

27 August 2013

Dear 

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request dated **1 July 2013** made pursuant to the Official Information Act 1982 ("OIA").

Your Request

Your request centred around documents, information and correspondence relating to the NZ Superannuation Fund's decision to exclude Africa Israel Investments and subsidiary Danya Cebus; Elbit Systems Limited; and Shikun & Binui from the Fund in December 2012. In addition to information we have previously supplied you via email, you have requested:

- the correspondence we referred to between the NZSF and any NGOs or individuals about the three Israeli companies;
- the RI Engagement Decision document for the excluded company Freeport-McMoRan Copper & Gold Inc.; and
- any material relating the NZSF's reviews of the practices of G4S, Caterpillar and Bank Hapoalim particularly in relation to Israel.

Our Response

Details of the information we have pertaining to your request are set out in the table **enclosed** at Appendix 1 to this letter. As set out in Appendix 1, we are withholding some of the information you have requested on the basis that we have good reasons for doing so under **Section 9** of the OIA.

Our reasoning is that it is necessary for us to withhold some of the information you have requested in order to:

- Protect the privacy of natural persons (section 9(2)(a))
- Prevent the disclosure of a trade secret, or prevent commercial prejudice to the person supplying or subject to the information requested (section 9(2)(b))
- Protect information which is subject to an obligation of confidence where disclosure 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 continue to be supplied, or where the supply would otherwise be likely to damage the public interest (section 9(2)(ba))
- Maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to members or officers and employees of any organisation (section 9(2)(g))
- Enable an organisation holding the information to carry out, without prejudice or disadvantage, commercial activities (section 9(2)(i))
- Enable an organisation holding information to carry on, without prejudice or disadvantage, negotiations (section 9(2)(j))

Where we have withheld information, we have considered whether the public interest in favour of disclosing that information outweighs our reasons for withholding it. We have reached the decision that the balancing test required, for each of the reasons outlined above, favours non-disclosure of some of the information requested on the bases that:

- A. Section 9(2)(a)** . We wish to protect the privacy of those staff whose names are in the documents who did not hold senior roles at the Guardians or other organisations and the privacy of members of the public who contact us.
- B. Section 9(2)(b)(i)** We carry out commercial activities in relation to the Fund. In investing the Fund we compete in a global market for access to the best investment managers and investment opportunities, as well as competing for a variety of suppliers such as investment advisers, responsible investment screening agencies, and custodians. Our business partners and suppliers are each commercial entities in their own highly competitive markets. They are very concerned about protecting their trade secrets and other intellectual property. They will not work with us if we cannot uphold the confidentiality of this truly sensitive information. We strongly believe that it is in the public interest that we can maintain the highest standards of commercial sensitivity with those we work with.
- C. Section 9(2)(b)(ii)** We carry out commercial activities in relation to the Fund. In investing the fund we compete in a global market for access to the best investment managers and investment opportunities, as well as competing for a variety of suppliers such as investment advisers, responsible investment screening agencies, and custodians. Our business partners and suppliers are each commercial entities in their own highly competitive markets. They are very concerned about protecting information relating to their pricing strategies, marketing strategies and other sensitive commercial information. They will not work with us if we cannot uphold the confidentiality of this truly sensitive information. We strongly believe that it is in the public interest that we can maintain the highest standards of commercial sensitivity with those we work with.
- D. Section 9(2)(ba)(i)** Our engagement with our partners, co investors, companies with which we engage on responsible investment matters and suppliers are frequently conducted on a confidential basis, with our correspondence with them being subject to an obligation of confidence. Our partners, co investors, companies in which the Fund is invested and suppliers are reassured by our pledges to maintain and respect confidentiality. They will not work with us if we cannot uphold confidentiality of this truly sensitive information, creating a very real risk that future engagement and the supply of such information would be jeopardised. It is in the public interest that we can maintain the highest standards of confidentiality and commercial sensitivity with those we work with.
- E. Section 9(2)(g)(i)** It is important for our efficient and effective operations that our staff and officers are able to express their opinions freely and frankly. Release of such information in the current case would be likely to inhibit future free and frank expression of opinions of our staff and officers, where it would be detrimental to the public interest
- F. Section 9(2)(i)** We carry out commercial activities in relation to the Fund. In investing the fund we compete in a global market for access to the best

investment managers and investment opportunities, as well as competing for a variety of suppliers such as investment advisers, responsible investment screening agencies, and custodians. Our responsible investment engagements are also part of our commercial activities. Our position will be prejudiced or disadvantaged if information concerning our strategy and likely future investment actions were made known to the relevant market participants ahead of any such actions. Our partners, and suppliers will not wish to work with us if we cannot uphold confidentiality of this truly sensitive information. It is in the public interest that we can maintain the highest standards of confidentiality and commercial sensitivity with those we work and engage with as well as our own commercial sensitivity.

