

14 June 2019



Mike Barton
Email: westernsaharacampaignz@protonmail.com

Dear Mr Barton

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request to the Guardians of New Zealand Superannuation (“Guardians”), the manager of the New Zealand Superannuation Fund (“NZ Super Fund”, “Fund”), dated 16 May 2019 and clarified on 1 June 2019 made pursuant to the Official Information Act 1982 (“OIA”).

Your Request

You have requested information on the Fund’s investments that relate to Western Sahara and Western Sahara phosphate. Details of the information we have identified as being within the scope of your requests are set out below.

Note: All references to the ‘previous OIA response’ refer to [OIA 2618246](#) dated 26/02/2019 and published on www.nzsuperfund.nz, requesting all key RI and ESG documents regarding the Fund’s holdings in companies whose operations are in any way linked to the Western Sahara. To the extent that our response to OIA 2618246 contains information that was partly or wholly redacted, we maintain that the grounds for withholding that information continue to apply with respect to the instances where we have referenced the information as being within the scope of this request.

1. *The details of all companies that the Super Fund invests in that:*

(a) *Use phosphate supplied by Ballance or Ravensdown;*

The following are NZSF-owned entities that hold the Guardians’ portfolio of rural land investments. Farming operations are managed on the Guardians’ behalf by farm manager FarmRight Limited. All entities use phosphate supplied by Ballance.

- NZSF Southland Farms Ltd
- NZSF Canterbury Farms Ltd
- NZSF Waikato Farms Ltd
- NZSF Rural Land Ltd

We do not hold comprehensive information detailing all companies in which the Fund holds shares that source their phosphate from Ballance and Ravensdown. By way of context, Ballance and Ravensdown supply phosphate to the majority of New Zealand’s farming and horticulture industries. Like many institutional investors, a sizeable portion of the Fund tracks equity indices in order to gain cost-effective, diversified exposure to share markets. This means that the Fund holds equity securities in a wide range of companies, generally in very small percentage holdings. Investments in these companies move in and out of the Fund primarily in line with their market capitalisation rather than through active stock picking.

For completeness, we note that Ballance and Ravensdown are co-operatives with nearly all customers being co-operative members in order to receive quota. The Fund therefore has a small amount of equity exposure to Ballance itself through its farm co-operative membership.

- (b) *Or operate in the Western Sahara (including the nature of the Super Fund's interest, the nature of the company's business, and the extent of involvement in Western Sahara).*

This information is provided in the previous OIA response, please see: [#2318236](#) ("Western Sahara Research Project") page 29 (Appendix 6: International businesses operating in the WS).

2. *Any information relating to steps taken by the Guardians of the Super Fund to satisfy itself that, in respect of investments related to Western Sahara and Western Sahara phosphate, its decision-making is consistent with:*
- (a) *Super Fund's Responsible Investment Framework;*
 - (b) *Super Fund's Responsible Investment Certification; and*
 - (c) *The New Zealand Superannuation and Retirement Income Act 2001, and in particular the obligation under s 58(2) of that Act.*

We have interpreted this question as material information (e.g. excluding early stage working documents that were superseded by other more developed analysis).

In 2016 the Guardians initiated a work stream looking into the situation in the Western Sahara in order to ensure that Fund investments with operations linked to the region were consistent with our mandate, our RI Framework, and our associated certifications, as articulated above.

The next year three companies with operations in the Western Sahara were flagged by New Zealand's Crown Financial Institutions (CFIs) for consideration. At a meeting of the CFIs on 28 November 2017 the Guardians recommended to the CFIs that further research be carried out on the companies, that they be added to a monitoring list, and for the Guardians to contact the Ministry of Foreign Affairs and Trade (MFAT) to discuss New Zealand's position on the issue.

