

s 9(2)(a)

19-D-02438

22 NOV 2019

Dear s 9(2)(a)

Thank you for your email of 24 October 2019, making the following request under the Official Information Act 1982 (the Act):

One of the new clauses [of the Climate Change Response (Emissions Trading Reform Amendment Bill)] - 30GF - would require the auction monitor to keep secret all information that comes into its knowledge when performing its functions or exercising its powers.

I would like to request the following information:

All advice and communications on the drafting of this clause [clause 41] of the Climate Change Response (Emissions Trading Reform) Amendment Bill. I'm particularly interested in seeing the justification for the amendment, and who (if anyone) was consulted about it.

As I doubt there is a formal document on this, I expect this request will have to look at emails.

I note that the manager of the Emissions Trading Scheme policy team, Matthew Cowie, emailed you on 30 October 2019 to provide background information on the auction monitor and transparency provisions in the Climate Change Response (Emissions Trading Reform) Amendment Bill (the Bill). Links were also provided to regulatory advice on new measures to improve transparency in the New Zealand Emissions Trading Scheme. Notwithstanding this information, you requested to continue with the OIA request.

The primary purpose of the auction monitor, if the Government chooses to appoint one, is to provide independent oversight of market behaviour in auctions so as to mitigate auction integrity risks. To fulfil this function, it is necessary that the auction monitor have access to information held by the Environmental Protection Authority, the Registrar, and the Minister for Climate Change or agent/s appointed to conduct auctions. The Bill contains new provisions that allow for this data sharing.

There is also a corresponding confidentiality requirement to ensure that the information the auction monitor receives is safeguarded and used only for the purpose for which it was intended. The Climate Change Response Act already has a provision that addresses confidentiality, section 99. Currently it applies to the chief executive, the Environmental Protection Authority, enforcement officers and other persons who perform functions or delegated exercise of powers under the Act. Therefore, it is appropriate that the auction monitor be subject to an equivalent obligation of confidentiality.

Clause 30GF of the Bill serves this purpose. It will require that the auction monitor, if appointed, keep confidential all information that comes into its knowledge when performing its functions or exercising its powers under the Act. This will include information such as the entities bidding in auctions, the amounts they bid, and the number of failed bids. This type of material is commercially sensitive and will not be publically available. This is consistent with the format of the auctions, which is a sealed-bid format. It is also consistent with the role of the auction monitor, which is to provide independent oversight of market conduct rather than to report on or disclose individual activity of participants.

Given that a confidentiality provision already exists in the Climate Change Response Act, and that any new agent or person exercising powers under the Act should be subject to an equivalent obligation, there was no new policy assessment undertaken for clause 30GF. No documents therefore fell into direct scope of your OIA request.

Consultation with the following agencies was undertaken on relevant Cabinet papers, regulatory impact statements, and the draft Bill (in its entirety): Treasury; the Environmental Protection Authority; Ministry of Business, Innovation and Employment; Ministry of Foreign Affairs and Trade; Ministry for Primary Industries; Department of Conservation; Ministry of Transport; Ministry of Justice; Te Puni Kōkiri; and the Department of Prime Minister and Cabinet. No agency commented on the policy or drafting of the confidentiality obligation set out in clause 30GF. The agency consultation responses are therefore out of scope of your request on this clause.

In addition to agency consultation, the Ministry for the Environment sought feedback from the Office of the Privacy Commissioner on provisions related to the auction monitor. Their office replied that it had no comment on this subject.

It should be noted that the duty of confidentiality owed by the auction monitor will not preclude auctions from being conducted and reported on in a transparent manner. The Bill provides the framework for the appointment of the auction monitor, but the functions and role for the auction monitor will largely be set through regulations. Decisions have not yet been taken on these regulations. Regulations will also specify the transparency measures for auctioning. For example, what type of auction results should be publicly available following individual auctions. The Government has released a public consultation document on the operational regulations that will govern auctions. The consultation document and information about how to provide feedback on the proposals are available on the Ministry's website via this link: <https://www.mfe.govt.nz/consultations/nzets-rules-for-auctioning>.

Although there were no documents directly in scope of your request, the Ministry has identified 15 documents that you may find relevant or informative, as listed in the attached table. Many of these are publicly available documents as they have been proactively released. We have provided links for you to access them. Three documents identified within the broad scope of your request have been withheld under the following sections of the Official Information Act:

s9(2)(h) to maintain legal professional privilege

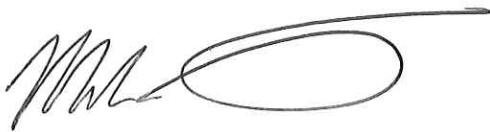
In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review by the Office of the Ombudsman of the decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our [OIA responses page](#) shortly after the response has been sent.

