

25 June 2021

S. Rowe

By email: [fyi-request-13956-8e736e7a@requests.fyi.org.nz](mailto:fyi-request-13956-8e736e7a@requests.fyi.org.nz)

Dear Requestor

### **Request for information**

Thank you for the request you made on 12 October 2020 under the Official Information Act 1982 (**OIA**), via email from the website [fyi.org.nz](http://fyi.org.nz) (**FYI**), seeking information about a wide range of matters which you have characterised as “Southern Response Ethics Violations” (**Request**).

The full details of your Request can be accessed on FYI via this link and are included as Appendix 1 at the end of this letter.

<https://fyi.org.nz/request/13956-southern-response-ethics-violations>.

### **Eligibility to request information**

We initially responded to your Request by asking you to contact us directly to discuss whether you meet the eligibility criteria in section 12 of the OIA.

However, on 7 April 2021 the Office of the Ombudsman informed us that it had sighted your New Zealand passport and was satisfied that you are eligible to request information under the OIA. We are now responding to your Request on this basis.

### **Response to your Requests**

#### **Request 1**

*For each of the Southern Response directors, Alister James, Bevan Killick, Anne Urlwin, and the minister for Southern Response Grant Robertson, please provide the following information.*

- a) *When were each first informed there was an ethics complaint?*
- b) *What updates were each given about the ethics complaint?*
- c) *Which of these individuals recommended any actions regarding the complaint, the policyholders, or the way the claim was being handled, and what are the details of those recommendations?*

#### Answer

We refuse your Request on the two independent grounds outlined below.

### *Protection of privacy*

First, your Request is directed at a particular complaint to IFSO about a specific insurance claim and, as a result, we must refuse your Request under section 9(2)(a) of the OIA, on the basis that withholding the information requested is necessary to protect the privacy of the persons involved. As the information you have requested does not appear to be your own personal information or information about a claimant for whom you have authority to act, disclosing the information you have requested about this specific complaint could interfere with the privacy of the claimants.

Our decision to refuse your Request on this basis has been made after careful consideration of the public interest considerations referred to in section 9(1) of the OIA.

### *Confidential information*

Second, the IFSO complaint at which your Request is directed was a complaint that was both made to and considered by IFSO on a confidential basis. As a result, we must also refuse your request under section 9(2)(ba) of the OIA, on the basis that withholding the information requested is necessary to protect information which is subject to an obligation of confidence.

The obligation of confidence attached to the information you have requested arises from the fact that IFSO's dispute resolution service is a confidential negotiation process. This is stated in the IFSO Terms of Reference (which can be found on the IFSO website). Paragraph 9.1(a) of IFSO's Terms of Reference also notes that IFSO "*...will not begin considering a complaint until the Complainant has confirmed in writing acceptance of confidentiality.*" IFSO decisions also usually contain reminders to the parties that all information relating to any IFSO complaint and decision must be kept confidential.

In this case, it is necessary to withhold the confidential information you have requested on the basis provided in section 9(2)(ba)(i) of the OIA. In particular, it is in the public interest for Participants in the IFSO scheme to continue to share information with IFSO on the full, frank, confidential basis necessary for IFSO to effectively resolve complaints. This supply of information to IFSO would be prejudiced if the obligations of confidence agreed to by both parties from the outset of the IFSO complaint process were not protected.

Our decision to refuse your Request on this second and independent basis has been made after careful consideration of the factors outlined above and the public interest considerations referred to in section 9(1) of the OIA.

### **Request 2**

*Was denying the policyholders the ability to make complaints something that was recommended by the law firm that Southern Response paid to advise on their submission to the IFSO Scheme?*

### Answer

Your Request is directed at a particular insurance claim and claimant, as a result, we must refuse your Request under section 9(2)(a) of the OIA, on the basis that withholding the information requested is necessary to protect the privacy of the persons involved. As the information you have requested does not appear to be your own personal information or information about a claimant for whom you have authority to act, disclosing the information you have requested about this specific complaint could interfere with the privacy of the claimants.



Our decision to refuse your Request on this basis has been made after careful consideration of the public interest considerations referred to in section 9(1) of the OIA.

### **Request 3**

*Did Southern Response consider that remaining a member of ICNZ would be appropriate given that it may again handle claims directly instead of through EQC?*

Answer

No.

