

29 August 2016

Chris Gousmett

[Fyi-request-4387-](#)

[fc26ec4b@requests.fyi.org.nz](mailto:fc26ec4b@requests.fyi.org.nz)

Dear Mr Gousmett

Thank you for your Official Information Act request, submitted to [www.fyi.org.nz](http://www.fyi.org.nz). You requested “all information relating to [the] consideration as to whether Ōtākaro Ltd. (a Crown company) should be subject to:

- A. The Public Records Act
- B. The Official Information Act.”

You were notified by email on 8 August 2016 that the information requested in part B of your request is more closely connected with the functions of the Ministry of Justice, who administer the Official Information Act 1982. This section of the request was transferred to the Ministry under section 14 of the Official Information Act 1982 on 8 August 2016. This response therefore addresses part A of your request.

A review of the relevant documents has been completed. The information we are releasing to you is listed in Appendix A. Six types of information are being withheld.

Section of OIA	Document Number	Reason for withholding
Section 9(2)(a)	1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 34, 41, 42, 43, 45, 46, 47	The withheld information relates to the names and details of individuals who are not employed by Archives New Zealand or the Department of Internal Affairs. I consider withholding this information is necessary to protect the privacy of natural persons.
Section 9(2)(ba)(ii)	12, 16, 43, 45	The withheld information pertains to issues discussed in a non-public board meeting, and to teleconference access and PIN codes. Section 9(2)(ba)(ii) allows for the withholding of information where that information was supplied subject to an obligation of confidence, and release of that information would be likely otherwise to damage the public interest.

Section 9(2)(g)(i)	6, 7, 8, 9, 11, 22, 25, 42	The information has been withheld to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any Department or organisation in the course of their duty.
Section 9(2)(h)	13, 15, 17, 18, 29, 30, 31, 32, 33, 35, 36, 37, 38	I consider that withholding this information is necessary to maintain legal professional privilege.
Section 18	14	The information requested is or will soon be publicly available. Please go to <a href="http://www.business.govt.nz/companies">www.business.govt.nz/companies</a> to access this document.
Out of scope	11	A small amount of information has been determined to be outside the scope of this request. It does not relate to the determination of Ōtākaro Limited's public office status.

I do not consider that the withholding of this information is outweighed by other considerations that render it desirable, in the public interest, to make that information available.

Decisions on public office and local authority status form part of an integrated regulatory framework established by the Public Records Act 2005 (PRA). The framework includes standards and guidance, authorisations of disposal, audits and inspection of recordkeeping. It is important to have clarity around which organisations are subject to this framework for Archives New Zealand, the organisations in question, and the public.

Archives New Zealand has developed an internal policy to guide the process of determining whether the PRA applies to an organisation. The *Policy for deciding public office and local authority status* is available publicly at <http://www.records.archives.govt.nz/managing-records2/is-my-organisation-covered-by-the-public-records-act/>. This document has been made available so that organisations have access to the same considerations that Archives New Zealand uses when determining coverage, and to ensure transparency of process.

You have the right, by way of complaint to the Ombudsman under s 28(3) of the Official Information Act, to seek an investigation and review of my response to your request. The contact address is: Office of the Ombudsman, PO Box 10152, Wellington.

Yours sincerely



**Marilyn Little**  
Chief Archivist

## Appendix A: Documents for OIA request

This table identifies reasons for withholding information. Emails have been filed in the Archives New Zealand's document management system as email trails. To simplify the release of information, duplicate emails have been excised where appropriate. Image attachments to emails are organisational logos used in email signatures that have not converted to PDF.

#	Name of document	Document date	Release or withhold	Page Count
1.	Advice needed	14/03/2016	W S 9(2)(a)	2
2.	RE: Advice needed	14/03/2016	W S 9(2)(a)	2
3.	RE: Ōtākaro	15/03/2016	R	1
4.	RE: Can you get access to this?	15/03/2016	R	1
5.	RE: Public Finance (Ōtākaro Limited) Order 2016 (2016/37)	15/03/2015	W S 9(2)(a)	1
6.	RE: Public Finance (Ōtākaro Limited) Order 2016 (2016/37)	15/03/2016	W S 9(2)(a) S 9(2)(g)(i)	4
7.	RE: FYI – CERA transition to Ōtākaro	16/03/2016	W S 9(2)(a) S 9(2)(g)(i)	1
8.	RE: FYI – CERA transition to Ōtākaro	16/03/2016	W S 9(2)(a) S 9(2)(g)(i)	1

#	Name of document	Document date	Release or withhold	Page Count
9.	Ōtākaro	16/03/2013	W S 9(2)(a) S 9(2)(g)(i)	1
10.	RE: Ōtākaro	16/03/2016	W S 9(2)(a)	1
11.	RE: Ōtākaro	22/03/2016	W S 9(2)(a) S 9(2)(g)(i) Out of Scope	2
12.	CERA/ Ōtākaro Ltd	22/03/2016	W S 9(2)(a) S 9(2)(ba)(ii)	1
13.	FW: CERA/ Ōtākaro Ltd	22/03/2016	W S 9(2)(h)	1
14.	Ōtākaro Limited's constitution	n/a	W S 18	32
15.	FW: CERA/ Ōtākaro Ltd	22/03/2016	W S 9(2)(h)	1
16.	RE: Ōtākaro Constitution	22/03/2016	W S 9(2)(ba)(ii)	1
17.	FW: CERA/ Ōtākaro Ltd	23/03/2016	W S 9(2)(h)	1

#	Name of document	Document date	Release or withhold	Page Count
18.	FW: CERA/ Ōtākaro Ltd	23/03/2016	W S 9(2)(h)	1
19.	FW: CERA/ Ōtākaro Ltd	23/03/2016	R	1
20.	Ōtākaro Limited	23/03/2016	R	1
21.	RE: Ōtākaro Limited	23/03/2016	R	1
22.	RE: Ōtākaro Limited	23/03/2016	W S 9(2)(g)(i)	1
23.	RE: Ōtākaro Limited	23/03/2016	R	1
24.	RE: Ōtākaro Limited	23/03/2016	R	1
25.	RE: Ōtākaro Limited	23/03/2016	W S 9(2)(g)(i)	1
26.	RE: Ōtākaro Limited	23/03/2016	R	1
27.	RE: Ōtākaro Limited	23/03/2016	R	1
28.	RE: Ōtākaro Limited	23/03/2016	R	1
29.	FW: Ōtākaro Limited	23/03/2016	W S 9(2)(h)	1
30.	Ōtākaro Ltd Public Office Assessment	23/03/2016	W S 9(2)(h)	6
31.	RE: Ōtākaro Limited	23/03/2016	W S 9(2)(h)	1

#	Name of document	Document date	Release or withhold	Page Count
32.	Ōtākaro Limited assessment feedback from DIA Legal Services	24/03/2016	W S 9(2)(h)	1
33.	160324 Ōtākaro Ltd assessment Legal comments	24/03/2016	W S 9(2)(h)	4
34.	Public Office	30/03/2016	W S 9(2)(a)	1
35.	160324 Otakaro Ltd assessment Legal comments	31/03/2016	W S 9(2)(h)	1
36.	160324 Otakaro Ltd assessment Legal comments	31/03/2016	W S 9(2)(h)	6
37.	Ōtākaro Limited assessment feedback 2 from DIA Legal Services	01/04/2016	W S 9(2)(h)	1
38.	160401 2 Ōtākaro Ltd assessment Legal comments	01/04/2016	W S 9(2)(h)	7
39.	Ōtākaro Limited Public Office Assessment signed by Chief Archivist April 2016	04/04/2016	R	6
40.	RE: Ōtākaro Limited Public Office Assessment signed by Chief Archivist April 2016	05/04/2016	R	2
41.	Notification provided to CERA re public office status for Ōtākaro Limited	06/04/2016	W S 9(2)(a)	1

#	Name of document	Document date	Release or withhold	Page Count
42.	Legal opinions	06/04/2016	W S 9(2)(a) 9(2)(g)(i)	1
43.	RE: Archives New Zealand - Ōtākaro Determination	06/04/2016	W S 9(2)(a) S 9(2)(ba)(ii)	2
44.	RE: Takaro	6/04/2016	R	1
45.	Agenda – 2.30pm Chief Archivist Ruling on Ōtākaro	6/04/2016	W S 9(2)(a) S 9(2)(ba)(ii)	1
46.	FW: Actions – Chief Archivist Ruling on Ōtākaro	11/04/2016	W S 9(2)(a)	1
47.	Actions from Archives NZ Determination meeting	11/04/2016	W S 9(2)(a)	1

withheld under s 9(2)(a)

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**From:** [REDACTED]@cera.govt.nz]  
**Sent:** Monday, 14 March 2016 6:56 p.m.  
**To:** Chris Adam  
**Subject:** Re: Advice needed

Thanks Chris, absolutely. I'll get [REDACTED] to work out time and location with you.

