

2 December 2021

██████████
By email: ██████████

Dear ██████████

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request of 11 November 2021 to the Guardians of New Zealand Superannuation (“Guardians”), manager of the New Zealand Superannuation Fund (“NZ Super Fund”, “Fund”), made pursuant to the Official Information Act 1982 (“OIA”).

Your Request

You have requested further information relating to the application of the Guardians' Responsible Investment Framework, and in particular, the processes and principles around divestment decisions, and the recent decision made by the Guardians to divest from a number of companies with activities within the Occupied Palestinian Territories.

Details of the information we have identified as being within scope of your request are set out below. We note that much of the information requested has been addressed in previous [OIA requests](#) or our [proactive disclosures](#). We would be grateful if you could please review this information before submitting further requests on this topic.

Our Response

- 1. Why does NZSF not have a policy of seeking out unethical companies in order to make sure that stock is not held by those who may be more willing to turn a blind eye? Given your obvious commitment to ethical investing and your comments explaining why you invest in gross human rights abusers, that would surely make logical sense. Could you clarify the apparent logical disconnect in your words and actions?***

We do not have such a policy in place and nor have we considered implementing such a policy. Therefore we do not hold the information requested.

- 2. It is even more logical that you seek out unethical companies given the work you do to transform companies like Meta. Surely you could transform the world by acquiring unethical companies and engaging – as was your argument for continuing to invest in Chinese companies complicit in genocide. Could you also confirm that you have a “relationship of trust” with those Chinese companies?***

While engagement with companies is considered best practice for institutional investors, we do not actively seek to invest in unethical companies. We invest in more than 3,800 companies globally in order to obtain broad, diversified exposure to global equity markets. Generally, investments in these companies move in and out of the Fund primarily in line with their market capitalisation rather than through active stock-picking.

The nature of the relationship between the NZ Super Fund as shareholder and the companies it invests in, and whether we are engaging with a particular company, is confidential and commercially sensitive. Therefore, we decline to provide information about the nature of our relationship with the companies to which your question relates on the basis that we have a good reason to do so, principally under **sections 9(2)(b)(ii), 9(2)(ba)(i) and 9(2)(i)** of the Act. Please refer to our response to your previous request for further elaboration of the application of these grounds to the disclosure of engagement information.

3. Please provide all evidence of your attempts to engage with the Israeli banks before your divestment decision.

We did not engage prior to divestment and therefore do not hold the information requested.

4. Please also provide all documents detailing why you thought such engagement may not have been effective.

Please see page 16 of the Investment Committee paper proactively disclosed on our website [here](#), the minutes of that meeting [here](#), as well as previous [OIA requests](#). Where information has been withheld in these materials, we have good reason for doing so under the OIA which continue to apply.

5. I request, again, all correspondence you have had with experts on the Israeli situation . I cannot imagine what information would be privileged, but am happy if you want to redact some of the documents should there be anything you consider sensitive. At the very least, please provide the dates of correspondence and the names of the experts – surely that is not confidential at all.

As noted previously, we are satisfied that our decision was based upon appropriate information and expertise. We received advice from a lawyer with significant international law experience. The dates of our correspondence with this lawyer in relation to the exclusion decision are set out below – please note this also includes correspondence of a more administrative nature. In addition, there is publicly available expert analysis on the situation (for example, Special Rapporteur reports), with the sources we relied on in our exclusion decision referenced in the [Investment Committee paper](#).

We have given further consideration to your request for copies of this correspondence, we are again declining your request, including in respect of the disclosure of names, on the basis of:

- **Section 9(2)(h)**, “Maintain legal professional privilege” – As stated in our previous response, this correspondence entails certain legal advice to the Guardians that is subject to legal privilege. Legal professional privilege is recognised as an important protection that will not be set aside except in the clearest of 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.
- **Section 9(2)(a)**, “Protect the privacy of natural persons”.
- **Section 9(2)(b)(ii)**, “Unreasonably prejudice the commercial position of the person who supplied the information”.
- **Section 9(2)(ba)(i)**, “Prejudice the supply of similar information, or information from the same source”.
- **Section 9(2)(i)** “enable any ... agency or organisation ... to carry out, without prejudice or disadvantage, commercial activities” –We deal with a number of contentious responsible investment issues and it is important that we are able to engage appropriate advisers

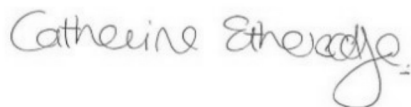
where needed. There is a strong public interest in us being able to do so. There is a risk that in publishing the names of advisers on contentious issues may impact on the availability of quality advisers (or on the free and frank nature of advice we receive) we are able to access in the future.

Date	Form of Correspondence
29/05/2020	Email & Meeting
04/06/2020	Email
05/06/2020	Email
06/06/2020	Email
09/06/2020	Email
12/06/2020	Meeting
15/06/2020	Email
21/06/2020	Email
22/06/2020	Email
25/06/2020	Email & Meeting
17/07/2020	Email
20/07/2020	Email
18/12/2020	Email
19/12/2020	Email
21/12/2020	Email
22/12/2020	Email
24/12/2020	Email
29/12/2020	Email
12/01/2021	Email
13/01/2021	Email

General

You have the right to seek a review by the Ombudsman's Office of our decision to withhold some of the information you have requested. Contact details for the Ombudsman's Office can be found [here](#). Please note we may choose to publish our response to your request on our [website](#).

Yours sincerely,



Catherine Etheredge
Head of Communications
Guardians of New Zealand Superannuation