MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

14 February 2025

Ref: DOIA-REQ-0006620-Jodie Bruning

Jodie Bruning
Email: fyi-request-29246-de7c5c7b@requests.fyi.org.nz

Tēnā koe Jodie

Thank you for your response of 13 January 2025 to the Ministry of Business, Innovation and Employment (MBIE) in response to our request to clarify your request, under the Official Information Act 1982 (the Act), the following information:

> *As per response letter above - 'Could you please confirm that our understanding of the below questions is accurate:*
> *• [2] Scientific information: We assume this a request for all academic literature or expert reports provided to the TAG.*
> *• [3a] Managing scientific uncertainty: We assume the scientific uncertainty part of this question covers how the Regulator will consider uncertainty when making decisions. We note the TAG's role was to provide technical advice and it was not asked to justify any policy decisions.*
> *• [3b] All powers of the Regulator: We assume this covers information on the regulator's powers to*
> *surveil and assess the changing risk environment, and not for other, unrelated powers of the Regulator.'*
>
> *Response:*
> *[2] Yes this is a request for all academic literature or expert reports provided to the TAG.*
> *[3a] This concerns addressing scientific uncertainty in general, this includes throughout the policy process, how the TAG may approach scientific uncertainty (which is embedded into and informs the policy process), and how this will flow into law and regulations. (Scientific uncertainty is endemic in risk management, to not have a language and understanding around scientific uncertainty, suggests that the policies and laws will be unable to handle complex issues that are part and parcel of risk assessment and risk management).*
> *[3b] The TAG must have a grasp of risk (biological, economic, social) and how less regulation of gene edited technology alters the risk environment. Otherwise the TAG is unfit for purpose. Please consider [3b] request in entirety:*
> *b. The technical focus group will presumably be interested in there being sufficient regulatory powers to surveil and assess the changing risk environment, so as to protect health, the economy and the environment. Please supply all discussions with the technical focus group concerning proposed powers for the regulator.*
> *This may include the potential powers to monitor the published scientific literature and surveil the global environment (for newly identified risks from off-target and unanticipated impacts from GMO development and release, regulatory changes, court decisions), and monitor and assess releases into the environment for the long term.*
>
> *'Unrelated powers' would need substantiation - if it is a regulator to manage a new technology so as to promote health and economic prosperity - surveillance must extend beyond data supplied by the manufacturer.*

Please note that the TAG's purposes include: 'ensure that officials' interpretation of relevant science is accurate, that both opportunities and risks are clearly understood and that technical considerations are effectively incorporated into policy development.'

As the TAG has a small workload the 3b request should not be onerous:
'TAG members can expect a workload of three hours per month, that includes a two-hour meeting each month and one hour preparation time. All meetings will be online.'
https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffyi.org.nz%2Frequest%2F29246%2Fresponse%2F114976%2Fattach%2F4%2FDOIA%2520REQ%25200006620%2520Gene%2520Technology%2520Regulation%2520Technical%2520Advisory%2520Group%2520Terms%2520of%2520Reference%2520FINAL.pdf&data=05%7C02%7Cministerials%40mbie.govt.nz%7C29d55feaa2954e7a5e2508dd3367bcef%7C78b2bd11e42b47eab0112e04c3af5ec1%7C0%7C0%7C638723243126034994%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=DygWOH3RtubyN%2FcQZUVAYXPBRXiv7tWjfxZo58w2B1k%3D&reserved=0

Thank you

MBIE responded previously to the first and fourth part of your original request in our letter to you on 17 December 2024. Our response to your remaining requests as shown above, are as follows:

[2] Scientific information
We clarified with you that this was a request for academic literature or expert reports provided by MBIE to TAG members. After searching our records, MBIE has not provided the Technical Advisory Group (TAG) with any such information. TAG members were expected to have prior knowledge of the relevant scientific information as they were chosen due to their significant expertise with gene technologies and related issues.

I note that FSANZ considers food standards independently from the gene technology provisions in the existing HSNO Act, and this will not change as a result of the Gene Technology Bill. MBIE therefore did not seek advice from the TAG regarding FSANZ's work on genetically modified foods.

I am therefore declining this part of your request under section 18(e) of the Act as the information requested does not exist.

[3a] Scientific uncertainty and the precautionary principle

MBIE discussed the precautionary principle with the TAG at its June 2024 meeting. I have attached the documents titled *'Extracts from Gene Technology Technical Advisory Group Meeting 5 June 2024.'* Which contains relevant extracts from that meeting's papers and another titled '*Draft Minutes of the TAG Meeting 5 June'*, an email from a TAG member providing additional feedback. Some information has been withheld under the following section of the Act:

- 9(2)(a), to protect the privacy of natural persons;
- 9(2)(ba)(i), to protect information which is subject to an obligation of confidence where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied.

MBIE has subsequently sought the TAG's advice on risk management approaches to develop the secondary legislation required by the Bill, including how uncertainty would be considered in decision making. These regulations include how the Regulator would determine the risk level of an activity. I have

withheld this information under the following section of the Act as ministers are yet to make decisions on the content of secondary legislation:

- 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.

You may be interested in the scope of the Bill's regulations, which can be found in subpart 5 (beginning at clause 155):
https://www.legislation.govt.nz/bill/government/2024/0110/latest/LMS1010100.html?search=sw_096be8ed81ede29c_regulations_25_se&p=3

I do not consider that the withholding of the above information is outweighed by public interest considerations in making the information available.

[3b] Surveillance and powers of the Regulator

I understand this part of your request covers discussions with the TAG on any powers of the Regulator to surveil and assess risks, including information from third parties and internationally. The policy intention was to enable the Regulator to require any surveillance it considers necessary to manage risks appropriately, and therefore MBIE did not need advice from the TAG on these powers. Some of the relevant clauses in the Bill include:

- Clause 15(j) enables the Regulator to impose supervision and monitoring conditions on authorised activities.
- Clause 110(f) requires the Regulator to monitor international practice regarding the regulation of gene technologies.
- Clause 110(d) requires the Regulator to contribute to and cooperate with relevant international forums.
- Clause 110(e) requires the Regulator to facilitate New Zealand's compliance with its international obligations under the Convention on Biological Diversity and the Cartagena Protocol

I am therefore declining this part of your request under section 18(e) of the Act as the information requested does not exist.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact OIA@mbie.govt.nz.

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

Nāku noa, nā

Tony de Jong
Manager, Biotechnology Policy & Regulation
Technology & Innovation