### **Request 4**

*When did Southern Response make the decision to stop being a member of ICNZ?*

Answer

19 August 2019.

### **Request 5**

*When did Southern Response inform ICNZ that it would stop being a member?*

Answer

27 August 2019.

### **Request 6**

*“The EQC staff looking after the claim were former Southern Response staff ...  
6) Were the EQC staff given a mandate to forward questions to Southern Response?”*

Answer

Your Request is directed at a particular insurance claim, as a result, we must refuse your Request under section 9(2)(a) of the OIA, on the basis that withholding the information requested is necessary to protect the privacy of the persons involved. As the information you have requested does not appear to be your own personal information or information about a claimant for whom you have authority to act, disclosing the information you have requested about this specific complaint could interfere with the privacy of the claimants.

Our decision to refuse your Request on this basis has been made after careful consideration of the public interest considerations referred to in section 9(1) of the OIA.

### **Request 7**

*Was that mandate related specifically to this claim or additional claims?*

Answer

EQC was provided with a mandate to act as Southern Response’s agent in relation to Southern Response insurance claims under an Agency Agreement dated 21 October 2019.



## **Request 8**

*What was the reasoning for Southern Response considering that a conversation it had with EQC about the “the role of EQC Settlement Specialist“ is considered legal privilege and has been redacted in Privacy Act requests?*

### Answer

Although you have referred to “Privacy Act requests” (plural) your Request is directed at a particular Privacy Act request in relation to a particular insurance claim. It would not be appropriate for us to comment on this individual claim and we must as a result refuse this Request under section 9(2)(a) of the OIA. This decision has been made after carefully taking into account the public interest considerations in section 9(1) of the OIA.

## **Request 9**

*What formal arrangement does Southern Response have with EQC to act as its legal advisor?*

### Answer

Although your Request has been presented as a general enquiry, it is both tied-to and directed at the particular Privacy Act request and insurance claim at which Request 8 above is directed. It would not be appropriate for us to comment on this individual claim and we must as a result refuse this Request under section 9(2)(a) of the OIA. This decision has been made after carefully taking into account the public interest considerations in section 9(1) of the OIA.

## **Request 10**

*Are Alister George James, Bevan Edward Killick, Anne June Urlwin, and Grant Murray Robertson aware that Southern Response is providing legal counsel to EQC on a claim that Southern Response has been found to have committed significant ethical violations?*

### Answer

Your Request is refused for the same reasons as Request 1 above.

## **Request 11**

*Has Southern Response requested that all claims be reallocated because there is a lack of continuity and familiarity with EQC handling the claims?*

### Answer

No.

## **Request 12**

*Did EQC express interest to Southern Response to reallocate this claim back to Southern Response?*

### Answer

Your Request is refused for the same reasons as Request 1 above.



### **Request 13**

*As the Ombudsman Act 1975 does not apply to Southern Response, but does to the Earthquake Commission, did Southern Response reallocate the claim to prevent the policyholders from seeking intervention from the New Zealand Ombudsman? (Noting that this request was subsequently withdrawn on 28 October 2020).*

#### Answer

Your Request is refused for the same reasons as Request 1 above.

### **Request 14**

*Did Southern Response consider that instead of needing “extensive experience as an insurance law practitioner” that it could instead just stop acting in a way that breached the code of ethics it agreed to uphold?*

#### Answer

Your Request is refused for the same reasons as Request 1 above.

### **Request 15**

*Has Southern Response been working with the IFSO Scheme’s Ombudsman to prevent the complaint filed before Southern Response left ICNZ from making its way to ICNZ?*

#### Answer

Your Request is refused for the same reasons as Request 1 above.

### **Your rights**

Please feel free to contact us if you have any concerns about this response. You also have the right to contact the Ombudsman about this response. To do so, you can visit their website - <http://www.ombudsman.parliament.nz/>

Yours sincerely



Casey Hurren  
Chief Executive



## Appendix 1

In 2019 the Insurance & Financial Services Ombudsman Scheme (IFSO Scheme) made a judgement that Southern Response had committed significant ethical violations in the handling of the claim of two people who are considered vulnerable by New Zealand Human Rights Commission.

Southern Response was required to report the assessment to the Insurance Council of New Zealand (ICNZ), who agreed with the IFSO Scheme that Southern Response had committed a Significant Breach of the Fair Insurance Code.

