



NEW ZEALAND  
**CUSTOMS SERVICE**  
TE MANA ĀRAI O AOTEAROA

PROTECTING NEW ZEALAND'S BORDER

**WELLINGTON**

The Customhouse, 1 Hinemoa Street, Wellington  
PO Box 2218, Wellington 6140  
Phone: 04 901 4500 Fax: 04 901 4555 All general enquiries phone: 0800 428 786  
Email: [feedback@customs.govt.nz](mailto:feedback@customs.govt.nz) Website: [www.customs.govt.nz](http://www.customs.govt.nz)

12 May 2020

Ref: OIA 20-060

Mahrukh Sarwar

By email: [fyi-request-11218-8127a782@requests.fyi.org.nz](mailto:fyi-request-11218-8127a782@requests.fyi.org.nz)

Dear Mahrukh Sarwar

**Request for information under the Official Information Act**

Thank you for your email dated 27 February 2020, to the New Zealand Customs Service (Customs) via the FYI website, comprising of a general question and a further 14 questions and comments in relation to our 11 November 2019 response under the Official Information Act 1982 (the Act), with regard to the Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019.

Please find attached Customs' response which includes an Annex displaying Customs' responses and decisions made under the Act in relation to your general question and further requests for supplementary information, in tabular format. Customs notes your comments in questions 2, 3, 13 and 14 of your request, and stands by its decisions made in our response to you on 11 November 2019.

Customs welcomes the Royal Commission of Inquiry into the Attack on Christchurch Mosques, and is working cooperatively with it. Some information which was created for the Royal Commission falls within the scope of your original request on 13 September 2019. The Royal Commission has issued orders under section 15(1)(a) of the Inquiries Act 2013 prohibiting publication of, or public access to any evidence or submissions to the Inquiry.

You have the right, by way of complaint to the Office of the Ombudsman under section 28(3) of the Act, to seek an investigation and review of the decisions conveyed in this letter.

If you have any queries about this response, please contact the Correspondence, Reviews and Ministerial Servicing team at [OIA@customs.govt.nz](mailto:OIA@customs.govt.nz).

Please note that Customs proactively releases responses to Official Information Act requests on our website. As such, we may publish this response on our website after we have sent it to you. Your name and contact details will be removed.

Yours sincerely

Michael Papesch  
**Deputy Chief Executive, Policy Legal and Strategy**

**Annex: OIA 20-060 Mahrukh Sarwar**

<p>General question</p>	<p><i>As a general question, we ask how Customs’ distinguishes information they would rather not disclose for public relation reasons (both domestically and through foreign relations) from the reasons you provided. We have noted that in several instances, information has been refused or partially answered without any compilation, disclosure or analysis of the information and without providing details for why information is theoretically prejudicial. Under section 19(a)(ii) of the Official Information Act, we are entitled to ask for the grounds in support of the reason for refusal. The High Court has stated that the test in section 6(a) requires evidence (Kelsey v Minister of Trade [2016] 2 NZLR).</i></p> <p><i>You claim that some of our requests are unclear. Please refer to responses we have received from NZSIS, GCSB, NZDF and DPMC. These agencies show a thorough understanding of our requests.</i></p> <p><b>Customs’ Response</b></p> <ul style="list-style-type: none"> <li>• Customs does not withhold information under the Act on the grounds of “public relations reasons”. Customs assesses each request for information on a case-by-case basis, and makes decisions in accordance with the principles outlined in the Act, where information is made available unless there is good reason for withholding it.</li> </ul>
<p>1</p>	<p><i>Premature refusal</i></p> <p><i>The information requested for has been withheld under s18(f) of the Official Information Act. Under sections 18A and 18B of the Official Information Act (OIA), you were required to consider whether the reason for refusal can be removed by either consulting us, fixing a charge or extending the time period for a response. Failing to follow the steps in sections 18A and 18B of the Act was held by the High Court as unlawful (Kelsey v Minister of Trade [2016] 2 NZLR).</i></p> <p><i>Ideally, you could have fixed a charge if you are to believe that collation of requesting documents is substantial.</i></p> <p><i>This also indicates that you have not made any effort to make this information available, despite the avenues set by Parliament which attempt at ensuring agencies engage with requests before refusal under section 18(f).</i></p> <p><i>Contextual significance</i></p> <p><i>The question asked is contextually significant to legal and other processes in response to the Christchurch attacks, and will be useful for future prevention and research. We note the context of this request would appear to outweigh even substantial inconvenience to Customs in the collation process. The context is highlighted by the historical significance of the Christchurch events, demanding the need for a comprehensive investigation which the Royal Commission and other civil society organisations are undertaking. Customs is a primary agency in this regard and we would have expected that several months after the attacks the priority of this issue would by now be self-evident.</i></p> <p><i>Timely collation</i></p> <p><i>We acknowledge that the number of documents is significant, but we note that this is not an individual case. Rather, it is a case of national importance and this should be evident to you.</i></p> <p><i>We allow Customs consideration of any reasonable consequences to the extent of this request, such as focussing on the order of priority, and/or prioritising certain searches. In other words, you can decide which searches you consider inconvenient to take on first as per Customs operation processes or resource use etc. However, we request this is made available as soon as possible so as to inform the current surge of</i></p>