If you have any queries about this, please feel free to contact our Executive Relations team.

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Mark Storey
Acting Director, Climate Change

Released under the provision of
the Official Information Act 1982

List of documents

Document no.	Document date	Content	Decisions	OIA sections applied
1	11 September 2019	Email Re: Request to consult on provisions with privacy implications – NZ ETS auction monitor From: Colin Trotter, Office of the Privacy Commissioner To: Kate Whitwell, Ministry for the Environment	Released in full	
2	9 September 2019	Email re: CCRA(ETR) Amendment Bill & Revised Cab paper From: Matthew Cowie Ministry for the Environment To: Agencies for consultation (Treasury, Ministry of Justice, Ministry for Foreign Affairs and Trade, Ministry for Business, Innovation and Employment, Te Puni Kōkiri, Ministry for Primary Industries, Environmental Protection Agency, Ministry for Transport)	Email released in full. Responses from agencies withheld as no agency commented on the confidentiality clause. Responses are therefore out of scope of the request.	
3	4 September 2019	Email: Re: Request to consult on provisions with privacy implications – NZ ETS auction monitor From: Kate Whitwell, Ministry for the Environment To: Colin Trotter and Michael Harrison, Office of the Privacy Commissioner	Released in full	
4	4 April 2019	Email Re: NZ ETS draft Cabinet papers for agency review From: Matthew Cowie Ministry for the Environment To: Agencies for consultation (Treasury, Ministry of Justice, Ministry for Foreign Affairs and Trade, Ministry for Business, Innovation and Employment, Te Puni	Email released in full. Responses from agencies withheld as no agency commented on the confidentiality clause. Responses are therefore out of scope of the request.	

Document no.	Document date	Content	Decisions	OIA sections applied
5	12 September 2019	<p>Kōkiri, Ministry for Primary Industries, Environmental Protection Agency, Ministry for Transport)</p> <p>Email Re: 12th draft of the consolidated Act etc – Climate Change Response Amendment Bill From: Nicky Armstrong, Parliamentary Counsel Office, To: Jeremy Shoebridge, Ministry for the Environment</p>	Withheld in full	s9(2)(h)
6	23 August 2019	<p>Email: Re: 9th draft of consolidated Act – Climate Change Response Amendment Bill From: Shane Williams, Parliamentary Counsel Office To: Jeremy Shoebridge, Ministry for the Environment</p>	Withheld in full	s9(2)(h)
7	1 August 2019	<p>Email: Re: draft auction monitor / auctioning regs drafting instructions From: Francesca Bakker, Ministry for the Environment To: Kate Whitwell, Ministry for the Environment</p>	Withheld in full	s9(2)(h)
8	6 May 2019	<p>Cabinet Paper Market Governance for the New Zealand Emissions Trading Scheme: Next Steps</p>	<p>Publicly available https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/cabinet-papers/nz-ets-tranche-two-market</p>	s18(d)
9	6 May 2019	<p>Cabinet Paper NZ ETS Tranche Two: Supporting a Fit-for-Purpose Auctioning System</p>	<p>Publicly available https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/cabinet-papers/nz-ets-tranche-two-0</p>	s18(d)
10	8 April 2019	<p>Cabinet Paper NZ ETS Tranche Two: Improving Transparency</p>	<p>Publicly available https://www.mfe.govt.nz/node/25149</p>	s18(d)

Document no.	Document date	Content	Decisions	OIA sections applied
11	1 April 2019	Regulatory Impact Statement Providing clarity for auctions in the NZ ETS	Publicly available https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/regulatory-impact-statements/nz-ets-8	s18(d)
12	1 April 2019	Regulatory Impact Statement: NZ ETS Tranche Two: Options for NZ ETS auction oversight including an auction monitor	Publicly available https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/regulatory-impact-statements/nz-ets-6	s18(d)
13	19 March 2019	Regulatory Impact Summary: NZ ETS Tranche Two: Improving Transparency	Publicly available https://www.mfe.govt.nz/node/25193	s18(d)
14	10 December 2018	Regulatory Impact Summary: High-level Design of an Auction System for the NZ ETS	Publicly available https://www.mfe.govt.nz/node/25035	s18(d)
15	10 December 2018	Cabinet Paper Amendments to the Climate Change Response Act 2002: tranche one	Publicly available https://www.mfe.govt.nz/node/25032	s18(d)