- G. Section 9(2)(j)** We frequently engage with third parties including investment managers, advisers, custodians, co-investors, companies in which the Fund is invested, vendors and other suppliers in relation to investment management, investment and operational due diligence, custody of investments, and the appointment of suppliers relevant to those activities. This engagement frequently involves negotiations with those companies. The effectiveness of such negotiations would very likely be undermined if we disclosed the nature and details of the negotiations.

General

Harmet, if you are not satisfied that we have adequately responded to your request, or if you have further questions, please contact me to clarify your requirements.

General

You have the right to seek a review by the Ombudsmen's Office of our decision to withhold the information. Contact details for the Ombudsmen's Office can be found at: <http://www.ombudsmen.parliament.nz/>.

Yours sincerely



Catherine Etheredge
Head of Communications

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Appendix 1

| No. | Doc Ref | Doc Date | Document Name | Whole Relevant to Request | Sections Relevant to Request | Released/ Withheld | Reason for withholding |
|---|---------|------------|---|---------------------------|------------------------------|---|------------------------|
| 1. Request for correspondence on this issue between the NZSF and NGOs and/or individuals | | | | | | | |
| 1 | 71571 | 3/12/2009 | Response to Investment Watch Dec 2009 Israel Companies | Yes | | Released in full | N/A |
| 2 | 273974 | 29/09/2011 | 2011-09-22 Letter to David May from Commerce Committee pertaining to Petition 2008/143 of Lois Griffiths and 382 Others | Yes | | Released in full | N/A |
| 3 | 792854 | 7/09/2012 | Email trail between Catherine Etheredge (NZSF) and Treasury staff member: "RE: PQ – Russel Norman" | Yes | | Released in full except name of Treasury staff member | Grounds A and E |
| 4 | 811659 | 21/11/2012 | Emails from Catherine Etheredge (NZSF) to member of public: "FW: Query from website" | Yes | | Released in full except name of correspondent | Ground A |
| 5 | 811662 | 21/11/2012 | Email from Catherine Etheredge (NZSF): "RE: Investment enquiries - Elbit" | Yes | | Released in full except name of correspondent | Ground A |
| 6 | 811663 | 21/11/2012 | Email from Catherine Etheredge (NZSF): "RE: Divest from Elbit" | Yes | | Released in full except name of correspondent | Ground A |
| 7 | 811664 | 21/11/2012 | Email from Catherine Etheredge (NZSF): "RE: Ethics & the Superannuation Fund" | Yes | | Released in full except name of correspondent | Ground A |
| 8 | 811665 | 21/11/2012 | Email from Catherine Etheredge (NZSF): "RE: Investments by NZ Superannuation Fund - Elbit" | Yes | | Released in full except name of correspondent | Ground A |
| 9 | 811666 | 21/11/2012 | Email from Catherine Etheredge (NZSF): "RE: Contribution? - Elbit" | Yes | | Released in full except name of correspondent | Ground A |
| 10 | 811669 | 21/11/2012 | Email from Catherine Etheredge (NZSF): "RE: Stop unethical investment - Elbit" | Yes | | Released in full except name of correspondent | Ground A |
| 11 | 811716 | 21/11/2012 | Email from Catherine Etheredge (NZSF): "Re: Investments by NZ Superannuation Fund - Elbit" | Yes | | Released in full except name of | Ground A |

