith Connell to the New Zealand Transport Agency	2 August 2018	Document withheld in full under s 9(2)(h) to maintain legal professional privilege.
17.	Draft warning notices to JEVIC and VINZ	3 August 2018	Document withheld in full under s 9(2)(h) to maintain legal professional privilege.
18.	Emails between Meredith Connell and NZTA staff, October 2018 – February 2019.	n/a	Document withheld in full under s 9(2)(h) to maintain legal professional privilege.
19.	Emails between Dave Whiteridge and Robert Broadnax on 10 July 2018	10 July 2018	Document withheld in full under s 9(2)(h) to maintain legal professional privilege and because disclosure of that information would breach that privilege.
20.	Emails between Anna Moodie, Fergus Gammie, Charles Ronaldson and Mark Rounthwaite on 27 September 2018 and 1 – 2 November 2018	n/a	Document withheld in full under s 9(2)(h) to maintain legal professional privilege.
21.	Email between Anna Moodie and Roger Wilkin on 2 November 2018	n/a	Document withheld in full under s 9(2)(h) to maintain legal professional privilege.
22.	Email between Angela Duncan and Steve Penman attaching legal advice from		Document withheld in full under s 9(2)(h) to maintain legal professional

	Document	Date	Details of release /withholding /refusal
	2010 and 2012, and the attached advice		privilege.
23.	<p>Draft or early versions of the following documents:</p> <ul style="list-style-type: none"> • Internal Advice to Fergus Gammie 15 August 2018. • Board paper 2018/10/1292 Managing Vehicle Inspection Conflicts of Interest. • Supplementary paper to 2018/11/1303 <i>Managing Vehicle Inspection Conflicts of Interest</i>. 	n/a	Documents withheld under s 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.
24.	118 Weekly Report WE 31 August 2018	31 August 2018	The part of this document that is in scope is withheld under section 9(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials, and under s 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.

Documents refused under section 18 of the OIA

	Document	Date	Details of release /withholding /refusal
25.	Minutes of the NZTA Board meetings, October and November 2018	n/a	Refused under s 18(d) as the information is publicly available on the NZTA website. Some relevant sections of the minutes have been withheld (by redaction) under s 9(2)(h) to maintain

			legal professional privilege.
26.	Consultation documents published on the Agency website, including the draft Managing Integrity of Vehicle Certification Inspection and Inspection Organisations – Operational Policy	n/a	Refused under s 18(d) as the document is already within the public domain.

Schedule Two

Documents released

	Document	Date	Details of release /withholding /refusal
27.	Request from Stuart Weir of 12 November 2018	12 November 2018	Released with some information withheld (by redaction) under s 9(2)(a).
28.	Request from Stuart Weir of 16 November 2018	16 November 2018	Released with some information withheld (by redaction) under s 9(2)(a).
29.	Email from Chen Palmer of 22 November 2018	22 November 2018	Released with some information withheld (by redaction) under section 9(2)(ba)(ii) to protect information which is subject to an obligation of confidence, where the making available of the information would be likely otherwise to damage the public interest. Other information has been withheld by redaction under s 9(2)(a) to protect the privacy of individuals.
30.	Request from Chen Palmer of 17 January 2019	17 January 2019	Released with some information withheld (by redaction) under section 9(2)(ba)(ii) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest. Other information has been withheld by redaction under s 9(2)(a) to protect the privacy of individuals.

Documents withheld in full under grounds in section 9 of the OIA

1.	Email from Gordon Shaw to Fergus Gammie	1 November 2018	Withheld under section 9(2)(ba)(ii) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest.
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1.	Email from Chen Palmer on 19 November 2018	19 November 2018	Withheld under section 9(2)(ba)(ii) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest.
1.	Letter from Chen Palmer of 28 November 2018	28 November 2018	Withheld under section 9(2)(ba)(ii) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest.
2.	Letter from Chen Palmer of 19 December 2018	19 December 2018	Withheld under section 9(2)(ba)(ii) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest.
31.	Without prejudice correspondence between Gordon Shaw (Chief Executive of VINZ) and the Transport Agency: <ul style="list-style-type: none"> • Letter from Gordon Shaw to Michael Stiassny of 11 February 2019 • Letter from Gordon Shaw to Mark Ratcliffe of 15 February 2019 • Letter from Gordon Shaw to Michael Stiassny of 15 February 2019 	n/a	Withheld under section 9(2)(ba)(ii) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest; and section 9(2)(j) in order to enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).
32.	Letter from Chen Palmer of 18 February 2019	18 February 2019	Withheld under section 9(2)(ba)(ii) to protect information which is subject to an obligation of confidence or which

			any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest.
33.	Confidential email correspondence from JEVIC, VINZ, Chen Palmer, and Stuart Weir to Meredith Connell	n/a	Withheld under section 9(2)(ba)(ii) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest; and section 9(2)(h) in order to maintain legal professional privilege.