Cheers,

[REDACTED]

On 14/03/2016, at 6:18 PM, Chris Adam <[Chris.Adam@dia.govt.nz](mailto:Chris.Adam@dia.govt.nz)> wrote:

Hi [REDACTED]

I can't meet before Wednesday afternoon. Is that still of use?

Chris

Sent from my iPhone

On 14/03/2016, at 5:46 pm, [REDACTED]@cera.govt.nz> wrote:

Hello Chris,

[REDACTED] is on training this week and so I hope you don't mind that I am contacting you directly.

We have had internal debate/discussion regarding the transfer of records between CERA and the Crown Co entity, now registered as Otakaro Limited. The CERA [REDACTED], [REDACTED] (copied) has some questions around the Chief Archivist's powers to designate. It is a matter you have discussed with us before but specifically related local authorities rather than Schedule 4 companies.

I have flagged to Russell Browning from OGCIO that this is a risk that might escalate to an issue and he was going to have a natter with your Wellington colleagues but I'd really appreciate some on the ground advice. I would very much appreciate the opportunity to buy yourself and [REDACTED] a coffee this week and talk through our concerns, particularly as [REDACTED] has found very little by way of guidance related to Schedule 4 companies.

Do you have any availability?



Cheers,

█

██████████  
██

**Canterbury Earthquake Recovery Authority (CERA)**

Private Bag 4999, Christchurch 8140

T: ██████████

M: ██████████

E: ██████████@cera.govt.nz

W: <http://www.cera.govt.nz>

[SEEMAIL][UNCLASSIFIED]

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**From:** [Chris Adam](#)  
**To:** [Lisa Austin](#); [Polly Martin](#)  
**Subject:** RE: Advice needed  
**Date:** Tuesday, 15 March 2016 10:03:40 a.m.

---

CERA are going to send me more information

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**From:** Lisa Austin  
**Sent:** Tuesday, 15 March 2016 8:38 a.m.  
**To:** Chris Adam; Polly Martin  
**Subject:** FW: Advice needed

Hi Polly,

This question has arisen, and we need to know urgently if Otakaro Ltd is a public office or not.

I'll come talk to you Polly.

L

---

**From:** Chris Adam  
**Sent:** Monday, 14 March 2016 6:19 p.m.  
**To:** Lisa Austin  
**Subject:** Fwd: Advice needed

Help. What do I say to these people?

Sent from my iPhone

Begin forwarded message:

**From:** [REDACTED] <[REDACTED]@cera.govt.nz>  
**Date:** 14 March 2016 5:45:55 pm NZDT  
**To:** Chris Adam <[Chris.Adam@dia.govt.nz](mailto:Chris.Adam@dia.govt.nz)>  
**Cc:** [REDACTED] <[REDACTED]@cera.govt.nz>, [REDACTED] <[REDACTED]@cera.govt.nz>  
**Subject:** Advice needed

Hello Chris,

[REDACTED] is on training this week and so I hope you don't mind that I am contacting you directly.

We have had internal debate/discussion regarding the transfer of records between CERA and the Crown Co entity, now registered as Otakaro Limited. The CERA [REDACTED], [REDACTED] (copied) has some questions around the Chief Archivist's powers to designate. It is a matter you have discussed with us before but specifically related local authorities rather than Schedule 4 companies.

I have flagged to Russell Browning from OGCI0 that this is a risk that might escalate to an issue and he was going to have a natter with your Wellington colleagues but I'd really appreciate some on the ground advice. I would very

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much appreciate the opportunity to buy yourself and [REDACTED] a coffee this week and talk through our concerns, particularly as [REDACTED] has found very little by way of guidance related to Schedule 4 companies.

Do you have any availability?

Cheers,

[REDACTED]

[REDACTED]

[REDACTED]

**Canterbury Earthquake Recovery Authority (CERA)**

Private Bag 4999, Christchurch 8140

T: [REDACTED]

M: [REDACTED]

E: [REDACTED]@cera.govt.nz

W: [www.cera.govt.nz](http://www.cera.govt.nz)

[SEEMAIL][UNCLASSIFIED]

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**From:** [Lisa Austin](#)  
**To:** [Chris Adam](#)  
**Subject:** RE: Otakaro  
**Date:** Tuesday, 15 March 2016 1:55:47 p.m.

---

Cool .I'll ask for a copy of that paper.

---

**From:** Chris Adam  
**Sent:** Tuesday, 15 March 2016 1:56 p.m.  
**To:** Lisa Austin  
**Subject:** RE: Otakaro

CERA is supposed to be supplying me with more info.

---

**From:** Lisa Austin  
**Sent:** Tuesday, 15 March 2016 1:55 p.m.  
**To:** Chris Adam  
**Subject:** RE: Otakaro

That does help potentially.

---

**From:** Chris Adam  
**Sent:** Tuesday, 15 March 2016 1:47 p.m.  
**To:** Lisa Austin  
**Subject:** Otakaro

The advert for the general counsel for the company says they will be dealing with OIA matters?  
Does that help?

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**From:** [Lisa Austin](#)  
**To:** [Chris Adam](#)  
**Subject:** RE: Can you get access to this?  
**Date:** Tuesday, 15 March 2016 1:58:42 p.m.

---

Im asking PCO for it.

---

**From:** Chris Adam  
**Sent:** Tuesday, 15 March 2016 1:56 p.m.  
**To:** Lisa Austin  
**Subject:** RE: Can you get access to this?

Can't they just pdf it to you?

---

**From:** Lisa Austin  
**Sent:** Tuesday, 15 March 2016 1:54 p.m.  
**To:** Chris Adam  
**Subject:** RE: Can you get access to this?

No we need to ask them for it.

---

**From:** Chris Adam  
**Sent:** Tuesday, 15 March 2016 1:42 p.m.  
**To:** Lisa Austin  
**Subject:** Can you get access to this?

[http://www.parliament.nz/en-nz/pb/presented/papers/51DBHOH\\_PAP68502\\_1/public-finance-otakaro-limited-order-2016-201637](http://www.parliament.nz/en-nz/pb/presented/papers/51DBHOH_PAP68502_1/public-finance-otakaro-limited-order-2016-201637)

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**From:** [Contact.PCO@parliament.govt.nz](mailto:Contact.PCO@parliament.govt.nz) [<mailto:Contact.PCO@parliament.govt.nz>]  
**Sent:** Tuesday, 15 March 2016 3:45 p.m.  
**To:** Lisa Austin  
**Subject:** Re: Public Finance (Otagaro Limited) Order 2016 (2016/37)

Hi Lisa,

Thanks for getting in touch. Here's the link to the Public Finance (Otagaro Limited) Order 2016 (2016/37):  
<http://www.legislation.govt.nz/regulation/public/2016/0037/latest/DLM6739481.html>

Kind regards



withheld under s 9(2)(a)

How well did we respond to your question? Please let us know, by clicking on the link to complete [our quick survey](#).

>>> Lisa Austin <[Lisa.Austin@dia.govt.nz](mailto:Lisa.Austin@dia.govt.nz)> 15/03/2016 2:00 p.m. >>>

Kia ora,

I'd like to get a copy of a paper recently presented to the House on 7 March 2016.  
It is: "Public Finance (Otagaro Limited) Order 2016 (2016/37)". Metadata below.

**Date**

07-Mar-2016

**Business Unit**

Office of the Clerk

**Content Provider**

Parliamentary Counsel Office

**Document ID**

51DBHOH\_PAP68502\_1

**Document Type**

Statutory regulation

**Parliament #**

51

**Status**

Presented

**Language**

en-NZ

**Priority**

500

Archives New Zealand needs this paper as a part of assessing if Otagaro is a public office under the Public Records Act 2005.

Please feel free to contact me if you have queries.

Nga mihi,

Lisa

**Lisa Austin** | Acting Manager, Disposal and Acquisition

**Archives New Zealand Te Rua Mahara o te Kawanatanga**

Direct Dial: +64 4 4956223 x 9223 | [www.archives.govt.nz](http://www.archives.govt.nz)

**From:** [Lisa Austin](#)  
**To:** [Chris Adam](#)  
**Subject:** RE: Public Finance (Otakaro Limited) Order 2016 (2016/37)  
**Date:** Wednesday, 16 March 2016 8:56:04 a.m.  
**Attachments:** [image001.png](#)

---

That's good then. ;)

---

**From:** Chris Adam  
**Sent:** Wednesday, 16 March 2016 8:27 a.m.  
**To:** Lisa Austin  
**Subject:** RE: Public Finance (Otakaro Limited) Order 2016 (2016/37)

I wasn't thinking of their legal team:-)

---

**From:** Lisa Austin  
**Sent:** Wednesday, 16 March 2016 8:25 a.m.  
**To:** Chris Adam  
**Subject:** RE: Public Finance (Otakaro Limited) Order 2016 (2016/37)

I would think so. [REDACTED]

[REDACTED] withheld under s 9(2)(g)(i) [REDACTED]

---

**From:** Chris Adam  
**Sent:** Wednesday, 16 March 2016 8:12 a.m.  
**To:** Lisa Austin  
**Subject:** RE: Public Finance (Otakaro Limited) Order 2016 (2016/37)

The advert for general counsel suggest it is subject to OIA. I will try and follow up through CERA. There must be some embryonic organisation in there.

