

21 August 2024

B Evans

fyi-request-26717-4276a1c1@requests.fyi.org.nz

Tēnā koe

Your request for official information, reference: HNZ00055705

Thank you for your email on 4 July 2024, asking Health New Zealand | Te Whatu Ora (Health NZ) for the following under the Official Information Act 1982 (the Act):

I wish to clarify some of your answers therein.

1) *In Appendix 1 of your response:*

“This request for proposal (RFP) is an invitation to suitably qualified suppliers to submit a proposal for the ‘Gender-Affirming Primary Care – Update to Guidelines for Gender-Affirming Care’, contract opportunity. This is a closed single-step procurement process.”

Please explain the basis for the closed nature of this contract process (which is a departure from the All of Government best practice procurement rules) and provide the usual supporting information/documentation:

a) the rationale document (Rule 14);

b) which organisations were invited to submit a proposal/tender;

c) which organisations submitted a proposal/tender;

d) GETS contract award notice and date of its publication (Rule 48).

2) “The part of your request which asks for emails, briefs, meeting minutes, etc, is refused under sections 9(2)(g)(i) and section 9(2)(b)(ii) of the Act. This is to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between employees of any public service organisation in the course of their duty as the release of this information would be likely to unreasonably prejudice the commercial position of the organisation who supplied it. It is in the public interest that such information continues to be supplied.”

Could you please clarify how the ‘commercial position’ of an organisation (i.e. PATHA) that cites itself as an ‘interdisciplinary professional association’ and whose Incorporated Society Rules state that “Pecuniary gain is not a purpose of the Society” would be unreasonably prejudiced by the release of information of our public servant’s discourse regarding this contract and what constitutes best care for our gender questioning youth/adults and the services to provide this care?

I request you please reconsider your initial refusal and consider how you might at least partially meet my request?

3) *In Appendix 1 of your response, the RFP, there are at least three references to being 'aligned with WPATH SOC v8'. However, WPATH Standards of Care (SOC8) are currently being questioned and are under intense scrutiny1,2,3,4,5.*

a. Given that the contract awarded to PATHA to update the NZ guidelines for 'gender affirming care' requires them to use SOC8 as 'best practice', what steps are Te Whatu Ora taking to amend that contract and/or otherwise take into account recent developments that indicate that WPATH SOC8 may NOT be best practice? Please provide emails, letters, memos, briefs, meeting minutes, reports, and legal opinions regarding this matter.

4) *You respond that: "...the draft guidelines will be reviewed by clinical stakeholders and undergo a sign out process to ensure that contents are clinically and culturally safe."*

Please provide documentation on this 'sign out process' (such as any applicable policy, procedure, memo or advisory documents) including definitions of what is meant by 'clinical stakeholders', 'clinically safe' and 'culturally safe' in this context. Please list the clinical stakeholders (where this might be problematic such as a single individual, please list the organisation/group that that single individual is a representative of).

Response

1) *In Appendix 1 of your response:*

"This request for proposal (RFP) is an invitation to suitably qualified suppliers to submit a proposal for the 'Gender-Affirming Primary Care – Update to Guidelines for Gender-Affirming Care', contract opportunity. This is a closed single-step procurement process."

Please explain the basis for the closed nature of this contract process (which is a departure from the All of Government best practice procurement rules) and provide the usual supporting information/documentation:

a) the rationale document (Rule 14);

The Procurement Plan is attached as **Appendix 1 – Final Procurement Plan – Updating Guidelines** 1 March.

Some information in that document has been withheld under the following sections of the Act:

- The details of some individuals are withheld under sections 9(2)(a) of the Act to protect their privacy, and 9(2)(g)(ii) of the Act to protect employees of Health NZ from improper pressure or harassment. The need to protect the privacy of these individuals is not outweighed by the public interest in the release of this information.
- Some information is withheld under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. Releasing the information would mean that the relevant staff will not be willing to convey their unguarded opinions in future, which is a core part of their role.

The recommendation report is attached as **Appendix 2 – Recommendation Report – Guidelines RFP**. Some information in that document has been withheld under the following sections:

- The details of some individuals are withheld under sections 9(2)(a) of the Act to protect their privacy, and 9(2)(g)(ii) of the Act to protect employees of Health NZ from improper pressure or harassment. The need to protect the privacy of these individuals is not outweighed by the public interest in the release of this information.

- The scoring summary and final weighted scores have been redacted under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through free and frank expression of opinions by employees of a public service agency. It is in the public interest that the procurement processes run by Health NZ are robust, and that organisations are able to respond to them without the risk of confidential information relating to their potential shortfalls or strengths being released publicly. The release of this information may deter organisations from responding to future requests for proposals.

b) which organisations were invited to submit a proposal/tender;

The Professional Association for Transgender Health Aotearoa (PATHA) and Gender Minorities Aotearoa (GMA) were invited to submit a tender.

c) which organisations submitted a proposal/tender;

PATHA and GMA submitted tenders.

d) GETS contract award notice and date of its publication (Rule 48).

