



22 July 2021

Adam Irish

Via FYI.org.nz: [fyi-request-15811-7ee7407b@requests.fyi.org.nz](https://fyi.org.nz/request/15811-7ee7407b)

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Tēnā koe Adam

**Official Information Act 1982 (OIA) request dated 16 June 2021 (ref 20/21 0728)**

Thank you for your OIA request dated 16 June 2021 to the Department of Internal Affairs (the Department) regarding its investigation in 2001-02 relating to allegations made against Mr Meng Foon. We refer to our letter of 9 July 2021 advising you of the extension to the timeframe for our response until 28 July 2021.

You requested –

*“Any draft press release regarding Mr Foon being deemed an unsuitable person to be involved in running any gaming activities.*

*Any advice or reports provided to Ministers regarding Mr Foon.*

*The full process that DIA undertakes when assessing whether to prosecute an individual and what independent checks and balances it had in place to ensure the DIA wasn't derelict or negligent in its duty to prosecute Mr Meng Foon.*

*Why documentation went missing regarding Mr Meng Foon.*

*If at the time of the appointment of Mr Meng Foon the DIA had been consulted on his appointment and any information it provided the appointing Minister.*

*Any document, advice or report current or historical providing a no surprises disclosure on Mr Meng Foon to Ministers.”*

The Department has addressed each of your queries individually below.

**Draft press release regarding Mr Foon**

The Department has identified a draft media release regarding Mr Foon from 2001. This document is being withheld in full under section 9(2)(g)(i) of the OIA on the basis that its release would inhibit the future exchange of free and frank opinions, and that such inhibition would prejudice the effective conduct of public affairs.

The Department has considered whether the withholding of the document under section 9(2)(g)(i) is outweighed by any public interest considerations under section 9(1) of the OIA. The Department acknowledges the public interest in the transparent conduct of public affairs and in holding officials to account for their actions. In this case, however, it has been decided that the public interest in favour of disclosure of the document in question does not outweigh the need to withhold for the reasons set out in section 9(2)(g)(i) of the OIA.

**Advice or reports provided to Ministers regarding Mr Foon, including current or historical 'no surprises' disclosures**

The Department has reviewed its records for any documents that would fall in scope of these parts of your request.

Outside the context of the recent media interest in the 2001 investigation, the Department has not provided any advice or reports to Ministers about Mr Foon.

In early 2020, the Department received an OIA request about the 2001 investigation, and since then, the Department has kept the Minister of Internal Affairs informed of the media interest in the historical investigation. This has included sending draft copies of OIA responses to the Minister's Office for the Minister's information, as well as providing the Minister with a copy of the communications plan (with associated talking points for the Minister) prior to the story's publication on Stuff. The Minister of Justice and the Minister for Diversity, Inclusion and Ethnic Communities were also provided with copies of the communications plan with tailored talking points should they be questioned about the media story.

These documents are being withheld under the following sections of the OIA:

- section 9(2)(g)(i), where the withholding of the information is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty; and
- section 9(2)(f)(iv), where the withholding of the information is necessary to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

However, in the interests of transparency, the Department is providing you with summaries of the communication with Ministers regarding the recent OIA requests and media interest, which can be found at Appendix A.

Before deciding to withhold the original documents under sections 9(2)(g)(i) and 9(2)(f)(iv), the Department considered whether the withholding of information was outweighed by any public interest considerations under section 9(1) of the OIA. To the extent that there is a public interest in the disclosure of the information requested, the Department considers that it is satisfied by the provision of the above-referenced summary information.

## **Process for assessing whether to prosecute an individual**

The Department does not hold any documents outlining the decision-making process followed in 2001 when Mr Foon was investigated. It is also to be noted that the investigation related to alleged offences under the Gaming and Lotteries Act 1977 (the 1977 Act), which was repealed and replaced by the Gambling Act 2003 (the 2003 Act). The Department has carried out searches for its prosecution policy under the 1977 Act and has not located any documents that relate to such a policy. Therefore, to the extent that your request refers to historical processes followed in 2001, it is refused in reliance on section 18(g) of the OIA: the information requested is not held by the Department.

