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Dear James

Thank you for your emails of 21 and 26 July and 3 August 2019, requesting the following information:

No.	Date	Wording of request
1	21 July 2019	<i>All information about why [kindergarten teachers get higher funding]</i>
2		<i>Given the equal pay claim, why there is a huge gap between the unionised Kindergarten negotiated [...] and the rate [the Ministry thinks] is the minimum other teachers within ECE should earn un-unionised</i>
3	26 July 2019	<i>The % of union members employed by kindergartens (by region and service if you have it [...])</i>
4	3 August 2019	<i>The legal advice sought regarding the legality of the Ministry negotiations with NZEI and would the Commerce Act be breached as a result by the competitive advantage Kindergarten associations negotiated, as Kindergarten[s] can now pay much higher salaries in a competitive marketplace with a teacher shortage</i>
5		<i>A full copy of the negotiation notes</i>
6		<i>If the "pay Parity" claim was raised by either side and the result of this</i>

Your requests have been considered under the Official Information Act 1982 (the Act). The response to your requests is set out below.

1. *All information about why [kindergarten teachers get higher funding]*

The government subsidises early learning services, including kindergartens. It is largely up to individual services to determine how they spend this money.

Registered teachers employed by free kindergarten associations are state sector employees under the State Sector Act 1988. Because kindergarten teachers are state sector employees, the State Services Commissioner has the statutory authority to negotiate the Kindergarten Teachers, Head Teachers and Senior Teachers' Collective Agreement (KTCA) with the representative union NZEI Te Riu Roa (on behalf of registered kindergarten teachers). The Commissioner has delegated bargaining authority to the Secretary for Education Iona Holsted.

The higher funding rates paid to free kindergartens support pay increases to registered teachers in kindergartens.

2. *Given the equal pay claim, why there is a huge gap between the unionised Kindergarten negotiated [...] and the rate [the Ministry thinks] is the minimum other teachers within ECE should earn un-unionised*

Between the 2005/06 and 2010/11 financial years, the non-salary component of ECE funded child hour (FCH) subsidy rates was annually adjusted for inflation. The remaining salary component of the FCH rates for teacher-led centre-based services (ie, education and care services and free kindergartens) was also adjusted annually to reflect the KTCA changes.

In 2010/11, free kindergartens continued to receive salary component adjustments to account for additional costs arising from KTCA bargaining, but the funding rates for other education and care centres were no longer adjusted. This is why there is a distinct funding differential between free kindergartens and other services. This was the result of the Government of the day deciding that it would not pass on the higher rates to education and care services if there was no assurance they were paying KTCA level salaries.

3. *Percentage of union members employed by kindergartens*

I am refusing this part of your request under section 18(e) of the Act, as the information is not held by the Ministry. We do not hold information about individual kindergarten teachers' union memberships. Kindergarten Teachers are employed directly by Kindergarten Associations. You may wish to address this part of your request directly with them.

4. *The legal advice sought regarding the legality of the Ministry negotiations with NZEI and would the Commerce Act be breached as a result by the competitive advantage Kindergarten associations negotiated, as Kindergarten[s] can now pay much higher salaries in a competitive marketplace with a teacher shortage.*

Collective Agreements in the state education sector are negotiated between the Secretary for Education under a delegation from the State Services Commissioner made pursuant to section 23 of the State Sector Act 1988, and the relevant union(s).

We did not seek legal advice regarding the legality of the Ministry negotiations with NZEI and whether the Commerce Act would be breached as a result by the competitive advantage Kindergarten associations negotiated, because the duty of good faith under the Employment Relations Act 2000 requires the parties to conclude bargaining for a collective agreement. For this reason, this part of your request is refused under section 18(e) of the Act, as the requested advice does not exist.

5. *A full copy of the negotiation notes*

I am withholding all negotiation notes under sections:

- 9(2)(g)(i) of the Act, to maintain the effective conduct of public affairs through the free and frank expression of opinions by, between or to Ministers of the Crown or officials in the course of their duties; and
- 9(2)(j) of the Act, to avoid prejudice to future negotiations.

6. *If the "pay Parity" claim was raised by either side and the result of this.*

I have interpreted your request as relating to a claim for pay parity between kindergarten teachers and teachers in education and care services.

The Government is not directly involved in setting salaries for teachers outside the KTCA. However, the Secretary for Education does set minimum salaries that education and care services must attest to paying their certificated teachers if the services want to access higher funding rates. The current rates were set on 1 August 2019, and are available on our website, at <https://www.education.govt.nz/attestation>. Information about the attestation process is also contained in the *ECE Funding Handbook*

<https://www.education.govt.nz/early-childhood/funding-and-data/funding-handbooks/ece-funding-handbook/>

Employers may choose to pay teachers more than the minimum rates specified. Union members can raise any pay concerns they may have with NZEI Te Riu Roa, as they are best placed to advocate on their behalf during collective agreement negotiations.

Thank you again for your request. Section 28(3) of the Act gives you the right to refer my response to an Ombudsman. You can do this by emailing [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'P Cleaver'.

Pauline Cleaver  
**Acting Deputy Secretary**  
**Early Learning and Student Achievement**