We are refusing your request for the GETS contract award notice and date of its publication and the date of its publication under section 18(e) of the Act as this information does not exist. The two providers who submitted bids were advised in writing of the outcome.

A contract award notice was not published on GETS at the time as it was anticipated that the contract would be for less than \$100k. We acknowledge that as the contract awarded was for more than \$100k an award notice should have been published. Our team is working on its process to ensure that this does not happen for future closed tender procurement processes valued over \$100k.

2) "The part of your request which asks for emails, briefs, meeting minutes, etc, is refused under sections 9(2)(g)(i) and section 9(2)(b)(ii) of the Act. This is to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between employees of any public service organisation in the course of their duty as the release of this information would be likely to unreasonably prejudice the commercial position of the organisation who supplied it. It is in the public interest that such information continues to be supplied."

Could you please clarify how the 'commercial position' of an organisation (i.e. PATHA) that cites itself as an 'interdisciplinary professional association' and whose Incorporated Society Rules state that "Pecuniary gain is not a purpose of the Society" would be unreasonably prejudiced by the release of information of our public servant's discourse regarding this contract and what constitutes best care for our gender questioning youth/adults and the services to provide this care?

I request you please reconsider your initial refusal and consider how you might at least partially meet my request?

We have reconsidered your request for further information about the process used to commission PATHA and have attached further documents that were part of the process that supported contracting PATHA to deliver the Guidelines.

In addition to the Procurement Plan and Recommendation Report, we have attached the response forms as **Appendix 3 – Response form 1 Questions relating to evaluation criteria** and **Appendix 4 – Response form 2 Pricing proposal**. We have also provided the standard Conflict of Interest Declaration and Confidentiality Agreement form as **Appendix 5 – Conflict of Interest Declaration and Confidentiality Agreement**. You were provided with the full Request for Proposals (RFP) document previously (HNZ00047611 refers).

In response to your question about 'best practice care for our gender questioning youth/adults and the services to provide this care', best practice care for gender questioning youth and/or adults is highly individual and depends on each person's goals. It is the responsibility of the treating health professional(s) to consider the appropriateness of a particular treatment for a specific patient. The use of any medicine or treatment is a matter for discussion between the health professional(s) and their patient. This includes ensuring the patient is informed of the risks and benefits associated with the treatment options available to them. Importantly, any medical intervention carries a balance of benefit and risk that needs to be considered in context.

3) In Appendix 1 of your response, the RFP, there are at least three references to being 'aligned with WPATH SOC v8'. However, WPATH Standards of Care (SOC8) are currently being questioned and are under intense scrutiny^{1,2,3,4,5}.

a. Given that the contract awarded to PATHA to update the NZ guidelines for 'gender affirming care' requires them to use SOC8 as 'best practice', what steps are Te Whatu Ora taking to amend that contract and/or otherwise take into account recent developments that indicate that WPATH SOC8 may NOT be best practice? Please provide emails, letters, memos, briefs, meeting minutes, reports, and legal opinions regarding this matter.

Health NZ's contract with PATHA includes a literature review as part of the development of the updated Guidelines. We are refusing your request for emails, letters, memos, briefs, meeting minutes, reports, and legal opinions under section 18(e) of the Act as this information does not exist.

4) You respond that: "...the draft guidelines will be reviewed by clinical stakeholders and undergo a sign out process to ensure that contents are clinically and culturally safe."

Please provide documentation on this 'sign out process' (such as any applicable policy, procedure, memo or advisory documents) including definitions of what is meant by 'clinical stakeholders', 'clinically safe' and 'culturally safe' in this context. Please list the clinical stakeholders (where this might be problematic such as a single individual, please list the organisation/group that that single individual is a representative of).

We are refusing the first part of your question under section 18(e) of the Act as this information does not exist. There is no documented sign out process for guidelines, nor do we wish to pre-empt what steps may be required once the draft guidelines are ready for review. The sign out will be undertaken within Health NZ by the National Clinical Governance Group.

"Clinical safety" will be demonstrated by the Guidelines being reviewed and approved by relevant clinical stakeholders.

"Cultural safety" will be demonstrated by the Guidelines reflecting consultation with the below groups and will provide guidance on addressing the needs of:

takatāpui, Māori transgender and non-binary people and their whānau
MVPFAFF+ people, Pacific transgender and non-binary people and their whānau
transgender and non-binary tāngata whaikaha (disabled peoples) and their whānau
rangatahi or youth and their whānau.

How to get in touch

If you have any questions, you can contact us at h.nzOIA@tewhaturora.govt.nz.

If you are not happy with this response, you have the right to make a complaint to the Ombudsman. Information about how to do this is available at www.ombudsman.parliament.nz or by phoning 0800 802 602.

As this information may be of interest to other members of the public, Health NZ may proactively release a copy of this response on our website. All requester data, including your name and contact details, will be removed prior to release.

Nāku iti noa, nā



Deborah Woodley

Director – Starting Well

National Commissioning