



20 December 2024

9(2)(a)

Tēnā koe 9(2)(a)

Thank you for your email of 30 August 2024 to the Ministry for the Environment (the Ministry) requesting the following under the Official Information Act 1982 (the Act):

In 2012 Deputy Prime Minister Bill English and Attorney-General Christopher Finlayson gave affidavit assurances that the Supreme Court relied on in 2013 that the Crown was committed to make provision for past actions that were inconsistent with Māori Rights in freshwater, including “through redress provided in Treaty settlements” (the Ministers’ assurances).¹ 2. The Waitangi Tribunal subsequently released its Stage 2 Water Claim (Wai 2358) report. It reconfirmed that Māori rights in freshwater include proprietary rights.² It also relevantly recognised that pressure on freshwater bodies will continue to grow, and that the Crown should not wait for that pressure to reach full allocation before putting in place a new Tiriti consistent allocation system.³ 3. We request from MfE under the Official Information Act 1982 (OIA) copies of all documents that: a. Refer to the Ministers’ assurances; and b. Identify and/or assess the relevance of the Ministers’ assurances to actual or proposed changes to policy or to law reform (including without limitation actual or proposed changes to the Resource Management Act 1991). 4. The documents identified in response to para 3 above should include (without limitation) MfE advice to Ministers, Cabinet papers and Cabinet Minutes.

On 11 November 2024, the Ministry sent you the decision on request letter in response to your request under the Act, with an explanation that we required additional time to finalise 13 documents before releasing these to you.

Please accept our apologies for the additional delay in responding to you. The consultation required in order to release these documents took longer than originally anticipated.

This letter provides you an update on the documents to be released to you.

Please note documents 11 and 12 are the same document and were incorrectly listed twice in the document list provided to you on 11 November 2024.

We are releasing six documents to you in full.

Four documents are being released to you in part, with some information withheld under the following sections of the Act:

- 9(2)(a) to protect the privacy of natural persons.
- 9(2)(ba)(i) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information,

or information from the same source, and it is in the public interest that such information should continue to be supplied.

- 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.
- 9(2)(g)(i) 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 public service agency or organisation in the course of their duty.
- 9(2)(h) to maintain legal professional privilege.

We are refusing two documents in full as the information is publicly available, on the Ministry's website, here:

- [https://environment.govt.nz/assets/OIA/Files/CAB-377 Replacing the National Policy Statement for Freshwater Management 2020 and Addressing its Implementation in the Interim-for release.pdf](https://environment.govt.nz/assets/OIA/Files/CAB-377_Replacing_the_National_Policy_Statement_for_Freshwater_Management_2020_and_Addressing_its_Implementation_in_the_Interim-for_release.pdf)
- <https://environment.govt.nz/assets/MOG-16-29-March-2022.pdf>

In terms of section 9(1) of the Act, we are 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 our 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 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 Ministerial Services team: ministerials@mfe.govt.nz.

Nāku noa, nā

SR

Sam Ritchie

General Manager (Acting) - Te Tiriti and Te Ao Māori
Ministry for the Environment | Manatū Mō Te Taiao

Document schedule

Doc no.	Document date	Content	Decisions	OIA sections applied
1	Aug-20	Freshwater decision-making and Māori rights and interests - a stocktake of where we have been and where we might be going	Released in full	
2	3-Feb-21	Table 1: Timeline of key views of the Crown and members of the Collective expressed on rights and interests in freshwater	Released in full	
3	Oct-21	Connections between Māori freshwater rights and interests and proposed reforms of the resource management system	Released in full	
4	25-Jan-22	Re: Proposed next steps for Māori right and interests in freshwater	Released in full	
5	26-Sep-23	Māori rights and interests in freshwater governance and decision-making - a whole-of-MfE picture	Released in full	
6	14-Dec-23	BRF-3973 Land Use, Freshwater, and the Marine Environment	Released in full	
7	19-Apr-22	MOG #16 Paper 2: Resource allocation and user charges	Refused	18(d)
8	22-Jun-22	BRF-1679 RM Reform 190 - Delegated decisions on Māori freshwater rights and interests preservation clause and statutory time frame	Released in part	9(2)(h)
9	11-Dec-23	CAB 377 Replacing the National Policy Statement for Freshwater 2020	Refused	18(d)
10	15-Feb-24	MBIE MfE Briefing Policy decisions on the National Policy Statement for Renewable Electricity Generation and the National Policy Statement on Electricity Transmission	Released in part	9(2)(a) 9(2)(ba)(i) 9(2)(f)(iv) 9(2)(h)
11 and 12	26-Mar-24	BRF-4460 Progressing Changes to the Freshwater Management System	Released in part	9(2)(h) 9(2)(g)(i)
13	29-Apr-24	Attachment 4: Extract from BRF 4561 Aide Memoire: Advice on Electrify NZ cabinet Paper - Māori Rights and Interests	Released in part	9(2)(g)(i)