

21 March 2022

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Amnesty International

By email: [REDACTED]

Dear [REDACTED]

Official information request - Myanmar

I refer to your official information request dated 10 December 2021 for:

- all correspondence, reports, activities and assessments related to the businesses of current and prospective investees in Myanmar, created since 1 February 2021; and
- all correspondence, reports, activities and assessments related to NZ Super's involvement in the Investor Statement on Human Rights and Business Activities in Myanmar.

On 16 December 2021, we wrote to you making a number of suggestions for limiting the scope of your request in order make it practicable for us to process. You responded on 26 January 2022 confirming that you were happy for us to:

- limit the request to material information and to information which has a primary focus on ESG issues concerning company activities in Myanmar;
- exclude staff names and identifying details (other than the Leadership Team);
- exclude drafts; and
- exclude reports, assessments and information prepared by third parties which are publicly available.

You did not agree to our suggestion that you provide us with the names of companies in which you have a particular interest. On 28 January 2022, we therefore responded by email to you explaining that it is not practical for us to provide information on prospective NZ Super Fund investee companies, as this could conceivably include thousands of publicly listed entities given our predominantly passive approach to investing in global equities. This part of your request, therefore, is not framed with due particularity, cannot be processed and is refused under Section 18 (f) of the Official Information Act 1982 (**OIA**).

On 17 February 2022, we wrote to you advising you that we were processing the other parts of your request and of an extension of the time required to make our decision, to 25 March 2022.

Part of the information you have requested is enclosed at Appendix 1.

We have withheld a number of documents in full, and certain information within the documents we have released, on the basis that we have good reason for doing so under section 9 of the OIA. We considered whether the public interest in favour of disclosure outweighed our reasons for withholding such information and concluded that it did not.

The core withholding grounds under the OIA that we've relied on, and a brief explanation about why they apply, are set out below.

A. Section 9(2)(a) – “protect the privacy of natural persons”

In your email of 26 January 2022, you confirmed you were happy for us not to include staff names and identifying details. In the interests of protecting the privacy of individuals, and as agreed with you, we have therefore redacted the names and identifying details of individuals other than those people in the Guardians' Leadership Team. We cannot see any public interest or benefit in releasing personal information.

B. Sections 9(2)(b)(ii) and 9(2)(i) – “protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information” and “enable... any... organisation holding the information to carry out, without prejudice or disadvantage, commercial activities”

We carry out commercial activities in respect of the NZ Super Fund. In investing the Fund we compete in a global market for access to the best investment managers, investment opportunities, co-investors, advisers and other service providers.

These entities operate in their own highly competitive markets and are very concerned about protecting their sensitive commercial information. They will not work with us if we cannot uphold the confidentiality of this information. Releasing this information would therefore prejudice and/or disadvantage our ability to undertake our commercial activities.

Furthermore, releasing this information would prejudice these third parties' 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.

C. Section 9(2)(ba)(i) – “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”

Some of the information you have requested has been provided to 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, the supply of such information will be jeopardised.

If we were to disclose this confidential information, other entities we may wish to contract with, would be reluctant to engage with us because of the perceived risk that we might 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 investors and maximise returns to the Fund (and therefore taxpayers).

Some of the documents you've requested, include information about our responsible investment engagement programme with specific companies. While we proactively disclose significant information around our responsible investment approach (including engagement) generally, it is crucial that we conduct our specific engagements with investee companies on responsible investment issues on a confidential basis.

For engagements to be successful, we need to have a relationship of trust with our partners in collaborative investments, and investee companies, in order to gain access to information and develop influence. The investors and companies we wish to engage with will not work with us if we cannot uphold the confidentiality of both the fact of the engagements and the information supplied as part of the engagement process.

As noted above, releasing this information would seriously jeopardise future engagements on responsible investment and the willingness of other investors/organisations to work with us.

D. 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 public service agency or organisation in the course of their duty”

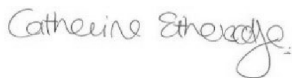
It is important for our efficient and effective operations that our staff and officers are able to express their opinions freely and frankly. Documents captured by your request include opinions of staff members who prepared those materials. The release of such information is likely to inhibit the future frankness and candour of our staff and that would be detrimental to good investment decision making by the Guardians and therefore, to the public interest.

We attach, in **Appendix 1**, the documents we have identified as being within the scope of your request and which we are releasing to you, either in full or in part. Please note that where information within these documents is not within the scope of your request, it has either been redacted, or (in the case of entire pages) not included. We have marked redactions with a reference to the applicable withholding grounds under the OIA or a note explaining the material is out of scope, as appropriate.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or at freephone 0800 802 602.

Please note that it is our policy to proactively release our responses to official information requests where we consider the request to be a material one. Our response to your request will be published shortly at <https://www.nzsuperfund.nz/publications/disclosures/oia/>, with your personal information removed.

Yours sincerely



Catherine Etheredge
Head of Communications

Encl: Appendix 1.