

15 June 2021

Dear [REDACTED]

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Further to our letter to you of 31 May 2021, our decisions regarding the outstanding documents in respect of your Official Information Act (OIA) request of 2 March 2021 are set out at **Table 1**. We apologise again for the delay in finalising this request for you. The information we are releasing to you is attached at **Appendix 1**.

In working through the outstanding records we identified a number had already been released to you and/or were duplicate records, and others were out of the scope of your request. Where we have already released documents to you we have not included them in Appendix 1.

You agreed that you did not require us to release names and contact details of people in the documents.

Where we have withheld information, we have a good reason for doing so under sections 6 and 9 of the OIA. We have considered whether the public interest in favour of disclosing the information contained in these documents outweighs our reasons for withholding it, and we have concluded that it does not. In brief, the main withholding grounds are:

- **Section 6(a) and (b)** – Information has been withheld where releasing it would be likely to **prejudice the international relations** of the Government of New Zealand and/or the **entrusting of information** to the Government of New Zealand on a basis of confidence by the government of any other country or any agency of such a government. This is a conclusive reason for declining to release information under the OIA.
- **Sections 9(2)(b)(ii) and 9(2)(i)** – “**protect information where the making available of that information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.**” The Guardians invests the Fund on a commercial basis and undertakes commercial activities in doing so, including in respect of our responsible investment activities. We compete in a global market for a variety of suppliers such as investment advisers and responsible investment screening agencies. Our business partners and suppliers are each commercial entities in their own highly competitive markets. They are very concerned about protecting to their sensitive commercial information. They will not work with us if we cannot uphold the confidentiality of their information. Releasing this information would prejudice their commercial position by making freely available their professional analysis and judgements, for which we have paid a fee on a commercial basis. 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. Moreover, disclosure of background information concerning our exclusion processes can make our decision-making process less effective and adversely impact on our investment process and, therefore, our commercial activities.
- **Section 9(2)(ba)** – “**protect information which is subject to an obligation of confidence... 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 or otherwise damage the public interest.” Some of the documents you have requested contain information that our suppliers have provided us on a confidential basis because it is commercially sensitive. We operate in a competitive market and if we cannot uphold the confidentiality of commercially sensitive information provided to us in order to evaluate investments, the supply of such information will be jeopardised. In the event that we were to disclose this confidential information to the public, it is likely that other parties with which the Guardians might wish to contract would be reluctant to engage with us because of the risk that we would disclose their confidential information. 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 private sector investors and maximise returns to the Fund (and thus taxpayers).

- **Section 9(2)(g)(i)** – “**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 department or organisation in the course of their duty**”. It is important for our efficient and effective operations that our staff are able to express their opinions freely and frankly, including in the context of investment or exclusion decisions which can be contentious. 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.
- **Section 9(2)(h)** – it is necessary for us to withhold this information in order to maintain **legal professional privilege**. Legal professional privilege is recognised as an important protection that will not be set aside except in the clearest cases. In this case, we do not consider that there is a public interest in the release of this information that outweighs the Guardians' interest in protecting its rights to legal privilege.

General

You have the right to seek a review by the Ombudsman's Office of our response to your request. The Ombudsman's contact details are available online.

Please note that we may choose to publish our response to your request on our website at www.nzsuperfund.nz. As previously offered, feel free to call me on 0274 777 501 or email me on cetheredge@nzsuperfund.co.nz (cc enquiries@nzsuperfund.co.nz) if you would like to clarify or discuss your OIA requests and our responses in any way.

Yours sincerely,



Catherine Etheredge
Head of Communications
Guardians of New Zealand Superannuation

Table 1

PDF Number	PDF Page No	Document Reference	Document Date	Document Title	Status	Core withholding grounds
1	1	2554503	27/07/2018	RE: Attn - Matt Whineray, Catherine Savage & Lindsay Wright - Are Israeli Banks involved in Pillage? - Follow Up	Partially released	Section 9(2)(g)(i) – free and frank Section 9(2)(h) – legal professional privilege
2	6	3041925	6/06/2020	RE: OPT Legally privileged Attachments: 2522068 – Briefing note for supplier (page 9 in PDF) 988020 – RI High Risk Profile Israel Discount Bank (draft) January 2014 (page 15 in PDF) 987904 – RI High Risk Profile Bank Mizrahi-Tefahot Israel – (Draft) January 2014 (page 16 in PDF) 987920 – RI High Risk Profile First International Bank of Israel – (Draft) January 2014 (page 19 in PDF) 987783 – RI high Risk Profile Bank Leumi Israel (Draft) January 2014 (page 21 in PDF)	Partially released	9(2)(b)(ii) and 9(2)(i) – commercial prejudice Section 9(2)(ba) – obligation of confidence Section 9(2)(g)(i) – free and frank
3	24	3160198	14/01/2021	RE: Letter for the Chief Executive Matt Whineray- REPLY Legally Privileged Attachment: 3110635 – Israeli Investments – John Minto Response – January 2021	Partially released	9(2)(b)(ii) and 9(2)(i) – commercial prejudice Section 9(2)(ba) – obligation of confidence Section 9(2)(g)(i) – free and frank Section 9(2)(h) – legal professional privilege
4	26	3166695	20/01/2021	SV: OPT	Partially released	Section 9(2)(ba) – obligation of confidence 9(2)(b)(ii) and 9(2)(i) – commercial prejudice Section 9(2)(g)(i) – free and frank s

