

05 July 2024

Paul White

fyi-request-27263-1ee1d74c@requests.fyi.org.nz

Kia ora Paul

Your Official Information Act request, reference: GOV-033102

Thank you for your email of 14 June 2024, referring to an internal policy and asking for the following information under the Official Information Act 1982 (the Act):

1. *When a issue subject to review is not meeting any of the qualifiers, when is it OK to have External Counsel represent ACC.*
2. *When a issue subject to review is not meeting any of the qualifiers, when is it OK to have External Counsel to write the submission for the review specialist to submit in their own name.*
3. *Where the External Counsel has always represented ACC Claimants, does ACC consider that using External Counsel to write submissions for ACC is a conflict of interest and damaging to the idea of a fair and informal process.
An example " lily of Laura Findlater Law after leaving ACC represents claimants, since working a Laura Findlater Law she writes submissions on behalf of ACC, this practise is only done by specialist Review Specialist, this is not an isolated event.*
4. *Do the Review Specialist need to refer to Legal Services in respect to questions 1 & 2 above.*

We understand your request refers to the attached operational process 'Refer to Legal Services for external counsel'. Please note we have removed staff names as being outside of scope.

Engaging external counsel in reviews – questions one, two and four

Section 1.0(a) of the attached process sets out ACC's consideration factors for referring a review to Legal Services for external counsel. As noted in this process, the consideration factors are not exhaustive. It is ultimately ACC's decision as to what matters it refers to external counsel.

Review Specialists make decisions to refer review matters to external counsel on a case-by-case basis using the guidance in the document. In general, ACC's Resolution Services team make referrals to ACC's Legal Services to instruct external counsel.

ACC's external counsel and any conflicts of interest – question three

Question three asks for ACC's view on whether a conflict of interest has occurred in a particular situation. Please note that under the Act, there is a distinction between questions which can be answered by providing information already known and held by an agency (official information); and questions which require the agency to form an opinion or provide an explanation and create new information to answer the request (not official information). This question falls into the category of asking for an opinion. Therefore, we are refusing this question as the information sought is not held. This decision is made under section 18(g) of the Act.

We note that lawyers have professional obligations to avoid conflicts of interest. The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 contains rules relating to conflicting interests, which you can view at:

<https://www.legislation.govt.nz/regulation/public/2008/0214/latest/whole.html#DLM1437881>

As this information may be of interest to other members of the public

ACC may decide to proactively release a copy of this response on ACC's website. All requester data, including your name and contact details, will be removed prior to release. The released response will be made available www.acc.co.nz/resources/#/category/12.

If you have any questions about this response, please get in touch

You can email me at GovernmentServices@acc.co.nz. If you are not happy with this response, you can also contact the Ombudsman via info@ombudsman.parliament.nz or by phoning 0800 802 602. Information about how to make a complaint is available at www.ombudsman.parliament.nz.

Ngā mihi



Christopher Johnston
Manager Official Information Act Services
Government Engagement