

30 August 2018

Alex Harris  
fyi-request-8065-5b5e666e@requests.fyi.org.nz

Dear Alex

**Official Information Act 1982 (Act) – Request for information - Thompson and Clark**

We refer to your email dated 19 June 2018 requesting the following information from the National Institute of Water and Atmospheric Research Limited (NIWA):

*“all information relating to, or provided by, Thompson and Clark Private Investigations between the years 2014-2018 held by your agency.”*

On 9 July 2018 the timeframe for responding to your request was extended pursuant to section 15A of the Act to 6 August 2018. We apologise that this response was not provided by this date.

**Information to be released**

Please find attached information that is being released to you in full or part in response to your request. The information being released is information held by NIWA relating to circumstances in which NIWA engaged, or considered engaging, Thompson and Clark (TCIL) to provide services, or where TCIL provided unsolicited information to NIWA which was unconnected to TCIL's work for NIWA clients.

The information we have released to you primarily covers:

- Our engagement of TCIL in 2014 to conduct a security threat assessment supporting deployment of our staff on a project in the Middle East.
- NIWA considering engaging TCIL in late 2014 to provide a security threat assessment in connection with a voyage for a commercial client.
- NIWA considering engaging TCIL to complete a security review following a protest incident in late 2015 when Greenpeace protestors boarded NIWA's research ship the RV Tangaroa.
- Our subsequent engagement of TCIL to provide vessel staff with situational security awareness training including how to manage an encounter with someone illegally boarding the vessel.
- Our engagement of TCIL in 2016 to review NIWA's standard Vessels' Security Plan which NIWA was to use for an upcoming voyage for a commercial client, to undertake a security threat assessment, and to oversee security operations while the vessel was in port.

For clarity, we can confirm that at no time during the timeframe of your request did NIWA authorise or request TCIL to carry out any surveillance on its behalf or on behalf of its clients.

Certain information has been redacted from the material released because NIWA has determined that it falls outside the scope of your request.

In some cases, attachments have been left out of our response because they are an exact duplicate of a document already included, or a version of a document where, although changes have been made to

material that falls outside your request (which has therefore been redacted), the information covered by your request is unchanged from the version included.

Please note the following specific comments:

- Included in the information that has been released to you is a copy of one of NIWA's internal reports which includes a section detailing the engagement of TCIL by NIWA. We note that the exact section also appeared in a number of NIWA's other internal reports but, since the wording was the same on each occasion, we consider the intention of the Act is met by providing a copy of only one of these reports to you.
- NIWA generates and holds a number of routine internal reports covering invoicing and administration relating to all our suppliers, including TCIL. We consider these more general reports to be out of the scope of your request.

Other information has been redacted, or fully withheld, in reliance on the grounds set out in section 9 of the Act. We discuss these grounds further below.

### **Withheld information**

Certain information has been withheld either in part or in full in reliance on the grounds available under section 9 of the Act.

#### *Situation Reports, Alerts and Updates*

We have withheld all Situation Reports, Alerts, and Updates received from TCIL during the timeframe of your request under sections 9(2)(b)(ii), 9(2)(ba)(i) and 9(2)(i) of the Act. We are aware that certain reports of this type have been provided to you by other entities in response to your request under the Act, but NIWA has formed the view that the specific reports provided to it by TCIL were provided on a confidential basis and contain TCIL's proprietary information, and that release of this information would:

- be likely to prejudice the supply of similar reports by TCIL and it is in the public interest that such reports continue to be supplied; and
- As these reports contain proprietary information, NIWA has also formed the view that disclosure of these reports would also unreasonably prejudice the commercial position of TCIL as the supplier of the information under s9(2)(b)(ii).

Moreover, some of the Situation Reports, Alerts, and Updates received by NIWA were obtained in relation to work NIWA was undertaking for a specific client meaning that the client (as well as NIWA itself) is a subject of the information contained in those reports. Because the reports are in some cases directed to the activities of our client and/or NIWA, it is necessary to withhold these reports to prevent unreasonable prejudice to the commercial position of that client under s9(2)(b)(ii), and to enable NIWA to undertake commercial activities without prejudice or disadvantage under s9(2)(i).

We do not consider that the strong public interest in withholding these documents, as well as in protecting the commercial interests of not only TCIL but also NIWA and its client, is outweighed by any public interest in their disclosure.

