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Tēnā koe Andrew Ecclestone

We refer to your email of 13 September 2024 in which you request the following under the Official Information Act 1982 (OIA):

On 22 December 2009 New Zealand ratified the Convention on Cluster Munitions (https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-6&chapter=26&clang=en)

State parties to the Convention expressed the views that they were, "Deeply concerned that civilian populations and individual civilians continue to bear the brunt of armed conflict, Determined to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned, Concerned that cluster munition remnants kill or maim civilians, including women and children, obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons, can negatively impact on national and international peace-building and humanitarian assistance efforts, and have other severe consequences that can persist for many years after use."

Article 1(c) of the Convention states that each party to the Conventions "undertakes never under any circumstances to...assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention."

Article 21 of the Convention states (inter alia):

- "1. Each State Party shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention.*
- 2. Each State Party shall notify the governments of all States not party to this Convention, referred to in paragraph 3 of this Article, of its obligations under this Convention, shall promote the norms it establishes and shall make its best efforts to discourage States not party to this Convention from using cluster munitions.*
- 3. Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party."*

On 10 September 2024, New Zealand's Deputy Permanent Representative to the Conference on Disarmament in Geneva made a statement to the 12th Meeting of States Parties to the Convention on Cluster Munitions (<https://www.mfat.govt.nz/en/media-and-resources/convention-on-cluster-munitions-12th-meeting-of-states-parties-new-zealand-general-statement>).

This noted the use of cluster munitions in Ukraine, and that "The United States has transferred cluster weapons of various kinds from its own stockpile to Ukraine. These actions will have economic, social, and environmental consequences for years to come, including in hampering recovery efforts in places where they have been used."

It has been reported that both Russia and Ukraine have been using cluster munitions during their armed conflict.

Please provide me with the following information:

- 1. The dates on which New Zealand, pursuant to Article 21(2), notified the governments of Russia, Belarus, Iran, Ukraine and the United States of its obligations under the Convention on Cluster Munitions.*
- 2. The dates on which New Zealand, pursuant to Article 21(2), communicated to the governments of Russia, Belarus, Iran, Ukraine and the United States in accordance with its obligation to "make best efforts to discourage States not party to this Convention from using cluster munitions."*
- 3. Copies of all communications falling within 1 and 2 above, and the replies received.*
- 4. The dates since October 2020 on which legal advice was requested on what New Zealand needed to do to meet its obligations under the Convention on Cluster Munitions.*
- 5. Copies of all requests since October 2020 for legal advice on what New Zealand needed to do to meet its obligations under the Convention on Cluster Munitions.*
- 6. The dates since October 2020 on which legal advice was provided on what New Zealand needed to do to meet its obligations under the Convention on Cluster Munitions.*
- 7. Copies of all legal advice provided since October 2020 on what New Zealand needed to do to meet its obligations under the Convention on Cluster Munitions.*
- 8. The dates on which, since October 2020, advice has been provided to the Ministers of (a) Disarmament and Arms Control and (b) Foreign Affairs that relate to the Convention on Cluster Munitions and New Zealand's obligations under that Convention with regard to the conflict in Ukraine.*
- 9. Copies of all advice since October 2020 to the Ministers of (a) Disarmament and Arms Control and (b) Foreign Affairs that relate to the Convention on Cluster Munitions and New Zealand's obligations under that Convention with regard to the conflict in Ukraine.*
- 10. The dates of all meetings and correspondence with the Ministry of Defence since October 2020 that relate to the Convention on Cluster Munitions and New Zealand's obligations under that Convention with regard to the conflict in Ukraine.*
- 11. Copies of all meetings notes and correspondence with the Ministry of Defence since October 2020 that relate to the Convention on Cluster Munitions and New Zealand's obligations under that Convention with regard to the conflict in Ukraine.*
- 12. The dates, since October 2020, of any meetings or correspondence any MFAT official has had with any member or representative of the government of the United*

Kingdom that included mention of either country's obligations under the Convention on Cluster Munitions.

