



15 July 2025

s 9(2)(a)

Official information request

Our ref: R001070

Tēnā koe

Thank you for your Official Information Act 1982 (OIA) request, which the Ministry for Regulation (Ministry) received on 16 June 2025.

You requested:

“The following request for information is made in relation to Annex Three: The Treaty of Waitangi/te Tiriti o Waitangi Impact Analysis for the Regulatory Standards Bill, as included in the document bundle titled Information Release - Policy Approvals for Progressing a Regulatory Standards Bill May 2025, available from the Ministry for Regulations (MfR) website.

I note that Annex 3 contains deleted information on page 2 through page 8, and that the withholding grounds are stated as s 9(2)(h) or [LEGALLY PRIVILEGED: s 9(2)(h)].

- 1. Since publishing the above bundle of documents on the MfR website in May, has MfR made available, any of the information that was deleted/withheld? If yes, I wish to request a copy of the updated/amended version of the document, The Treaty of Waitangi/te Tiriti o Waitangi Impact Analysis for the Regulatory Standards Bill.*
- 2. I request any document or similar, that contains the assessment, decision, and/or grounds in support of MfR’s determination that there was good reason and it was necessary, to withhold the information within Annex 3, marked s 9(2)(h) or [LEGALLY PRIVILEGED: s 9(2)(h)].*
- 3. If not already addressed at point 2, please confirm the category of legal privilege that applies to the information deleted/withheld in Annex 3. I have in mind the Ombudman’s advice that if information is subject to legal professional privilege, it is always open to the client to decide whether to waive that privilege and release the information at issue. Also, that a document does not become the subject of legal professional privilege because it is signed by a legal adviser or includes a claim to being privileged.*
- 4. If not already addressed at point 2, did MfR identify any reasons that rendered it desirable, to make the withheld information available, but chose not to? If yes, please advise.*

5. *If not already addressed at point 2, what public interest considerations or assessments were undertaken in order for MfR to state, on the cover page of the Policy bundle, that “no public interest has been identified that would outweigh the reasons for withholding the information.”*

Response

The published material in the Ministry website, *Information Release - Policy Approvals for Progressing a Regulatory Standards Bill May 2025* comprises six documents¹. We understand your information request pertains wholly to *Annex 3: The Treaty of Waitangi/te Tiriti o Waitangi Impact Analysis for the Regulatory Standards Bill*.

On item 1: *since publishing the above bundle of documents on the MfR website in May, has MfR made available, any of the information that was deleted/withheld? If yes, I wish to request a copy of the updated/amended version of the document, The Treaty of Waitangi/te Tiriti o Waitangi Impact Analysis for the Regulatory Standards Bill.*

Since publishing the material, “Information Release - Policy Approvals for Progressing a Regulatory Standards Bill May 2025”, the Ministry has not made available any information that was withheld in Annex 3.

On item 2: *any document or similar, that contains the assessment, decision, and/or grounds in support of MfR’s determination that there was good reason and it was necessary, to withhold legally-privileged information within Annex 3.*

This information is contained across various documents. In order to assist what we understand to be your intent to receive the information, we have summarised the relevant parts of these documents here.

In making our decision to withhold legally privileged information in the proactively released Annex 3, we were guided by the following:

Ombudsman guidance on legal professional privilege²

The guidance from the Office of the Ombudsman states that “*Legal professional privilege has long been regarded as a ‘a fundamental element in the administration of justice.’ [Beecroft v Auckland District Court [1999] 3 NZLR 672, 677]. As such, the public interest in ensuring the maintenance of the privilege is very high. Given the strength of the public interest in ensuring the maintenance of legal professional privilege, any public interest consideration, in terms of section 9(1), which might outweigh the interest which section 9(2)(h) is designed to protect would need to be particularly strong.*”

Cabinet Manual guidance on legal advice and legal professional privilege³

There is similar guidance in section 4.63 of the Cabinet Manual, which states that “*If legal advice is protected by legal professional privilege, it may be withheld under the [Official Information](#)*

¹ Cabinet paper - Policy Approvals for progressing a Regulatory Standards Bill; Annex 1 - Summary of Submissions: Consultation on the proposed Regulatory Standards Bill; Annex 2 - Regulatory Impact Statement: proposed Regulatory Standards Bill; Annex 3 - The Treaty of Waitangi/te Tiriti o Waitangi Impact Analysis for the Regulatory Standards Bill; Annex 5 - Summary of departmental feedback; CAB-25-MIN-0148 - Cabinet Minute of Decision - Progressing a Regulatory Standards Bill: Policy Approvals.