*public resources already going into inquiring into these matters, in comparison to which your agency's costs will pale into insignificance. We request being updated in whatever process is undertaken.*

**Customs' Response**

- We stand by our decision to refuse this part of your request under section 18(f) of the Act. We do not believe that a further extension of time, or by charging you would enable us to provide you with a response to this question.
- Based on our findings from the initial collation of the information in scope used to inform our response to this part of your request on 11 November 2019; despite breaking down the requested information into four separate time periods, and prioritising readily available information in our searches, we maintain the view that we would not be able to respond to your request without significantly and unreasonably impacting on our ability to carry out other operations. For instance, a search of Customs' email database for one keyword during Period A (October 2017 to September 2019) resulted in over 16,000 emails requiring individual assessment under the Act.
- So that we can help you, we would appreciate further clarification from you with regard to this part of your original request of 13 September 2019, if you were seeking information about a more specific topic.

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*We acknowledge that Customs is an agency involving a significant amount of intercultural interaction, yet it does not provide comprehensive cultural intelligence training to its staff.*

*We also acknowledge that Customs provides some role-specific intercultural training. Can you please expand on this by providing more information on:*

1. *What this training actually contains.*
2. *What roles it is aimed at.*
3. *Whether it is compulsory or not. If not compulsory, please provide the number and percentage of staff participating in this module.*

*Further, we infer from Customs "offering" Unconscious Knowledge and Bias training that this training is optional. If so, please provide the number and percentage of staff participating in this training.*

*Please expand on the notion of "inclusive leadership" and how this may provide cultural intelligence, if any.*

**Customs' Response**

- Our *Intercultural Awareness* training forms a compulsory part of our Trainee Customs Officer Induction training. This training is based on the Office of Ethnic Communities training module and is delivered to all new Customs Officers and Assistant Customs Officers. The module focusses on understanding what culture is, how it impacts on communication and behaviour and provides tools and methods for improving people's ability to communicate effectively across cultural boundaries.
- As requested, please find attached supplementary documents containing Customs' role-specific intercultural training, *Intercultural Awareness*, for your information:
  - *Intercultural Awareness Presentation*

	<ul style="list-style-type: none"> <li>○ <i>Intercultural Awareness Participant Workbook.</i></li> <li>• Please also see attached <i>Intercultural Awareness Summary Graph</i>, which shows the number and percentage of staff participating in <i>Intercultural Awareness</i> training.</li> <li>• As of April 2020, 202 frontline staff (19.5% of all frontline staff) and 219 people leaders/managers (73.4% of all people leaders/managers) have completed <i>Unconscious Knowledge and Bias</i> training, and 193 staff have completed the recruitment bias module. All members of Customs' counter-terrorism team have completed the <i>Unconscious Knowledge and Bias</i> training. In addition, in their roles as intelligence analysts they have been trained on intelligence principles including avoiding personal bias, group think and other practices that impede effective intelligence processes.</li> <li>• In response to your request for supplementary information on inclusive leadership, please see the attached report titled <i>The Six Signature Traits of Inclusive Leadership</i>, which provides the framework for the leadership training on this topic. You will note that the report emphasises Cultural Intelligence as being one of the signature traits of an inclusive leader. This training is discussion-based, and aims to provide awareness rather than comprehensive skill development.</li> </ul>
5	<p><i>We understand that information may be withheld under Section 6(c) of the Act, where disclosure of that information may prejudice maintenance of the law, including the prevention, investigation and detection of offences and the right to a fair trial. However, could you please expand on what connection exists between information regarding Customs intelligence principles and section 6(c), if any connection does exist.</i></p> <p><b>Customs' Response</b></p> <ul style="list-style-type: none"> <li>• Our response to your question was withheld in accordance with section 6(c) of the Act, where making available the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.</li> <li>• We believe that providing you with specific information about Customs' proven intelligence principles regarding Customs' border risk management approach would be likely to assist those involved in illegal activity at the border to ascertain Customs' intelligence capability at the border, thereby likely to compromise Customs' ability to protect the border. Therefore, Customs stands by its decision to withhold the information sought under section 6(c) of the Act, and providing you with further information about this decision would be likely to prejudice those grounds specified under section 6 of the Act.</li> </ul>
6	<p><i>We understand that information may be withheld under Section 6(c) of the Act, where disclosure of that information may prejudice maintenance of the law, including the prevention, investigation and detection of offences and the right to a fair trial. Please confirm that this information has been provided to the Royal Commission of Inquiry.</i></p> <p><b>Customs' Response</b></p> <ul style="list-style-type: none"> <li>• Customs welcomes the Royal Commission of Inquiry into the Attack on Christchurch Mosques, and is working cooperatively with it. Some information which was created for the Royal Commission falls within the scope of your original request on 13 September 2019. The Royal Commission has issued orders under section 15(1)(a) of the Inquiries Act 2013 prohibiting publication of, or public access to</li> </ul>

