

133 Molesworth Street
PO Box 5013
Wellington 6140
New Zealand
T+64 4 496 2000

21 March 2024

Spencer Woodman

By email: fyi-request-25513-9d5e8104@requests.fyi.org.nz
Ref: H2024035220

Tēnā koe Spencer

Partial response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to Ministry of Health – Manatū Hauora (the Ministry) on 25 January 2024 for information regarding vaping regulations.

On 22 February 2024, the Ministry extended the due date for responding to your request pursuant to section 15A(1)(a) of the Act, as the request necessitates a search through a large quantity of information.

To avoid any delays in communicating a decision on your request, the Ministry is providing a partial response at this time. Information in response to some parts of your request is outlined below:

“1c. Are the responsible parties for this cost to the tax payer still employed by the Ministry of Health, and/or still used for legal advice?”

In regards to question 1(c), this information is withheld under section 9(2)(f)(iv) of the Act, in order to maintain the constitutional conventions that protect the confidentiality of advice tendered by ministers and officials.

- “2. a. What is the rationale behind the current formulation of flavour naming regulations for vape products?
b. What considerations or assessments have been made regarding the alignment of these regulations with the Fair Trading Act?
c. What steps or initiatives have been taken by the Ministry of Health to address potential conflicts or legal challenges arising from the current regulatory framework?
d. Who is responsible for developing the list of flavour names?
e. How many vape products utilize the flavour name "Oat"?
f. How many vape products utilize the flavour name "Clove"?
g. How many vape products utilize the flavour name "Pepper"?
h. How many vape products utilize the flavour name "Nutmeg"?”*

The rationale for specifying generic flavour names in the regulations is to limit the flavour descriptions to being accurate descriptors of the product without permitting flavour names that are appealing to young people. This includes excluding flavour names that are: names of candy

brands, cocktails, soft drinks, energy drinks, and words that are not actual flavours such as rainbow or burst. The Ministry is not restricting vape flavours or flavour ingredients, rather this is a labelling requirement.

Regarding question 2(b) about aligning the Regulations with the Fair Trading Act 1986, the Ministry undertook consultation with the Ministry of Justice and the Crown Law Office as part of developing these regulatory proposals, and the subsequent Regulations.

Documents identified within scope of your request are itemised in Appendix 1. Where information is withheld under section 9 of the Act, I have considered the public interest in release of this information and do not consider that it outweighs the need to withhold it in this case.

Ministry of Health staff, including the policy and regulation team, and staff from the Vaping Regulatory Authority, undertook the analysis and collation of the initial flavour list, and continued to refine and review against specified criteria before the final list was approved by the Director-General of Health.

Turning to parts 2(e) - 2(h) on flavour names, we have gathered information from the list of active product notifications that the Vaping Regulatory Authority has received. These can also be found on the :[Notified Product Register. We have identified:](#)

- 6 notified products that include the flavour variant 'oat'. 2 of these products notifications are under renewal.
- 5 notified products that include the flavour variant 'clove'. 1 of these product notifications is expired.
- 3 notified products that include the flavour variant 'pepper'. There are also expired 4 product notifications for 'Pepper mint'.
- No products have been notified that include the flavour variant 'nutmeg'.

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.

The Ministry will endeavour to provide a response to the remaining questions as soon as possible. We thank you for your patience and apologise for any inconvenience this may have caused.

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 or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauora website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā



Jane Chambers
Group Manager, Public Health Policy & Regulation
Public Health Agency | Te Pou Hauora Tūmatanui

Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	27 June 2023	Email correspondence: Draft Flavour Wheel	Released with some information withheld under section 9(2)(a) of the Act, to protect personal privacy
1A	N/A	Email attachment: SERPA Flavour Wheel	
2	22 October 2023	Email correspondence: Flavour Wheel	Publicly available: https://edepot.wur.nl/537112
2A	N/A	Email attachment: The role of flavors in attractiveness of electronic cigarettes	
3	24 August 2023	Email correspondence: Ice memo/unintended consequence and managing queries	Released with some information withheld under section 9(2)(a) of the Act, to protect personal privacy
3A	29 August 2023	Email attachment: Memo – Policy decision taken to exclude synthetic cooling agents from approved flavours for vaping products	
3B	N/A	Email attachment: Audit trail to Memo – Policy decision taken to exclude synthetic cooling agents from approved flavours for vaping products	
4	27 February 2023	Email correspondence: Vaping submission	
4A	N/A	Email attachment: Whitehall-smokefree-environments-regulations-submission-form_feb_2023.pdf	