

6 March 2017

Mr David Lawson

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Dear Mr Lawson

### Official Information Act request

Thank you for your six requests of 9, 13 and 15 November 2016, asking for information under the Official Information Act 1982 (the Act). On 7 December 2016 we wrote to you to advise that we would be grouping your requests together and responding to them by 6 March 2017. Your requests, along with our response to each, are detailed below.

#### Request One:

##### ***ACC's Clinical Advisory Panel***

*"1) Documented history of the inception of the ACC's Clinical Advisory Panel (CAP) explaining when, how and why it was started, etc.*

*2) All policies, procedures, guidelines, rules and similar documents pertaining to the subject of the ACC's Clinical Advisory Panel (CAP).*

*In addition to the above OIA request I also request under section 23 of the Official Information Act 1982, a written statement from the Head of the Clinical Advisory Panel which convened and declined acceptance of cover under claim number 10031989043, as to why ACC did not seek information from an independent neurosurgeon once the neurosurgeon had examined me physically and taken my accident and medical history in relation to the claim for facial nerve treatment injury that came about through the treatment of my cervical spine by a physiotherapist manipulating my neck at C1/2 and performing acupuncture with 45 mm deep dry needles which lead to the new injury."*

#### Our response

##### ***ACC's Clinical Advisory Panel***

We note that you have requested the same information that was provided in response to LeeM's request of 20 September 2016 on [fyi.org.nz](http://fyi.org.nz). The following information is taken from our response of 19 October 2016.

##### ***The establishment of the Clinical Advisory Panel (CAP)***

You requested a documented history of CAP. Prior to responding to that part of your request, we refer you to the enclosed copy of the Office of the Ombudsman's guide *Making*

*official information requests (Appendix A1)*. Please refer to 'What is official information?' on page 7 of this document, which outlines the distinction between:

- questions which can be answered by providing information already known to and held by the agency (official information); and
- questions which require the agency to form an opinion or provide an explanation and so create new information to answer the request (not official information).

Providing you with a history of CAP would require us to provide an explanation and create new information. This would involve a significant amount of research and work. Accordingly, we consider that your request for a 'documented history' falls into the latter of the above categories. We therefore decline this part of your request as it falls outside of the OIA. However, in the hope that it may assist you in your enquiries we provide the following comments.

In 2003, ACC carried out a review of its surgery assessment and decision-making process. The review found that in some instances surgery requests needed clinical comment on causation.

This led to the creation of the Elective Surgery Unit, which started with a small number of assessment staff and a Clinical Advisor, who was responsible for providing staff training and clinical comment on causation.

By 2004 there were three Clinical Advisors, who met regularly to discuss cases. At this point the team became known as the Clinical Advisory Panel. While the number of staff in CAP has since grown, it has continued to work in the same way since 2004.

#### ***Policies, procedures, guidelines on CAP***

There are two documents relevant to this part of your request, which are: *Making a referral to the Clinical Advisory Panel* and *Issuing an elective surgery funding decision*. Please find these enclosed (*Appendix A2 and A3*). We have withheld the names and contact details of staff from these documents in order to protect the privacy of individuals. This decision is made in accordance with section 9(2)(a) of the Act. We have been unable to identify why the release of this information would be in the public interest.

Noting your interest in the CAP, please find below some general information about their role and place within ACC, and how they operate.

#### ***Surgery funding requests and referrals to CAP***

ACC receives around 54,000 surgical funding requests each year. Approximately 82% of these are assessed by the Treatment Assessment Centre (TAC) and the remainder are managed in the Branch network. The TAC operates a triage process which allows for 58% of all requests managed by that unit to be approved within 3 days from the date they are received.

Requests for surgery funding that contain insufficient clinical information, or where a decision is not straightforward, are referred for further assessment. In the vast majority of cases, this will involve obtaining further clinical information and/or referring the request to CAP for a clinical opinion.

The core function of the CAP is to provide clinical advice in response to referrals from case owners seeking clarification regarding the likely causal link between a condition to be treated surgically and an ACC covered injury. The advice CAP provides is based on the information

held by ACC including the Assessment Report and Treatment Plan, clinical notes and investigation results.