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From: [Kate Whitwell](#)
To: Colin.Trotter@privacy.org.nz; Michael.Harrison@privacy.org.nz
Cc: [Kate Timlin](#)
Subject: Request to consult on provisions with privacy implications – NZ ETS auction monitor
Date: Wednesday, 4 September 2019 2:56:26 PM
Attachments: [image001.png](#)
[cabinet-paper-supporting-a-fit-for-purpose-auctioning-system.pdf](#)
[impact-statement-options-for-nzets-auction-oversight-including-an-auction-monitor.pdf](#)

Tena korua Colin and Michael,

I wasn't entirely sure who best to address this request to, so please feel free to pass it on to the most appropriate person.

We have recently consulted with the Privacy Commissioner on draft legislation to amend the Climate Change Response Act 2002 (CCRA) for an amendment with privacy implications regarding publication of ETS participant level greenhouse gas emissions and removals data. You have already provided feedback on this and we have included your recommendation in our list of matters to be addressed.

As we move closer to introduction date, we have found further amendments with privacy implications that we would appreciate your views on, this time related to the role of the auction monitor for the NZ ETS.

The existing CCRA provides for the Minister to sell NZ emission units (NZUs) by auction, but this power has never been used. The draft legislation that is about to be introduced includes amendments intended to further define the legislative and regulatory framework to enable the Government to sell NZUs by auction to NZ ETS participants. Our existing timetables plan to have the first auction of NZUs held by the end of 2020, once regulations have been made. We intend to consult on the detail of those regulations later this year and early next year for drafting during 2020.

One of the legislative amendments to the CCRA will enable regulations to be made to appoint an auction monitor whose role is to provide independent oversight of auctions. In order to perform this role, the auction monitor will require access to information regarding auctions and auction participants. Therefore the draft legislation includes sections to ensure that the relevant information from certain key entities (the auction agent, the EPA, the NZ ETS Registrar and others) can be shared with the auction monitor. Once shared, there are provisions to ensure that the auction monitor has the obligation to keep that information confidential unless certain exceptions apply. The obligations to maintain confidentiality are modelled on s99 of the existing CCRA.

The information that is provided to the auction monitor may well include information on individuals who are participating in auctioning. Although it is more likely that auction participants will be businesses, there is nothing preventing individual ETS participants from taking part.

The analysis behind this provision, and consultation process during policy development, is set out in the attached Cabinet paper and regulatory impact statement (these two documents are also publicly available on the MfE website).

We are interested in any views the Privacy Commissioner has on these amendments. We would

also be happy to meet to discuss this in detail if you'd prefer.

We'd appreciate it if you could get back to us by Monday 23rd September. As we are now very close to introducing the draft Bill, we will include any feedback you provide in our list of matters to be considered during the Select Committee phase.

I look forward to hearing from you, and please let us know if our timeframes are reasonable for you or not.

Naku noa

Kate Whitwell

Kate Whitwell – Senior Policy Analyst, Climate Change Policy

Ministry for the Environment – Manatu Mo Te Taiao

Mobile: 022 4930114 Email: kate.whitwell@mfe.govt.nz Website: www.mfe.govt.nz

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Ministry for the
Environment
Manatū Mō Te Taiao



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[SEEMAIL]

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From: [Matthew Cowie](#)
To: [Maria-Krystyna.Duval@treasury.govt.nz](#); [Hannah.Cobb@justice.govt.nz](#); [parek@tpk.govt.nz](#); [Steven Cox](#); [Elizabeth Heeg](#); [Simon Tomkins](#); [sfordham@doc.govt.nz](#); [Bronwyn.Kropp@epa.govt.nz](#); [Anna Broadhurst](#); [Kay Harrison \(MFAT\)](#); [Todd Croad \(MFAT\)](#); [Carolyn Holmes \(mpi.govt.nz\)](#); [Philip Wiles](#); [Kristen Green \(mpi.govt.nz\)](#); [f.holmes@transport.govt.nz](#); [David.Hodson@epa.govt.nz](#); [Dominic Millicich](#); [Tom Simcock](#); [Taina Wilson](#); [Amelie Goldberg](#); [janet.humphris@mbie.govt.nz](#); [John Scott \(DPMC\)](#); [Terry Genet](#)
Cc: [ETS Policy](#); [Francesca Bakker](#); [James Goodchild](#); [Jeremy Shoebridge](#); [Mark Storey](#); [Meredith Davis \(mfat.govt.nz\)](#); [Scott Gulliver](#); [Todd Croad \(MFAT\)](#); [Roger Lincoln](#); [Janine Smith](#); [Lindy Fursman](#)
Subject: CCRA(ETR) Amendment Bill & revised Cab paper
Date: Monday, 9 September 2019 3:17:15 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[2019-09-06 - Consolidated Climate Change Response Act 2002, as amended by CCRAB v11.15 \(clean\).pdf](#)
[2019-C-05874 revised Cab paper for agencies 9-9-19.docx](#)