The Department's current prosecution policy, under the 2003 Act, contains details about the process undertaken when considering or undertaking a prosecution under any of the enactments the Department enforces. You can find more information about this policy (including a copy of the policy itself) on the Department's website:

<https://www.dia.govt.nz/Prosecution-Policy>

Decisions to prosecute are made in consultation with the Department's Legal Services team, which has prosecutorial discretion and is independent from the investigating unit. However, the Department's searches of its records for the 2001-02 period have not produced any documents that show that its Legal Services team was consulted at any time during or after the investigation into the allegations against Mr Foon in 2001-02.

Any decision to prosecute under the current prosecution policy must be made in accordance with the overarching framework that applies to any government agency under the Solicitor-General's Prosecution Guidelines, which can be found here:

<https://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf>

Any prosecution made in accordance with the above guidelines must meet the required evidential threshold of '*beyond reasonable doubt*' prior to commencement.

## **Missing documentation regarding investigation into Mr Foon**

In your request you asked for clarity on "why documentation went missing regarding Mr Meng Foon". In the documentation the Department still holds on this matter, other records are referenced which are no longer able to be located. The Department carried out extensive searches for the remaining documents relating to the investigation, including searching its electronic and paper file records. It also sought to undertake a search through the email accounts of former staff of the Department, but this was unsuccessful.

Despite extensive efforts to locate the remaining documentation regarding the 2001-02 investigation the Department was not able to do so. The Department notes that its record-keeping and systems have greatly improved over the last two decades.

### **Any consultation with the Department on Mr Foon's appointment**

You also asked whether, at the time of Mr Foon's appointment, the Department had been consulted, and requested any information provided to the appointing minister. The Department understands your request as referring to Mr Foon's appointment as Race Relations Commissioner in 2019. The Department can confirm that it was not consulted on Mr Foon's appointment to the role of Race Relations Commissioner and did not provide any information to the appointing minister.

Therefore, to the extent that this part of your request is for documentation, it is refused in reliance on section 18(g) of the OIA: the information requested is not held by the Department.

If you are dissatisfied with the Department's decision on your request for information, you have the right, under section 28 of the OIA, to make a complaint to the Office of the Ombudsman. The Office of the Ombudsman can be contacted by phone on 0800 802 602, via post at PO Box 10152 Wellington or via email to [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz).

Ngā mihi

A handwritten signature in blue ink, appearing to read 'D. Robson', is positioned above the printed name and title.

**Dave Robson**  
Director Gambling

## Appendix A

Document number	Title	Date	Summary
Document 1	Email from Department official to Minister of Internal Affairs' Office (2 attachments)	23/04/2020	<p><b>Title: "Consultation on the proposed response to Stuff's Official Information Act 1982 (the "OIA") request"</b></p> <p>In this email, Rachel Chrystall (Senior Advisor Official Correspondence) emails a copy of a draft OIA response to the Minister of Internal Affairs' Private Secretary and notes the deadline for any feedback from the Minister's Office.</p>
Document 2	<i>Ministerial coversheet</i>	30/04/2020	<p><b>Title: "Departmental Official Information Act request"</b></p> <p>This document is a coversheet used when sending a copy of an OIA response to the Minister's Office for consultation. It describes the information requested and records the Department's proposed response. The document contains the following headings:</p> <ul style="list-style-type: none"> <li>• <b>Information falling within the request</b></li> <li>• <b>Proposed response</b></li> <li>• <b>Consultation</b></li> <li>• <b>Risks and mitigation</b></li> </ul>
Document 3	<i>Draft OIA response to journalist</i>	23/04/2020	<p><b>Title: "Official Information Act request (Ref OIA19200526)"</b></p> <p>This document is the draft OIA response to the journalist who requested information regarding an investigation into Mr Foon in 2001. The Department withheld all documentation relating to the investigation under section 9(2)(g)(i) of the OIA.</p>
Document 4	Email from Director Gambling to Minister of Internal Affairs' Office, Minister of Justice's Office, and other officials	14/04/2021	<p><b>Title: "Changing timing on Foon matter"</b></p> <p>In this email, the Director Gambling emails officials at the Office of Ethnic Communities, Public Service Commission, Ministry of Justice, and the Minister of Internal Affairs' Office, as well as a number of DIA officials, to update them on the timing of release to Stuff of summary information relating to the Mr Foon investigation in 2001.</p>
Document 5	Email from Department official to Minister of Internal Affairs' Office (2 attachments)	21/04/2021	<p><b>Title: "OIA response to [journalist name] for review"</b></p> <p>In this email, Caleb Smith (Senior Business Advisor) emails a copy of a draft OIA response to the Minister of Internal Affairs' Private Secretary. The email briefly summarises the type of information being withheld in the OIA response and advises the due date for any comments from the Minister's Office.</p>