Case owners currently request clinical input from CAP for 300 to 400 cases each week. This clinical input is used by case owners as part of the decision-making process when determining surgical entitlements and support.

The CAP members are vocationally registered medical practitioners with collective experience and clinical expertise in the following specialties: orthopaedic surgery, general surgery, sports medicine, urgent care, physiotherapy and nursing. Each member of the team has a current practicing certificate. Collectively, the CAP has provided more than 100,000 comments regarding causal link since the formation of the team in 2004.

The clinical advice provided by CAP is based on a consensus of opinion supported by the best available evidence. This is obtained through regular meetings that involve: discussion of specific cases, formal peer review, discussion of current research/journal articles, and reference to the following CAP consensus guidelines.

### **Clinical Advisory Panel Consensus Guidelines**

<b>Factor</b>	<b>Considerations</b>
ACC-covered injury	Is there an ACC-covered injury for the body site to be treated?
Timeframe	How much time was taken between the date of accident and the date of initial presentation for assessment?
Subjective history	What is the contemporaneous clinical record of the subjective history including: mechanism of accident, degree and type of force involved, initial consequences of the accident, initial signs and symptoms as described by the client, evolution of signs and symptoms since the accident.
Medical and occupational history	What is the relevant medical history including: comorbidities, past medical history, family history? What is the relevant occupational history including: work, sporting activities, hobbies?
Initial presentation	What are the objective findings at the initial presentation including: clinical examination, special tests?
Initial diagnosis	What is the initial diagnosis from the lodging provider? What injury code was accepted by ACC for cover?
Imaging	Is there relevant imaging available? What are the findings?
Revision of diagnosis	Is there a revised diagnosis and what information influenced this revision?
Natural history	What is the natural history of the condition requiring surgery including: background prevalence, demographics, nature/quality of evidence?
Analysis and conclusion	Considering all of the factors of the individual case, does the pathology to be treated appear likely to have been caused by the covered accident?

The clinical advice provided by the CAP is expected to apply the guidelines and adhere to ACC's Clinical Advice Standards (March 2015). Please find these standards enclosed (*Appendix A4*).

### **Section 23 request**

You requested a statement from the head of the Clinical Advisory Panel as to why ACC did not seek information from an independent neurosurgeon regarding your claim. For section 23 of the Act to apply, the request must be about a decision or recommendation by ACC that is specifically about you in your personal capacity. It will not apply to a decision or

recommendation regarding some other person, or class of persons more generally, or decisions on policies or public issues more generally. It also will not apply in respect of issues that have not been actively considered, or in respect of the administrative steps or actions taken toward reaching a decision or recommendation.

We have confirmed that the claim you make reference to in your request was not referred to a Clinical Advisory Panel, rather it was referred to a Complex Claims Panel. Accordingly, we have determined that your request does not fall within the scope of section 23 of the Act as it is not connected to a decision that has been made by ACC. Your request also appears to seek an explanation regarding an administrative action, rather than an explanation regarding a decision or recommendation made specifically about you in your personal capacity.

## **Request Two:**

### ***ACC's Recover Independence Service/s Units***

*"1. The official documentation recommending to the Corporations Management that the Corporation proposed to reduce RIS entry case streaming criteria from 915 days to 365 days for claimants receiving weekly compensation, and the business case model associated with the change similar to the information contained in the Riley Report.*

*2. The Official documentation that the ACC management signed in approving the reduction from 915 days to 365 receiving weekly compensation for claimants to be streamed into the RIS claims management stream, which includes the date that the 365 days on claim receiving weekly entitlement was signed off together with the date it became ACC internal policy.*

*3. The weekly compensation level that ACC internal procedure/policy used to target the entry of the RIS claims management service between the period 14 February 2014 and 30 April 2014, and if the monetary limit changed during the period, and is so to what monetary limit applied then.*

*4. Please confirm what the number of days a claimant receiving weekly entitlements over \$600 per week, had to have been on claim for between the 14th February 2014 and 31 April 2014 before they became streamed through ACC's RIS case management streaming.*