---

**From:** Lisa Austin  
**Sent:** Wednesday, 16 March 2016 8:06 a.m.  
**To:** Chris Adam  
**Subject:** RE: Public Finance (Otakaro Limited) Order 2016 (2016/37)

Nice synopsis. All those things would indicate it might be a public office. We need to find out if it is subject to OIA or not and what the Ministerial relationship is I think.

---

**From:** Chris Adam  
**Sent:** Wednesday, 16 March 2016 7:35 a.m.  
**To:** Lisa Austin  
**Subject:** RE: Public Finance (Otakaro Limited) Order 2016 (2016/37)

I've done that. The sections just seem to place constraints on borrowing and seem related to the recent financial crisis (eg don't touch derivatives)

So far we seem to have an organisation

- Wholly funded and owned by Govt?
- Run by a board appointed by Govt
- Taking over residual functions of a public office
- Subject to similar requirements of Crown entity companies

- Appears to be subject to OIA and Public Finance Act 1989
- Is not fundamentally a commercial business
- Is it a statutory entity?

On the other side:

It would appear to have some independence in its business decisions?

What we don't know is the relationship between it and the Minister. Public Finance Act 3AB suggests Ministers of the Crown are the owners.

---

**From:** Lisa Austin  
**Sent:** Tuesday, 15 March 2016 5:02 p.m.  
**To:** Chris Adam  
**Subject:** RE: Public Finance (Otakaro Limited) Order 2016 (2016/37)

Will have to go through the schedule bit at the end and match it with the Crown Entities Act 2004. Might be something we need to do as a part of the test.

---

**From:** Chris Adam  
**Sent:** Tuesday, 15 March 2016 4:58 p.m.  
**To:** Lisa Austin  
**Subject:** RE: Public Finance (Otakaro Limited) Order 2016 (2016/37)

Anything we can glean from these slim pickings?

---

**From:** Lisa Austin  
**Sent:** Tuesday, 15 March 2016 3:11 p.m.  
**To:** Chris Adam; Polly Martin  
**Subject:** FW: Public Finance (Otakaro Limited) Order 2016 (2016/37)

---

**From:** [Contact.PCO@parliament.govt.nz](mailto:Contact.PCO@parliament.govt.nz) [<mailto:Contact.PCO@parliament.govt.nz>]  
**Sent:** Tuesday, 15 March 2016 3:45 p.m.  
**To:** Lisa Austin  
**Subject:** Re: Public Finance (Otakaro Limited) Order 2016 (2016/37)

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Kind regards

withheld under s 9(2)(a)

How well did we respond to your question? Please let us know, by clicking on the link to complete [our quick survey](#).

>>> Lisa Austin <[Lisa.Austin@dia.govt.nz](mailto:Lisa.Austin@dia.govt.nz)> 15/03/2016 2:00 p.m. >>>

Kia ora,

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**Date**

07-Mar-2016

**Business Unit**

Office of the Clerk

**Content Provider**

Parliamentary Counsel Office

**Document ID**

51DBHOH\_PAP68502\_1

**Document Type**

Statutory regulation

**Parliament #**

51

**Status**

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**Language**

en-NZ

**Priority**

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Archives New Zealand needs this paper as a part of assessing if Otakaro Limited is a public office under the Public Records Act 2005.

Please feel free to contact me if you have queries.

Nga mihi,

Lisa

**Lisa Austin** | Acting Manager, Disposal and Acquisition

**Archives New Zealand Te Rua Mahara o te Kawanatanga**

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*Archives New Zealand is part of the Department of Internal Affairs*



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Parliamentary Counsel Office Te Tari Tohutohu Paremata

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Wellington 6160

New Zealand

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Website: [www.pco.parliament.govt.nz](http://www.pco.parliament.govt.nz) Free access to NZ legislation: [www.legislation.govt.nz](http://www.legislation.govt.nz)

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**From:** [Lisa Austin](#)  
**To:** [Denise Williams](#)  
**Subject:** RE: FYI - CERA transition to Otakaro  
**Date:** Wednesday, 16 March 2016 8:57:55 a.m.  
**Attachments:** [image001.png](#)

Hi Denise,  
withheld under s 9(2)(a)

Thanks for sending that through. [REDACTED] has been in touch with Chris, we are going to put Otakaro Ltd through the public office test.

L

---

**From:** Denise Williams  
**Sent:** Wednesday, 16 March 2016 8:47 a.m.  
**To:** Lisa Austin  
**Subject:** FW: FYI - CERA transition to Otakaro

---

**From:** Russell Browning  
**Sent:** Wednesday, 16 March 2016 8:45 a.m.  
**To:** Chris Adam  
**Cc:** Denise Williams  
**Subject:** FYI - CERA transition to Otakaro

Hi Chris, FYI withheld under s 9(2)(a)

I met [REDACTED] from CERA last week, [REDACTED] said you'd already been pretty involved in the records transfer work to date.

[REDACTED] withheld under s 9(2)(g)(i)  
[REDACTED] and [REDACTED] may be looking for more help from Archives in a more directive manner [REDACTED] withheld under s 9(2)(a)

So don't be surprised if you get a call  
Russell

**Russell Browning** | Relationship Manager  
**Department of Internal Affairs Te Tari Taiwhenua**  
Direct Dial: +64 4 494 0550 | Mobile: +64 27 809 7962 | [www.dia.govt.nz](http://www.dia.govt.nz) | [www.ict.govt.nz](http://www.ict.govt.nz)



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**From:** [Lisa Austin](#)  
**To:** [Chris Adam](#)  
**Subject:** RE: FYI - CERA transition to Otakaro  
**Date:** Wednesday, 16 March 2016 8:57:01 a.m.  
**Attachments:** [image001.png](#)

I know..... ☹

---

**From:** Chris Adam  
**Sent:** Wednesday, 16 March 2016 8:50 a.m.  
**To:** Lisa Austin  
**Subject:** FW: FYI - CERA transition to Otakaro

---

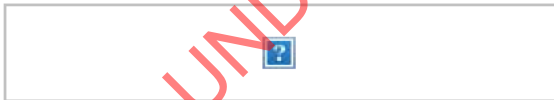
**From:** Russell Browning  
**Sent:** Wednesday, 16 March 2016 8:45 a.m.  
**To:** Chris Adam  
**Cc:** Denise Williams  
**Subject:** FYI - CERA transition to Otakaro

Hi Chris, FYI [redacted] withheld under s 9(2)(a)  
I met [redacted] from CERA last week, [redacted] said you'd already been pretty involved in the records transfer work to date.

[redacted]  
[redacted] withheld under s 9(2)(g)(i) and [redacted] may be looking for more help from  
Archives in a more directive manner [redacted] withheld under s 9(2)(a)

So don't be surprised if you get a call  
Russell

**Russell Browning** | Relationship Manager  
**Department of Internal Affairs Te Tari Taiwhenua**  
Direct Dial: +64 4 494 0550 | Mobile: +64 27 809 7962 | [www.dia.govt.nz](http://www.dia.govt.nz) | [www.ict.govt.nz](http://www.ict.govt.nz)



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**From:** Chris Adam [<mailto:Chris.Adam@dia.govt.nz>]  
**Sent:** Wednesday, 16 March 2016 8:55 a.m.  
**To:** [REDACTED]  
**Subject:** Otakaro

Hi [REDACTED] withheld under s 9(2)(a)

We are trying to glean what we can from the meagre information in legislation and news releases. Is there anybody within CERA actually dealing with the establishment of Otakaro? I note from one of the adverts that they expect their general counsel will deal with OIA enquiries, but it would be nice to have that confirmed. It would also be good to know what relationship the Minister will have with the new entity.

[REDACTED] withheld under s 9(2)(g)(i)

So far, we seem to have an organisation (correct me if I'm wrong here)

- Wholly funded and owned by Govt?
- Run by a board appointed by Govt
- Taking over residual functions of a public office
- Subject to similar requirements of Crown entity companies
- Appears to be subject to OIA and Public Finance Act 1989
- Is not fundamentally a commercial business
- Is it a statutory entity?

These, if verified, would appear to point to Otakaro being a public office under the PRA 2005. But some more information would be helpful.