PDF Number	PDF Page No	Document Reference	Document Date	Document Title	Status	Core withholding grounds
5	28	3151101	25/02/2021	UPDATE RE: Israeli bank exclusions - update on timing/actions	Partially released	Section 6(a) and (b) – international relations Section 9(2)(g)(i) – free and frank
6	30	3152104	26/02/2021	RE: Exclusion of companies with operations in the Occupied Palestinian Territory in relation to poor ESG practices	Partially released	9(2)(b)(ii) and 9(2)(i) – commercial prejudice Section 9(2)(ba) – obligation of confidence
7	N/A	3152202	26/02/2021	RE: Publication of IC paper and query on timing	Withheld in full	Section 6(a) and (b) – international relations 9(2)(b)(ii) and 9(2)(i) – commercial prejudice Section 9(2)(g)(i) – free and frank Section 9(2)(h) – legal professional privilege
8	33	3152534	26/02/2021	Israeli bank exclusions - current/upcoming actions	Partially released	Section 6(a) and (b) – international relations Section 9(2)(ba) – obligation of confidence Section (2)(b)(ii) and 9(2)(i) – commercial prejudice Section 9(2)(g)(i) – free and frank Section 9(2)(h) – legal professional privilege
9	N/A	3152509	26/02/2021	RE: Israeli bank exclusions - current/upcoming actions	Withheld in full	Section 6(a) and (b) – international relations Section 9(2)(ba) – obligation of confidence 9(2)(b)(ii) and 9(2)(i) – commercial prejudice

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10	N/A	3152508	26/02/2021	RE: Israeli bank exclusions - current/upcoming actions	Withheld in full	Section 6(a) and (b) – international relations Section 9(2)(ba) – obligation of confidence Section 9(2)(b)(ii) and 9(2)(i) – commercial prejudice Section 9(2)(g)(i) – free and frank Section 9(2)(h) – legal professional privilege
11	N/A	3152655	28/02/2021	RE: Israeli bank exclusions - update on timing/actions	Withheld in full	Section 6(a) and (b) – international relations Section 9(2)(ba) – obligation of confidence Section 9(2)(b)(ii) and 9(2)(i) – commercial prejudice Section 9(2)(g)(i) – free and frank Section 9(2)(h) – legal professional privilege
12	N/A	3160157	28/02/2021	RE: Israeli bank exclusions - update on timing/actions	Withheld in full	Section 6(a) and (b) – international relations Section 9(2)(ba) – obligation of confidence 9(2)(b)(ii) and 9(2)(i) – commercial prejudice Section 9(2)(g)(i) – free and frank Section 9(2)(h) – legal professional privilege

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13	34	3155588	2/03/2021	Re: Israeli banks - communication with MPs	All requested information released	N/A
14	35	3159821	2/03/2021	https://www.psna.nz/press-releases/nz-superfund	All requested information released	N/A
15	36	3159212	2/03/2021	Notes from a call with MFAT	Partially released	Section 6(a) and (b) – international relations Section 9(2)(ba) – obligation of confidence Section 9(2)(g)(i) – free and frank
16	38	3160040	3/03/2021	RE: Israeli bank divestment	All requested information released	N/A
17	41	3166942	3/03/2021	RE: Israeli bank divestment One attachment “Israel – XXX NZ Super Fund Divestment_March 2021.pdf” withheld in full. All other attachments released in full.	Partially withheld	Section 6(a) and (b) – international relations Section 9(2)(ba) – obligation of confidence Section 9(2)(g)(i) – free and frank
18	48	3160083	3/03/2021	RE: Israeli bank divestment	Partially withheld	Section 6(a) and (b) – international relations Section 9(2)(ba) – obligation of confidence Section 9(2)(g)(i) – free and frank
19	54	3162033	4/03/2021	Guardians Board Communications Update One attachment “Israel – XXX NZ Super Fund Divestment_March 2021.pdf” withheld in full. All other attachments released in full.	Partially withheld	Section 6(a) and (b) – international relations Section 9(2)(ba) – obligation of confidence Section 9(2)(g)(i) – free and frank
20	N/A	3174326	19/03/2021	RE: Internal Comms re Decisions etc	Withheld in full	Section 9(2)(g)(i) – free and frank