This led to further research being undertaken by the Guardians, culminating in a CFI Briefing Paper presented at the meeting of the 13th August 2018 document [#2549228](#) ("CFI Briefing Paper: Sourcing phosphates from the Western Sahara") released on page 86 of the previous OIA response. The paper sets out the work undertaken by the Guardians' Responsible Investment team on the issue, including:

- Investigating whether New Zealand companies that purchase phosphate from the Western Sahara area have appropriate mechanisms in place to ensure consent from the Saharawi people is given before purchasing phosphate. See *Appendix 2* of document [#2318236](#) ("Western Sahara Research Project") in the previous OIA response.
- Considering engagement with international companies operating in the Western Sahara to ensure they have appropriate mechanisms in place to gain consent from the Saharawi people before selling resources acquired from the Western Sahara (see *Appendix 6* of document [#2318236](#)).
- Considering the use of phosphate on NZSF-owned farms in light of the issue, including considering what alternatives are available. See documents [#2462680](#) ("MFAT Call re: Western Sahara Phosphate MINUTES 15 March 2018"), [#2463127](#) ("WS and phosphate rock sourcing – Internal meeting on 21 March 2018"), [#2612169](#) ("Western Sahara Meeting with OCP – April 2018"), [#2613370](#) ("FW Balance meeting raw notes") of the previous OIA response for this information.
- Holding a number of meetings with MFAT on the issue (see documents [#2462680](#) ("MFAT Call re: Western Sahara Phosphate MINUTES 15 March 2018"), [#2509462](#) "MFAT File Note

Western Sahara Phosphate Update”), [#2512639](#) (“MFAT meeting re. Western Sahara phosphate (29 May 2018)”), [#2614321](#) (“Notes from call with MFAT 18 Dec 2017”), [#2614312](#) (“File note: MFAT meeting 28 Nov 2018”) of the previous OIA response, and [#2557176](#) (“Meeting with MFAT regarding the Western Sahara (29 August 2018)”) in **Appendix 1**, as per our response to question 5 of this request).

Engagement was ultimately carried out with a number of international companies operating in the Western Sahara (that had not yet made a commitment to cease operations). Please see references to documents [#2526144](#) (“Engagement letter”), [#2526084](#) (“Engagement tracker: Western Sahara (listed equity companies)”), [#2526134](#) (“Engagement letter”), [#2595271](#) (“Engagement letter follow up”), [#2595267](#) (“Engagement letter follow up”), [#2608714](#) (“Fwd: Phosphate Rock sourcing – Engagement response”), [#2608721](#) (“Fwd: Engagement RESPONSE Jan 2019”) of the previous OIA response, all withheld under sections 9(2)(b)(ii) and 9(2)(ba)(i) of the OIA. Engagement with companies over significant breaches of standards to encourage best practice is part of Active Ownership, [RI Framework](#), page 12 and page 15.

Please also see <https://www.responsiblereturns.com.au/products/new-zealand-superannuation-fund/profile> for more information about the Guardians’ Responsible Investment Association Australasia (RIAA) certification.

See **Table 1** for all other information, previously undisclosed, that we have identified as being within the scope of this request. The information we are releasing can be found attached, at **Appendix 1**. We have withheld certain portions of these documents on the basis that we have a good reason for doing so under section 9 of the OIA. In **Table 1** we have identified the key grounds that apply.

The general bases on which it is necessary for us to do so are as follows:

Section 6(a) – *“Prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.”* On consultation the Guardians has been advised that the release of certain information could be prejudicial to the international relations of the Government of New Zealand.

Section 9(2)(a) – *“Protect the privacy of natural persons”.* Names and contact details pertaining to individuals other than senior managers have been withheld in order to protect the privacy of natural persons. We cannot see any public interest in, or benefit from, the release of such personal information. Information regarding the identity of these individuals is not required for the purposes of transparency and accountability of the Guardians’ activities.

Section 2(b)(ii) – *“Protect information where the making available of the information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.”* Some of the information captured by this request relates to companies with commercial interests and who operate in competitive markets. Parts of this information are commercially sensitive (such as information about business strategy) and was supplied specifically to the Guardians in confidence to enable us to conduct our engagement activities. Non-public information that relates to a company’s commercial position has been withheld where disclosure would diminish the value of that information, jeopardise the company’s negotiating position with its customers or suppliers, or disadvantage the company by making commercially sensitive information known to its competitors or the wider public.

