

28 January 2016

M Lee

Via FYI website link: fyi-request-3461-b24825be@requests.fyi.org.nz

Dear M Lee

Response to Request under the Official Information Act 1982

I refer to your request for information transferred from the Minister for ACC's office, dated 10 December 2015, received 16 December 2015. We understand this to be a request for information regarding mediation reports and the information that FairWay Resolution holds in relation to mediations.

We respond to your queries as follows:

1. *Whether FairWay has any legal right or entitlement to be provided with confidential information from mediation, particularly notes made by the mediator or any agreement the parties may have reached.*

FairWay is required to be notified by the mediation provider of the outcome of the mediation. This is so that FairWay can report to ACC. The relevant extract from the contract between ACC and FairWay provides:

7.4 On completion of the alternative dispute resolution, the Supplier will report to ACC on the outcome of the alternative dispute resolution process and attach a copy of any written agreement entered into by ACC and other parties.

FairWay holds a copy of the agreement to mediate and any mediated agreement in its records, as part of case and records management. FairWay is subject to the Public Records Act 2005 and so must keep records.

Any written notes made by the mediator in the course of the mediation are their own personal notes and FairWay does not require a copy of these notes. We understand that common practice is for mediators to destroy any personal notes made during mediation soon after it is completed, in line with the requirement for confidentiality.

2. *Does that fact that there is a connection between the ACC and FairWay Resolution Limited – by way of a contract/service agreement that provides for mediation services – give rise to an expectation that FairWay Resolution Limited may and will receive information as to the outcome of mediated disputes, and, that the information will become part of FairWay Resolution Limited's corporate record? If so, what legislation provides for both of the aforementioned circumstance? And, if no legislation provides for either or both of the aforementioned circumstances please provide a copy of the relevant policy, procedure of guideline that does.*

For standard case and document management records FairWay must have details of the outcome of mediation. (Again, FairWay is subject to the Public Records Act 2005 and so must keep records).

Where you refer to FairWay's "corporate record", details of mediated outcomes and documentation for this are stored securely in the internal electronic case management system and are not a matter of public record.

There are reporting requirements created by the Contract for Service between ACC and FairWay, which gives rise to an expectation that FairWay may and does receive the outcome of mediated disputes. We again refer to the extract of the contract noted above.

3. *Is there any provision – legislation, policy, procedure or guideline – that requires copies of written mediated agreements, signed by the disputing parties before the mediation concludes, to be copied to FairWay Resolution Limited by mediators whose services they use? If so, please advise what the relevant legislation is or provide a copy of the relevant policy, procedure or guideline.*

It is the mediator's responsibility to ensure both parties to the agreement are provided with a copy. It is a requirement to provide mediation services for FairWay that mediation providers comply with reporting obligations.

Once signed by both parties FairWay receives a copy of the agreement to store in the case management system, for the reasons referred to above in terms of case and records management.

4. *Is there any provision – legislation, policy, procedure or guideline – that requires a Mediation Report to be written by a mediator after a mediation has concluded, and regardless of whether or not agreement has been reached between the disputing parties? If so, what would such a report ordinarily look like and can you please provide a copy of an example with identifying information redacted.*

A mediation report is where the mediator provides written confirmation to FairWay that all, some or no matters were agreed to at the mediation. If no matters were resolved the report may not necessitate a full substantive written document in a formal report form. In this situation, the Mediator is still required to let FairWay know if any matters were resolved at the mediation. A mediation report is distinct from the mediated agreement. There is no standardised template for a mediation report.

5. *Is FairWay Resolution Limited, and/or mediators whose services are utilized by FairWay Resolution Limited, paid any form of incentive income where settlement agreements are reached between disputing parties at mediation, or, is this recognised or compensated in any other way? If so, please provide a copy of the relevant policy, procedure or guideline.*

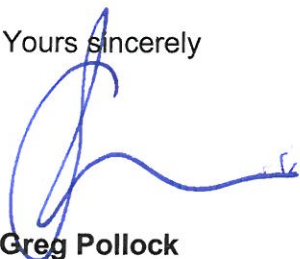
There are no financial incentives for a settlement to occur.

FairWay is paid a standard rate per mediation/facilitation, regardless of the outcome. Mediators are not compensated in any other way.

Please note you have the right to complain to the Office of the Ombudsman if you are dissatisfied with this response:

The Office of the Ombudsman
PO Box 10152
Wellington 6143

Yours sincerely

A handwritten signature in blue ink, appearing to be 'G. Pollock', written over the words 'Yours sincerely'.

Greg Pollock
Chief Executive