

Hon James Shaw

Minister of Climate Change

Associate Minister for the Environment (Biodiversity)



OIA592

Lance Lavery

By email: fyi-request-22730-2c40d6c2@requests.fyi.org.nz

Tēnā koe Lance

Thank you for your email of 9 May 2023 requesting the following under the Official Information Act 1982 (the Act):

Pursuant to the Official Information Act 1982, I am formally requesting access to information concerning the redactions made to a Cabinet paper released by Climate Change Minister James Shaw, as detailed in an article by Marc Daalder. Specifically, I request the following information:

- 1. A copy of the unredacted Cabinet paper addressing the decision on price controls in the Emissions Trading Scheme (ETS) and containing reference to an upcoming ETS review.*
- 2. All communications between the Ministry for the Environment officials and Minister James Shaw's office regarding the release of the Cabinet paper and the redactions made against official advice.*
- 3. An explanation for the redactions in the Cabinet paper, including the legal basis, reasons for departing from official advice, and the rationale for not specifying the reasons for the redactions in the released version.*
- 4. Policies, guidelines, or internal protocols governing the process of proactive release of Cabinet papers and other government documents, and the interaction between proactive release and the Official Information Act.*
- 5. Information on instances where proactive release has been used to circumvent the Official Information Act or where redactions have been made that do not align with the reasons allowed under the Act.*

I have responded to each of your questions below.

Question One

The Cabinet paper: *2022 update to New Zealand Emissions Trading Scheme limits and price control settings for units* has been reassessed for information to release and some further content has been unredacted. However, some information that was withheld at the time this paper was proactively released must continue to be withheld under the following section of the Act:

- 9(2)(b)(ii) To protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.

Question Two

Three emails and corresponding attachments between my office and the Ministry for the Environment (The Ministry) regarding the release of the Cabinet paper have been identified in scope of your request, as listed in the attached document schedule. These emails are being released to you. Some information within these documents has been refused because the information is publicly available, or withheld under the following sections of the Act:

- 9(2)(b)(ii) To protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.
- 9(2)(a) To protect the privacy of natural persons, including that of deceased natural persons.
- 18(d) That the information requested is or will soon be publicly available.

Question Three

As mentioned in question one, some material was withheld in the proactively released Cabinet paper under the following sections of the Act:

- 9(2)(b)(ii) To protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.
- 9(2)(f)(iv) To maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

Releasing the redacted information would have been likely to prejudice the commercial position of the entity/company and potentially inhibit the future exchange of this information. The decision to withhold this material is aligned with guidance published by the Ombudsman on the use of these particular sections of the Official Information Act 1982.

The information withheld under section 9(2)(f)(iv) was still being actively considered at the time of the proactive release and would have been likely to prejudice the orderly and effective conduct of government decision making processes.

Question Four

The Cabinet Office circular "CO (18) 4: Proactive release of Cabinet material: Update Requirements" sets out the requirements and procedures for the proactive release of Cabinet material (Cabinet and Cabinet committee papers and minutes). A copy of this Circular and further information on proactive release can be found on the Department of the Prime Minister and Cabinet's website here: <https://tinyurl.com/myeen9ta>.

Proactive release of information is different from release under the Act in that Cabinet material is published in the interests of transparency rather than in response to a request made under the Act. All material proposed for proactive release must undergo a considered, reliable, robust review process and the principles of the Act, Privacy Act 2020 and Protective Security Requirements are used as a guideline for this review.

Question Five

I am not aware of any instances where proactive release has been used to circumvent the Official Information Act or where redactions have been made that do not align with the reasons allowed under the Act.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at:
www.ombudsman.parliament.nz.

Please contact my office if you have any queries about this response.

Nāku noa, nā,



Hon. James Shaw

Minister of Climate Change

Document schedule

No.	Date	Content	Decision	OIA Section/s applied (if withholding information)
1	8 December 2022	Cabinet Paper: 2022 update to New Zealand Emissions Trading Scheme limits and price control settings for units	Release in part	S9(2)(b)(ii)
1 (a)		Appendix one: Regulatory Impact Statement: Annual update to New Zealand Emissions Trading Scheme limits and price control settings for units 2022	Refuse in full	S18(d)
1 (b)		Appendix two: Diagram displaying where NZ ETS unit settings fit within the wider emissions reduction context	Release in full	N/A
1 (c)		Appendix three: Summary of submitter views on proposals for the 2022 update to New Zealand Emissions Trading Scheme limits and price control settings for units	Release in full	N/A
2	12 December 2022, 9:55 am	Email: [IN-CONFIDENCE]RE: [SENSITIVE]BRF-2602 Proactive release of the NZ ETS unit settings policy decisions Cabinet paper	Release in part	s9(2)(a)
2 (a)	12 December 2022, 9:55 am	Email attachment: Proactive release of the NZ ETS unit settings policy decisions Cabinet paper	Release in part	s9(2)(a)

3	12 December 2022, 12:17 pm	Email: [IN-CONFIDENCE]RE: [SENSITIVE]BRF-2602 Proactive release of the NZ ETS unit settings policy decisions Cabinet paper	Release in part	s9(2)(a)
4	12 December 2022, 6:16 pm	Email: RE: [SENSITIVE]BRF-2602 Proactive release of the NZ ETS unit settings policy decisions Cabinet paper	Release in part	s9(2)(a)
4 (a)	12 December 2022, 6:16 pm	Email attachment: BRF-2602-appendix-1 - NZ ETS settings cabinet paper_Redacted.pdf	Release in full	N/A
4 (b)	12 December 2022, 6:16 pm	Email attachment: BRF-2602 Cabinet paper Appendix Three - Summary of submitter views on proposals.pdf	Release in full	N/A
4 (c)	12 December 2022, 6:16 pm	Email attachment: BRF-2602 Cabinet paper Appendix Two - Diagram putting NZ ETS unit settings in context_Redacted.pdf	Release in full	N/A
4 (d)	12 December 2022, 6:16 pm	Email attachment: BRF-2602 Cabinet paper Appendix One - Regulatory Impact Statement_Redacted.pdf	Release in part	S9(2)(b)(ii)
4 (e)	12 December 2022, 6:16 pm	Email attachment: BRF-2602-appendix-2-CAB-22-MIN-0533 Minute.pdf	Release in full	N/A