13. *The dates, since October 2020, of any meetings or correspondence any New Zealand government minister has had with any member or representative of the government of the United Kingdom that included mention of either country's obligations under the Convention on Cluster Munitions.*

Under section 16 of the Official Information Act, my preferences are (a) to receive a copy of the whole of each document (b) that the information is disclosed in a text searchable format, either Word or PDF, (c) that it does not have a watermark of 'Released under the Official Information Act' or similar across the text and (d) that it is sent to the email address from which the Ministry received this request.

If the Ministry decides that there is 'good reason' under the OIA to withhold any of the information I am requesting, then under section 19(a)(ii) of the OIA, I further request that the Ministry provide me with the grounds in support of each withholding reason cited for refusal and the public interest factors favouring disclosure that the Ministry considered.

On 24 September 2024, we contacted you seeking to refine your request to:

All timeframes are from 1 October 2020 to 13 September 2024.

- 1- Communications between Ministry of Foreign Affairs and Trade (MFAT) officials and the governments of Russia, Belarus, Iran, Ukraine and the United States relating to New Zealand's obligations under Article 21(2) of the Convention on Cluster Munitions;*
- 2- Legal advice produced by MFAT relating to New Zealand's obligations under Article 21(2) of the Convention on Cluster Munitions;*
- 3- Formal advice to Ministers produced by MFAT relating to New Zealand's obligations under the Convention on Cluster Munitions with regard to the conflict in Ukraine;*
- 4- Formal meeting notes and correspondence between MFAT and the Ministry of Defence that relate to New Zealand's obligations under the Convention on Cluster Munitions with regard to the conflict in Ukraine;*
- 5- The dates of formal and planned meetings between New Zealand based MFAT officials and British High Commission representatives to New Zealand where the Convention on Cluster Munitions was a named agenda item.*

On 30 September 2024, you declined this refinement. On 10 October 2024, the timeframes for responding to your request were extended by an additional 45 working days because responding to your request necessitated the review of a large quantity of information, and due to the consultations necessary to make a decision on your request (section 15A(1) of the OIA refers).

Your request has been broken down into 5 sections to aid in the Ministry of Foreign Affairs and Trade's (the Ministry) response:

Section 1:

- 1) The dates on which New Zealand, pursuant to Article 21(2), notified the governments of Russia, Belarus, Iran, Ukraine and the United States of its obligations under the Convention on Cluster Munitions.*
- 2) The dates on which New Zealand, pursuant to Article 21(2), communicated to the governments of Russia, Belarus, Iran, Ukraine and the United States in accordance*

with its obligation to "make best efforts to discourage States not party to this Convention from using cluster munitions."

3) *Copies of all communications falling within 1 and 2 above, and the replies received.*

Please refer to pages 1-5 of the collated docs. We have withheld some information under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis;
- 6(b)(ii): to protect the passing of information from an international organisation on a confidential basis; and
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments.

In addition to the dates mentioned in the collated docs there is a recollection of this topic being raised with the government of United States of America in December 2022. There is no formal record of this interaction.

Information on New Zealand's statements at the Convention on Cluster Munitions Meeting of States Parties and Oral Questions to the former Minister of Foreign Affairs are refused under section 18(d) of the OIA, as the information is publicly available via the following links:

- Golriz Ghahraman's 27 July 2023 oral parliamentary question to Hon Nanaia Mahuta relating to the ban on cluster munitions:
www.parliament.nz/en/pb/hansard-debates/rhr/document/HansS_20230727_050760000/4-question-no-4-foreign-affairs
- New Zealand's statements at Convention on Cluster Munitions Meetings:
2020 – www.clusterconvention.org/files/meetings/9msp/New-Zealand-Universalization-1.pdf
2021 – www.clusterconvention.org/wp-content/uploads/2021/09/New-Zealand-CCM-2RC-general-statement-Item-7.pdf
2022 – www.clusterconvention.org/wp-content/uploads/2022/08/CCM-10MSP-New-Zealand-Statement-Aug-2022.pdf
2023 – www.clusterconvention.org/wp-content/uploads/2023/09/New-Zealand-National-Statement-CCM-MSP-11-September-2023.pdf
2024 – www.clusterconvention.org/wp-content/uploads/2024/09/New-Zealand-statement-CCM-12MSP-10-September-2024.pdf

The Ministry can also confirm that the New Zealand Government has notified the government of Ukraine of our obligations under the Convention on Cluster Munitions. This correspondence is withheld in full under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government; and
- 6(b)(i): to protect the passing of information from another government on a confidential basis.

