

28 March 2019

Emailed to: fyi-request-9705-a55fe13f@requests.fyi.org.nz

Dear C Montague

Official information request – emails regarding Births, Deaths and Marriages Act

Thank you for your official information request received on 28 February 2019 in which you request:

I request all emails to and from your office from 1 January 2018 to 28 February 2019 that mention the Births, Deaths, Marriages and Relationships Registration Bill and/or Act. Later refined by you to: Any communications regarding the Births, Deaths and Marriages Bill/Act and personal sex self-identification (also known as sex self-declaration and self-ID).

I request all emails to and from media outlet The Spinoff from 1 January 2018 to 28 February 2019, or emails that mention The Spinoff.

I would like to see copies of all analysis your office has completed regarding the self-identification clauses introduced August 15 2018 in the BDMRRB. In particular, I would like to see copies of all analysis that look at the impact of self-declared sex changes on the privacy of women and girls (as privacy is a grounds for sex-segregated spaces in the Human Rights Act 1993).

I would like to see a copy of any social media policies and conflict of interest policies the Privacy Commissioner is expected to abide by.

In response to the first part of your request we attach all such communications. Some of the material has been redacted under s9(2)(f)(iv) of the OIA 1982: withholding of the information is necessary to protect the confidentiality of advice tendered by Ministers of the Crown and officials.

In response to the second part of your request we attach all emails to and from media outlet The Spinoff from 1 January 2018 to 28 February 2019 and also some tweets.

Due to the substantial amount of work that would be required to research and collate the remainder of the information you have requested (being emails that mention The Spinoff) we are refusing that part of your request under section 18(f) of the OIA. To obtain that information would include requiring every OPC staff member to individually conduct a search of their email correspondence and the combined amount of time this would take across our organisation would necessarily negatively impact on our other operations (including, in particular, our efficient processing of complaint matters). We do not consider that either charging or extending the timeframe for responding would help in these circumstances as

neither of these would practically avoid the undue impact of having each staff member of our small (and very busy) organisation being diverted from conducting OPC's ordinary business.

We note that on 14 March 2018 we consulted with you and asked if you could confirm whether you would like to refine the scope of your request given its wide scope that may not be relevant to the information you are seeking as follows:

"We are currently processing your OIA request and wanted to clarify the second part of your request as it covers a significant amount of information which may not be relevant to the information you are seeking. You have requested "all emails to and from media outlet The Spinoff from 1 January 2018 to 28 February 2019, or emails that mention The Spinoff." By including the request for emails that mention the Spinoff, this significantly widens the scope of the request.

For context, our Office is likely to hold many emails that mention articles appearing on The Spinoff during that time period, which predominantly include those referring to articles of generalist privacy interests (e.g. articles examining the use of a medical AI tool), or articles of broader interest within the office.

Can you please confirm whether or not you would like to refine the scope of your request so that we can provide you with the relevant information you seek?"

That attempt at consultation did not resolve the difficulty as you did not respond. While we cannot meet this part of your request in full we are providing you with additional emails relating to the Commissioner's article published in the February The Spinoff article.

In response to the third part of your request we attach all such information, noting this is mainly contained in The Spinoff article and the earlier drafts of this. The contact details of a person are withheld under s.9(2)(a) of the Official Information Act 1982.

In response to the fourth and final part of your request the information you seek is as follows:

The Privacy Commissioner is an independent crown entity and is subject to the State Services Commissioner's Standards of Integrity and Conduct at <http://www.ssc.govt.nz/code>

The Commissioner's legal status (set out in s 12 of the Privacy Act 1993) is such that he is not an employee bound by the policies of the Office of the Privacy Commissioner that apply to his staff. The Commissioner does, however, take notice of OPC policies. The conflict of interest policy is included in the OPC Code of Conduct. There is no specific social media policy. OPC policies are publicly available at <https://privacy.org.nz/about-us/transparency-and-accountability/opc-policies/>

You have the right to ask the Ombudsman to investigate and review my decision on your request.

Yours sincerely


Jane Foster
General Counsel