



22 September 2023

John Miller

By email: fyi-request-23803-a2e75f0a@requests.fyi.org.nz

Tēnā koe John

I refer to your information request dated 12 August 2023 made under the Official Information Act 1982 (the Act). You have requested:

“Are there any plans to renovate/change the second floor of the Commerce Building [Otago Business School] over the next 5 years?”

If so, please provide any relevant documents held by the University of Otago.”

We note that on 8 September 2023, we extended the time limit by which we must make a decision on your request of 12 August 2023, to 22 September 2023.

Please see below our response to your request.

1. Are there any plans to renovate/change the second floor of the Commerce Building [Otago Business School] over the next 5 years?

As noted in our email of 8 September 2023, we confirm that there are renovations planned for Level 2 of the Otago Business School building. The project involves the relocation of the Pathways and English Learning Centre from the University Plaza building to Level 2 and part of Level 3 in the Otago Business School.

2. Please provide any relevant documents held by the University of Otago.

Please see the attached information within scope of your request. Having given careful attention to public interest considerations in accordance with section 9(1) of the Act, we have withheld documents where we consider that good reasons exist for withholding information. We have withheld information on the following grounds:

- Under section 9(2)(i) of the Act, on the basis that withholding this information is necessary to enable the University carry out, without prejudice or disadvantage, commercial activities. The University has contracts with suppliers which are commercially sensitive and arrangements which will require ongoing commercial negotiations. The contracts we have with our suppliers are based on trust and collaboration and we consider that the disclosure of any such information would be likely to prejudice our relationship with them; the project as a whole; and our ability to obtain further contracts with these and other suppliers. This would prejudice our commercial activities.

- Similarly, under section 9(2)(j) of the Act, to enable the University to carry out commercial negotiations with future contractors without prejudice or disadvantage. If future contractors were aware of all of the terms and conditions we negotiated in respect of this project, we would be put at a bargaining disadvantage and our ability to negotiate would be impaired. The University regularly negotiates with contractors in relation to its building projects, and so we consider the prospect of such negotiations to be real. Such prejudice would also be likely to occur as the information was generated for the purpose of negotiation and directly related to the issues under negotiation; the information is not in the public domain; and the information will remain 'live' as it is relevant to future negotiations and the project (and other projects') progress.
- Under section 9(2)(b)(ii) of the Act to protect information which if disclosed would be likely to unreasonably prejudice the commercial position of the person who supplied or is the subject of the information – such as our suppliers and contractors. We consider that release of any such information could damage the reputation of the suppliers that are providing us with their services in relation to the project. This could lead to a loss of confidence in their services as well as impact on their relationships with sub-contractors. Such disclosure could detrimentally affect their business. Our suppliers are operating in competitive industries (i.e., construction, architecture, and consulting industries), rather than from a monopoly position.
- Under section 9(2)(ba) of the Act to protect information which is subject to an obligation of confidence, and where making it available would be likely to prejudice the supply of similar information or information from the same source, and it is in the public interest that such information should continue to be supplied. This includes contracts with our contractors and suppliers, as well as:
 - Feedback. Staff and students from the Otago Business School were invited to submit email feedback and/or attend workshops on the project throughout 2021. Staff from the project team also met with individual staff from the Pathways and English Learning Centre to discuss and comments, questions or concerns they had in relation to the move to the Otago Business School. All submissions and/or discussions were received on the shared understanding that they would be treated in the strictest of confidence. Assurances of confidentiality are necessary as the information provided expresses the personal views and opinions of the submitter and are often of a highly personal nature. We believe that if we were to breach this obligation of confidence, we would struggle with engagement in any future consultation processes, as it would impact on the relationship of trust and confidence that exists between the University and submitters. Such disclosure would impact on submitters' willingness to express themselves openly and honestly in the future. Future supply of such information is in the public interest, as these submissions are used to inform the University's services and enhance the University's ability to make decisions.
- Under section 9(2)(g)(i) of the Act to maintain the effective conduct of public affairs through the free and frank expression of opinions between staff. Correspondence and meetings between members of the project would contain free and frank discussions and advice. It is important that our staff and contractors are able to freely express their opinions, ideas and concerns in a sincere and honest manner in relation to ongoing projects. Disclosure of this information would inhibit free and frank opinions in future, thereby preventing University staff from providing or receiving the information and advice they require to do their jobs and make good and informed decision in the context of live issues and ongoing projects.

Please see below the following general summary of the information we have withheld:

- Cost plans, reports, and estimates from our contractors.
- Value management registers.
- Construction contract documentation, including health and safety, quality management, and programme plans.
- Consultant contracts.
- Cultural design briefs and overlay from our consultants.
- Project Control Group and Executive Planning Team meeting reports and minutes. These meetings were led by our contractors and involved free and frank discussions over various aspects of the project:
 - Progress and milestones
 - Timelines
 - Cost
 - Risks
 - Procurement
 - Design
 - Feedback
 - Health and safety
 - Consents
 - Staffing

We acknowledge that there is public interest in releasing such information, namely transparency in the context of public sector procurement practices and accountability for spending public money. However, we do not believe these outweigh the prejudice that would result to both the University of Otago and our suppliers if any such information were to be released.

In the above cases, we consider that good reasons exist for withholding information, and this is not outweighed by other considerations which would make it desirable, in the public interest, to make the information available. If you are not satisfied with our response to your information request, section 28(3) of the Act provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.

Yours sincerely



Kelsey Kennard
Official Information and Compliance Coordinator
Office of the Registrar