*5. Please provide the internal official information confirming as to when the Henderson Branch of ACC began providing local in house RIS case management and when the ACC Henderson Branch formed a local RIS unit within ACC's physical premise in Lincoln Road Henderson.*

*6. Please confirm under the Official Information Act whether if an individual who has been case streamed through the RIS stream, who requested their full case notes and ACC case file under the Privacy Act 1993, is statutorily eligible under the Health Information Privacy Code 1994, and the Privacy Act 1993 to receive the following personal, health and were relevant official information associated with their claims and complaint management files;*

*-dual management list, spread sheets, or allocation lists in which the claimant has been named in so that the claimant can be aware of the criteria that have lead to a specific course of action so the claimant can be aware and if needed have the ability to challenge the decision.*

*-emails between ACC staff arranging to meet to discuss claims information about the claimant so that the claimant is fully informed*

*-the transfer emails/communications to and from Recover Information Services Teams*

*providing ACC's reason for the transfer that the claimant can challenge if they feel that they have been prejudiced.*

*-team manager and technical claims support advice that the case manager has requested help with so that the claimant remains fully informed of the decision making process and who was responsibly and thus accountable for the decision and for the claimant to correctly address their communication to if not satisfied.*

*-the lists of claims for panels.*

*-the psychological profiling that has been conducted by an ACC Branch Psychological Advisor on the claimant so that the individual has an informed knowledge and can respond to the profiling and challenge the branch psychological advisors opinions if the claimant does not agree with the psychologists, since quite often the BAP conducts the profiling without having consulted or spoken with the claimant.*

*-requests to and from ACC and treatment providers about claim details, treatment, rehabilitation so that the claimant remains fully informed, especially since ACC often communicates with the treatment provider about what ACC require.”*

## **Our response**

### ***History of the Recover Independence Service***

We note that you refer to both a “return to independence service” and “recover independence service” in your request. We have determined from the context of your request that the service you refer to is the Recover Independence Service (RIS).

The RIS was established in 2009 and consisted of a group of claims management teams in branches around the country. Those teams were responsible for providing a more focused approach to the rehabilitation needs of clients who had been out of the workforce for at least 912 days (2.5 years). In 2011 there were RIS teams in 15 claims branches around the country. Clients managed by the RIS were provided with the necessary treatment, rehabilitation and compensation to support and encourage their return to independence and received the same level of service as clients managed outside of the RIS.

In mid-2013 the RIS was disestablished as part of a restructure of the claims management network at ACC that aimed to decentralise some case and claims management functions. The operations undertaken by the RIS were absorbed back into the claims management network, with long term clients now being managed by appropriately experienced case managers. This structure was implemented to ensure that the needs of long term clients could still be met, while reinforcing consistent processes across the entire claims management network.

We note that a report from the Office of the Auditor General titled *Accident Compensation Corporation: Using a case management approach to rehabilitation*, indicated that the threshold for clients being managed by the RIS could be lowered to clients who had been out of the workforce for 365 days. This was never implemented.

### ***Documentation regarding changes to entry criteria for RIS***

The criteria for entry into the RIS was 912 days out of the workforce - it was not reduced to 365 days while the service was in operation. Therefore, there is no official documentation recommending a reduction in the entry criteria to 365 days, nor was any official documentation signed approving such a change. We are unable to provide you with information in response to these parts of your request as the documents do not exist. This decision complies with section 18(e) of the Act.

### ***Entry criteria for RIS between 14 February 2014 and 30 April 2014***

A client receiving weekly compensation between 14 February 2014 and 30 April 2014 would not have been entered into the RIS as it was disestablished in mid-2013. Instead, their claim

would have been managed by a case manager who was appropriately experienced to deal with long term clients. We are unable to provide you with information in response to these parts of your request as the information does not exist. This decision complies with section 18(e) of the Act.

In addition, we can advise that when the RIS was in existence, the criteria for entry was only based on the number of days a client had been out of the workforce (912 days). The criteria was not based on the amount of weekly compensation that a client was entitled to receive.