Additionally, as part of our investment activity we contract with various suppliers, including responsible investment/ethical screening and research agencies. These agencies are commercial entities in their own competitive markets, and their subscription-based business model depends upon

developing and selling proprietary advice and research. Given the reports are central to their business model and developed at considerable expense, these agencies are concerned about protecting their intellectual property and proprietary analysis. Disclosing such information to members of the public could limit their ability to sell their research to future clients, make their research available to competitors, or, because the information in question has been produced with recourse to third party sources, be in breach of their own licensing agreements and therefore expose them to financial litigation. The fact that information has been disclosed publicly may also undermine their ability to engage with issuers in the future, which could have a crippling effect on the ongoing viability of their business.

Section 9(2)(ba)(i) – “Protect information which is subject to an obligation of confidence.” We operate in a competitive market and if we cannot uphold the confidentiality of commercially sensitive information provided to enable us to evaluate and monitor investments, the supply of such information will be jeopardised. The documents you have requested include information about the Guardians’ responsible investment engagement programme in connection with specific companies. The Guardians’ engagements with investee companies on responsible investment issues are conducted on a confidential basis. For engagements to be successful, the Guardians needs to have a relationship of trust with the investee company in order to gain access to information and to develop influence. The companies the Guardians engage with are not likely to work with the Guardians if the confidentiality of both the fact of the engagements and the information supplied as part of the engagement process cannot be upheld. This creates a very real risk that the supply of information from the companies concerned would be jeopardised and would put future engagements on responsible investment issues at risk. It is in the public interest that we can maintain the highest standards of confidentiality and commercial sensitivity with those we work with, in order to compete on a level playing field with other investors and maximise returns to the Fund.

Section 9(2)(g)(i) – “Maintain the effective conduct of public affairs through the free and frank expression of opinions”. It is important for our efficient and effective operations that our staff are able to express their opinions freely and frankly. The documents include opinions of staff members who prepared those materials. The release of such information is likely to inhibit frankness and candour in the future which will be detrimental to good investment decision-making and contrary to the public interest.

Table 1

Document Reference	Document Date	Document Title	Released	Reasons for Withholding	Page Ref
2426498	28/06/2018	Western Sahara Policy Position	<i>Partially withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 9(2)(b)(ii) • Section 9(2)(ba)(i) • Section 9(2)(g)(i) 	1
2478957	16/06/2018	Western Sahara positioning thinking (April 2018)	<i>Partially withheld</i>	<ul style="list-style-type: none"> • Section 6(a) • Section 9(2)(a) • Section 	6

				<ul style="list-style-type: none"> 9(2)(b)(ii) Section 9(2)(g)(i) 	
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3. *The Super Fund's correspondence with Potash Corporation and FMC Corporation in relation to this issue.*

Information that we have identified as being within the scope of this request is set out in **Table 2** below. We have withheld all documents on the basis that we have a good reason for doing so under section 9 of the OIA.

The bases on which it is necessary for us to do so are as follows.

Section 2(b)(ii) – “Protect information where the making available of the information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.”

Section 9(2)(ba)(i) – “Protect information which is subject to an obligation of confidence”.

Table 2

Document Reference	Document Date	Document Title	Released	Reasons for Withholding
797121	24/09/2012	Engagement Letter September 2012	<i>Withheld</i>	<ul style="list-style-type: none"> Section 9(2)(b)(ii) Section 9(2)(ba)(i)
797122	24/09/2012	Engagement Letter September 2012	<i>Withheld</i>	<ul style="list-style-type: none"> Section 9(2)(b)(ii) Section 9(2)(ba)(i)
829229	17/01/2013	Engagement Response to Request	<i>Withheld</i>	<ul style="list-style-type: none"> Section 9(2)(b)(ii) Section 9(2)(ba)(i)
	<i>Attachment</i>	Engagement Response to New Zealand Superannuation Fund 16Jan13	<i>Withheld</i>	<ul style="list-style-type: none"> Section 9(2)(b)(ii) Section 9(2)(ba)(i)
	<i>Attachment</i>	Supplier Code of Conduct FINAL June 2012	<i>Withheld</i>	<ul style="list-style-type: none"> Section 9(2)(b)(ii) Section 9(2)(ba)(i)

	<i>Attachment</i>	_CodeOfEthics_2012_Eng lish	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i)
884438	28/06/2013	Q4 CFIs - July 2013 combined papers	<i>Withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(b)(ii) • Section 9(2)(ba)(i)

4. *Any documents or correspondence relating to the Responsible Investment Team’s review of the Western Sahara situation referred to at page 14 of the OIA Response.*

The ‘review’ referred to at page 14 of the OIA Response is the material that follows the reference (i.e. **#2318236** “Western Sahara Research Project”: pages 16 – 37, appendices 1 - 10). This research fed into many of the other documents released under the previous OIA Response, and formed the basis of our ongoing engagement work.

