



OIATP-156

25 November 2024

P Robins
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Tēnā koe P Robins

Official Information Act request

Thank you for your information request dated 25 October 2024. You requested the following information:

“I request all communications on any medium mentioning Richard Prebble or discussing appointments to the Waitangi Tribunal sent or received by you or your staff in the employ of Ministerial Services since 25 August 2024.”

Your request has been considered in accordance with the Official Information Act 1982 (**OIA 1982**).

Background information

I have received a number of requests for official information regarding recent appointments to the Waitangi Tribunal. In considering these requests, I want to clarify the processes used to make appointments to the Waitangi Tribunal (**Tribunal**).

The Tribunal was established under section 4 of the Treaty of Waitangi Act 1975 and consists of a Chairperson and up to 20 members. Members are appointed by the Governor-General, based on following the recommendation of the Minister for Māori Development, made after consultation with the Minister of Justice (section 4(2)(a) of the Treaty of Waitangi Act). In considering recommendations for appointments as a member of the Tribunal, the Minister for Māori Development shall have regard to (see section 4(2A) of the Treaty of Waitangi Act):

- a. the partnership between the two parties to the Treaty; and
- b. not only to a person's personal attributes but also to a person's knowledge of and experience in the different aspects of matters likely to come before the Tribunal.

Members of the Tribunal hold office for a term not exceeding three years but may from time to time be reappointed (section 4(3) of the Treaty of Waitangi Act).

The positions are not advertised. It is common for the Minister for Māori Development to seek the views of the Tribunal's Chairperson about suitable persons for consideration who will meet the statutory criteria for Tribunal members.

From time to time, the Minister for Māori Development might receive curriculum vitae from members of the public expressing an interest in being considered for appointment to the Tribunal.

Once directed to do so, Te Puni Kōkiri provides the Minister for Māori Development with a long list of suitable persons for possible appointment to the Tribunal. The Minister will seek views, from the Minister of Justice and other Ministerial or coalition partner colleagues. This advice informs the recommendations for appointment (and reappointment) to the Tribunal. All recommendations for Tribunal members go through the usual Cabinet process for appointments. That includes the Cabinet Appointments and Honours Committee noting the proposed appointment before proceeding to Cabinet for confirmation, and then the Governor-General for appointment.

My response

A major consideration in my decision-making is the need to follow the precedents established by my predecessors in not releasing personal details or information given the overwhelming public interest considerations relating to:

- a. privacy (section 9(2)(a) of the OIA 1982); and
- b. to information that was supplied under an obligation of confidence (section 9(2)(ba) of the OIA 1982).

Further, I am currently actively considering Tribunal appointments. Accordingly, I have decided to decline your request in full under section 18(a) of the OIA 1982 by virtue of section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

I understand that this may be a disappointing decision to you, however, I can assure you that I will be happy to consider any future requests related to appointments made to the Waitangi Tribunal after further appointments occur. I trust my response satisfies your request.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602. Ngā mihi nui ki a koe.

Mauriora



Hon Tama Potaka
Te Minita Whanaketanga Māori