Kia ora koutou,

A fortnight ago I circulated to you a LEG paper to introduce the Climate Change Response Amendment Bill (CCRAB). Thank you to all who were able to provide us with feedback. I am now sending out a copy of the Bill itself, along with a revised Cabinet paper.

Please find attached:

- draft **Climate Change Response (Emissions Trading Reform) Amendment Bill** (NB the revised title) - any feedback on the Bill itself we would need by **Tuesday 10 September by 3pm (tomorrow)**.
- a revised Cabinet paper (26 pages) – any feedback on the paper is required by **noon Wednesday 11 September 2019**

I acknowledge that this is an extraordinarily tight timeframe to consider the Bill itself. However, we would need to provide any instructions to PCO on changes to the Bill tomorrow evening in order for these to be included in the Bill on introduction.

Our Minister's office will be consulting on the Bill and Cabinet paper with other Ministers this week.

What are the main revisions in the Cabinet paper?

The most significant change to the paper is that we now intend to include some agricultural provisions in the Bill on introduction – the paper now reflects this. This has been done to ensure that the Bill has sufficient scope for any subsequent decisions about agricultural emissions.

When is the paper going to Committee/Cabinet?

This has not yet been confirmed. The paper may go to LEG acting as Cabinet on 17 September; or alternatively straight to Cabinet on 23 September.

Let me know if you have any queries, and thank you in advance for your assistance.

Naku noa, na
Matt

[IN CONFIDENCE]

Matthew Cowie – Manager, NZ ETS Policy
Ministry for the Environment – Manatu Mo Te Taiao

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From: [Colin Trotter](#)
To: [Kate Whitwell](#)
Cc: [Kate Timlin](#); [Michael Harrison](#)
Subject: RE: Request to consult on provisions with privacy implications – NZ ETS auction monitor
Date: Wednesday, 11 September 2019 3:38:25 PM
Attachments: [image002.jpg](#)
[image003.png](#)
[image004.jpg](#)
[image005.png](#)
[image006.png](#)

Hi Kate

Thanks for contacting us again on the NZ ETS implementation.

We have no comments at this stage. We will review and make a submission on the Bill if we find anything concerning or where we can improve the Bill's privacy related provisions.



Regards

Colin

Colin Trotter | Policy Adviser

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E colin.trotter@privacy.org.nz – for on-going work
E policy@privacy.org.nz - for new work
www.privacy.org.nz



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From: Kate Whitwell <Kate.Whitwell@mfe.govt.nz>
Sent: Wednesday, 4 September 2019 2:56 PM
To: Colin Trotter <Colin.Trotter@privacy.org.nz>; Michael Harrison <Michael.Harrison@privacy.org.nz>
Cc: Kate Timlin <Kate.Timlin@mfe.govt.nz>
Subject: Request to consult on provisions with privacy implications – NZ ETS auction monitor

Tena korua Colin and Michael,

I wasn't entirely sure who best to address this request to, so please feel free to pass it on to the most appropriate person.

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The analysis behind this provision, and consultation process during policy development, is set out in the attached Cabinet paper and regulatory impact statement (these two documents are also publicly available on the MfE website).

We are interested in any views the Privacy Commissioner has on these amendments. We would also be happy to meet to discuss this in detail if you'd prefer.

We'd appreciate it if you could get back to us by Monday 23rd September. As we are now very close to introducing the draft Bill, we will include any feedback you provide in our list of matters to be considered during the Select Committee phase.

I look forward to hearing from you, and please let us know if our timeframes are reasonable for

you or not.

