

17 November 2025

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Tēnā koe [REDACTED]

Official Information Act – Ombudsman Complaint

We have received notice from the Office of the Ombudsman regarding your complaint under the Official Information Act 1982 (OIA) - reference 031144.

The Office requested that we advise whether it is possible to resolve the matter without the need for further investigation. We are writing to you to seek to do so.

We have reassessed the grounds on which we withheld the document titled "Motorola Solutions Research and Analysis". Due to the passage of time, the likely prejudices arising from the release of the document have significantly diminished. In particular, substantive parts of the information set out in the document are now in the public arena, having been canvassed as part of a recent judicial review hearing (mentioned further on page 97 of our [annual report](#)).

We are therefore attaching a copy of the document, with several redactions where we have determined that there continue to be good reasons to withhold the information.

The core grounds we have relied upon, and a brief explanation of why they apply, are:

- **Section 9(2)(h) legal professional privilege:** It is necessary that we withhold certain information to maintain legal professional privilege. Legal professional privilege is an important protection that will not be set aside except in the clearest cases. In order to meet our mandate it is critical that we can take legal advice without the prospect that this advice will be publicly disclosed.
- **Sections 9(2)(b)(ii) and 9(2)(i) 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 any organisation holding the information to carry out, without prejudice or disadvantage, commercial activities:**
 - 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 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 naturally very concerned about protecting their intellectual property and proprietary analysis, including because disclosing such information can cause them loss of revenue opportunities or make their research available to competitors.
 - Furthermore, because the information is often produced with recourse to third party sources, our suppliers could be in breach of their own licensing agreements should this

information become subject to public distribution. Given this, releasing the information to the public could limit the ability of our suppliers to sell research to clients in the future, and may expose them to financial litigation which in our view would unreasonably prejudice their commercial position.

- Our legislation requires us to invest the NZ Super Fund, including to manage or enable the management of the Fund, on a commercial basis. Fund investments and their management are accordingly expressly commercial activities. 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 (including sustainable investment service providers). These entities operate in their own highly competitive markets and are very concerned about protecting their sensitive commercial and/or proprietary 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.
- **Section 9(2)(ba)(i) 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:** We have withheld proprietary third party information that is available to us on a subscription basis. Disclosing this information could adversely impact on the provider business model and on our ability to access critical information we need to conduct our activities.

We are able to confirm that the information on the latter two grounds relates to MSCI ESG and controversy ratings in respect of Motorola Solutions. It will be clear from what we have disclosed that this information is only one source of information taken into account in the overall research and analysis and was at a fixed point in time only (we monitor this on an ongoing basis). MSCI has noted that members of the public who are interested could subscribe for this information directly.

We have also considered the public interest in respect of the information that we have withheld. We noted that parts of the document we have released clearly set out our reasoning and approach. The information can also be read in the context of the substantial other background documents we have provided you on our approach in this general area.

We have determined there is not a public interest requiring disclosure. There is, however, a strong public interest in us being able to take advice in reliance on legal privilege and to undertake our functions effectively (and with access to information we need to do so) for the benefit of all New Zealanders.

We would be grateful if you could please confirm whether this resolves the matter from your perspective so that can advise the Office of the Ombudsman.

Yours faithfully



Jo Townsend
Chief Executive Officer
Guardians of New Zealand Superannuation