#### ***RIS at Henderson Branch***

We can confirm that there was never a dedicated RIS team the Henderson branch of ACC. Because of this, we are unable to provide you with information in response to this part of your request as the information does not exist. This decision complies with section 18(e) of the Act.

#### ***Rights of RIS clients to access their personal information***

ACC is required to comply with the rights of clients to access their personal information, as directed under Information Privacy Principle 6 of the Privacy Act 1993, and Health Information Privacy Rule 6 of the Health Information Privacy Code 1994. Under this legislation, clients are entitled to request access to all personal information that ACC holds about them, unless one or more of the reasons for withholding information outlined in Part 4 of the Privacy Act applies. We can confirm that RIS clients were entitled to the same rights to their personal information as any other ACC client.

We note from our letter to you, dated 8 June 2016, that we have previously posted documents outlining our internal policies on the rights of clients to access their personal information to your home address. These documents provide a more detailed explanation of our responsibilities under the legislation referred to above.

#### **Request Three:**

##### ***ACC policy and procedure on placing ACC clients on a communications plan***

*"It would be appreciated if you could please provide to me all official information associated with ACC policy, procedure, and rules that relate to "communication plans" that ACC use.*

*Please also provide all information associated with ACC policy, procedure and rules that relate to "care indicators" that I believe ACC use."*

#### **Our response**

##### ***Communication plans - policy, procedure and rules***

Information regarding policy, procedure and rules relating to communication plans was requested by you previously and our response of 12 April 2016 is publicly available on [fyi.org.nz](http://fyi.org.nz). Accordingly, we are declining this part of your request under section 18(d) of the Act as the information is publicly available.

##### ***Care indicators - policy, procedure and rules***

In our email to you of 16 December 2016, we directed you to our previous response to another requester on [fyi.org.nz](http://fyi.org.nz), dated 18 September 2014, which included documents regarding ACC policy and procedure on the use of care indicators. We note however, that many of the documents have been updated, and some new documents created, since that time and we are happy to provide you with the following documents, which are attached (*Appendix B*):

- *Assessing a client's risk level*
- *Managing care indicated clients*
- *Ordering security for staff and provider safety*
- *Transferring care indicated clients to another branch*
- *Transferring care indicated clients to the RCU*
- *Reviewing care indicated clients*
- *Ensuring overdue management plan reviews are completed*
- *Guidelines for making a client management recommendation*
- *Guidelines for when to remove a care indicator*
- *Activate, review and remove a client care indicator*
- *Excerpt from Safe Kiwis - Managing aggressive and threatening situations policy and procedures: "Managing care indicators".*

We have withheld the names and contact details of staff from these documents in order to protect the privacy of individuals. In deciding to withhold that information, we have carefully considered whether the privacy interests we have identified are outweighed by the public interest in making it available. Our decision to withhold the requested information is made in accordance with section 9(2)(a) of the Act.

**Request Four:**

***Names of the medical, vocational and medical case review independent assessors contract to ACC***

*"It would be greatly appreciated if you would supply the following Official Information under the Official Information Act 1982 for the periods 1 July 2014 through until 30 June 2015, and 1 July 2015 through until 30 June 2016;*

*A separate list under (a), (b) and (c) below of the names of all of the ACC independent specialists contracted by, or on ACC's books, for which ACC could contract services to if so required for the following assessments, who conduct the assessments in the Auckland Region;*

- a) Medical Assessment inclusive of initial medical assessment and the reassessment, and*
- b) Vocational Assessments/Vocational Medical Assessments, and*
- c) Medical Case Reviews*

*For each of the separate classes of assessment under (a) ,(b) and (c ) above, please confirm for the Auckland Region the names of the 4 most highly remunerated specialists within each subgroup (a), (b) and (c ), together with the annual amount paid to these specialists in bands of \$25,000.*

*For the absence of doubt if an assessor travels the country for assessment purposes on behalf of ACC, and services Auckland as part of the process, please include their name if they rank within the top 4 in any of the lists (a) (b) and (c), please include their data in the requested information.”*

#### **Our response**

Our response to this request has been emailed to your personal email address. Our response sets out an explanation for our decision to process your request in this manner.