Regards

Chris

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---

**From:** [REDACTED]  
**Sent:** Wednesday, 16 March 2016 9:14 a.m.  
**To:** Chris Adam; [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Otakaro

Hello Chris,

Copied in [REDACTED] as [REDACTED] might correct me if any of this is incorrect: -

- Wholly funded and owned by Govt? - Yes
- Run by a board appointed by Govt - Yes
- Taking over residual functions of a public office - Yes
- Subject to similar requirements of Crown entity companies - Yes
- Appears to be subject to OIA and Public Finance Act 1989 - Yes
- Is not fundamentally a commercial business – it is driven by commercial outcomes but as a Schedule 4 company does have aspects of non-commercial as well
- Is it a statutory entity? – Schedule 4 has/is being amended to include it

Cheers,

[REDACTED]

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From: [Chris Adam](#)  
To: [Lisa Austin](#); [Antony Moss](#)  
Subject: CERA/Otakaro Ltd  
Date: Tuesday, 22 March 2016 12:08:54 p.m.  
Attachments: [Otakaro.pdf](#)  
Importance: High

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Lisa

As you are aware I have just attended a meeting at CERA with [redacted] s 9(2)(a) [redacted] (Manager, Individual Contractors) and [redacted] s 9(2)(a) from CAS (?). [redacted] out of scope [redacted] out of scope [redacted] withheld under s 9(2)(g)(i)

s 9(2)(a)

The upshot is that [redacted] has asked as a matter of urgency (given their existence can be measured in weeks) for the Chief Archivist's determination of whether or not Otakaro Ltd is a public office under the PRA 2005.

[redacted] withheld under s 9(2)(g)(i)

As far as information management at CERA is concerned, the records go with the function and it needs to be the full record. A lot of the discussion at the meeting was around OIA but I said that this was a separate issue and not really one for the Chief Archivist.

The contents of CERA's Objective EDRMS will eventually be emptied as records are transferred to the various successor agencies.

s 9(2)(a)

[redacted] explained that this was still a fluid situation as Otakaro was still in the process of forming [redacted] withheld under s 9(2)(g)(i) [redacted] and they did not have any records/information management expertise as of today. The scope of what they were going to do and what records they would require was also still developing.

s 9(2)(a)

[redacted] thinks that a clear decision that Otakaro is a public office (if that is what is determined) will allow [redacted] to convince Otakaro of their responsibilities and allow the transfer of the complete relevant records to the Crown entity.

In terms of our determination, it may or may not be relevant that apparently Otakaro could have one of two roles. Role A was full accountability and responsibility for the whole of the twelve anchor projects, whereas Role B left ownership with the Crown (Treasury and DPMC) and

delegated a custodial role to Otakaro, perhaps for a number of the projects. It became confusing at this point.

I have been given a current copy of the constitution, which I have attached. I am aware we have also done some preliminary work on this over the past week in expectation this question might come up.

I hope we can help CERA over this last hurdle.

Chris

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**From:** [Chris Adam](#)  
**To:** [Lisa Austin](#)  
**Subject:** FW: Otakaro  
**Date:** Tuesday, 22 March 2016 12:27:09 p.m.

fyi

---

**From:** Jason Diaper [mailto:Jason.Diaper@cera.govt.nz]  
**Sent:** Tuesday, 22 March 2016 9:36 a.m.  
**To:** [REDACTED] Chris Adam  
**Cc:** [REDACTED]  
**Subject:** RE: Otakaro withheld under s 9(2)(a)

Hi All,

I agree with the below from [REDACTED]

In terms of relationship with the Ministers... Minister CER and Minister of Finance will be the main/only shareholders.

[REDACTED] withheld under s 9(2)(ba)(ii)  
[REDACTED] I will try to get a copy of the full constitution today, but the first draft included similar wording to "will return a commercial gain to shareholders"... [REDACTED] 9 (2)(ba)(ii)

[REDACTED] withheld under s 9(2)(ba)(ii)  
[REDACTED]. There was some tooting and froing on this wording, Treasury where very reluctant to change the wording, I'm not sure where it landed.

Look forward to catching up at 10am.

Thanks

[REDACTED] withheld under s 9(2)(a)

[REDACTED]  
Change Management Office  
Canterbury Earthquake Recovery Authority (CERA)

Phone: [REDACTED]  
Mobile: [REDACTED]  
Email: [REDACTED]@cera.govt.nz

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On 22/03/2016, at 6:13 PM, Antony Moss <Antony.Moss@dia.govt.nz> wrote:

13

[REDACTED]

---

**From:** Polly Martin

**Sent:** Tuesday, 22 March 2016 12:42 p.m.

**To:** Phirak Appleton

**Cc:** Antony Moss; Lisa Austin

**Subject:** CERA/Otakaro Ltd

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Polly Martin** | Manager Advice & Compliance.  
Government Recordkeeping Directorate  
**Archives New Zealand Te Rua Mahara o te Kawanatanga**  
Direct dial +64 4 894 6067 | Extn9267 | Mobile: +64 21 685 210|  
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This document has been withheld under s 18 of the OIA as it is available publicly.  
Please visit [www.business.govt.nz/companies](http://www.business.govt.nz/companies) to access the constitutional documents  
for Ōtākaro Limited

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**From:** Phirak Appleton  
**Sent:** Tuesday, 22 March 2016 9:05 p.m.  
**To:** Antony Moss  
**Cc:** Polly Martin; Lisa Austin  
**Subject:** Re: CERA/Otakaro Ltd

[REDACTED]

[REDACTED]

[REDACTED]

**Phirak Appleton**  
Deputy Chief Legal Advisor  
Legal Services  
Department of Internal Affairs  
DDI 4 494 0698  
Mob 027 702 8106

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**From:** [Lisa Austin](#)  
**To:** [Chris Adam](#)  
**Subject:** RE: Otakaro Constitution  
**Date:** Tuesday, 22 March 2016 1:38:33 p.m.

---

The minister can direct them to do things.

---

**From:** Chris Adam  
**Sent:** Tuesday, 22 March 2016 12:54 p.m.  
**To:** Lisa Austin  
**Subject:** RE: Otakaro Constitution

Wot's that mean then?

---

**From:** Lisa Austin  
**Sent:** Tuesday, 22 March 2016 12:49 p.m.  
**To:** Chris Adam  
**Subject:** RE: Otakaro Constitution

**110 Obligation to give effect to direction**

Every Crown entity within the category or type or group of Crown entities to which the direction is given must give effect to the direction as soon as it comes into force under [section 109](#).

From the companies act

<http://www.legislation.govt.nz/act/public/2004/0115/latest/DLM330358.html>

---

**From:** Chris Adam  
**Sent:** Tuesday, 22 March 2016 12:26 p.m.  
**To:** Lisa Austin  
**Subject:** Otakaro Constitution

Clauses 22 through 23.4 are interesting. And withheld under s 9(2)(ba)(ii)

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**From:** Antony Moss  
**Sent:** Wednesday, 23 March 2016 8:51 a.m.  
**To:** Phirak Appleton  
**Cc:** Polly Martin; Lisa Austin  
**Subject:** RE: CERA/Otakaro Ltd

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**From:** Phirak Appleton  
**Sent:** Wednesday, 23 March 2016 9:18 a.m.  
**To:** Antony Moss  
**Cc:** Polly Martin; Lisa Austin; Nicki Shewan  
**Subject:** RE: CERA/Otakaro Ltd

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Phirak Appleton**  
Deputy Chief Legal Advisor  
Legal Services

DDI: (04) 494 0698; Ext: 5698; Mob: (027)702 8106



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**From:** [Polly Martin](#)  
**To:** [Jonathan Newport](#)  
**Cc:** [Lisa Austin](#)  
**Subject:** FW: CERA/Otakaro Ltd  
**Date:** Wednesday, 23 March 2016 11:55:54 a.m.  
**Attachments:** [image001.png](#)

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Kia ora Jonathan

Thank you so much for picking this up.

We are hoping to be able to get this through to our legal services for their assessment by COB today.

Lisa is going away on leave tomorrow but both she and I are happy to assist with anything else if you need

Good luck!

Polly

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**From:** Jonathan Newport  
**Sent:** Wednesday, 23 March 2016 3:24 p.m.  
**To:** Polly Martin  
**Subject:** Otakaro Limited

20

Hi Polly,

I think I've given this a look through and I've gone through everything I could reasonably think of.

The upshot? – I don't think they are a Public Office. While I agree that it feels like the issue of funding and bank accounts should be a strong indicator of Public Office status, the policy does not give much weighting to this. The key factor is the degree of influence/control the Crown can assert, and I could not find evidence of the Crown exercising that degree of control. The Crown *is* the majority shareholder, but from looking through past advice it seems that we need to see a more direct degree of control.

There are a number of reasons in the moderately/weakly for category, but without a counterweight in the 'strongly for' category I would have to think that the 'strongly against' reasons weight the balance in favour of Otakaro not being a Public Office.

Thanks,

Jonathan Newport

Archivist/Advisor

Archives New Zealand Te Rua te Mahara o te  
Kawanatanga The Department of Internal Affairs Te  
Tari Taiwhenua Direct Dial: +64 4 894 6069 Extn: 9269  
10 Mulgrave Street  
PO Box 12 050  
Wellington 6144, New Zealand  
[www.archives.govt.nz](http://www.archives.govt.nz)

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**From:** Polly Martin  
**Sent:** Wednesday, 23 March 2016 3:28 p.m.  
**To:** Jonathan Newport  
**Cc:** Antony Moss; Chris Adam; Lisa Austin  
**Subject:** RE: Otakaro Limited

Thank you for this Jonathan

Love your work!

