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21 February 2024

Morris Lazootin

By email: fyi-request-24188-cc8a5ed0@requests.fyi.org.nz  
Ref: H2023031848/005473

Tēnā koe Morris

### Your request for official information

I refer to your request under the Official Information Act 1982 (the Act) to the Ministry of Health - Manatū Hauora (the Ministry) on 21 September 2023 for information regarding the flavour names listed in Schedule 4A of the Smokefree Environments and Regulated Products Amendment Regulations 2023 (the Regulations). You requested:

- “1. Details on the rationale behind the creation of this list.*
- 2. Criteria or factors that determined the inclusion or exclusion of specific flavours.*
- 3. Information about the individual(s) or entity/entities responsible for finalising this list.*

*I would appreciate any relevant communications, discussions, and documents that could provide insight into these queries.”*

On 10 November 2023, the Ministry responded to your request and refused parts 1 and 2 under section 18(d) of the Act, as at the time, the requested information was soon to be made publicly available.

The consultation process required for proactive release of the information you requested is taking longer than anticipated. However, in order to provide you with the information requested, the Ministry will release to you the relevant documents in response to parts 1 and 2 of your request. This is in advance of the documents being proactively released. Please see attached material.

Please note that a portion of the proactive release package has been published. You can view what has been published on our webpage here: <https://www.health.govt.nz/about-ministry/information-releases/release-ministerial-decision-making-documents/cabinet-and-consultation-material-smokefree-environments-and-smoked-tobacco-regulatory-regime>.

The Ministry’s response to you on 10 November 2023 advised that “...*legal advice and documents which come under the scope of all three questions are withheld under section 9(2)(h) of the Act, to maintain legal professional privilege*”. You made a further request under section 19(a)(ii) of the Act on 13 November 2023, requesting the grounds on which the Ministry withheld this material.

These documents contain legally privileged advice from one, or a combination of Ministry of Health Legal, Crown Law, and the Ministry of Foreign Affairs and Trade. The latter was requested to provide advice regarding international trade law obligations.

I trust this information fulfils your request. If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on: [oiagr@health.govt.nz](mailto:oiagr@health.govt.nz).

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by calling 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'A. Old', written in a cursive style.

Dr Andrew Old  
**Deputy Director-General**  
**Public Health Agency | Te Pou Hauora Tūmatanui**

## Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	24 – 25 January 2023	Email correspondence about inclusion and exclusion of certain flavours	Some information withheld under the following sections of the Act, <ul style="list-style-type: none"> <li>• 9(2)(g)(ii), to maintain the effective conduct of public affairs through the protection of Ministers, members of organisations, officers, and employees from improper pressure or harassment.</li> <li>• 9(2)(a), to protect the privacy of natural persons</li> </ul>
2	28 October 2022	Briefing: Proposals for the Smoked Tobacco Regulatory Regime	Some information withheld under the following sections of the Act: <ul style="list-style-type: none"> <li>• 9(2)(a)</li> <li>• 9(2)(h) to protect legal and professional privilege.</li> <li>• 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers and officers and employees of any public service agency.</li> </ul>
3	20 – 22 October 2022	Email correspondence with Canadian health officials	Some information withheld under section 9(2)(g)(ii) of the Act.
4	24 August 2023	Email correspondence about a memo on the exclusion of 'ice' from flavour wheel	
5	20 April 2023	Briefing: Smoked Tobacco Regulatory Regime – report back to Cabinet	Some information withheld under the following sections of the Act: <ul style="list-style-type: none"> <li>• 9(2)(a)</li> <li>• 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers and officers and employees of any public service agency.</li> </ul>
6	24 - 27 February 2023	Email correspondence about publicly available research	Some information withheld under section 9(2)(g)(ii) of the Act.
7	16 December 2022	Social Wellbeing Committee: Cabinet decision minutes, and corresponding Cabinet paper: Public consultation on	Some information redacted as out of scope.

#	Date	Document details	Decision on release
		regulatory proposals for the smoked tobacco regulatory regime.	Some information withheld under section 9(2)(h) of the Act.