

29 November 2022

REF: OIA 83618

Polly Adams

**By email:** [fyi-request-20833-e423037d@requests.fyi.org.nz](mailto:fyi-request-20833-e423037d@requests.fyi.org.nz)

Tēnā koe

### **Request for official information: privately-owned land and Treaty settlements**

Thank you for your correspondence of 11 October 2022 requesting under the Official Information Act 1982 (OIA) background cabinet papers and advice to Ministers, and any other key documents which specifically address the matter of whether land held in private ownership (not held by the Crown) could be considered as part of the Tribunal's processes, and could be considered by the Crown as part of Treaty Negotiations and/or Settlement.

Your request was transferred from Te Puni Kokiri to Te Arawhiti as it relates to Treaty settlements.

Documents held by Te Arawhiti that relate to your request are attached.

I hope it will assist your inquiry if I provide some background to the attached information.

The Waitangi Tribunal was established in 1975. At that time, it could not inquire into, or make recommendations about, claims about Treaty breaches before the enactment of the Treaty of Waitangi Act 1975. That meant it could not inquire into or make recommendations about Māori tribal land loss in the nineteenth century. The Tribunal's jurisdiction was extended in 1986 to encompass claims about Treaty breaches from 6 February 1840.

There was at that time no constraint on recommendations the Tribunal could make to the Crown about remedying Treaty breach claims the Tribunal had found to be well-founded.

In 1992, the Waitangi Tribunal released the *Te Roroa Report 1992*. The report appeared to recommend that the Crown acquire specific areas of privately-owned land for return to the former Māori owners on the basis that the Crown in the nineteenth century sold that land in contravention of an agreement to reserve it for the Māori owners.

In 1993 Parliament passed the Treaty of Waitangi Amendment Act 1993. The Act added a provision to the Treaty of Waitangi Act stating that, apart from certain exceptions relating to land transferred by the Crown to State-Owned Enterprises, the Tribunal was prohibited from recommending the return to Māori ownership of any private land or the acquisition by the Crown of any private land.

As the attached 1992 report from the Treaty of Waitangi Policy Unit (written in response to the

Tribunal's recommendations in the *Te Roroa* report) says, Crown policy has always been that "private land is not used to settle Māori land grievances unless the purchase is negotiated on a willing buyer/willing seller basis."

When Te Arawhiti acknowledged receipt of your OIA request, we advised we may proactively release your OIA response on our website.

After considering our response to your request, we can advise that it will be published no earlier than 20 working days from the date of this letter at [www.tearawhiti.govt.nz](http://www.tearawhiti.govt.nz). Your personal and other identifying information will be removed.

If you have any concerns about the information in this response being published on our website please contact us by emailing [officialcorrespondence@tearawhiti.govt.nz](mailto:officialcorrespondence@tearawhiti.govt.nz) by 5.00pm on 29 November 2022.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about this process is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or phone 0800 802 602.

Nāku noa, nā



Adam Levy

**Principal Advisor**

**Table of documents provided under the Official Information Act 1982**

DOCUMENT NUMBER	DATE	DOCUMENT DESCRIPTION	EXTENT OF INFORMATION PROVIDED	REASON FOR WITHHOLDING/REFUSING (refer to notes below Table)
1	1992 or 1993	Treaty of Waitangi Policy Unit report on Waitangi Tribunal Te Roroa report	Released in full	N/A
2	27.10.1992	Cabinet Minute 1993 CAB (92) M 43-21: Proposed Amendment on land in private ownership	Released in full	N/A
3	10.06.1993	Cabinet Committee Minute 1993 LEG (93) M 14-1: Treaty of Waitangi Act Amendment Bill	Released in full	N/A
4	14.06.1993	Cabinet Minute 1993 CAB (93) M 21-14: Treaty of Waitangi Act Amendment Bill	Released in full	N/A

## Table of documents provided under the Official Information Act 1982

### Reasons for withholding under section 9 of the Official Information Act 1982<sup>1</sup>

- s 9(2)(a) – protect the privacy of natural persons, including the deceased.
- s 9(2)(b) – protect information that would:
  - (i) – disclose a trade secret;
  - (ii) – unreasonably prejudice commercial position of subject.
- s 9(2)(ba) – protect information where making it available would:
  - (i) – prejudice the supply of similar information; or
  - (ii) – likely otherwise damage the public interest.
- s 9(2)(c) – prejudice to measures protecting health or safety of the public.
- s 9(2)(d) – prejudice to substantial economic interests of New Zealand.
- s 9(2)(e) – prejudice to measures that prevent or mitigate material loss to members of the public.
- s 9(2)(f) – maintain the constitutional conventions which protect:
  - (i) – communications by or with the Sovereign or their representative; or
  - (ii) – collective and individual ministerial responsibility; or
  - (iii) – the political neutrality of officials; or
  - (iv) – the confidentiality of advice tendered by Ministers and Crown officials.
- s 9(2)(g) – maintain the effective conduct of public affairs through:
  - (i) – the free and frank expression of opinions;
  - (ii) – the protection from improper pressure or harassment.
- s 9(2)(h) – maintain legal professional privilege.
- s 9(2)(i) – enable the Crown holding the information to carry out commercial activities.
- s 9(2)(j) – negotiations sensitive.
- s 9(2)(k) – prevent the disclosure of information for improper gain or advantage.

### Reasons for refusing information under section 18 of the Official Information Act 1982<sup>1</sup>

- s 18(a) – good reasons by virtue of s 6, 7 or 9 of the Act:
- s 18(b) – the department or Minister or organisation neither confirms nor denies the existence or non-existence of the information:
- s 18(c) – making the information available would -
  - (i) – be contrary to a specified enactment; or
  - (ii) – constitute contempt of court or the House of Representatives:
- s 18(d) – the information is, or will soon be, publicly available:
- s 18(da) – the request is made by a defendant or person acting on behalf of a defendant and is -
  - (i) – information that could be sought under the Criminal Disclosures Act 2008; or
  - (ii) – information that could be sought under that Act and that has been disclosed or withheld under that Act:
- s 18(e) – the information requested does not exist, or cannot be found:
- s 18(f) – the information cannot be made available without substantial collation or research:
- s 18(g) – the information is not held by the department or Minister of the Crown or organisation, and the person dealing with the request has no grounds for believing that it is:
  - (i) – held by another department, Minister of the Crown or organisation, or by a local authority; or
  - (ii) – connected more closely with the functions of another department or Minister of the Crown or organisation or local authority:
- s 18(h) – the request is frivolous or vexatious or the information requested is trivial.

<sup>1</sup> Please see the Official Information Act 1982 for full version of sections 9 & 18 of the Act.