Our next step is to send your assessment through to our legal services team for their view

Nga mihi

Polly

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**From:** [Chris Adam](#)  
**To:** [Polly Martin](#)  
**Subject:** RE: Otakaro Limited  
**Date:** Wednesday, 23 March 2016 3:34:37 p.m.

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[REDACTED]  
withheld under s 9(2)(g)(i)  
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[REDACTED]  
[REDACTED]

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**From:** [Chris Adam](#)  
**To:** [Polly Martin](#); [Lisa Austin](#)  
**Subject:** RE: Otakaro Limited  
**Date:** Wednesday, 23 March 2016 3:37:58 p.m.

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23

If it does turn out they are not a public office, how do we deal with the transfer of public records to them? Does this need to be covered by an agreement?

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**From:** [Lisa Austin](#)  
**To:** [Chris Adam](#)  
**Cc:** [Polly Martin](#)  
**Subject:** RE: Otakaro Limited  
**Date:** Wednesday, 23 March 2016 3:43:15 p.m.

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24

They can only take copies at this point would be my opinion. DPMC will have to take the “official” record.

Otherwise if Otakaro does take the “official” record their will have to be an MOU in place maybe?

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**From:** Chris Adam  
**Sent:** Wednesday, 23 March 2016 3:49 p.m.  
**To:** Lisa Austin  
**Cc:** Polly Martin  
**Subject:** RE: Otakaro Limited

From my understanding the contents of the VPC could currently be regarded a copy, as the full record resides in Objective at the moment, until they pull the plug. I'm glad I don't have to break this to DPMC; it will be bad enough telling the CERA people.

withheld under s 9(2)(g)(i)

God didn't give us the policy on two stone tablets by any chance?

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**From:** Polly Martin  
**Sent:** Wednesday, 23 March 2016 3:57 p.m.  
**To:** Chris Adam; Lisa Austin  
**Subject:** RE: Otakaro Limited

The policy underwent a rigorous approval process which included legal advice.

Helen successfully used the process to assess a number of agencies – I can send you the reference to the assessments if you like.

Don't panic Mrs Mannering – legal hasn't looked at it yet and they are particularly sensitive to the implications.

Wait your patience until next week. Gawd – next time I'm keeping you out of things until the process is completed.

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**From:** [Lisa Austin](#)  
**To:** [Polly Martin](#)  
**Subject:** RE: Otakaro Limited  
**Date:** Wednesday, 23 March 2016 4:08:43 p.m.

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27

Lmao!

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**From:** [Chris Adam](#)  
**To:** [Polly Martin](#)  
**Subject:** RE: Otakaro Limited  
**Date:** Wednesday, 23 March 2016 4:03:03 p.m.

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28

Good idea. I need a holiday. I was just thinking about the implications of the organisation responsible for the CHCH Rebuild anchor projects (maybe) having no legal obligation to create and maintain any records apart from those required by other piffling pieces of legislation. I'm sure CEISMIC will keep them, however, so that's OK.

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29

From: Polly Martin  
Sent: Wednesday, 23 March 2016 3:31 p.m.  
To: Nicki Shewan  
Cc: Phirak Appleton  
Subject: FW: Otakaro Limited

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Polly Martin** | Manager Advice & Compliance.

Government Recordkeeping Directorate

**Archives New Zealand Te Rua Mahara o te Kawanatanga**

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**From:** [Nicki Shewan](#)  
**To:** [Polly Martin](#)  
**Cc:** [Phirak Appleton](#)  
**Subject:** RE: Otakaro Limited  
**Date:** Wednesday, 23 March 2016 3:40:28 p.m.

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**From:** [Nicki Shewan](#)  
**To:** [Polly Martin](#)  
**Cc:** [Phirak Appleton](#)  
**Subject:** RE: Otakaro Limited  
**Date:** Thursday, 24 March 2016 11:38:29 a.m.  
**Attachments:** [160324 Otakaro Ltd assessment Legal comments.docx](#)

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- [REDACTED]

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[REDACTED]

[REDACTED]

**Nicki Shewan**  
Solicitor  
Legal Services, Strategy and Governance Branch  
Department of Internal Affairs Te Tari Taiwhenua

DDI: +64 4 495 7227 | Ext: 5227 | Mobile: +64 27 8099035  
46 Waring Taylor Street | PO Box 805, Wellington 6140 | [www.dia.govt.nz](http://www.dia.govt.nz)

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**From:** [REDACTED]  
**Sent:** Wednesday, 30 March 2016 4:16 p.m.  
**To:** Chris Adam  
**Subject:** RE: Public Office

Thanks!

---

**From:** Chris Adam [<mailto:Chris.Adam@dia.govt.nz>]  
**Sent:** Wednesday, 30 March 2016 4:10 p.m.  
**To:** [REDACTED]  
**Subject:** RE: Public Office

I'll find out. I think it is with legal and they promised a quick turn around.

---

**From:** [REDACTED]  
**Sent:** Wednesday, 30 March 2016 2:53 p.m.  
**To:** Chris Adam  
**Cc:** [REDACTED]; [REDACTED]  
**Subject:** RE: Public Office

Hi Chris

I know it is only Wednesday, but just wondering how this was tracking on your side?

Thanks

[REDACTED]

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**From:** Polly Martin  
**Sent:** Thursday, 31 March 2016 12:41 p.m.  
**To:** Nicki Shewan  
**Cc:** Antony Moss  
**Subject:** 160324 Otakaro Ltd assessment Legal comments

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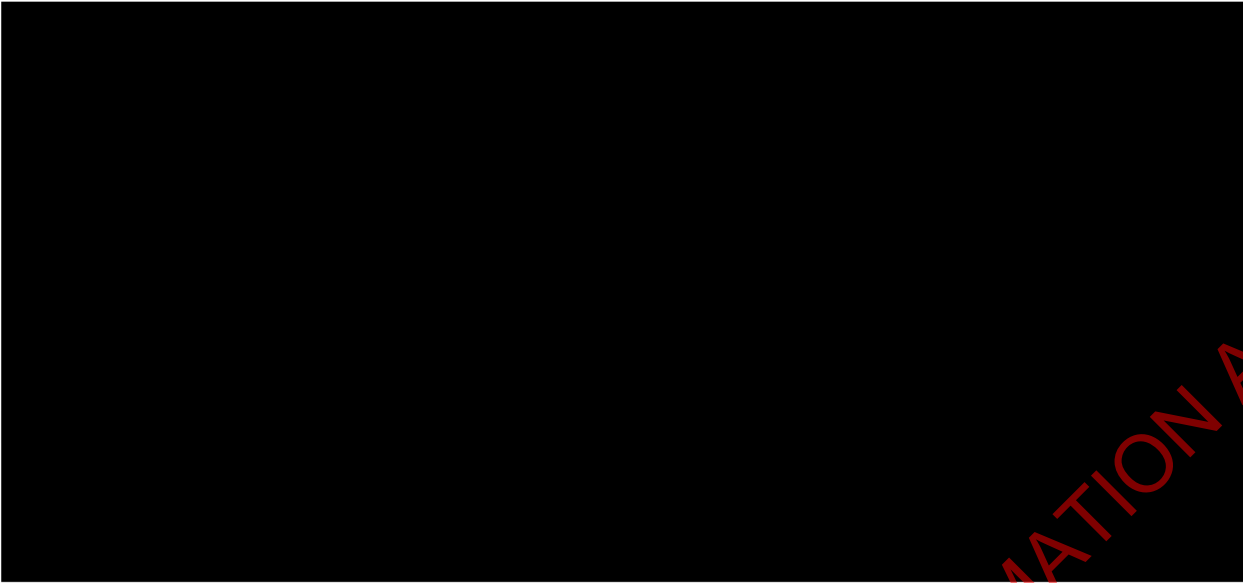
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**From:** [Nicki Shewan](#)  
**To:** [Polly Martin](#)  
**Cc:** [Antony Moss](#)  
**Subject:** RE: 160324 Otakaro Ltd assessment Legal comments  
**Date:** Friday, 1 April 2016 12:52:34 p.m.  
**Attachments:** [160401.2 Otakaro Ltd assessment.docx](#)

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Nicki Shewan**  
Solicitor  
Legal Services, Strategy and Governance Branch  
**Department of Internal Affairs Te Tari Taiwhenua**

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[REDACTED]


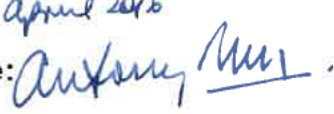
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	<ul style="list-style-type: none"><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li></ul>	
--	--	--

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		<ul style="list-style-type: none"><li>• [REDACTED]</li></ul>	
--	--	--	--

