

25 June 2021

S. Rowe

By email: fyi-request-13968-ec164567@requests.fyi.org.nz

Dear Requestor

Request for information

We refer to your Official Information Act 1982 (**OIA**) request received on 13 October 2020 via email from the website fyi.org.nz (**FYI**) seeking information about a complaint made to the Insurance and Financial Services Ombudsman's dispute resolution scheme (**IFSO**) by a Southern Response customer (**Request**).

The full details of your request can be accessed on FYI via this link and are included as Appendix 1 at the end of this letter:

<https://fyi.org.nz/request/13968-southern-response-s-interactions-with-ifso-and-icnz>

Eligibility to request information

We initially responded to your Request by asking you to contact us directly to discuss whether you meet the eligibility criteria in section 12 of the OIA.

However, on 7 April 2021 the Office of the Ombudsman informed us that it had sighted your New Zealand passport and was satisfied that you are eligible to request information under the OIA. We are now responding to your Request on this basis.

Response to your Request

We refuse your Request on the two independent grounds outlined below.

Protection of privacy

First, your Request is directed at a particular complaint to IFSO about a specific insurance claim and, as a result, we must refuse your Request under section 9(2)(a) of the OIA, on the basis that withholding the information requested is necessary to protect the privacy of the persons involved. As the information you have requested does not appear to be your own personal information or information about a claimant for whom you have authority to act, disclosing the information you have requested about this specific complaint could interfere with the privacy of the claimants.

Our decision to refuse your Request on this basis has been made after careful consideration of the public interest considerations referred to in section 9(1) of the OIA.

Confidential information

Second, the IFSO complaint at which your Request is directed was a complaint that was both made to and considered by IFSO on a confidential basis. As a result, we must also refuse your request under section 9(2)(ba) of the OIA, on the basis that withholding the information requested is necessary to protect information which is subject to an obligation of confidence.

The obligation of confidence attached to the information you have requested arises from the fact that IFSO's dispute resolution service is a confidential negotiation process. This is stated in the IFSO Terms of Reference (which can be found on the IFSO website). Paragraph 9.1(a) of IFSO's Terms of Reference also notes that IFSO "*...will not begin considering a complaint until the Complainant has confirmed in writing acceptance of confidentiality.*" IFSO decisions also usually contain reminders to the parties that all information relating to any IFSO complaint and decision must be kept confidential.

In this case, it is necessary to withhold the confidential information you have requested on the basis provided in section 9(2)(ba)(i) of the OIA. In particular, it is in the public interest for Participants in the IFSO scheme to continue to share information with IFSO on the full, frank, confidential basis necessary for IFSO to effectively resolve complaints. This supply of information to IFSO would be prejudiced if the obligations of confidence agreed to by both parties from the outset of the IFSO complaint process were not protected.

Our decision to refuse your Request on this second and independent basis has been made after careful consideration of the factors outlined above and the public interest considerations referred to in section 9(1) of the OIA.

Your rights

Please feel free to contact us if you have any concerns about this response. You also have the right to contact the Ombudsman about this response. To do so, you can visit their website - <http://www.ombudsman.parliament.nz/>

Yours sincerely



Casey Hurren
Chief Executive



Appendix 1

This is relating to Southern Response's activities in dealing with a complaint about ethical violations raised by policyholders who are considered to have vulnerable status according to the New Zealand Human Rights Commission guidelines.

In 2018 a complaint was raised about Southern Response committing ethical violations. In 2019 the Dispute Resolutions Scheme, Insurance & Financial Services Ombudsman Scheme (IFSO Scheme), found that Southern Response had committed Significant Breaches of the Fair Insurance Code (FIC). In 2020 ICNZ's Code Compliance Committee upheld the IFSO Scheme's findings that Southern Response had Significantly Breached the FIC. This was then passed to the ICNZ Board of insurance industry executives who affirmed the findings.

The complaint was originally filed with ICNZ in August 2018 to be heard at the November 2018 Code Compliance Committee meeting. ICNZ agreed to this, collected the relevant information and then two days before the meeting in November ICNZ said that after speaking to Southern Response that they would not hear the complaint based on information that had already been provided and assessed back in August. ICNZ reversed their previous decision saying that the complaint needed to be heard by the IFSO Scheme first.

1) Did any representative of Southern Response communicate with either the IFSO Scheme or ICNZ relating to getting ICNZ not to hear the complaint in November 2018?

After the complaint was lodged with the IFSO Scheme, Southern Response was asked to provide their response within two weeks of 5 November 2018. Instead of two weeks Southern Response took 3.5 months finally making the submission on 1 March 2019.

Southern Response missed the following deadlines set by the IFSO Scheme staff managing the complaint.