	<p>any evidence or submissions to the Inquiry. With respect to this information, Customs believes there are good reasons to withhold release in accordance with section 6(c) of the Act, as making available the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.</p> <ul style="list-style-type: none"> <li>As mentioned in our 11 November 2019 response, the individual mentioned in this part of your request is currently subject to an ongoing investigation and court process. Therefore, Customs stands by its decision to withhold the information sought under section 6(c) of the Act, and providing you with further information about this decision would be likely to prejudice those grounds specified under section 6 of the Act.</li> </ul>
7, 8 and 9	<p><i>We acknowledge your statement that “Customs does not target or profile passengers based on race, religion”. Yet, we know Customs has “created risk profiles based on trends and known indicators of potentially illegal activity” and assesses pre-arrival passenger information against these risk profiles and identifies passengers that could pose a risk:</i></p> <p><i>The information we seek pertains to these trends and criteria for assessment that creates these risk profiles. Can you please expand on what these trends are and what the criteria for assessment are? The Human Rights Foundation reports from a human rights perspective that Muslims are in fact targeted at New Zealand airports</i></p> <p><i>You state that this is not based on a policy in respect of extremism. Is there any other Customs policy that involves this or are we to infer that it is simply unconscious or conscious bias held by Customs officers?</i></p> <p><i>Among one of many incidents, we have provided the following case study:</i></p> <p><a href="https://www.stuff.co.nz/the-press/news/67775902/kiwi-muslim-sisters-not-alone-in-concerns-over-aussie-airport-treatment">https://www.stuff.co.nz/the-press/news/67775902/kiwi-muslim-sisters-not-alone-in-concerns-over-aussie-airport-treatment</a></p> <p><i>In your response, you refer to international protocols. Can you please expand on what these protocols for profiling/targeting passengers are?</i></p> <p><b>Customs’ Response</b></p> <p><i>Trends and Criteria</i></p> <ul style="list-style-type: none"> <li>Customs considers a variety of factors when determining passengers’ risk at the border, including taking into account whether passengers have travelled to high-risk regions such as the Middle East and South America. Customs targeting passengers suspected of extremism is no different to how we approach passengers suspected of illegal activity at the border, such as drug smugglers and importers/exports of child sexual abuse material.</li> <li>In response to your request for supplementary information regarding specific criteria, trends and indicators that Customs refers to when determining potential illegal activity at the border, we believe that the release of this information would be likely to reveal Customs’ operational techniques utilised during Customs’ screening and questioning of passengers at the border, thereby likely to compromise Customs’ ability to protect the New Zealand border.</li> <li>Therefore, Customs is withholding this information in full in accordance with section 6(c) of the Act, as the release of this information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.</li> </ul>

*Specific Policy*

- As mentioned in our previous response to you on 11 November 2019, Customs maintains that no specific policy exists in relation to particular classes of extremism as described in your request, and stands by our decision to refuse that part of your request in accordance with section 18(e) of the Act.