Document 6	<i>Draft OIA response to journalist</i>	28/04/2021	<p><b>Title: “Official Information Act (OIA) request dated 5 March 2021 (ref OIA 20/21 0494)”</b></p> <p>This document is a draft OIA response to the same journalist that made the January 2020 OIA request referenced in the summary of Document 3 above. In the 2021 request, the journalist requested all correspondence referencing their earlier OIA request. This response letter lists all the documents in scope of the request, noting which ones are being provided to the requestor, and any redactions made to the documents.</p>
Document 7	<i>Documents for release to journalist with draft redactions noted</i>	12/02/2020 - 28/04/2020	<p><b>No title, documents are numbered as outlined in the OIA response (i.e. ‘Document 1’ etc.)</b></p> <p>This file contains copies of the correspondence generated in responding to the journalist’s previous OIA request on this topic, with proposed redactions noted. The correspondence in question involves the officials tasked with drafting the 2020 OIA response, and details the search for documents, review and consultation on the response, and final response to the journalist.</p>
Document 8	Email from Department official to Minister of Internal Affairs' Office (7 attachments)	7/05/2021	<p><b>Title: “Release of information to [journalist name] and [withheld under section 9(2)(a)] – Comms plan”</b></p> <p>In this email, Emma Atkins (Acting Manager Accountability &amp; Principal Advisor Official Correspondence) emails a number of attachments to the Minister of Internal Affairs’ Private Secretaries in relation to release of information on Mr Foon. This included details on the release of summary information to a journalist at the direction of the Ombudsman, as well as the OIA response summarised above (Documents 6 and 7). This email also attached communications plans and talking points for the Minister of Internal Affairs, as well as the Minister of Justice and Minister for Diversity, Inclusion and Ethnic Communities.</p>
Document 9	<i>Draft letter to journalist regarding Ombudsman investigation</i>	10/05/2021	<p><b>Title: “Update regarding Official Information Act 1982 (OIA) request dated 6 January 2020 (ref OIA 19/20 0526) and subsequent Ombudsman investigation (525338)”</b></p> <p>This document is a draft of the letter sent to the journalist who made the 2020 OIA request. This letter referred to the 2020 OIA request, and summarises the Department’s decision on that request, refers to the subsequent Ombudsman investigation, and provides the journalist with further summary information on the investigation into Mr Foon. Below are the headings in the letter, and a summary of the information contained under each heading.</p>

