



26 January 2016

Lee M

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Dear Lee M

Official Information Act Requests

Thank you for your request of 19 December 2015 (at 8.51pm) asking for information under the Official Information Act 1982 (the Act). Your questions and ACC's responses are set out below. Due to the similarity in subject matter and the response given, some answers have been grouped.

Question 1

1. Are Branch Medical Advisor "opinions" ever requested by ACC management and/or staff purely in response to a client submitting new medical evidence, and solely for the purpose of using the "opinions" document at a review hearing, not for the purpose of an ACC case owner/case manager reviewing a decision to decline cover or an entitlement? If so, please provide me with a copy of the ACC policy, procedure, guideline or rule that allows for this.

There is no ACC policy that matches the scenario you mention, therefore this part of your request is declined under section 18(e) of the Act. In general, however, the Accident Compensation Act 2001 (AC Act) contains provisions that allow for reconsideration of cover decisions and entitlements.

Under section 65, for example, ACC may revise decisions if it considers a decision has been made in error, whatever the reason for the error. A revision may amend the original decision, or revoke the original decision and substitute it with a new decision. ACC also has powers under section 117 of the AC Act to suspend, cancel or decline entitlements if it is not satisfied on the basis of the information in its possession that a claimant is entitled to continue to receive that entitlement. Branch Medical Advisors are ACC staff themselves and their role is to provide expert medical opinion on claim matters, which may include decisions made under sections 65 and 117.

Questions 2-3

2. Where a review application has been made by a client, but the review has not yet proceeded, and a client finds 'errors of fact' in a Branch Medical Advisor "opinion" that does not amount to a difference of opinion but is proven factually inaccurate and/or misleading by medical or other evidential record/s, is the ACC required to correct same if so requested by a client, and do so before the review hearing takes place? If not, please provide me with a copy of the ACC policy, procedure, guideline or rule that would allow the ACC to refuse such a request.

3. In the abovementioned circumstances, would it be ACC policy to refuse to correct the 'errors of fact' on the basis that the review is underway, and whether or not a review hearing date has not been set down? If so, please provide me with a copy of the ACC policy, procedure, guideline or rule that allows for this?

If the Branch Medical Advisor's opinion is **not** part of the review documentation or submissions, ACC will correct the information in accordance with its policy contained on this page on its external website <http://www.acc.co.nz/privacy/privacy-notice/WPC120353> and in accordance with the Privacy Act 1993 and Health Information Privacy Code 1994, found on this site: www.legislation.govt.nz.

If the Branch Medical Advisor's opinion forms part of the review submissions, ACC has no legislative obligation to correct the information once it is held by the reviewer. ACC is guided in this respect by the definition of "agency" in section 2(1)(b)(vii) of the Privacy Act 1993 which states that an agency *does not* include "in relation to its judicial functions, a Tribunal". Therefore, when FairWay Resolution Limited is acting in its capacity as a reviewer of ACC decisions, it is acting in a judicial capacity and is a tribunal within the meaning of section 2(1)(b)(vii). To clarify, this means that it is not subject to the Correction principle of the Privacy Act 1993 or Rule 7 of the Health Information Privacy Code 1994. As mentioned previously, legislation can be located on this site: www.legislation.govt.nz.

Your request for policies, procedures, guidelines, rules, etc around correction of ACC client information is therefore refused under section 18(d) of the Act because the information is publicly available.

Questions 4-5

4. *Would it be ACC policy to refuse to correct factually inaccurate and misleading information - proven by medical or other evidential records - where a client complains to the ACC about same? If so, please provide me with a copy of the relevant policy, procedure, guideline or rule.*

5. *Would it be ACC policy to refuse to add correction statements to the original documents which they seek to correct where a client requests this? If so, please provide me with a copy of the relevant policy, procedure, guideline or rule.*

ACC will correct the information in accordance with its policy contained on this page on its external website <http://www.acc.co.nz/privacy/privacy-notice/WPC120353> (and in accordance with the Privacy Act 1993 and Health Information Privacy Code 1994). Your request for policies, procedures, guidelines, rules, etc is therefore refused under section 18(d) of the Act because the information is publicly available.

6. *What other course of action is available to a client who wants to ensure that the information made available to Fairway Resolution Limited and its reviewers by the ACC is factually accurate and not misleading (given that the ACC provides a copy of the client claim file to Fairway Resolution Limited very early on in the review process with ACC claims records being added to all the time right up to the day the review hearing takes place)?*

The hearing itself is an opportunity for the client to present their own information and views to the reviewer. Applicants for review have the right to contest evidence of medical specialists in that hearing and contest the evidence put before FairWay Resolution Limited when it is considering reviews.

ACC is happy to answer your questions

If you have any questions about the information provided, ACC will be happy to work with you to answer these. You can contact us at GovernmentServices@acc.co.nz or in writing to Government Services, PO Box 242, Wellington 6140.

You have the right to complain to the Office of the Ombudsman about our decision to withhold some of the information. You can call them on 0800 802 602 between 9am and 5pm on weekdays, or write to The Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely

Government Services

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