We have not directly contacted the governments of Russia, Belarus, or Iran to outline New Zealand obligations under the Convention on Cluster Munitions. All UN Member States were notified of New Zealand's ratification of the Convention on 22 December 2009, via the United Nations Secretary-General.

Section 2:

- 4) *The dates since October 2020 on which legal advice was requested on what New Zealand needed to do to meet its obligations under the Convention on Cluster Munitions.*
- 5) *Copies of all requests since October 2020 for legal advice on what New Zealand needed to do to meet its obligations under the Convention on Cluster Munitions.*
- 6) *The dates since October 2020 on which legal advice was provided on what New Zealand needed to do to meet its obligations under the Convention on Cluster Munitions.*
- 7) *Copies of all legal advice provided since October 2020 on what New Zealand needed to do to meet its obligations under the Convention on Cluster Munitions.*

Between the dates of 1 October 2020 to the date of your request, the Ministry requested internal legal advice, related to what New Zealand needed in order to meet its obligations under the Convention on Cluster Munitions, one time. This advice is withheld in full under section 9(2)(h) of the OIA, to maintain legal professional privilege. We confirm that the Ministry's International Security and Disarmament Division sought legal advice on 23 November 2023 and received this advice on 27 November 2023.

Section 3:

- 8) *The dates on which, since October 2020, advice has been provided to the Ministers of (a) Disarmament and Arms Control and (b) Foreign Affairs that relate to the Convention on Cluster Munitions and New Zealand's obligations under that Convention with regard to the conflict in Ukraine.*
- 9) *Copies of all advice since October 2020 to the Ministers of (a) Disarmament and Arms Control and (b) Foreign Affairs that relate to the Convention on Cluster Munitions and New Zealand's obligations under that Convention with regard to the conflict in Ukraine.*

Please refer to pages 6-56 of the collated docs. Some information is under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis;
- 6(b)(ii): to protect the passing of information from an international organisation on a confidential basis;
- 9(2)(a): to protect individuals' privacy;
- 9(2)(f)(iv): to protect the confidentiality of advice tendered by Ministers of the Crown and officials; and
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments.

Where the information has been withheld under section 9 of the OIA, we identified no public interest in releasing the information that would override the reasons for withholding it.

In response to your questions for the dates of these communications, this information is largely contained within the documents provided. The additional dates are provided below:

- The document, *INWARDS VISIT BY US SECRETARY OF STATE ANTONY BLINKEN 26 – 27 JULY 2023*, located on page 17-23, was supplied to the Minister of Foreign Affairs on 20 July 2023, and
- The supplementary question, *Did the Minister raise the US' provision of cluster munitions to Ukraine with Secretary Blinken?*, located on page 25, was supplied to the Minister of Foreign Affairs on 27 July 2023.

Section 4:

- 10) The dates of all meetings and correspondence with the Ministry of Defence since October 2020 that relate to the Convention on Cluster Munitions and New Zealand's obligations under that Convention with regard to the conflict in Ukraine.*
- 11) Copies of all meetings notes and correspondence with the Ministry of Defence since October 2020 that relate to the Convention on Cluster Munitions and New Zealand's obligations under that Convention with regard to the conflict in Ukraine.*

Please refer to pages 28-60 of the collated documents. We have withheld some information under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis;
- 6(b)(ii): to protect the passing of information from an international organisation on a confidential basis; and
- 9(2)(a): to protect individuals' privacy.

Where the information has been withheld under section 9 of the OIA, we identified no public interest in releasing the information that would override the reasons for withholding it.

In response to your requests for the dates of these communications, this information is contained within the documents provided.