			<p><b>Department response to your OIA request</b> This section summarises the Department’s response to the 2020 OIA request.</p> <p><b>Ombudsman investigation</b> This section refers to the journalist’s subsequent complaint to the Ombudsman and notes that the Ombudsman agreed with the majority of the Department’s decision on the OIA request but recommended the release of further summary information.</p> <p><b>Release of additional summary information</b> This section contains the additional summary information regarding the documents detailing the 2001 investigation into Mr Foon.</p>
Document 10	<i>Draft OIA response to journalist</i>	12/05/2021	<p><b>Title: “Official Information Act 1982 (OIA) request dated 5 March 2021 (ref OIA 20/21 0494)”</b></p> <p>This document is a draft OIA response to the same journalist that made the January 2020 OIA request referenced in the summary of Document 3 above. In the 2021 request, the journalist requested all correspondence referencing their earlier OIA request. This response letter lists all the documents in scope of the request, noting which ones are being provided to the requestor, and any redactions made to the documents.</p>
Document 11	<i>Documents for release to journalist with draft redactions noted</i>	12/02/2020 - 28/04/2020	<p><b>No title, documents are numbered as outlined in the OIA response (i.e. ‘Document 1’ etc.)</b></p> <p>This file contains copies of the correspondence generated in responding to the journalist’s previous OIA request on this topic, with proposed redactions noted. The correspondence in question involves the officials tasked with drafting the 2020 OIA response, and details the search for documents, review and consultation on the response, and final response to the journalist.</p>
Document 12	Details of this document are withheld under section 9(2)(a) of the OIA.		
Document 13	<i>Communications Plan and talking points for the Minister of Internal Affairs</i>	undated	<p><b>Title: “Communications Plan: Meng Foon OIA release”</b></p> <p>This document is the Department’s communications plan associated with the release of information on the Mr Foon 2001 investigation, including the summary information, as well as the response to the 2021 OIA request. Below are the headings in this document, and a summary of the information contained under each heading.</p>

		<p><b>Background/situation analysis</b></p> <p>This section of the document summarises the media interest in the 2001 investigation, and outlines the events since the 2020 OIA request, including detailing the complaint to the Ombudsman, decision of the Ombudsman, and further 2021 OIA request from the journalist.</p> <p><b>Outcomes and objectives</b></p> <p>This section details the communication goals of the Department with respect to this matter.</p> <p><b>Target audience</b></p> <p>This section details the internal and external audiences to which this communications plan relates.</p> <p><b>Key messages</b></p> <p>This section details the key messages for both external and internal audiences.</p> <p><b>Tools and tactics</b></p> <p>This section contains a bulleted list of actions, including the preparation of a reactive written statement and talking points for the Minister of Internal Affairs. It also outlines the need to keep the Minister and Chief Executive’s office informed of statements being sent out.</p> <p><b>Timing and responsibilities</b></p> <p>This section contains a timeline of actions which details when documents or messaging will be sent to various parties.</p> <p><b>Risk analysis</b></p> <p>This section outlines various risks associated with this matter, and details impact and potential mitigations.</p> <p><b>Media response</b></p> <p>This contains information for provision to the media.</p> <p><b>Reactive response to other media</b></p> <p>This section contains further information for provision to any additional media requests for comment.</p> <p><b>Response to media – escalating media attention</b></p> <p>This section contains further information for provision to media in the event of additional media attention.</p> <p><b>Talking points</b></p> <p>This section contains talking points for the Minister of Internal Affairs, Minister of Justice, and Minister for Diversity, Inclusion and Ethnic Communities should they be approached for comment.</p>
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Document 14	<i>Communications Plan and talking points for the Minister of Justice</i>	undated	<p><b>No title</b></p> <p>This document is an extract from the communications plan summarised above and contains the sections of the above document for provision to the Minister of Justice’s Office. The following sections of the communications plan are included in this document:</p> <ul style="list-style-type: none"> <li>• <b><i>Background/situation analysis</i></b></li> <li>• <b><i>Media response</i></b></li> <li>• <b><i>Reactive response to other media</i></b></li> <li>• <b><i>Talking points (For Minister of Justice)</i></b></li> </ul>
Document 15	<i>Communications Plan and talking points for the Minister of Diversity, Inclusion and Ethnic Communities</i>	undated	<p><b>No title</b></p> <p>This document is an extract from the communications plan summarised above and contains the sections of the above document for provision to the Minister for Diversity, Inclusion and Ethnic Communities’ Office. The following sections of the communications plan are included in this document:</p> <ul style="list-style-type: none"> <li>• <b><i>Background/situation analysis</i></b></li> <li>• <b><i>Media response</i></b></li> <li>• <b><i>Reactive response to other media</i></b></li> <li>• <b><i>Talking points (For Minister for Diversity, Inclusion and Ethnic Communities)</i></b></li> </ul>