



29 May 2020

Dave Lane

fyi-request-12489-668216b6@requests.fyi.org.nz

Tēnā koe Dave

Thank you for your request of 20 March 2020 to the Ministry of Education for information on *informed consent for proprietary software used at New Zealand Public Schools*.

Your request has been considered under the Official Information Act 1982 (the Act).

My response to your request is set out below in the order of the questions you raised.

- *Almost all NZ's public school kids are at either a "Google" or "Microsoft" school. Their curriculums are tightly tied to Google Docs or Microsoft Office 365. Most also use the SeeSaw classroom/portfolio system extensively. All of these are foreign corporate proprietary software with most or all student data hosted outside the NZ jurisdiction.*
- *Who at the Ministry reviews & approves the Terms & Conditions of all these proprietary applications? Where are their analyses and guidance for schools and parents published for review? How often are these Ts&Cs revisited and re-analysed, given that all of the software vendors stipulate "these terms can change at any time without notice"?*

The Ministry does not review or approve the terms and conditions on behalf of schools.

Because schools are independent entities governed by boards of trustees, they are free to decide what technology platforms they deploy within their schools for their students. As you point out, schools typically take advantage of educational product offerings. Schools are responsible for assessing the costs, benefits and risks of these products.

Schools can seek advice from a range of sources to assist their decision making, including:

- The Ministry's Enabling e-learning website: <http://elearning.tki.org.nz/>.
- Ministry funded ICT Helpdesk (0800 225542, email: callict@tki.org.nz) which can assist schools with software enquiries, and will re-direct calls to other parties where appropriate to assist schools.
- Ministry funded Connected Learning Advisory service, which has a specific role to provide advice and support for using digital technologies effectively for teaching and learning:
<http://elearning.tki.org.nz/Technologies/Technical-support-and-procurement/CLA-resources>.

We note that we responded in early 2019 to a request from you for information on the Ministry's role in relation to schools' adoption of Microsoft 365. Our position on software used for education remains the same.

The Ministry funds some software that schools can choose to use. General information about these can be found here: <http://education.govt.nz/school/digital-technology/software/>. Licenses are assigned to a school, and it is the responsibility of schools to review the Terms and Conditions when changes occur. We have working relationships with software suppliers, who often inform us of changes that affect schools so that we can include these on our website.

These software products are well tested and have been deployed in educational jurisdictions and institutes around the world. Information about their data policies are published online. Google's student data policies can be found here: <https://edu.google.com/why-google/privacy-security/>; and Microsoft's here: <https://www.microsoft.com/en-sg/apac/trustedcloud/new-zealand.aspx>. If you click on the Privacy link and go down three levels you can find: <https://privacy.microsoft.com/en-us/PrivacyStatement>.

- *Who clicks "I ACCEPT" on behalf of each student for each of these proprietary apps? As a parent, I've never been asked to approve the use of any of these applications for my children. Wouldn't this be required by the software proprietors to claim "informed consent"? Doesn't having a non-parent or guardian accepting it on behalf of parents and students constitute a breach of the terms of all these applications?*

Schools own the software licenses for the products they choose to implement & use in their school environments and make these software products available to their students. If parents are concerned about consenting to their children using software used by their school, they should approach the principal or board directly.

- *How does the Ministry fulfil its statutory obligations to public school children whose informed parents quite reasonably reject the Ts&Cs of one or more of these proprietary services as unacceptable impositions on their children's freedom, privacy, and data sovereignty?*

Boards of trustees carry these statutory responsibilities.

- *What advice have you received on these issues from your legal advisors? Who have you consulted to provide suggestions for less controversial software options and what advice have you received? For example, that you could adopt open source options that could be commercially hosted on behalf of the Ministry onshore in the NZ jurisdiction, where the Ministry can then set the Ts&Cs (similar to how apps like Moodle and Mahara (aka My Portfolio) are hosted currently)?*

The Ministry has not received advice on these issues from our legal advisers, except to confirm that Boards of Trustees are responsible for decisions relating to their adoption of technologies.

The Government's Chief Digital Officer oversees the development and management of digital for the state sector, and leads the direction of digital. The Government's Chief Digital Officer is responsible for, among other things, setting digital policy, standards and guidance for government agencies. You can find information here:

www.digital.govt.nz.

In response to COVID-19, the Government's Chief Digital Officer has directed that Government organisations use public cloud services in preference to traditional IT systems. You can find this information at the following site:

www.digital.govt.nz/standards-and-guidance/technology-and-architecture/cloud-services/.

Please note, the Ministry now proactively publishes OIA responses on our website. As such, we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Nāku noa, nā



Zoe Griffiths
Deputy Secretary
Business Enablement and Support