² <https://www.ombudsman.parliament.nz/resources/legal-professional-privilege-guide-section-92h-oia-and-section-72g-lgoima>

³ <https://www.dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/4-ministers-law-and-inquiries/legal-advice-and-legal-professional-privilege>

Act 1982 and the Privacy Act 2020, and will not be required to be produced for inspection during discovery in legal proceedings. It is therefore important that legal professional privilege in legal advice provided to the government is maintained, and not inadvertently waived.”

Other information

You may be interested in the recently published Final Opinion of the Ombudsman relating to “Requests for unredacted copies of the Preliminary Treaty Impact Analysis for the proposed Regulatory Standards Bill”⁴.

The document, “Preliminary Treaty Impact Analysis for the proposed Regulatory Standards Bill”, was proactively released by the Ministry. Specific parts were redacted because the information contained legal advice to support Crown decision-making.

The Ombudsman received complaints about the Ministry’s decision to withhold legally-privileged information in the proactively released version of the said document, and to continue to withhold the same information when requested under the OIA. The Ombudsman’s final opinion, following completion of its investigation, is that the Ministry was entitled to withhold the redacted information on the basis that section 9(2)(h) of the OIA provided good reason for doing so.

On item 3: *if not already addressed at point 2, please confirm the category of legal privilege that applies to the information deleted/withheld in Annex 3.*

Consistent with section 4.65 of the Cabinet Manual, solicitor-client privilege applied to the withholding of information in Annex 3: “All legal advice that is provided to Ministers or government agencies (whether it is internal advice from agency legal advisers, advice from the Crown Law Office, or advice from outside legal firms to either Ministers or government agencies) will attract solicitor-client privilege.”

On item 4: *If not already addressed at point 2, did MfR identify any reasons that rendered it desirable, to make the withheld information available, but chose not to? If yes, please advise*

The Ministry has not identified any reasons that rendered it desirable to make the redacted information available, which outweighed the reasons for withholding.

Before proactively releasing any material, Ministry officials consider any potential redactions as if they were being released under the OIA. This includes redacting information where there are grounds for withholding under the Act, subject to consideration of whether there are any public interest reasons favouring release which outweigh the reasons for withholding.

On item 5: *If not already addressed at point 2, what public interest considerations or assessments were undertaken in order for MfR to state, on the cover page of the Policy bundle, that “no public interest has been identified that would outweigh the reasons for withholding the information.”*

The process of developing the proposed Regulatory Standards Bill (Bill) involved a significant amount of legal advice given the specific nature of the Bill; as a result legal advice is embedded throughout most of the documents related to the Bill.

⁴ <https://www.ombudsman.parliament.nz/resources/requests-unredacted-copies-preliminary-treaty-impact-analysis-proposed-regulatory>

The redactions in Annex 3 were done consistent with section 9(2)(h) of the OIA, which allows information to be withheld to maintain legal professional privilege.

We assessed the relevant public interest factors - transparency, public participation, accountability, and the administration of justice - in line with Ombudsman guidance⁵. To promote transparency, uphold the principle of availability, support public engagement in the consultation process, and demonstrate accountability, we released as much information as possible about the Bill (including most of the contents of Annex 3), without waiving legal professional privilege. While there is a public interest in disclosing information related to the potential legal implications of the Bill to support the administration of justice, this is outweighed by the countervailing public interest in preserving legal professional privilege.

Right of review

If you wish to discuss this decision with us, please contact hello@regulation.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that we may publish this response (with your details removed) on the Ministry for Regulation website.

Ngā mihi

s 9(2)(a)



Aisling Risdon

Head of Ministerial Services
Ministry for Regulation

⁵[https://www.ombudsman.parliament.nz/sites/default/files/2024-03/Public interest A guide to the public interest test.pdf](https://www.ombudsman.parliament.nz/sites/default/files/2024-03/Public%20interest%20A%20guide%20to%20the%20public%20interest%20test.pdf)