

29 November 2018

Bob Johnston
Fyi-request-8590-15952403@requests.fyi.org.nz

Dear Bob,

Thank you for your further correspondence of 1 November 2018.

To provide some clarification and clear up any misunderstanding, the New Zealand Transport Agency (NZTA) is a crown entity with multiple functions, not separate entities acting as the regulator, developer and owner of the apps in question.

Further, NZTA has not set up a transport service and is not a regulated party, it has simply developed apps which help people find suitable transport options that meet their needs.

In answer to your first question, the Chief Executive's statement in the emails released was in his role as Chief Executive of NZTA.

In relation to your second question; these emails reflect the changing position of the Transport Agency over time. At the time of the Chief Executive's email being sent, we had not yet received clear legal advice on the matter. In his email, he indicated that until we had a clear answer on this we would, in the meantime, apply for a license.

The decision not to continue with the application was not made contrary to the Chief Executive's email, but in line with the intent of his email which stated "*We are seeking legal advice to clarify which is the case. In the mean-time Choice will apply for the relevant licence purely as a precaution and to ensure that there is no doubt that the Agency takes compliance with the legislation and the safety of the public seriously.*" We were in the process of completing this application when legal advice was provided to NZTA, ultimately making it unnecessary for the application to proceed.

The decision to seek independent legal advice was made by NZTA in order to balance its role as both the regulator and developer of the apps in question. Legal advice was sought from an external firm and as outlined in our previous correspondence this advice was withheld under section 9(2)(h) of the Official Information Act. This section allows for the withholding of information to maintain legal professional privilege. Furthermore, the request for legal advice from the external counsel is also withheld under section 9(2)(h).

The Transport Agency and its relationship with its lawyers (an external firm in this situation) is protected by legal privilege. As with anyone else, when someone from the Transport Agency seeks advice from a lawyer, there is a relationship of confidentiality between the lawyer and the Transport Agency. Under the Official Information Act, we are obliged to balance the withholding of information under section 9 with the public interest. In this situation, we determined that the public interest in protecting the legal professional privilege between lawyer and client outweighed the interest in releasing the information.

I also provided you with the contact details of the Ombudsman if you are unhappy with my decision, which is part of our formal process when responding to OIA requests. You can find their contact details at www.ombudsman.parliament.nz and I encourage you to get in touch with them should this be the case.

Kindest regards,

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a long, horizontal flourish.

Damien Le Breton
Senior Manager – Connected Journey Solutions