5. *A copy of the dialogue between the Responsible Investment Team and MFAT referred to at page 22 of the OIA Response (other than the materials already provided in the OIA Response).*

The dialogue referred to on page 33 of the previous OIA Response references a document we released in that response, found on page 38 (Draft – Western Sahara Q&As to understand position – December 2017, updated May 2018).

This document contains the following links to notes from meetings between the Guardians’ Responsible Investment team and MFAT, disclosed in the previous OIA Response. These include:

- **#2462680**: (“MFAT Call re: Western Sahara Phosphate MINUTES 14 March 2018”)
- **#2509462**: (“MFAT File Note Western Sahara Phosphate Update”)
- **#2512639**: (“MFAT meeting re. Western Sahara phosphate (29 May 2018)”)
- **#2614321**: (“Notes from call with MFAT 18 Dec 2017”)
- **#2614312**: (“File note: MFAT meeting 28 Nov 2018”).

All other information that we have identified as being within the scope of this request is set out in **Table 3** below. The information we are releasing can be found attached, at **Appendix 1**. We have withheld certain portions of these documents on the basis that we have a good reason for doing so under section 9 of the OIA. In **Table 3** we have identified the key grounds that apply.

The general bases on which it is necessary for us to do so are as follows:

Section 9(2)(a) – “Protect the privacy of natural persons”. After consultation the Guardians has withheld identifying information pertaining to individuals in order to protect the privacy of those persons.

Section 9(2)(g)(i) - – “Maintain the effective conduct of public affairs through the free and frank expression of opinions”. After consultation the Guardians has been advised that some information constitutes an expression of opinion by officials, the release of which is likely to inhibit frankness and candour in the future which is contrary to the public interest.

Table 3

Document Reference	Document Date	Document Title	Released	Reasons for Withholding	Page Ref
2557176	30/08/2018	Meeting with MFAT regarding the Western Sahara (29 August 2018)	<i>Partially withheld</i>	<ul style="list-style-type: none"> • Section 9(2)(a) • Section 9(2)(g)(i) 	9

6. *Any information relating to the Super Fund's decision to conduct an engage programme with investee companies rather than divest as a first option.*

Consistent with our Responsible Investment Framework, in the majority of cases where companies are found to have breached our Responsible Investment standards we focus our efforts on carrying out a programme of engagement.

We would only choose to divest as a first option very rarely, taking into account:

- New Zealand or international law
- International conventions to which New Zealand is a signatory
- Significant policy positions of the New Zealand Government
- Impact of exclusion on expected Fund returns
- Actions of our peers
- Severity of breach/action
- Likelihood of success of alternative course of action (engagement).

For more information see our previous OIA response, document: [#2549228](#) ("CFI briefing Paper: Sourcing phosphates from the Western Sahara") where we explain our decision to engage with the companies we held in our portfolio that had not yet made a decision to cease operating in the Western Sahara or stop sourcing phosphates from the area.

See also our response to question 2 of this OIA.

7. *Any information relating to the previous engagement by the Super Fund on the issue referred to at page 35 of the OIA response.*

The documents referred to on page 35 of the previous OIA Response were included in that response, please see:

- [#299546](#): ("Background to Parliamentary Question – FMC Corporation and Potash Corporation of Saskatchewan – 2012 February")
- [#299296](#): ("PQ – Potash and FMC – February 2012")
- [#2402319](#): ("Draft – Western Sahara Q&As to understand position – December 2017, updated May 2018").