*Unconscious or conscious bias*

- People of certain religious persuasions or belonging to certain ethnic groups may feel that they have been singled out on ethnic or religious grounds by Customs for interaction (questioning and possibly searches) when entering New Zealand. At the individual level, these perceptions are understandable – some individuals could well have been selected for an interaction on more than one occasion, or it has been seemingly apparent that only they have been chosen from a flight for questioning.
- This perception of bias is an example of correlation not equating to causality. The “false correlation” is brought about because in some risk focus areas (counter-terrorism in particular) risk indicators such as travel routes, or travel to places of terrorism risk will tend to select persons that will correlate with certain ethnicities or religious persuasions on a purely coincidental basis. The perception of bias is exacerbated by terrorism risk profiling relating to a relatively narrow range of travel routes and travel to places of risk. If we compare to an area of risk such as drug trafficking, a much wider range of risk travel/countries are involved and therefore are profiled and so persons selected for interaction will tend to be a wider representation of travellers as a result.

*International Protocols*

- Customs’ risk management process does not incorporate or tolerate profiling on religious or ethnic grounds. Risk assessment processes are designed to ensure that selections for an intervention are based on a robust risk assessment around facts concerning travel routes and time spent in places of known risk. Additionally, Customs’ use of Passenger Name Record (PNR) data for passenger risk targeting conforms to the recommended practices of the International Civil Aviation Organization and the World Customs Organization in that PNR data is supplied to Customs in the PNRGOV format. PNRGOV deletes from the “raw” PNR data created by airlines certain data elements that would potentially support profiling on grounds such as gender, political affiliation, ethnicity or religion.

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*We understand that information may be withheld under Section 6(c) of the Act, where disclosure of that information may prejudice maintenance of the law, including the prevention, investigation and detection of offences and the right to a fair trial. However, could you please expand on what connection exists between information regarding Customs stopping “white extremists” and “sympathisers with Serb-nationalism and Bosnian Genocide” principles and section 6(c), if any connection actually exists.*

**Customs’ Response**

- Our response to your question was withheld in accordance with section 6(c) of the Act, where making available the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.
- We believe that providing you with specific information about Customs’ interaction with those whom you have described as “white extremists” and “sympathisers with Serb-nationalism and Bosnian Genocide”, would be likely to enable countermeasures to be taken by those communities to impede Customs’ ability to assess their risk at the border. Therefore, Customs stands by its decision to withhold

the information sought under section 6(c) of the Act, and providing you with further information about this decision would be likely to prejudice those grounds specified under section 6 of the Act.

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*Thank you for acknowledging that a number of individuals have complained about feeling disproportionately interacted with by Customs on arrival or departure from New Zealand, principally because they are Muslim.*

*You state that a dialogue is taking place to abate this feeling shared by the New Zealand Muslim community. Can you confirm that the only events taken place in this dialogue are:*

- 1. Presentation by OEC to Customs Diversity and Inclusion Council meeting (March 2016)*
- 2. FIANZ's public forums on Airport Arrivals at Avondale Islamic Centre (July 2018) and West Auckland Mosque (October 2018), attended by only Customs' Manager Investigations and Manager Auckland Passenger Operations.*

*Can you also provide the number and percentage of attendees at the presentation by OEC to Customs Diversity and Inclusion Council meeting in March 2016, and provide further detail as to trainee expertise.*

#### **Customs' Response**

- More recently, we have begun to explore having workshops that cover conversations about racism. A Courageous Conversation two-hour seminar was delivered by the Institute for Courageous Conversations About Race to our Inclusion and Diversity Council, Network leads and some senior leaders last year (40 people). The seminar covered the critical question: *"In the context of ever-increasing racial and ethnic diversity, how can I contribute to a more racially equitable New Zealand Customs Service under the Treaty of Waitangi?"* Participants were introduced to the Courageous Conversations about Race Protocol, where they explored the topic of race in their personal and professional life. By the end of this seminar, they have used tools to practice engaging self and others in productive, compassionate, and generative conversations about race and racism.
- In response to your request for supplementary information on the number and percentage of attendees at the Office of Ethnic Communities presentation on March 2016, we can advise that 15 out of the 17 (88%) members of the Customs Diversity and Inclusion Council attended the presentation by the Office of Ethnic Communities.
- As to the attendees' expertise, the Inclusion and Diversity Council members are representatives of frontline Customs staff as well as those in management roles. The ethnic make-up of the Council members includes Pākehā, New Zealand Pākehā/European, Asian, Māori and non-New Zealand European.