

THOMPSON + CLARK

INVESTIGATIONS^{LTD} / DETECTION / PROTECTION / SECURITY

17 July 2018

██████████
██████████
Plant & Food Research

Via email: ██████████@plantandfood.co.nz

Dear ██████████

RE: OIA request to Plant & Food pertaining to Thompson and Clark Investigations Ltd (TCIL)

1. I understand that your department may be subject to an Official Information Act request pertaining to my company Thompson & Clark Investigations Ltd (TCIL).
2. Please accept this letter as notification of our interest as a third party in this matter and we highlight relevant sections of the OIA as well as sections from the Ombudsman's guidelines outlining that third parties should be consulted prior to the release of any information.
3. The following Sections are relevant to this situation:
 - a. Section 9(2)(b)(i) OIA & Section 7(2)(b)(i) LGOIMA, Considered a Trade Secret.
 - b. Section 9(2)(b)(ii) OIA & Section 7(2)(b)(ii) LGOIMA, Commercial position of Third Parties.
 - c. Section 9(2)(ba) OIA & Section 7(2)(c) LGOIMA, Subject to an obligation of confidence.
4. When considering a trade secret the factors (below) outlined in the guidelines make it clear that consultation is necessary to determine whether the information is in fact a trade secret as specific knowledge is only possessed by the supplier of the information.
 - a. *Some factors to be considered in determining whether given information is one's trade secret are:*
 - (1) *the extent to which the information is known outside of his business;*
 - (2) *the extent to which it is known by employees and others involved in his business;*
 - (3) *the extent of measures taken by him to guard the secrecy of the information;*
 - (4) *the value of the information to him and to his contemporaries;*
 - (5) *the amount of effort or money expended by him in developing the information;*
 - (6) *the ease or difficulty with which the information could be properly acquired or duplicated by others.*

http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/1265/original/part_2c_other_reasons_for_refusing_official_information_-_commercial_information.pdf?1450331887

5. When considering the commercial position of a third party the following is outlined in the guidelines making it clear that consultation may be necessary to establish the basis of this concern:

/ PHONE +64 9 361 3260 / FAX +64 9 302 0113 / EMAIL info@tcil.co.nz / ADDRESS PO Box 301775, Albany, NSMC 0752, New Zealand / WEBSITE www.tcil.co.nz

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- a. *“The likelihood and nature of prejudice to a third party's commercial position cannot be established by a simple assertion made by the holder of the information that such prejudice would be likely to arise. Direct consultation with the third party or parties may be necessary in order to establish the basis for this concern”.*

http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/1265/original/part_2c_other_reasons_for_refusing_official_information_-_commercial_information.pdf?1450331887

6. When considering an obligation of confidence there must be a mutual understanding of an obligation of confidence, TCIL documents hold a confidentiality caveat, the following is outlined in the guidelines:

- a. *In order to establish that information is subject to an obligation of confidence, there must generally be a mutual understanding between the supplier of the information and the agency receiving the information that it is subject to an obligation of confidence.*

http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/1239/original/part_2c_other_reasons_for_refusing_official_information_-_confidentiality.pdf?1450324013

7. I trust that the above grounds are sufficient to advise you of your obligations pursuant to the OIA and I look forward to hearing from you in due course.

Yours faithfully



Thompson & Clark Investigations Ltd
Mobile: +
Email: @tcil.co.nz