All other information relating to the previous engagement by the Super Fund is set out in Table 2 (and withheld under sections 9(2)(b)(ii) and 9(2)(ba)(i) of the OIA), as well as documents [#2526144](#), [#2526084](#), [#2526134](#), [#2595271](#), [#2595267](#), [#2608714](#), [#2608721](#) of the previous OIA response, all withheld under sections 9(2)(b)(ii) and 9(2)(ba)(i) of the OIA.

8. *Any other information held by the Super Fund in relation to Western Saharan phosphate or Western Sahara that is not captured by the categories set out above and was not provided in the OIA Response.*

Consistent with the verbal agreement in the phone conversation between you and Guardians' Communications Advisor Isabelle Brunton on 21st May we have not provided a response to this question. As discussed, we are happy to provide a more fulsome answer, where we can, where you require further elaboration on any point contained in this response.

9. *A confirmation of whether the briefing on Western Sahara provided to Finance Minister Grant Robertson and Prime Minister Jacinda Ardern in early 2018 was included in our earlier OIA Response.*

The Guardians' briefing to Finance Minister Grant Robertson on the Western Sahara is contained on page 55 of Appendix 1 of the previous OIA Response, document **#2472764** ("NZSF Quarterly Report to 31 March 2018"). To date this is the only briefing we have provided to the Government on the issue.

10. *Any information relating to the Fund's, and in particular the Responsible Investment Team's, consideration of divestment by international funds from companies operating in Western Sahara, including the Norwegian Government Pension Fund, NEST (UK), and the BMO Global Asset Management Responsible Investment Funds.*

Please see the below documents:

- **#2318236** ("Western Sahara Research Project") – previous OIA response
- **#2549228** ("CFI Briefing Paper: Sourcing phosphates from the Western Sahara") – previous OIA response
- **#2615926** ("Western Sahara companies discussed at CFI RI Meeting Sept 2016") – previous OIA response
- **#2478957** ("Western Sahara – position thinking") – in **Appendix 1**
- **#2426498** ("Western Sahara Policy Position") – in **Appendix 1**

11. *Any information relating to the Fund's, and in particular the Responsible Investment Team's, consideration of international cases relating to Western Sahara, including the South African NM Cherry Blossom case (2017), decisions by the European Court of Justice in relation to EU fisheries agreements, and the English High Court case brought by the Western Sahara Campaign UK against Her Majesty's Revenue and Customs and Secretary of State for the Environment, Food and Rural Affairs ([2019] EWHC 684).*

Please see the below documents:

- **#2462680** ("MFAT Call re: Western Sahara Phosphate MINUTES 14 March 2018") – previous OIA response
- **#2318236** ("Western Sahara Research Project") – previous OIA response
- **#2549228** ("CFI Briefing Paper: Sourcing phosphates from the Western Sahara") – previous OIA response
- **#2426498** ("Western Sahara Policy Position") – in **Appendix 1**

To date we have not looked into the English High Court case brought by the Western Sahara Campaign UK against Her Majesty's Revenue and Customs and Secretary of State for the Environment, Food and Rural Affairs. The Responsible Team would like to thank you for bringing this case to our attention.

12. *A copy of any advice provided by MFAT to the Fund on Western Sahara.*

Please see the below documents:

- **#2462680**: (“MFAT Call re: Western Sahara Phosphate MINUTES 14 March 2018”) – previous OIA response
- **#2509462**: (“MFAT File Note Western Sahara Phosphate Update”) – previous OIA response
- **#2512639**: (“MFAT meeting re. Western Sahara phosphate (29 May 2018)”) – previous OIA response
- **#2614321**: (“Notes from call with MFAT 18 Dec 2017”) – previous OIA response
- **#2614312**: (“File note: MFAT meeting 28 Nov 2018”) – previous OIA response
- **#2557176**: (“Meeting with MFAT regarding the Western Sahara (29 August 2018)”) – in **Appendix 1**.

We hold no other information containing advice provided by MFAT on the Western Sahara.

General

You have the right to seek a review by the Ombudsmen's Office of our decision to withhold the information. Please note that we may choose to publish our response to your request on our website at www.nzsuperfund.nz.

Yours sincerely



Anne-Maree O'Connor
Head of Responsible Investment
Guardians of New Zealand Superannuation