#### **Request Five:**

##### ***Request for the disclosure of reviewers’ appointed by the Accident Compensation Corporation prior employment history with the Accident Compensation Corporation***

*“1. A current list for the period 1 November 2015 through to 31 October 2016 of Reviewers names who have been contracted to, and who remain contracted with ACC for which ACC are able to contract/allocate for services under section 137 of the Accident Compensation Act 2001 the responsibility and duties of services to independently oversee the review process, inclusive of review hearing and release of a review decision.*

*2. For the purposes of transparency and public interest, please provide alongside each reviewers name, whether each Reviewer has been previously employed by ACC, and if they have been the following additional information;*

*(a) the period in terms of the actual years that the Reviewer had previously held employment with ACC,*

*(b) whether the Reviewer had ever been employed within the ACC legal services team, or the Office of the Complaints Investigation team, now known as the customer resolution team, and if so for what years.*

*(c) Please confirm for each reviewer in bands of \$25,000 for the period 1 July 2015 through 30 June 2016, how much ACC remunerated either FairWay Resolution and or the Reviewer Direct for the provision of Reviewing services that each reviewer has provided services for within the period requested.*

*Under section 23 of the Official Information Act 1982, I respectfully request to be advised why when ACC appointed Ms Maree Hill for the purpose of conducting the review process including review hearing in matters associated with reviews 4369589, 4411587, 4066110, 4047586, 4047587, 4049595 & 4610589, it was not disclosed to me that Ms Maree Hill had a past employment history with ACC, and what departments that Ms Hill had been employed in whilst at ACC?*

*It would be appreciated if you could confirm whether Reviewer Ms Maree Hill was ever employed within the Corporation's Office of the Complaints Investigation Team or Legal Services team and if so for what periods in terms of actual years...i.e 1985 through 1995 etc.*

*It would be appreciated if you could confirm the actual years that ACC Complaints Investigators Ms Sandra Warwick, and Sheryl Nolan have been employed with ACC, and also specify the actual years that Ms Warwick and Ms Nolan have been employed within the Office of the Complaints Investigation team, which is now referred to as the Customer Resolution Team.”*



## **Our response**

### ***Reviewer contracts***

ACC is required to arrange for the allocation of reviewers under section 137(2) of the Accident Compensation Act 2001. To facilitate this, ACC has appointed FairWay Resolution Limited under a contract for services to provide decision review hearing services. Under this contract, it is the responsibility of FairWay Resolution Limited to appoint individual reviewers and enter into employment agreements with them - ACC does not enter into employment agreements with individual reviewers. We are unable to provide you with information in response to these parts of your request as the documents do not exist. This decision complies with section 18(e) of the Act.

### ***Section 23 request***

As explained above in our response to Request One, a request made under section 23 of the Act must be in relation to a decision made by ACC. We have determined that your request does not fall within the scope of section 23 of the Act as reviewers are not appointed by ACC and therefore, the request is not connected to a decision that has been made by ACC. Your request also appears to seek an explanation regarding an administrative action, rather than an explanation regarding a decision or recommendation made specifically about you in your personal capacity.

### ***Employment history of individuals***

We can confirm that Ms Maree Hill was never employed in the Office of the Complaints Investigator or the Legal Services Team at ACC.

Ms Sandra Warwick is no longer an employee of ACC and we have been unable to consult with her regarding your request. We have also been unable to consult with Ms Sheryl Nolan in this instance. As your request is for the personal information of individuals, we are declining your request as it is necessary to protect the privacy of the individuals concerned. In deciding to withhold that information, we have carefully considered whether the privacy interests we have identified are outweighed by the public interest in making it available. Our decision to withhold the requested information is made in accordance with section 9(2)(a) of the Act.