- * 5 November 2018 deadline set to 19 November 2018
- * 10 December 2018 IFSO asked for the submission.
- * 19 December 2018 IFSO asked for submission with Southern Response saying that it will start the submission in January.
- * 9 January 2019 IFSO asked for submission.
- * 14 January 2019 Southern Response requested an extension to 28 January 2019.
- * 23 January 2019 Southern Response requested an extension to 2 February 2019.
- * 1 March 2019 Southern Response said the submission will be sent shortly.

2) Were there any other deadlines or requests for the submission that Southern Response did not meet?

3) What reason did Southern Response give to the IFSO Scheme for not making the submission on 2 February 2019?

During the period that Southern Response was supposed to be submitting its response to the complaint it engaged in communication on 13 December 2018 with the IFSO Scheme staff handling the complaint saying:

- * Southern Response was in direct discussions with the IFSO Scheme's Ombudsman about convincing the complainants to not pursue a decision about violations of the Fair Insurance Code, and instead to have a "facilitated meeting" about the claim.



* Southern Response said that the IFSO Scheme's Ombudsman had made contact with the secondary complainant to change her mind about the complaint.

* Southern Response said that involving the primary contact would "likely to pose some difficulties" because he was in a different country.

4) Who initiated contact between Southern Response and the IFSO Scheme's Ombudsman?

5) When was contact first made between Southern Response and the IFSO Scheme's Ombudsman about the complaint or complainants?

6) What reasons does Southern Response have for directly communicating with the IFSO Scheme's Ombudsman instead of addressing all communication through the IFSO Scheme staff assigned to the complaint?

7) Did Southern Response's stated desire to not address the complaint impact on the timeliness of Southern Response providing its submission to the IFSO Scheme?

8) Did Southern Response inform the IFSO Scheme's Ombudsman that the secondary complainant should not be contacted because it knew she was in extremely poor health and had not been engaged on the claim in years?

9) What facts did Southern Response use to conclude that involving the primary contact would be difficult despite having been involved with the primary contact for years prior?

On 5 November 2018 in an email between Southern Response and the IFSO Scheme it is said that "Although you may have addressed the complaint in previous correspondence, it is important that you now address the specific matters raised by the Complainant in the complaint form and supporting letter."

10) Did Southern Response address the complaint in previous correspondence with the IFSO Scheme?

11) When did the previous correspondence start?

Southern Response staff were directly communicating with the IFSO Scheme's Ombudsman, and the Southern Responses CEO was directly communicating with the ICNZ Chief Executive.

12) Please confirm that Southern Response staff were communicating with the IFSO Scheme's Ombudsman about not addressing the complaint, while missing deadlines in dealing with the IFSO Scheme staff responsible for the complaint.

13) Please confirm that the Southern Response CEO communicated by email about this complaint with the ICNZ Chief Executive in December 2018, and by phone in June 2019, and that these dates are prior to Southern Response giving notice to ICNZ about the IFSO Scheme's finding of a Significant Breach of the Fair Insurance Code.

In the IFSO Scheme's findings it attributed a number of matters to inexperienced staff, instead of dishonesty. However, Southern Response has said that these statements of inexperienced staff are limited to the dates 17 January 2017 to 3 November 2017.

Outside of this timeframe Southern Response's gave the primary complainant a 1 week deadline to technically disprove a repair methodology that Southern Response's geotechnical engineers had already told them was not a valid repair option. Southern Response said that if the complainant did not provide his own technical evidence that Southern Response would proceed with their desired repair methodology without further input from the policyholders.



This 1 week deadline was given while the complainant was in hospital, having been admitted to ICU, was undergoing procedures, and had told Southern Response that he needed to reduce his stress.

This matter, and more, was not specifically addressed in the IFSO Scheme's findings, and when it was questioned the IFSO Scheme's Ombudsman said that the IFSO Scheme would not make any assessments of dishonesty and that ICNZ should make an assessment instead. However, ICNZ only addressed the matters explicitly cited by the IFSO Scheme, choosing to ignore the Ombudsman's statements that they should make an assessment of dishonesty.

14) Southern Response stated to the IFSO Scheme that it did not do anything that would bring the industry into disrepute. (A requirement for a finding of a Significant Breach) Does this include actions taken like assigning a short deadline, regarding a repair methodology known to be invalid, while aware the complainant was in hospital and requested respite?

Despite both the IFSO Scheme and ICNZ finding that Southern Response had committed Significant Breaches of the Fair Insurance Code, the IFSO Scheme did not recommend any remedial action, and ICNZ did not enforce any sanctions against Southern Response.

Southern Response stated to ICNZ that "Southern Response wishes to be heard by the ICNZ's Code Compliance Committee before the Committee makes any decisions or recommendations in relation to this complaint or Assessment."

15) What information did Southern Response supply to the ICNZ Code Compliance Committee that led them to conclude that the complaint was resolved?

16) Was Southern Response aware that the ICNZ Code Compliance Committee processes would mean that it would not contact the complainant to verify any details supplied by Southern Response?