This is apparently the first time that any organisation in New Zealand had been found to have committed an unresolved Significant Breach of the Fair Insurance Code.

1) For each of the Southern Response directors, Alister James, Bevan Killick, Anne Urlwin, and the minister for Southern Response Grant Robertson, please provide the following information.

- a) When were each first informed there was an ethics complaint?
- b) What updates were each given about the ethics complaint?
- c) Which of these individuals recommended any actions regarding the complaint, the policyholders, or the way the claim was being handled, and what are the details of those recommendations?

A few weeks after the IFSO Scheme assessment, but more than half a year before the ICNZ assessment, Southern Response told the policyholders that they were no longer permitted to submit any complaints and that any attempt to make a complaint would be “filed without response”. As Southern Response ignored new and existing complaints they did not provide letters of “deadlock” to the policyholders, which the IFSO Scheme lists as a requirement for investigating if Southern Response had further violated the ICNZ code of ethics.

2) Was denying the policyholders the ability to make complaints something that was recommended by the law firm that Southern Response paid to advise on their submission to the IFSO Scheme?

Southern Response has ended its membership with ICNZ and is therefore no longer bound to the industry accepted code of ethics.

The timing of this could be explained by the handover of claims from Southern Response to EQC. However, in the Agency Agreement between the two agencies Southern Response retained the ability to reallocate any claim back to itself.

- 3) Did Southern Response consider that remaining a member of ICNZ would be appropriate given that it may again handle claims directly instead of through EQC?
- 4) When did Southern Response make the decision to stop being a member of ICNZ?
- 5) When did Southern Response inform ICNZ that it would stop being a member?

The EQC staff looking after the claim were former Southern Response staff, and they forwarded questions similar to ‘what is the status of the claim’, ‘when was the DRA received by Southern Response’, and ‘what is your role at EQC’ to Southern Response to answer.

- 6) Were the EQC staff given a mandate to forward questions to Southern Response?
- 7) Was that mandate related specifically to this claim or additional claims?
- 8) What was the reasoning for Southern Response considering that a conversation it had with EQC about the “the role of EQC Settlement Specialist” is considered legal privilege and has been redacted in Privacy Act requests?
- 9) What formal arrangement does Southern Response have with EQC to act as its legal advisor?
- 10) Are Alister George James, Bevan Edward Killick, Anne June Urlwin, and Grant Murray



Robertson aware that Southern Response is providing legal counsel to EQC on a claim that Southern Response has been found to have committed significant ethical violations?

After the policyholders asked these questions Southern Response reallocated the claim back to itself and told the policyholders that they were still not allowed to file complaints, and that they would not be provided any support as vulnerable people. Casey Hurren from Southern Response further stated that “the reason that your claim was transferred back to Southern Response is that my assessment was that both continuity, familiarity and extensive experience as an insurance law practitioner was needed for your claim”.

11) Has Southern Response requested that all claims be reallocated because there is a lack of continuity and familiarity with EQC handling the claims?

12) Did EQC express interest to Southern Response to reallocate this claim back to Southern Response?

13) As the Ombudsman Act 1975 does not apply to Southern Response, but does to the Earthquake Commission, did Southern Response reallocate the claim to prevent the policyholders from seeking intervention from the New Zealand Ombudsman?

14) Did Southern Response consider that instead of needing “extensive experience as an insurance law practitioner” that it could instead just stop acting in a way that breached the code of ethics it agreed to uphold?

ICNZ has stated in writing that Southern Response denying the policyholders from filing complaints is not only a further significant breach of the Fair Insurance Code, but also a violation of the rules of membership to ICNZ. However, ICNZ has said that it can not make a formal assessment because it must go through the IFSO Scheme first.

Southern Response has told the IFSO Scheme that it did not tell the policyholders that they can not file complaints. This is despite there being multiple emails from Southern Response to the policyholders saying so. The IFSO Scheme is also saying that it does not have jurisdiction over the matters that it has already found Southern Response to have been in breach of in the first complaint that Southern Response continues to breach. The complaint was filed in December 2019 and no action has been taken by the IFSO Scheme except trying to not accept the complaint.

15) Has Southern Response been working with the IFSO Scheme’s Ombudsman to prevent the complaint filed before Southern Response left ICNZ from making its way to ICNZ?