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| | | | | | | correspondent | |
| 12 | 811779 | 21/11/2012 | Email from Catherine Etheredge (NZSF) to James Ihaka, NZ Herald: "Response to petition as requested - Elbit" Attachment: "Guardians Final response to Israel petition" (PDF) | Yes | | Released in full | N/A |
| 13 | 811857 | 21/11/2012 | Email from Catherine Etheredge (NZSF): "RE: NZ superfund enquiry" | Yes | | Released in full except name of correspondent | Ground A |
| 13A | 811858 | 21/11/2012 | Email trail between Catherine Etheredge (NZSF) and member of the public: "RE: Elbit" | Yes | | Released in full except name of correspondent | Ground A |
| 13B | 811984 | 21/11/2012 - 22/11/2012 | Email trail between Catherine Etheredge (NZSF) and member of the public: "RE: re shares" | Yes | | Released in full except name of correspondent | Ground A |
| 13C | 812502 | 21/11/2012 - 23/11/2012 | Email trail between Catherine Etheredge (NZSF) and member of the public: "RE: Elbit Systems Ltd" | Yes | | Released in full except name of correspondent | Ground A |
| 13D | 812573 | 22/11/2012 - 23/11/2012 | Email trail between Catherine Etheredge (NZSF) and members of the public /media/stakeholders: "RE: Catherine Etheredge, NZ Superfund RE: Shares in Elbit Systems Ltd" | Yes | | Released in full except name of correspondent | Ground A |
| 14 | 815972 | 6/12/2012 | Email from Catherine Etheredge (NZSF) to Gavin Walker: "Email to GW re Lois Griffiths" Attachment: "Guardians Final response to Israel petition" (PDF) | Yes | | Released in full except email address of correspondent | Grounds A and E |
| 15 | 819360 | 19/09/2012 - 12/12/2012 | Email trail between Adrian Orr and Russel Norman: "RE: New Zealand Superannuation Fund's investment in Shikun and Binui Ltd" | Yes | | Released in full | N/A |
| 16 | 817082 | 12/12/2012 | Email from Robert Ashe: "Greens Welcome Super Fund divestment decision – Green Party media release" | Yes | | Released in full | N/A |
| 17 | 818196 | 13/12/2013 | Email correspondence between Lois Griffiths and Catherine Etheredge: "Re: FW: Media Statement – NZ Super Fund excludes three companies on responsible investment grounds" | Yes | | Released in full except email address of correspondent | Ground A |

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| 18 | 817812 | 17/12/2012 | Email from Catherine Etheredge (NZSF) to Henry Benjamin (journalist): "RE: Israel and the NZ Super" | Yes | | Released in full | N/A |
| 19 | 839945 | 05/03/13 | Email FW: Letter for Gavin Walker attached - Palestine (2013-03-05) | Yes plus attachment | | Released in full | N/A |
| 20 | 842608 | 14/03/2013 | Email to [REDACTED] with our response 14 March 2013 Attachment: Response to [REDACTED] - Global Peace & Justice Auckland - Israel (2013-03-05) | Yes | | Released in full | N/A |
| 21 | 863805 | 15/05/2013 | Email from Catherine Etheredge (NZSF) to Tim Hunter, Sunday Star-Times: "Exclusions - previous announcements" Attachment: "RI Awards pr_au" (PDF) | No | Email | Released in full | N/A |
| 22 | 896781 | 31/07/2013 | Excerpt from Investment Watch Website - Letter to Guardians Israel | Yes – response is 71395 | | Released in full | N/A |
| 2. Request for the RI Engagement Decision document for the excluded company Freeport-McMoRan Copper & Gold Inc. | | | | | | | |
| 23 | 400928 | 25/07/2012 | RI Engagement Decision – Freeport McMoRan July 2012 | Yes | | Partial Withhold | Grounds D, E, F and G |
| 3. Request for NZSF reviews of the practices of G4S, Caterpillar and Bank Hapoalim particularly in relation to Israel | | | | | | | |
| 24 | 269657 | 13/09/2011 | Analysis table for Lois Griffiths petition - September 2011 | | Yes – mostly | Partial Withhold | Grounds A, B, C, D, F and G |
| 25 | 275695 | 07/10/2011 | Memo – Lois Griffiths Summary of Position Oct 2011 | Yes | | Partial Withhold | Grounds A, B, C, D, E, F and G |
| 26 | 894081 | 23/07/2013 | Companies operating in Israel & OPT | Yes | | Released in full | N/A |