

Hon Chris Hipkins

MP for Remutaka

Minister for COVID-19 Response

Minister of Education

Minister for the Public Service

Leader of the House



16 May 2022

Erika Whittome
fyi-request-19003-a72b78ec@requests.fyi.org.nz

Ref: OIA0680

Dear Erika Whittome

Official Information Act request relating to the justified limits on the freedoms and rights of New Zealanders

I refer to your request under the Official Information Act 1982 (the OIA) that was partially transferred from the Attorney-General, Hon David Parker to me on 30 March 2022. I will be responding to the following parts of your request:

2. *“Are the current emergency "orders" for Covid-19 justified based on the very low infection fatality rate in New Zealand for the Covid-19 virus? (The infection fatality rate was 1 percent for ALL age groups at the end of 2020 according to MoH statistics*
<https://web.archive.org/web/20201227021819/https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-data-and-statistics/covid-19-current-cases>. *On 27 Dec 2020 there were 2144 recovered cases and 25 deceased ALL age groups).*
3. *Are the current Covid-19 orders still justified to breach the following NZ BORA?*
 - a. *NZ Bill of Rights Act 1990 ,S13 Freedom of thought, conscience, and religion:*
 - i. *Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.*
 - b. *Bill of Rights Act 1990 ,S11 Right to refuse to undergo medical treatment*
Everyone has the right to refuse to undergo any medical treatment.

I understand these orders are to be reviewed every 3 months.
4. *When was the last review and kindly share the meeting minutes of this last review please?”*

The time frame for responding to your request was extended under section 15A of the OIA by 10 working days because it necessitated consultations to be undertaken before a decision could be made.

In regard to questions 2 and 3 of your request, I have interpreted this to relate to a COVID-19 Order made under sections 11 and 15 of the COVID-19 Public Health Response Act 2020 (the Act).

I can confirm that, before I make a COVID-19 order, the Act requires that I am satisfied that it does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990. In each case, I have been satisfied of that before I made the order, including in making the recent amendment to the Order which moved the whole of New Zealand to Orange on 11.59 pm on 13 April 2022. Also, before a draft COVID-19 order comes to me for consideration, officials have paid particular attention to ensure that, where a policy proposal impacts on rights, the corresponding law is designed in a

way that has the least impact on rights that is necessary to achieve the policy purpose. The number of deaths from COVID-19 is just one factor relevant to my consideration of whether a COVID-19 Order is justified.

The Act also sets out a number of other requirements that need to be met before I make or amend a COVID-19 Order. The requirements that need to be met are summarised below:

Pursuant to sections 11 and 15 of the Act, as Minister for COVID-19 Response, I am required to ensure an Order, or amendment to the Order, is consistent with the purpose of the Act, that is:

“to support a public health response to COVID-19 that—

- (a) prevents, and limits the risk of, the outbreak or spread of COVID-19 (taking into account the infectious nature and potential for asymptomatic transmission of COVID-19); and
- (b) avoids, mitigates, or remedies the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect); and
- (c) is co-ordinated, orderly, and proportionate; and
- (ca) allows social, economic, and other factors to be taken into account where it is relevant to do so; and
- (cb) is economically sustainable and allows for the recovery of MIQF costs; and
- (d) has enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also support that response.”

Section 9 of the Act further requires that I consider:

- advice from the Director-General of Health about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures (whether voluntary or enforceable) that are appropriate to address those risks.
- that an order under section 11 of the Act does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA).

Section 9 also requires that I consult with the Prime Minister, the Minister of Justice, and the Minister of Health, and ensure that certain requirements for the form, publication and making of COVID-19 Orders have been complied with before making a COVID-19 Order.

In response to question 3 of your request, the Act also requires that I keep all COVID-19 orders under review. There is no specific time frame for those reviews, but the quickly changing circumstances of the outbreak of COVID-19 in New Zealand has meant that the COVID-19 orders have been amended on approximately 172 occasions. In a practical sense, they are kept under continuous review. Each time I make an amendment to a COVID-19 order I must again be satisfied that the amendment does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990. Again, for every amendment, I have been satisfied of that.

High vaccination rates create more options for both domestic measures and border settings. Our new domestic framework to control COVID-19 will enable us to minimise the spread of disease without relying on widespread lockdowns.

Officials also keep the public health measures currently in place under constant review, informed by public health advice. This is to ensure they continue to remain fit for purpose, justified and proportionate.

In regard to question 4 of your request, you may be referring to the Epidemic Preparedness (COVID-19) Notice 2020 (the Epidemic Notice), which is made by the Prime Minister under section 5 of the Epidemic Preparedness Act 2006 and expires after 3 months if it is not earlier reviewed. A lot of the legislation made to respond to COVID-19 (including COVID-19 orders made by me) may only be made while the Epidemic Notice is in force. The Prime Minister can only make or renew the Epidemic Notice if she is satisfied that the effects of an outbreak of COVID-19 are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand significantly.

The Epidemic Notice has been renewed numerous times. It was last renewed on 17 March 2022 and will be due for review again in June 2022. Copies of the renewal notices are available on the Ministry of Health's website:

health.govt.nz/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-epidemic-notice-and-orders#epidemic

There is no formal meeting in respect of the renewal. When the review concludes, a Health Report is prepared, which is signed by the Director-General of Health, Minister of Health, Hon Andrew Little, and myself (Minister for COVID-19 Response). This report then goes to the Prime Minister for her approval and to issue the renewal.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'CH', is written over a light blue horizontal line.

Chris Hipkins
Minister for COVID-19 Response