Formatted: Body Text, Space Before: 0 pt, After: 0 pt

Papers prepared for Chief Archivist sign-off					
<b>Title:</b>	Public Office status assessment for Ōtākaro Limited				
<b>Doc Type:</b>	Assessment				
<b>Prepared by:</b>	Polly Martin				
<b>Peer reviewer:</b>	Chris Adam				
<b>Objective:</b>	A888438	<b>DMS:</b>		<b>IA:</b>	
<b>Due date:</b>	April 2016				
<b>Manager sign-off</b>					
<b>Date:</b> 4 April 2016					
<b>Signature:</b> 					
<b>Senior Manager sign-off</b>					
<b>Date:</b> 4 April 2016					
<b>Signature:</b> 					
<b>Comments</b>					
<p>Ōtākaro Limited has been established and incorporated by the Crown to take over some of the functions of the Canterbury Earthquake Recovery Authority from April 2016.</p> <p>Canterbury Earthquake Recovery Authority has requested advice about the transfer of records.</p> <p>Archives New Zealand has performed a public office status assessment to determine whether Ōtākaro Limited is a regulated party under the Public Records Act (please find public office assessment for Ōtākaro Limited , the Ōtākaro Limited Constitution, and Archives New Zealand's policy for determining Public Office status attached).</p> <p>The recommendations are that you;</p> <ul style="list-style-type: none"> <li>• note that Ōtākaro Limited is not assessed to be a regulated party ✓</li> <li>• note that the assessment has been checked with Legal services ✓</li> <li>• agree that Ōtākaro Limited is not a public office under the Public Records Act. ✓</li> </ul>					

**Chief Archivist sign-off**

**Approved**

Yes No

**Date:** 4/4/16

**Signature:**



Marilyn Little  
**Chief Archivist, Archives New Zealand**

**Comments**

**Return to:**

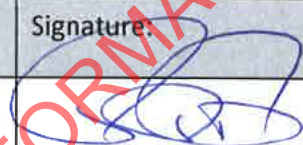
RELEASED UNDER THE OFFICIAL INFORMATION ACT



## Public Office status

<b>Organisation</b>	Ōtākaro Limited
<b>Recommendation</b>	Is not a public office
<b>Rationale</b>	In order to decide whether Ōtākaro Limited is an agency or instrument of the executive government, factors relevant to the nature and degree of control which the executive could exercise over Ōtākaro Limited have been assessed and given a weighting in relation to Ōtākaro Limited's particular current circumstances.

The recommendation was approved by:

Name	Position	Date	Signature
Marilyn Little	Chief Archivist	4/4/16	

### 1 General Criteria

None apply.

### 1 Crown control test assessment

Ōtākaro Limited is to deliver Anchor Projects in the Christchurch precincts in a manner that is not inconsistent with any Recovery Plan or Regeneration Plan and to acquire, manage and divest the Crown's assets associated with the Anchor Projects (including Crown-owned Land) over a timeframe agreed from time to time with the Shareholding Ministers, with the objective of achieving a commercial return for the Crown.

The company website states the following;

*Ōtākaro Limited has been established and incorporated by the Crown to take over some of the functions of the Canterbury Earthquake Recovery Authority from April 2016.*

*The company will be capitalised and funded by the Crown but act as a company, accountable to its Board. Our role is to ensure the work already in play accelerates with minimal disruption and that the community maintains confidence in the city centre's major projects and precincts and the outcome they will provide for Christchurch.*

In order to decide whether Ōtākaro limited is an agency or instrument of the executive government (and therefore a "public office"), an assessment has been undertaken of the relevance and weighting of various control factors.

On the weighting of the factors noted below, Ōtākaro Limited is not an agency or instrument of the executive and is therefore not subject to the requirements of the Public Records Act 2005.

## **2.1 Factors strongly for/against**

For: there are none.

Against:

- Acts of Ōtākaro Limited are not acts of the responsible ministers. The Board is responsible for the acts of the Company.
- Ōtākaro Limited has considerable freedom in its business decisions. While it is required to act consistently, with reconstruction and regeneration plans, little scope exists for the Crown giving direction as to how the directors of Ōtākaro Limited make business decisions.
- The Crown is not liable to contribute towards the payment of any debts or liabilities of a Schedule 4A company (section 49, Public Finance Act 1989).

## **2.2 Factors moderately for/against**

For:

- The shareholding Ministers may comment on Ōtākaro Limited's statement of intent and direct Ōtākaro Limited to make amendments (section 145, Crown Entities Act 2004).
- The shareholding Ministers can review the operations and performance of Ōtākaro Limited at any time and can request, and Ōtākaro Limited must supply, information on the operations and performance of the Company (section 132 and 133, Crown Entities Act 2004).

Against:

- Ōtākaro Limited is a Crown Company incorporated under the Companies Act 1993. It is not a statutory body.
- The Public Finance Act excludes Schedule 4A companies from its definition of the Crown.

## **2.3 Factors weakly for/against**

For:

- Ōtākaro Limited is subject to the same statutory requirements as Crown entity companies in terms of its formation, acquisition of shares, presentation of a constitution to the House of Representatives, and the provision of information to shareholders (sections 79 and 81-85 Crown Entities Act 2004).
- Ōtākaro Limited's financial statements are audited by the Auditor-General. (section 15 Public Audit Act 2001). There are also restrictions on Ōtākaro Limited's ability to acquire securities, borrow, give guarantees and indemnities and use derivatives (sections 150, 156, 161-164, Crown Entities Act 2004).
- The Minister of Finance and the Minister of State Services can jointly direct Ōtākaro Limited to follow a whole-of-government approach (section 107, Crown Entities Act 2004).
- The shareholding Ministers can appoint and remove members of the board (clauses 12.3 and 12.4 of the Constitution).

- Shareholding Ministers in Ōtākaro Limited can make resolutions about the management of Ōtākaro Limited (section 109, Companies Act 1993 and clause 9.4 of the Constitution).
- The shareholding Ministers may make comments on Ōtākaro Limited's draft statement of performance expectations and direct amendments to some of the information in that statement (sections 149B-149M, Crown Entities Act 2004).
- Ōtākaro Limited is wholly Government owned currently but must maintain at least 50% Crown ownership (clause 4.2a of the Constitution).
- The Minister of Finance may issue instructions to Ōtākaro Limited relating to minimum requirements for publication of information that Ōtākaro Limited would have to publish under the Public Finance Act, the non-financial reporting standards Ōtākaro Limited must apply and the form in which Ōtākaro Limited must provide the information to the House (sections 80A and 81, Public Finance Act 1989).
- Schedule 4A companies are "state services" under the State Sector Act 1988.

Against: there are none.

## **2.5 Neutral Factors**

- 3 The Ombudsman Act 1975 and the Official Information Act 1982 apply to Ōtākaro Limited.

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Factor weighting	For	Against
Strongly	<ul style="list-style-type: none"> <li>There are none</li> </ul>	<ul style="list-style-type: none"> <li>Acts of Ōtākaro Limited are not acts of the responsible ministers. The Board is responsible for the acts of the Company</li> <li>Ōtākaro Limited has considerable freedom in its business decisions. Little scope exists for the Crown giving direction as to how the directors of Ōtākaro Limited make business decisions.</li> <li>The Crown is not liable to contribute towards the payment of any debts or liabilities of a Schedule 4A company (section 49, Public Finance Act 1989).</li> <li></li> </ul>
Moderately	<ul style="list-style-type: none"> <li>The shareholding Ministers can review the operations and performance of Ōtākaro Limited at any time and can request, and Ōtākaro Limited Ltd must supply, information on the operations and performance of the Company (section 132 and 133, Crown Entities Act 2004).</li> </ul>	<ul style="list-style-type: none"> <li>Ōtākaro Limited is a Crown Company incorporated under the Companies Act 1993. It is not a statutory body.</li> <li>The Public Finance Act excludes Schedule 4A companies from its definition of the Crown.</li> </ul>
Weakly	<ul style="list-style-type: none"> <li>Ōtākaro Limited is subject to the same statutory requirements as Crown entity companies in terms of its formation, acquisition of shares, presentation of a constitution to the House of Representatives, and the provision of information to shareholders (sections 79 and 81-85 Crown Entities Act 2004).</li> <li>Ōtākaro Limited financial statements are audited by the Auditor-General. (section 15 Public Audit Act 2001). There are also restrictions on Ōtākaro Limited's ability to acquire securities,</li> </ul>	<ul style="list-style-type: none"> <li>There are none.</li> </ul>

borrow, give guarantees and indemnities and use derivatives (sections 161-164, Crown Entities Act 2004).

