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Joshua Riley

By email: fyi-request-34196-aef4288d@requests.fyi.org.nz
Ref: H2026082281

Tēnā koe Joshua

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health – Manatū Hauora (the Ministry) on 4 May 2026 as a follow up to your previous request, H2026080412. You requested:

“1. Treat my request as a request for the information withheld at paragraph 37 (and any other redactions in HR20212779) and issue a fresh decision on that information; or

2. Confirm that it maintains the s 9(2)(h) withholding, in which case I ask that the Ministry articulate:

a. The specific basis on which legal professional privilege is claimed (was paragraph 37 advice from in-house or external counsel, prepared for the dominant purpose of giving or receiving legal advice?);

b. Whether privilege has been waived, in whole or in part, by the surrounding paragraphs (paragraphs 36 and 38 expressly summarise the BORA analysis and reference "Previous Bill of Rights Act advice");

c. The Ministry's assessment of the s 9(1) public interest balancing test, having regard to:

- the findings of the Royal Commission of Inquiry into COVID-19 Lessons Learned (Phase 2, March 2026), which considered vaccine mandates and CV TAG advice in detail;*
- the passage of approximately 4.5 years since the advice was prepared;*
- the fact that the Vaccinations Order has since been revoked;*
- the strong public interest in transparency around the legal basis for measures that affected the employment and bodily autonomy of thousands of New Zealanders.*

In the absence of a substantive response to (2), I will refer this matter to the Office of the Ombudsman under s 28 of the Act.

For completeness, I also note that s 18(d) is properly used only where the information is "or will soon be" publicly available. Where the publicly available version is itself a redacted version of the document requested, s 18(d) cannot be a complete answer to a request for the unredacted document. I would be grateful if the Ministry would confirm this point in any further response.”

The Ministry has considered if withholding the relevant paragraph remains justified under section 9(2)(h) of the Act and remains satisfied that the information continues to be subject to legal privilege. The paragraph refers to legal advice provided by the Crown Law Office. The paragraph therefore falls under section 9(2)(h).

The content of the paragraph is distinct from the content contained in other sections under the heading "Human Rights" and the content of those other paragraphs does not waive the content of that paragraph. The fact that some information about New Zealand Bill of Rights Act consistency is released demonstrates a conservative approach to the application of legal privilege but does not waive privilege in the content specifically identified as coming from the Crown Law Office.

In terms of the Ministry's assessment of the public interest balancing test, the public interest in withholding the information continues to outweigh any public interest in release. The Ombudsman has consistently noted that the public interest in protecting legally privileged material is strong, as it is critical that Ministers and other Crown decision makers receive free and frank advice about legal risks and issues.

The Ministry acknowledges that issues around vaccine mandates have been considered in depth by the Royal Commission of Inquiry into COVID-19 Lessons Learned and the interest in transparency around the basis for the vaccination mandates. The Ministry has provided significant amounts of material to the public and the inquiry (including the document requested) in the interests of transparency. The highly limited redaction of legally privileged material in this document does not undermine the public interest in transparency, which has been met through processes such as the COVID-19 inquiry.

The Ministry does not consider that the repeal of the vaccine mandates or the passage of time changes the status of this legally privileged material or materially changes the public interest balance, particularly when there has been significant transparency in that period of time, consideration of these issues by the New Zealand courts and other mechanisms which have scrutinised human rights issues. This does not affect the Crown's right to assert legal privilege.

If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on: oiagr@health.govt.nz. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā



Phil Knipe
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Ministry of Health