



OIAD-1011

1 May 2024

9(2)a

Dear 9(2)a

Thank you for your email of 15 March 2024 requesting the following under the Official Information Act 1982 (the Act):

I would like to examine the 'materials' referred to in the judgment that were made available to the Minister and any others that perhaps were not provided to the court– i.e. any briefing note, aide memoir etc from officials regarding the ETS settings, early drafts and instructions from the Minister on this subject.

In addition, I would also ask whether officials agree that the materials were deficient and whether they take responsibility.

The Ministry for the Environment has identified 19 documents in scope of your request, as listed in the attached table.

Four documents have been provided to you in full. Two documents have been refused under section 18(d) of the Act, as they are publicly available.

One document has been withheld in full under section 9(2)(g)(i) of the Act, 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.

Some information within 12 of these documents has been withheld under the following sections of the Act:

- 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.
- 18(d) as the information is publicly available.

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 my 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 Ministerial Services team: ministerials@mfe.govt.nz.

Yours sincerely

Electronically approved by Kate Whitwell

Kate Whitwell

Manager, ETS Policy

Ministry for the Environment | Manatū Mō Te Taiao

Document schedule

Document no.	Document date	Content	Decisions	OIA sections applied
1	5 April 2022	Briefing note: BRF-1408 Annual update to NZ ETS Unit Supply and Price Control settings - timing considerations	Release in part	s 9(2)(g)(i), and 9(2)(h)
2	15 July 2022	Briefing note: BRF-1853 CCC Advice on NZ ETS Limit and Price Control Settings for Units	Release in full	
3	29 July 2022	Briefing note & appendices: BRF-1854 + Appendix 1, 2 & 3 - Draft Cabinet paper Approval to consult on the annual update to New Zealand Emissions Trading Scheme unit limit and price control settings	Release in part	s 9(2)(g)(i), s 9(2)(h), and s 18(d). Proposed changes to New Zealand Emissions Trading Scheme limit and price control settings for units 2022: Consultation document Ministry for the Environment
4	3 August 2022	Briefing note: BRF-1963 Unit Limit and Price Control Settings Consultation 2023: Approval to commence ministerial consultation	Release with redactions	s 9(2)(g)(i)

5	16 August 2022	Briefing note & appendices: BRF-1996 + Appendix 1,2,3 & 4 - Approval to lodge - Approval to consult on the annual update to NZ Emissions Trading Scheme limit and price control settings for units	Release in part	9(2)(g)(i)
6	17 August 2022	Cabinet paper: CAB-155 <i>Approval to consult on the annual update to New Zealand Emissions Trading Scheme limit and price control settings for units</i>	Release in full	N/A
7	14 October 2022	Briefing note: BRF-2003 Draft Cabinet paper: 2022 update to NZ Emissions Trading Scheme limits and price control settings for units	Release in part	9(2)(h).
8	19 October 2022	Briefing note: BRF-2359 Approval to start Ministerial consultation: 2022 update to NZ ETS limits and price	Release in part	9(2)(g)(i)

		control settings for units		
9	2 November 2022	Briefing note & appendices: BRF-2411 + Appendix 1 & 2 Approval to lodge: 2022 update to New Zealand Emissions Trading Scheme limits and price control settings for units	Release in part	9(2)(f)(iv), 9(2)(g)(i)
10	2 November 2022	Appendices: BRF-2411 Appendix 3 & 4 CAB-169 <i>New Zealand Emissions Trading Scheme: 2022 Update to Limits and Price Control Settings for Units</i> and Cabinet minute CAB-22-MIN-0533	Refuse	18(d) New Zealand Emissions Trading Scheme: 2022 Update to Limits and Price Control Settings for Units Ministry for the Environment
11	2 November 2022	Appendices: BRF-2411 Appendix 5 A4 for Unit Supply Price Cabinet paper	Release in part	9(2)(f)(iv)
12	9 November 2022	Briefing note: BRF-2452	Release in part	9(2)(g)(i), and 9(2)(h).
13	30 November 2022	Briefing note: BRF-2495	Release in part	9(2)(g)(i).
14	30 November 2022	Appendices: BRF-2495 Appendix 1 – Draft Cabinet	Withhold in full	9(2)(g)(i)

		paper: <i>Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2022</i>		
15	30 November 2022	Appendices: BRF-2495 Appendix 2 - Matters that the Minister must consider when recommending limits and price control settings for units	Release in full	N/A
16	6 December 2022	Briefing note: BRF-2581 Draft report – reasons recommended NZ ETS unit settings differ from Commission advice	Release with redactions	9(2)(g)(i), and 9(2)(h)
17	8 December 2022	Briefing note & appendices: BRF-2602 Proactive release of the NZ ETS unit settings policy decisions Cabinet paper	Release with redactions	9(2)(f)(iv), 9(2)(g)(i), and 18(d)
18	8 December 2022	Cabinet paper: CAB-169 2022 <i>update to New Zealand Emissions Trading Scheme limits</i>	Refuse	18(d) New Zealand Emissions Trading Scheme: 2022 Update to Limits and Price Control Settings for Units

		<i>and price control settings for units</i>		Ministry for the Environment
19	8 December 2022	Cabinet paper: CAB-194 <i>Climate Change (Auctions, Limits, and Price Controls for Units) Amendment Regulations 2022</i>	Release in full	N/A