

5 March 2014

Mr Anthony Jordan  
[fyi-request-1435-f6df687c@requests.fyi.org.nz](mailto:fyi-request-1435-f6df687c@requests.fyi.org.nz)

Dear Mr Jordan

### Official Information Act Request

#### Your request

I refer to your request of 5 February 2014, asking for the following:

1. That ACC release a copy of the letter it sent to the Ombudsman as part of his investigation into "safety concern submission";
2. Failing that, you request that ACC release a redacted copy of its submissions to the Ombudsman;
3. Failing that, you request that ACC consult with the providers concerned to determine whether they are willing to have ACC release the information (with ACC to provide proof of consultation without identifying those providers); and
4. That ACC provide the date of a letter and/or complaint to the New Zealand Police in respect of ACC's letter to you of 22 February 2013, which responded to your earlier query of as to what proof Dr Collier had provided ACC about the concerns he had about his safety.

I will deal with points 1, 2, and 3 collectively, before then dealing with point 4.

#### Correspondence and submissions relating to investigation by an Ombudsman

Section 2(1) of the Official Information Act 1982 (the Act) provides the definition of official information for the purposes of the Act. Official information is defined as any information held by; a department, Minister of the Crown (held in his or her personal capacity), or an organisation, such as ACC. However, there are a number of exceptions to that definition, including information relating to an investigation by an Ombudsman.

Subsection 2(1)(i) specifically provides for the manner in which any correspondence or communication between the office of the Ombudsmen and an organisation, which relates to an investigation conducted by an Ombudsman, is to be treated (copy of section 2(1) attached).

The section makes it clear that other than information that came into existence before the commencement of the investigation, any such correspondence or communication is excluded from the definition of official information.

It follows that as the letter and submissions you have requested were solely generated for the purpose of responding to an investigation by the Ombudsman, they fall under the exemption provided by section 2(1)(i). That is to say that they do not constitute official information for the purposes of the Act. It is on that basis that ACC declines to release those documents to you.

For the same reason ACC will not be providing you with a redacted version of the submissions you have referred to.

In relation to your request that ACC consult with the providers concerned, I can advise that ACC will not be consulting those individuals in respect of your request. This is because ACC has previously undertaken extensive consultation with the providers concerned. Their views on the issue of their privacy interests have been well canvassed and ACC is of the clear understanding that they wish to have those interests protected. ACC's decision to decline this aspect of your request is made in reliance of section 9(2)(a) of the Act.

I note that much of what has been discussed above has previously been addressed by Anna Mildenhall in her letter to you of 30 April 2013. I appreciate that this is not the outcome you were seeking, but the legal position is clear. As such, please note that ACC will not be responding to any further correspondence with you on that issue.

### **Letter and/or complaint to the New Zealand Police**

In responding to point 4 of your request I have taken you to mean the following. As a result of ACC's letter to you of 22 February 2013 (responding to your email of 24 January 2013 in which you requested, in general terms, proof of Dr Collier's concerns for his safety), you now seek to have ACC provide the date of any letter and/or complaint made by Dr Collier to the New Zealand Police.

ACC does not hold, or have knowledge of, any letter and/or complaint from Dr Collier to the Police. Therefore your request is declined pursuant to section 18(e) of the Act on the basis that the information you seek does not exist.

For the avoidance of doubt, I reiterate the advice Terence Routledge provided to you on this issue in his letter of 22 February 2013. In order to protect his privacy interests, ACC also declines to provide you with the information it does hold in respect of the concerns Dr Collier has for his safety. That decision is made pursuant to section 9(2)(a) of the Act.

Again, while I appreciate that this is not the outcome you were seeking, the legal position is clear. As such, please note that ACC will not be responding to any further correspondence with you on this issue.

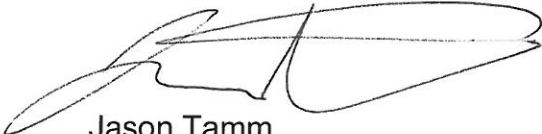
### **Further information**

Please contact me at [jason.tamm@acc.co.nz](mailto:jason.tamm@acc.co.nz) if you would like to discuss this letter. I will be happy to answer any questions or, if you have any concerns, work with you to resolve these.

If you are still not happy, you may make a complaint to the Office of the Ombudsman. You can call them on 0800 802 602, 9am to 5pm weekdays, or write to:

The Office of the Ombudsman  
P O Box 10 152  
WELLINGTON 6143

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jason Tamm', written over a horizontal line.

Jason Tamm  
**Senior Advisor**