## **Request Six:**

### ***Request for copies of ACC's contract for services that apply to reviewers***

*"It would be appreciated if you could supply me under the Official Information Act 1982, a copy of the full contract for services agreement/contract, and any amendment to the contracts for services agreement/contract that the Accident Compensation Corporation had, and has in place for the following FairWay Resolution Reviewers which the Corporation appoints to act as Reviewers in ACC matters primarily through FairWay Resolution;*

- 1. Ms M Hill, between the period 25 March 2015 and 30 July 2016*
- 2. Ms L Clark, between the period 25 July 2016 and present.*

*My interest does not lie with matters of remuneration within the contract, and I am happy for remuneration details and information to be redacted from the information provided.*

*Please do however confirm whether either of the reviewers have contractual arrangements with the Corporation, and are remunerated by the Corporation for any other services contracted to the Accident Compensation Corporation that fall outside of the Reviewers ACC-Reviewer contract for services.*

*An example of this may be that one of the Reviewers is remunerated for the development, maintenance and updating of FairWay Policy, Resource Material and Documentation, such as the FairWay Reviewers Training Manual, and or the FairWay Benchbook,*

*I seem to recall that FairWay Resolution had advised the Ombudsman that a FairWay Reviewer that was also legally qualified had been responsible for the development and maintenance of the FairWay Benchbook, and I would like to be advised as to whether ACC remunerated the FairWay Reviewer concerned, and if so, to also be advised the name of all of the Reviewers that have been remunerated by ACC for aiding in the maintenance and development of the FairWay Benchbook, together with being provided a copy of the Reviewers and ACC's contract for services for these services."*

### **Our response**

As stated above in response to Request Five, ACC does not enter into employment agreements with individual reviewers to provide decision review hearing services. We can also confirm that ACC has not entered into an employment agreement with any reviewer in any other capacity related to the review process, including for services related to the preparation of written documentation on the review process. We are unable to provide you with information in response to your request as the documents do not exist. This decision complies with section 18(e) of the Act. You may wish to contact FairWay Resolution Limited if you would like to receive a copy of the standard employment agreement they use to engage reviewers.

### **ACC is happy to answer your questions**

If you have any questions about the information provided, ACC will be happy to work with you to answer these. You can contact us at [GovernmentServices@acc.co.nz](mailto:GovernmentServices@acc.co.nz) or in writing to *Government Services, PO Box 242, Wellington 6140.*

You have the right to complain to the Office of the Ombudsman about our decision to withhold some of the information. You can call them on 0800 802 602 between 9am and 5pm on weekdays, or write to *The Office of the Ombudsman, PO Box 10152, Wellington 6143.*

Yours sincerely

**Government Services**

## Document Schedule

Number	Date	Document	Comments
A1	04/16	Making official information act requests. A guide for requesters.	
A2	12/10/16	Making a referral to the Clinical Advisory Panel	Name withheld under section 9(2)(a)
A3	01/12/16	Issuing an elective surgery funding decision	Name withheld under section 9(2)(a)
A4	03/15	Clinical advice standards	
B1	01/07/16	Assessing a client's risk level	Name withheld under section 9(2)(a)
B2	01/07/16	Managing care indicated clients	Name withheld under section 9(2)(a)
B3	01/07/16	Ordering security for staff and provider safety	Name withheld under section 9(2)(a)
B4	01/07/16	Transferring care indicated clients to another branch	Name withheld under section 9(2)(a)
B5	01/07/16	Transferring care indicated clients to the RCU	Name withheld under section 9(2)(a)
B6	01/07/16	Reviewing care indicated clients	Name withheld under section 9(2)(a)
B7	01/07/16	Ensuring overdue management plan reviews are completed	Name withheld under section 9(2)(a)
B8	01/07/16	Guidelines for making a client management recommendation	Name withheld under section 9(2)(a)
B9	01/07/16	Guidelines for when to remove a care indicator	Name withheld under section 9(2)(a)
B10	04/10/16	Activate, review and remove a client care indicator	Names withheld under section 9(2)(a)
B11	08/16	Excerpt from Safe Kiwis - Managing aggressive and threatening situations policy and procedures: "Managing care indicators"	