Naku noa

Kate Whitwell

Kate Whitwell – Senior Policy Analyst, Climate Change Policy

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<http://intranet.mfe.govt.nz/sites/all/files/Lockup-8pt.png>



[SEEMAIL]

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From: [Matthew Cowie](mailto:Matthew.Cowie)
 To: [Maria-Kristyna Duval](mailto:Maria-Kristyna.Duval@treasury.govt.nz) (TREASURY); [Jeff DeJong](mailto:Jeff.DeJong) (TREASURY); [Hannah Cobb](mailto:Hannah.Cobb@justice.govt.nz) (JUSTICE); perek@tpk.govt.nz; [Steven Cox](mailto:Steven.Cox); [Elizabeth Hess](mailto:Elizabeth.Hess); [Simon Tomkins](mailto:Simon.Tomkins); sfordham@doc.govt.nz; [Bronwyn Kropp](mailto:Bronwyn.Kropp@epa.govt.nz) (EPA); [Anna Broadhurst](mailto:Anna.Broadhurst); [Kay Harrison](mailto:Kay.Harrison) (MFAT); [Todd Cread](mailto:Todd.Cread) (MFAT); [Carolyn Holmes](mailto:Carolyn.Holmes) (MPI); [Philip Wiles](mailto:Philip.Wiles); [Kristen Green](mailto:Kristen.Green) (MPI); I.holmes@transport.govt.nz; [David Hodson](mailto:David.Hodson@epa.govt.nz) (EPA); [Domini Milich](mailto:Domini.Milich); [Tom Simcock](mailto:Tom.Simcock); [Taina Wilson](mailto:Taina.Wilson); [Amelle Goldberg](mailto:Amelle.Goldberg); janel.humphris@mbie.govt.nz; [John Scott](mailto:John.Scott) (DPMC)
 Cc: [Charlotte Berg](mailto:Charlotte.Berg); [Daniel Dimmer](mailto:Daniel.Dimmer); [Elizabeth Bine](mailto:Elizabeth.Bine); [Emily Watson](mailto:Emily.Watson); [Emma Corbett](mailto:Emma.Corbett); [Jack Bisset](mailto:Jack.Bisset); [Kate Ryan](mailto:Kate.Ryan); [Kate Timlin](mailto:Kate.Timlin); [Kate Whitwell](mailto:Kate.Whitwell); [Kim Ramakrisna](mailto:Kim.Ramakrisna); [Matt Rasburn](mailto:Matt.Rasburn); [Monique Page](mailto:Monique.Page); [Ted Jamieson](mailto:Ted.Jamieson); [Vanessa Chalk](mailto:Vanessa.Chalk); [Jeremy Shoebridge](mailto:Jeremy.Shoebridge); [Francesca Bakker](mailto:Francesca.Bakker)
 Subject: NZ ETS draft Cabinet papers for agency review
 Date: Thursday, 4 April 2019 5:24:38 PM
 Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[2019-B-05487 Appendix 1 - Market Governance for the NZ ETS next steps DRAFT.docx](#)
[2019-B-05487 Appendix 2 C-0537 NZ ETS tranche two - supporting a fit-for-purpose auctioning system DRAFT.doc](#)

Kia ora koutou

Please find attached two draft NZ ETS Cabinet papers for your review. The table below provides a summary of the proposals and who to contact to discuss your feedback. Please provide feedback by **midday Tuesday 9 April** with red flag comments as soon as possible. We are happy to arrange a meeting if that is easier.

If you have any questions please let me know.

Paper:	Proposal:	Comments (if relevant):	Contacts:
Enabling a fit-for-purpose auctioning system	Seeks agreement to two proposals to enable a robust auctioning system that supports regulatory predictability <ul style="list-style-type: none"> enable an auction monitor to be appointed via regulations with its functions in regulations in order to provide independent oversight of auctions amend the CCRA to provide clarity on the types of decisions that Cabinet must and may take when creating regulations for auctioning 		Kate Ryan
Market governance – next steps	Seeks agreement to <ul style="list-style-type: none"> establish a separate market governance work programme to provide advice on a comprehensive package of options to address the full range of market governance issues. This is likely to result in a separate bill to amend the CCRA and/or other Acts as necessary include the implementation of tranche one ETS decisions made in December 2018 to prohibit insider trading and market manipulation in the scope of this separate work programme. 	This broadly reflects the content of the most recent briefing note to Minister Shaw on market governance "2019-B-05345 Update on Market Governance in the NZ Emissions Trading Scheme" with the exception of auction monitor proposals which are covered by the paper above 'Enabling a fit-for-purpose auctioning system'.	Kate Whitwell Jack Bisset

Nga mihi
 Matt

[IN CONFIDENCE]

Matthew Cowie – Manager, NZ ETS Policy
 Ministry for the Environment – Manatu Mo Te Taiao
 Mobile: 64 21 531 288 Email: matthew.cowie@mfe.govt.nz Website: www.mfe.govt.nz
 23 Kate Sheppard Place, PO Box 10362, Wellington 6143



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