- The Minister of Finance and the Minister of State Services can jointly direct Ōtākaro Limited to follow a whole-of-government approach (section 107, Crown Entities Act 2004).
- The shareholding Ministers can appoint and remove members of the board (clauses 12.3 and 12.4 of the Constitution),
- Shareholding Ministers in Ōtākaro Limited can make resolutions about the management of Ōtākaro Limited (section 109, Companies Act 1993 and clause 9.4 of the Constitution).
- The shareholding Ministers may make comments on Ōtākaro Limited's draft statement of performance expectations and direct amendments to some of the information in that statement (sections 149B-149M, Crown Entities Act 2004).
- Ōtākaro Limited is wholly Government owned currently but must maintain at least 50 % Crown ownership (clause 4.2a of the Constitution).
- The Minister of Finance may issue instructions to Ōtākaro Limited relating to minimum requirements for publication of information that Ōtākaro Limited would have to publish under the Public Finance Act, the non-financial reporting standards Ōtākaro Limited must apply and the form in which Ōtākaro Limited must provide the information to the House (sections 80A and 81, Public Finance Act 1989).
- Schedule 4A companies are "state services" under the State Sector Act 1988.

**Relevant Sources include:**

Companies Office website – company # 5891655 <https://www.business.govt.nz/companies/app/ui/pages/companies/5891655>

Companies Act 1993

Crown Entities Act 2004

Public Finance Act 1989

State Sector 1988

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**From:** [Lisa Austin](#)  
**To:** [Chris Adam](#)  
**Subject:** RE: Otakaro Limited Public Office Assessment signed by Chief Archivist April 2016 (A880813)  
**Date:** Tuesday, 5 April 2016 10:56:32 a.m.

---

I have a D&A meeting in 5 mins for an hour, then a TVNZ meeting for 30mins. When are you having lunch?

---

**From:** Chris Adam  
**Sent:** Tuesday, 5 April 2016 10:52 a.m.  
**To:** Lisa Austin  
**Subject:** RE: Otakaro Limited Public Office Assessment signed by Chief Archivist April 2016 (A880813)

I'm back now.

---

**From:** Lisa Austin  
**Sent:** Tuesday, 5 April 2016 10:35 a.m.  
**To:** Chris Adam  
**Subject:** RE: Otakaro Limited Public Office Assessment signed by Chief Archivist April 2016 (A880813)

Ok. Maybe this arvo?

---

**From:** Chris Adam  
**Sent:** Tuesday, 5 April 2016 9:21 a.m.  
**To:** Lisa Austin  
**Subject:** RE: Otakaro Limited Public Office Assessment signed by Chief Archivist April 2016 (A880813)

I won't be back until after 11.

---

**From:** Lisa Austin  
**Sent:** Tuesday, 5 April 2016 8:57 a.m.  
**To:** Chris Adam  
**Subject:** RE: Otakaro Limited Public Office Assessment signed by Chief Archivist April 2016 (A880813)

I'll give you a ring after the managers meeting.

---

**From:** Chris Adam  
**Sent:** Tuesday, 5 April 2016 8:54 a.m.  
**To:** Polly Martin; Lisa Austin  
**Subject:** RE: Otakaro Limited Public Office Assessment signed by Chief Archivist April 2016 (A880813)

I await your instructions, Lisa.

---

**From:** Polly Martin  
**Sent:** Tuesday, 5 April 2016 8:47 a.m.  
**To:** Lisa Austin; Chris Adam  
**Subject:** Otakaro Limited Public Office Assessment signed by Chief Archivist April 2016 (A880813)

Kia Ora korua

Given that this is likely to become a Section 23 situation, I've completed my contribution and now hand it on to both of you in your D&A and RA roles .

Nga mihi

Polly

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**From:** [REDACTED]  
**To:** [Polly Martin](#)  
**Cc:** [Lisa Austin](#); [Chris Adam](#)  
**Subject:** Re: Otakaro Limited  
**Date:** Wednesday, 6 April 2016 11:48:55 p.m.

---

Many thanks Polly,

I will circulate the determination to our senior leadership and bring forward any discussions which result.

Cheers,

[REDACTED]

On 6/04/2016, at 4:05 PM, Polly Martin <[Polly.Martin@dia.govt.nz](mailto:Polly.Martin@dia.govt.nz)> wrote:

Kia Ora [REDACTED]

The Chief Archivist has determined that based on the information available Otakaro Limited is not a public office.

Please note that should further information come to light we may need to revisit the determination.

Happy to discuss if needed.

Nga mihi

**Polly Martin** | Manager Advice & Compliance.

Government Recordkeeping Directorate

**Archives New Zealand Te Rua Mahara o te Kawanatanga**

Direct dial +64 4 894 6067 | Extn9267 | Mobile: +64 21 685 210|

<http://www.records.archives.govt.nz>

*Archives New Zealand is part of the Department of Internal Affairs*

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---

**From:** Chris Adam  
**Sent:** Wednesday, 6 April 2016 3:59 p.m.  
**To:** Lisa Austin  
**Subject:** Legal opinions

Tried to phone again.

s 9(2)(a) took me aside after the meeting and explained that s 9(2)(g)(i). Last week their own law firm informed him that they did not think Otakaro could be a public office and this was reinforced by another legal advisor. So s 9(2)(g)(i) had been taking steps to mitigate the results of a No decision – hence the bloodless nature of the meeting today.

Chris

s 9(2)(a)

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**From:** [Lisa Austin](#)  
**To:** [Chris Adam](#)  
**Subject:** RE: Archives New Zealand - Otakaro Determination  
**Date:** Wednesday, 6 April 2016 12:26:36 p.m.

lol

---

**From:** Chris Adam  
**Sent:** Wednesday, 6 April 2016 11:42 a.m.  
**To:** Lisa Austin  
**Subject:** Re: Archives New Zealand - Otakaro Determination

Never mind them. I bloody do.

Sent from my iPhone

On 6/04/2016, at 9:58 am, Lisa Austin <[Lisa.Austin@dia.govt.nz](mailto:Lisa.Austin@dia.govt.nz)> wrote:

Did they want me to phone in?

---

**From:** Chris Adam  
**Sent:** Wednesday, 6 April 2016 9:53 a.m.  
**To:** Lisa Austin  
**Subject:** Fwd: Archives New Zealand - Otakaro Determination

Sent from my iPhone

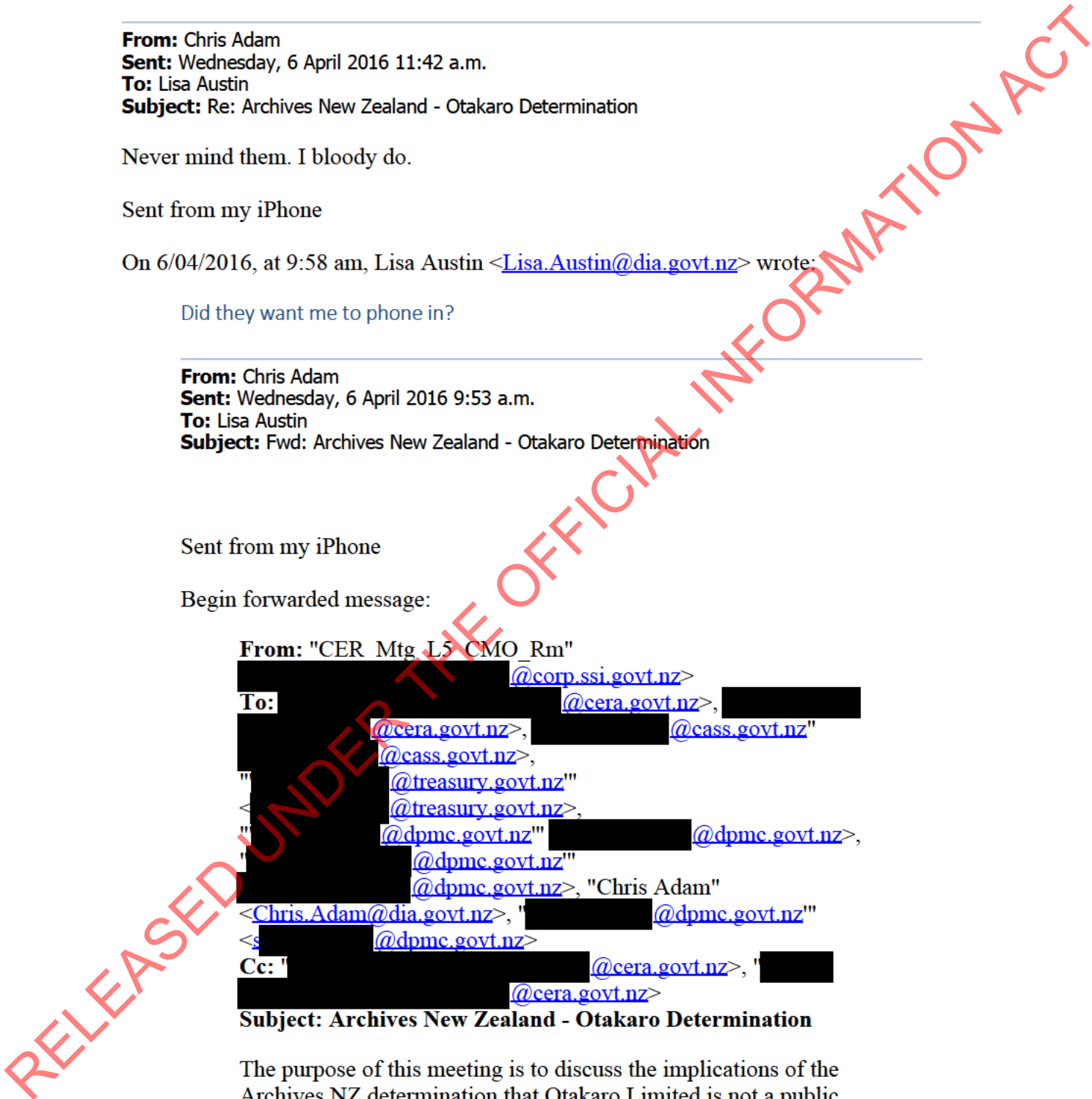
Begin forwarded message:

**From:** "CER Mtg L5 CMO Rm"  
**To:** [redacted] <[\[redacted\]@corp.ssi.govt.nz](mailto:[redacted]@corp.ssi.govt.nz)>  
[redacted] <[\[redacted\]@cera.govt.nz](mailto:[redacted]@cera.govt.nz)>, [redacted]  
[redacted] <[\[redacted\]@cera.govt.nz](mailto:[redacted]@cera.govt.nz)>, [redacted] <[\[redacted\]@cass.govt.nz](mailto:[redacted]@cass.govt.nz)>"  
[redacted] <[\[redacted\]@cass.govt.nz](mailto:[redacted]@cass.govt.nz)>,"  
[redacted] <[\[redacted\]@treasury.govt.nz](mailto:[redacted]@treasury.govt.nz)>"  
[redacted] <[\[redacted\]@treasury.govt.nz](mailto:[redacted]@treasury.govt.nz)>,"  
[redacted] <[\[redacted\]@dpmc.govt.nz](mailto:[redacted]@dpmc.govt.nz)>" [redacted] <[\[redacted\]@dpmc.govt.nz](mailto:[redacted]@dpmc.govt.nz)>,"  
[redacted] <[\[redacted\]@dpmc.govt.nz](mailto:[redacted]@dpmc.govt.nz)>"  
[redacted] <[\[redacted\]@dpmc.govt.nz](mailto:[redacted]@dpmc.govt.nz)>, "Chris Adam"  
<[Chris.Adam@dia.govt.nz](mailto:Chris.Adam@dia.govt.nz)>, "[redacted] <[\[redacted\]@dpmc.govt.nz](mailto:[redacted]@dpmc.govt.nz)>"  
<[\[redacted\]@dpmc.govt.nz](mailto:[redacted]@dpmc.govt.nz)>  
**Cc:** [redacted] <[\[redacted\]@cera.govt.nz](mailto:[redacted]@cera.govt.nz)>, [redacted]  
[redacted] <[\[redacted\]@cera.govt.nz](mailto:[redacted]@cera.govt.nz)>  
**Subject:** Archives New Zealand - Otakaro Determination

The purpose of this meeting is to discuss the implications of the Archives NZ determination that Otakaro Limited is not a public office for the purpose of the Public Records Act 2005.

Phone [redacted] or [redacted] withheld under s 9(2)(ba)(ii)

Host PIN (CERA) [redacted] withheld under s 9(2)(ba)(ii)



Guest PIN



withheld under s 9(2)(ba)(ii)

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-----

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**From:** [Chris Adam](#)  
**To:** [Lisa Austin](#)  
**Subject:** Re: Takaro  
**Date:** Wednesday, 6 April 2016 2:27:56 p.m.

---

I meant their new records.

Sent from my iPhone

On 6/04/2016, at 2:24 pm, Lisa Austin <[xxxx.xxxxxx@xxx.xxxx](mailto:xxxx.xxxxxx@xxx.xxxx)> wrote:

The OIA side they will have to discuss with their own lawyers. We can't advise on that side of it. The records that go to Otakaro will be like being released under OIA (so to speak) to the new organisation. They are copies of things that are public records, but have been given to Otakaro to use in performing their functions, but the full "original" public records will go to DPMC.

---

**From:** Chris Adam  
**Sent:** Wednesday, 6 April 2016 2:22 p.m.  
**To:** Lisa Austin  
**Subject:** Re: Takaro

Our definition of a public record is tied to public office so...

Sent from my iPhone

On 6/04/2016, at 2:09 pm, Lisa Austin <[xxxx@xxx](mailto:xxxx@xxx)> wrote:

Good question, that is one for them to figure out, not us.

---

**From:** Chris Adam  
**Sent:** Wednesday, 6 April 2016 1:37 p.m.  
**To:** Lisa Austin  
**Subject:** Takaro

So the records created from now on by Takaro will be subject to OIA but not the PRA? They won't be public records under the Act?

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withheld under s 9(2)(a)

---

**From:** [REDACTED]  
**Sent:** Wednesday, 6 April 2016 2:23 p.m.  
**To:** [REDACTED]@cass.govt.nz'; [REDACTED]@treasury.govt.nz';  
[REDACTED]@dpmc.govt.nz'; [REDACTED]@dpmc.govt.nz'; 'chris.adam@dia.govt.nz'; [REDACTED];  
[REDACTED]@dpmc.govt.nz'; [REDACTED];  
[REDACTED]@davanti.co.nz'; [REDACTED]@dpmc.govt.nz'; [REDACTED]@treasury.govt.nz'  
**Subject:** Agenda - 2.30pm Chief Archivist Ruling on Otakaro

Hi all,

Thanks for being available at short notice. Ahead of the meeting, please find attached agenda.

For those in HSBC please met at CMO room on Level 5, for those not in Christchurch please dial in:

Phone [REDACTED] and use Guest PIN [REDACTED]. withheld under s 9(2)(ba)(ii)

Thanks!

[REDACTED]

(CERA Host PIN (CERA) [REDACTED] withheld under s 9(2)(ba)(ii)

[REDACTED] | [REDACTED]  
Change Management Office  
Canterbury Earthquake Recovery Authority (CERA)  
Private Bag 4999, Christchurch 8140

Phone: [REDACTED]  
Mobile: [REDACTED]  
Email: [REDACTED]@cera.govt.nz  
Web: www.cera.govt.nz

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**From:** [Chris Adam](#)  
**To:** [Lisa Austin](#); [Polly Martin](#)  
**Subject:** FW: Actions - Chief Archivist Ruling on Otakaro  
**Date:** Monday, 11 April 2016 12:56:41 p.m.  
**Attachments:** [image001.jpg](#)  
[Actions from Archives NZ Determination meeting - 6 April 2016.docx](#)

---

fyi

**From:** [REDACTED]@cera.govt.nz]  
**Sent:** Monday, 11 April 2016 12:55 p.m.  
**To:** [REDACTED]@cass.govt.nz'; [REDACTED]@treasury.govt.nz';  
[REDACTED]@dpmc.govt.nz'; [REDACTED]@dpmc.govt.nz'; 'chris.adam@dia.govt.nz'; [REDACTED]  
[REDACTED]@dpmc.govt.nz'; [REDACTED]  
[REDACTED]@davanti.co.nz; [REDACTED]@dpmc.govt.nz; [REDACTED]@treasury.govt.nz;  
[REDACTED]@dpmc.govt.nz; [REDACTED]  
**Subject:** Actions - Chief Archivist Ruling on Otakaro

Hi All,

Apologies for the delay, please find attached actions from last Wednesday's meeting.

Please let me know if I've missed anything.

Thanks

[REDACTED]

[REDACTED]

Change Management Office  
Canterbury Earthquake Recovery Authority (CERA)

Phone: [REDACTED]  
Mobile: [REDACTED]  
Email: [REDACTED]@cera.govt.nz

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## Archives NZ Determination meeting - 6 April 2016

## Attendees:

[REDACTED], [REDACTED] CERA  
 [REDACTED], [REDACTED], CASS  
 [REDACTED], [REDACTED], CERA CMO  
 [REDACTED], DPMC [REDACTED]  
 [REDACTED], Treasury [REDACTED]  
 [REDACTED], DPMC MAES  
 Chris Adam, Archives NZ  
 Lisa Austin, Archives NZ  
 [REDACTED], CASS [REDACTED]  
 [REDACTED], CERA [REDACTED]  
 [REDACTED], CERA [REDACTED]

## Actions:

#	WHO	WHAT
AP1	[REDACTED]	Send VPC archive options summary to [REDACTED]
AP2	[REDACTED]	Confirm that archive of AECOM system is included in current contract/costing
AP3	[REDACTED]	Follow up with VPC on Archive timing and costs
AP4	[REDACTED]	OIA's - Circulate Ōtākaro proposed principles
AP5	[REDACTED]	Arrange DPMC/Ōtākaro OIA coordination meeting
AP6	[REDACTED]	To confirm Treasury position on Record Ownership for "Role B" projects, for which Treasury will own land and assets.
AP7	[REDACTED]	To discuss impact of ruling with Treasury colleagues and possible mitigations, including possibility of amending PRA 2005 by order in council.

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