



Ref: 224791

29 August 2023

Sam

Via FYI.org.nz

Tēnā koe Sam

## Response to your request for Official Information

On 18 July 2023, you requested the following information from the Human Rights Commission (“the Commission”) under the Official Information Act 1982 (“OIA”):

*Please provide me with all policies, information, and internal and external communications regarding the use of public bathrooms by transgender people, especially with their ability to elect whether to use a male or female bathroom depending on what they identify as.*

We address each aspect of your request below.

### Request for information

In response to your request for information regarding the use of public bathrooms by transgender people, we refer you to the following:

- The Commission’s report [PRISM: Human Rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics \(SOGIESC\) in Aotearoa New Zealand](#) (released June 2020). In particular, the matter is discussed on pages 18, 50 and 58 to 59 of this report.
- Information contained in the following FAQ’s on the Commission’s website:
  - [Can I use public toilets and changing rooms that align with my gender?](#)
  - [Can my school stop me using the toilets and changing rooms I feel most comfortable in?](#)
- The Commission’s submission on *Petition of Maggie Ross: Provide Funding for all Schools to have Gender-Neutral Bathrooms* (21 April 2023) – copy **attached**.

### Request for policies

In response to your request for policies about the use of public bathrooms by transgender people, we confirm that the Commission does not hold any information relevant to your request. As the Commission’s offices are not open to the general public, any internal policies do not relate to ‘public’ bathrooms. We must therefore decline this aspect of your request on the basis that the information you have requested is not held by the Commission.<sup>1</sup>

### Request for external correspondence

In response to your request for external communications regarding the use of public bathrooms by transgender people, we have **attached** an email chain between

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<sup>1</sup> OIA, s 18(g).

Commission staff and Parliament's Petitions Committee which addresses this matter. We note that we have applied redactions to the names of staff members from the Commission and the Petitions Committee in order to protect their individual privacy.<sup>2</sup>

We also note:

- Over the last five years (since 1 January 2018), the Commission's frontline Human Rights Information and Support Services Team has received three complaints alleging unlawful discrimination on the grounds of sex,<sup>3</sup> that relate to the use of bathrooms by transgender people.
- The Commission's Senior Human Rights Advisor – Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) has also searched his email inbox and found two enquiries received from members of the public relating to the use of public bathrooms by transgender people.

Other than the summary provided above, the Commission has made the decision to decline your request relating to providing copies of external communications on the following grounds:

- To protect the privacy of natural persons (OIA, s 9(2)(a)); and
- To protect information which is subject to an obligation of confidence, where disclosure would be likely to prejudice the future supply of similar information (OIA, s 9(2)(ba)).

We have made this decision because our dispute resolution processes, including all enquiries and complaints we receive from individuals, are treated as confidential.<sup>4</sup> We consider it is in the public interest that members of the public are assured that the correspondence they have with Commission staff as part of our enquiries and complaints service will be treated as confidential, and that such confidence will only be waived with their free, prior and informed consent. The continued supply of such information from members of the public is essential for the Commission to discharge its statutory functions under the HRA to receive enquiries and complaints from members of the public about discrimination and matters affecting human rights in Aotearoa.<sup>5</sup>

### **Request for internal correspondence**

We have made the decision to decline your request for copies of internal communications regarding the use of public bathrooms by transgender people, on the following grounds:

- To maintain the effective conduct of public affairs through the free and frank expression of opinions between Commission staff and representatives in the course of their duties (OIA, s 9(2)(g)(i)); and
- To maintain legal professional privilege (OIA, s 9(2)(g)(h)).

The internal communications which the Commission holds in relation to this matter involve the sharing of opinions and advice between Commission staff, including members of the Commission's legal team. The Commission considers there is a strong public interest in ensuring Commission staff receive robust and frank advice in the process of forming a public position on an issue, and that legal professional privilege be maintained.

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<sup>2</sup> OIA, s 9(2)(a).

<sup>3</sup> Section 21(1)(a) of the Human Rights Act 1993 prohibits discrimination on the basis of sex, which has been interpreted to include gender identity.

<sup>4</sup> See information on our [website](#).

<sup>5</sup> See Human Rights Act 1993, s 5 and Part 3.

### **Alternative avenues**

If you are not satisfied with this response, under the Official Information Act you are entitled to complain to the Ombudsman's Office. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or on freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'P Moran', with a long horizontal flourish extending to the right.

**Philippa Moran**

Kaitohu Ture | Legal Advisor

New Zealand Human Rights Commission | Te Kāhui Tika Tangata