

17 April 2014

A O'Sullivan

Email: fyi-request-2515-7d156705@requests.fyi.org.nz

Dear A O'Sullivan

Response to Request for Official Information

Scope of your request

On 23 February 2015 you requested that the Environmental Protection Authority (EPA) provides you with information relating to the Chatham Rock Phosphate (CRP) marine consent application. Specifically, pursuant to the Official Information Act 1992 (OIA) you requested:

...any and all correspondence between the EPA staff and the Decision Making Committee - and vice versa - relating to the above hearing.

...copies of any minutes, agendas, notes or other records of meetings between the EPA staff and the Decision Making Committee and vice versa relating to the above hearing, including both formal and informal meetings, and including telephone conversations...[including] hand written notes and any information concerning discussions which was not recorded in writing.

... copies of any minutes, agendas, notes or other records of meetings between the EPA staff members relating to the above hearing, including both formal and informal meetings, and including telephone conversations...[including] hand written notes and any information concerning discussions which was not recorded in writing.

Clarification of your request

In a 25 February 2015 email we sought clarification from you regarding the scope of your request. We noted that as it was originally framed your request captured a large amount of information, and as such responding to it would entail substantial collation and research. Also, due to its breadth it may have captured information beyond that which you wanted the EPA to provide. For example, we pointed out that information regarding administrative matters such as hearing scheduling came within the scope of your original request.

In response on 26 February 2015 you indicated that you did not wish to receive "items of a purely administrative nature" and as such you asked that we remove such items from the scope of your request.

Response to your request

Section 2(6)(ba) of the OIA provides that information that relates to the judicial functions of a Crown entity does not constitute 'official information' under the OIA. As the EPA is a Crown entity, and given the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 marine consent hearing process is judicial in nature, much of the information held by the EPA in relation to marine consent hearings it conducts is not official information under the OIA.

With the above in mind we respond to each of your requests in turn.

Information relating to the DMC

A Decision-making Committee (DMC) is appointed by the EPA to carry out a judicial function; namely to hear and decide a marine consent application. Information that a DMC produces during the course of a marine consent process is for the purpose of conducting a hearing and collating the information it requires to make a decision on an application. It follows that correspondence between the EPA staff and the CRP DMC, including records of meetings, is not considered official information under the OIA as it relates to the exercise of a judicial function.

You have not been provided correspondence between the EPA staff and the DMC in relation to the CRP hearing, or any records of meetings between the EPA staff and the DMC.

Meetings between the EPA staff

You specifically requested any records of meetings between the EPA staff in relation to the CRP hearing. Therefore, information produced by staff that is not directly related to the CRP hearing, including information produced prior to notification, is out of scope of your request.

The EPA conducted its search for records of meetings between its staff on the basis that the information you sought must be related to the hearing of the CRP application. At the conclusion of its search, the EPA found that the records and information related to these meetings were primarily of an administrative and procedural nature. Many project team meetings concerned the delegation of tasks, contract management, and updates on deliverables that the EPA is statutorily required to produce, such as notification letters or the public notice.

You clarified that information of an administrative nature does not form part of your request, and therefore we have not provided the records of these meetings.

Records of meetings that concerned material inputs into the hearing process or the production of information related to how the EPA conducted the CRP hearing are not considered official information. This is because, for the reasons outlined above, information of this nature is directly related to the EPA's judicial functions under the EEZ Act. Records of meetings related to how the EPA intended to run the hearing process and the production of staff reports, which are a material input to the decision-making process, are therefore not considered official information. You will not receive information related to these meetings.

We note that all of the information you requested is either not 'official information' or is administrative in nature.

Information provided during the CRP hearing including submissions, evidence, and the DMC's decision is available on the EPA website at: www.epa.govt.nz/EEZ/chatham_rock_phosphate/

You may have the right to complain to the Ombudsman regarding the EPA's decision on your request for information. The Ombudsman's contact for this purpose is:

The Ombudsman
Office of the Ombudsman
PO Box 10-152
WELLINGTON 6143

Yours sincerely



Rob Forlong
Chief Executive
Environmental Protection Authority