Section 5:

- 12) The dates, since October 2020, of any meetings or correspondence any MFAT official has had with any member or representative of the government of the United Kingdom that included mention of either country's obligations under the Convention on Cluster Munitions.*
- 13) The dates, since October 2020, of any meetings or correspondence any New Zealand government minister has had with any member or representative of the government of the United Kingdom that included mention of either country's obligations under the Convention on Cluster Munitions.*

Part 12 of your request is refused in full under section 18(f) of the OIA, as the information requested cannot be made available without substantial collation and research. This is because New Zealand meets regularly with States Parties, signatories and observers to the Convention on Cluster Munitions (CCM). New Zealand was National Implementation Measures coordinator for 10 years (until 2023), as part of the CCM Coordination Committee, and during this time we met regularly with other States to discuss Treaty

implementation. In addition, the United Kingdom was the President of the Tenth Meeting of States Parties to the CCM, which took place from 30 August to 2 September 2022. As the United Kingdom was CCM President and President designate during the time period in your request, New Zealand engaged with the United Kingdom in Coordination Committee meetings during that time. The minutes and dates of these meetings are publicly available via the link below: www.clusterconvention.org/minutes/

Regarding part 13 of your request. Between the dates of 1 October 2020 and the date of your request, no New Zealand Minister met with any member or representative of the government of the United Kingdom to discuss the Convention on Cluster Munitions. Accordingly, this part of your request is refused under section 18(e) of the OIA, as the information requested does not exist.

In response to your section 16 preference:

- (a) *to receive a copy of the whole of each document* – this was not possible because reviewing the entirety of all documents that are partially in scope of your request would impact on the agency's ability to carry out its other operations section 16(2)(a) of the OIA refers);
- (b) *that the information is disclosed in a text searchable format, either Word or PDF* – due to the Ministry's security requirements we are unable to complete this section 16 preference as doing so would require substantial additional administrative work. Doing so would impair efficient administration (section 16(2)(a) of the OIA refers);
- (c) *that it does not have a watermark of 'Released under the Official Information Act' or similar across the text* – while we are unable to release these documents without a watermark, we have moved this watermark to the margins of each page so it does not interfere with the text;
- (d) *that it is sent to the email address from which the Ministry received this request* – this response will be sent to the address the Ministry received it from (fyi-request-28391-a094xxxx@xxxxxxxxx.xxx.xxx.nz)

In response to your section 19(a)(ii) request please refer to Annex 1.

In response to your statement around section 17(2) of the Public Records Act 2005 the Ministry's records management system allows us to locate information potentially in scope of an OIA request using key words/document type/date etc, but in order for us to confirm if any documents are in scope of an OIA request every document needs to be manually reviewed.

Please note that it is our policy to proactively release our responses to official information requests where possible. Therefore, our response to your request (with your personal information removed) may be published on the Ministry website: www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'SC', written in a cursive style.

Sarah Corbett
for Secretary of Foreign Affairs and Trade

Annex 1.

Section 19(a)(ii) request.

OIA Code	Rational	Public Interest Considerations
6(a)	<p>Information that if released would impact New Zealand's international relations with:</p> <ul style="list-style-type: none"> - United States of America, - Ukraine, - Russia, and - Other partners. <p>Providing a full list of countries could damage international relations so has not been provided.</p>	Not Applicable
6(b)(i)	<p>Information supplied to New Zealand on a basis of confidence from other governments that was shared on a basis of confidence, for example:</p> <ul style="list-style-type: none"> - Ukraine, and - America. <p>Providing a full list of countries could damage international relations so has not been provided.</p>	Not Applicable
6(b)(ii)	<p>Information supplied to New Zealand on the basis of confidence by any international organisation.</p> <ul style="list-style-type: none"> - Information relayed to us by the Convention on Cluster Munitions state members. 	Not Applicable
9(2)(a)	<p>Protect the privacy of natural persons.</p> <ul style="list-style-type: none"> - Phone numbers are withheld to protect the privacy of staff. 	Considered and not outweighed
9(2)(g)(i)	<p>The free and frank expression of opinions.</p> <ul style="list-style-type: none"> - Opinion/interpretation on other countries decisions. - 'If asked' media lines are withheld as they are the free and frank expression of opinions by officials and contains speculative thinking. Officials need to be able to express opinions to maintain the effective conduct of Foreign Affairs. Release would make officials less likely to generate similar information in the future. 	Considered and not outweighed
9(2)(h)	<p>Maintain legal professional privilege.</p> <ul style="list-style-type: none"> - Advice provided by the Ministry's legal team, to protect confidential communications between solicitor and client. It is based on the impossibility of conducting legal business without professional assistance and the need for full and unreserved confidence between adviser and client in order to receive that assistance effectively. 	Considered and not outweighed