To the extent that these reports are already publicly available, they are withheld under s18(d) of the Act.

#### *Commercial information and information identifying our clients*

We have also withheld commercial proposals received from TCIL as well as pricing information, and certain other information relating to the services TCIL provided to NIWA or to NIWA's clients. In addition, we have withheld all correspondence with our clients as well as any information that reveals the identity of our clients or the work being carried out for them by NIWA or TCIL which could identify them. All of this information has been withheld under sections 9(2)(ba)(i), 9(2)(b)(ii) and 9(2)(i) of the Act.

The proposals and pricing and other information contain confidential information supplied to NIWA by TCIL or by NIWA's clients and making it available would likely prejudice the supply of similar information from TCIL or from NIWA's clients as well as potentially from other suppliers who may wish to provide services to NIWA or its clients. It is in the public interest that NIWA can continue to receive this information in order to procure such services competitively. Moreover, the information obtained from TCIL in some cases contains commercial information belonging to NIWA's clients which is subject to an obligation of confidence. Disclosure of this information would be likely to deter clients or prospective clients from providing such information to NIWA, and it is in the public interest that NIWA continues to be able to receive such information in order to develop its commercial relationships.

Further, these commercial proposals and pricing or other information have been withheld under sections 9(2)(b)(ii) and 9(2)(i) of the Act as:

- The proposals and pricing and other information contain information that is commercially sensitive to TCIL, the disclosure of which would unreasonably prejudice TCIL's commercial position.
- The pricing or other information is also commercially sensitive to NIWA and in some cases NIWA's clients. Withholding this sensitive information is necessary to avoid unreasonable prejudice to NIWA's clients who in some cases are the subject of the information. It is also necessary to enable NIWA to carry out commercial activities without prejudice. To the extent that the information relates to a client, NIWA treats all client information as confidential. It also expects that TCIL would expect to do the same in respect of NIWA's and its clients' information.

Release of any information relating to dealings NIWA has had with its commercial customers could disadvantage NIWA's ability to interact with its clients (or other prospective clients) in the future because businesses generally would be less willing to deal with NIWA if they knew that details of dealings with them may enter the public domain. Disclosure of the information would therefore likely prejudice the supply of further confidential information either from existing or prospective clients. It is in the public interest that NIWA can continue to develop and maintain strong relationships with its existing clients, as well as potential commercial partners.

Moreover, disclosure of client information would be likely to undermine NIWA's commercial activities; it is likely that future negotiations with customers or potential customers could be prejudiced because of the perception of a breach of trust and concerns over confidentiality.

NIWA does not consider that the strong public interest in protecting the confidentiality and commercial position of its clients and TCIL as well as its own ability to carry out commercial activities is outweighed by any public interest in disclosing the information.

#### *Security information*

We have withheld all or part of copies of security threat assessments, security and media plans, voyage plans and guard orders together with certain information regarding NIWA's or our client's operations, including information regarding certain projects and security measures implemented for the projects under sections 9(2)(ba)(i), 9(2)(ba)(ii), 9(2)(b)(ii) and/or 9(2)(i) of the Act.

Because this material concerns security, some of it is confidential to NIWA and/or to NIWA's clients as releasing it might compromise the security of future projects or of the client's work. Moreover, to the extent that the information was obtained from a client, NIWA treats all client information as confidential. It also expects that TCIL would expect to do the same in respect of NIWA's and NIWA's clients' information.

In addition, this information has been withheld where it is commercially sensitive to TCIL, our clients and/or NIWA and the release of it would prejudice the commercial position of those entities. Releasing security information could prejudice future operations and therefore NIWA's ability to undertake commercial activities.

NIWA does not consider that the strong public interest in protecting the confidentiality and commercial position of its clients and TCIL as well as its own ability to carry out commercial activities is outweighed by any public interest in disclosing the information.

*Privacy of natural persons*

Under section 9(2)(a) we have withheld certain personal information, including names, positions and contact details, from the material provided as we considered it was necessary to withhold to protect the privacy of the natural persons concerned. We are not aware of any public interest grounds that would outweigh the public interest in ensuring that the privacy of these individuals is protected.

If you are not satisfied with NIWA's decision to refuse part of the request, there is a right, by way of complaint to an Ombudsman under section 28(3) of the Act, to seek an investigation and review of this refusal.

Yours sincerely



Annabelle Watson  
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