

12 December 2013

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Your Request

You have requested the following seven categories of information:

Category 1: Copies of due diligence undertaken on Ogin Inc. ("**Ogin**") by or on behalf of the New Zealand Superannuation Fund ("**Fund**"), including a technology review.

Category 2: Copies of the financial transaction documents showing the transaction and date of transaction, including the signatories to the transaction from the Fund and Ogin.

Category 3: A copy of the business case used to support the investment in Ogin.

Category 4: Who within the Fund prepared the business case and supporting documentation.

Category 5: A copy of the financial assessment used by the Fund to address the risks associated with the investment in Ogin.

Category 6: A copy of the Fund's credit assessment of Ogin, including Ogin's present capital value and future earnings potential.

Category 7: A copy of details held by the Fund on who or what Ogin is, including company address, shareholders, liabilities, key contacts and account manager.

About the Guardians and its activities

Before going on to respond to your specific requests, and as you have indicated that you are unfamiliar with the OIA process and the Fund's approach to such requests, we thought it would be useful to provide you with an overview of the activities of the Guardians of New Zealand Superannuation ("**the Guardians**"), which manages the Fund, to give some context to our response.

Under the New Zealand Superannuation and Retirement Income 2001, the Guardians must invest the Fund on a prudent, commercial basis and, in doing so, must manage and administer the Fund in a manner consistent with:

- best-practice portfolio management;
- maximising return without undue risk to the Fund as a whole; and
- avoiding prejudice to New Zealand reputation as a responsible member of the world community.

The activities of the Guardians are therefore primarily commercial and, in seeking investment opportunities, we are in competition with other investors.

In relation to any potential investment or transaction, the Guardians is likely to hold a great deal of information relating to commercial, operational, tax, finance and legal matters. This information might include documents (including many emails) relating to the negotiation, drafting, advice on and discussions of documents such as confidentiality agreements, heads of agreements, term sheets, due diligence reports, investment analysis and memos. There can potentially be thousands of documents that are relevant to some requests under the OIA. Many of these documents are commercially sensitive, as discussed further below.

For further information about the Guardians and Fund please see www.nzsuperfund.co.nz.

Background information

Please find below some background information about Ogin and about the due diligence process we undertook in relation to the investment.

Ogin's original parent company, FloDesign, Inc., was established in 1990. Until 2007, FloDesign, Inc. conducted wind turbine technology design and development under its own name. At that time, with the success of the wind turbine technology development, FloDesign, Inc. formed FloDesign Wind Turbine Corp. as a subsidiary. In 2008, separate capital was raised and FloDesign Wind Turbine Corp. became a separate company, with its own shareholder, CEO, management team and business direction. In 2010 FloDesign Wind Turbine Corp. received an \$8.3 million grant from the U.S. Department of Energy's Advanced Research Projects Agency-Energy (ARPA-E). In November, 2013, FloDesign Wind Turbine Corp. changed its name to "Ogin, Inc." and launched a new website (www.oginenergy.com).

More information on Ogin, including a full list of investors and details of the Ogin management team, can be found on www.oginenergy.com. Current investors in Ogin include:

- United States utilities NRG and Constellation;
- Alberta Investment Management Corporation - one of Canada's largest and most diversified institutional investment fund managers, with an investment portfolio of approximately CAD70 billion;
- venture capital firm Kleiner Perkins;
- the global investment bank Goldman Sachs; and
- the German chemicals company BASF.

See www.flodesign.org for more background on Ogin's founders.

Our nine-month due diligence process included:

- Guardians staff travelling to the US to meet with Ogin management company founders and visit facilities, including a fully operational commercial scale turbine;
- engaging a US-based engineering consultancy with specific expertise in mechanical and aerospace engineering, including shrouded/ducted wind turbines, to provide a view on the technology and levelised cost of energy;
- discussing the shrouded/ducted turbine space with Auckland-based experts, who were familiar with the issues with Vortec and who highlighted the challenges developers of this technology have faced in the past;
- engaging a US-based electricity markets consultant to gauge the market potential for Ogin, and to calculate the levelised cost of energy for Ogin, similar competing turbines and utility scale alternatives;
- engaging a specialist legal advisor to focus on intellectual property due diligence;
- engaging two specialist legal advisors to structure the transaction documentation and mitigate investment risks;
- engaging specialist tax, insurance and financial advisors.

As is typical of the Guardians' collective approach to making active investment decisions of this type, the Ogin investment was considered and sanctioned by the Guardians' Investment Committee.

We are confident that our due diligence process has been thorough and that we have acted prudently and responsibly in relation to this investment.

The OIA regime and grounds for withholding information

Under the OIA, the Guardians is required to make official information available in response to a request unless there is "good reason" for withholding it. Good reason for withholding information exists under section 9 of the OIA where, for example, withholding the information is necessary to:

- protect the privacy of natural persons;
- protect information where making it available would disclose a trade secret;
- protect information where making it available would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;
- 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 and it is in the public interest that such information should continue to be supplied, or would be likely otherwise to damage the public interest;
- maintain legal professional privilege; or
- prevent the disclosure or use of official information for improper gain or improper advantage;

and the withholding of the information is not outweighed by the public interest in making that information available.

Response to your requests

For the reasons set out below, the Guardians has determined that good reasons exist for withholding all of the information you have sought with the exception of publicly available details of Ogin (part category 7). We invite you to obtain these details in the first instance from Ogin's website at: www.oginenergy.com (see in particular the "Leadership" tab).

We have considered whether consulting with you would assist you to make your request in a form that would remove the reasons for the refusal. We believe that, given the nature of your requests, your request is unlikely to be able to be formulated in a way that would enable us to provide you with the information.

Personal information (categories 2, 4 and 7)

The Guardians considers that good reasons exist for withholding information relating to the signatories to the transaction from the Fund and Ogin (part category 2), details of the individuals within the Fund who prepared the business case and supporting documentation (category 4) and information on Ogin's account manager used (part category 7) on the basis that withholding this information is necessary to protect the privacy of natural persons.

The information sought in the categories above is not publicly available. It comprises personal information about the individuals involved, i.e. the fact that it was a particular individual or individuals that signed the relevant documentation, prepared the business case and supporting documentation and/or acted as the account manager.

The Guardians cannot see any public interest in, or public benefit from, the release of this personal information. Information regarding the identity of these individuals is not required for the purposes of transparency and accountability of the Guardians' activities. There is no good reason why these individuals in particular should be subjected to potential public scrutiny.

Trade secrets (categories 1 and 3)

The Guardians considers that good reasons exist for withholding information relating to any technology review conducted on Ogin (part category 1) and any information in the business case that discloses details of Ogin's technology (part category 3) on the basis that withholding this information is necessary to protect information where making it available would disclose a trade secret.

A significant part of Ogin's business is the development of unique technologies relating to wind energy generation. Much of the information relating to Ogin's products and technologies is therefore confidential information comprising trade secrets. The interests of Ogin and its shareholders (including the Guardians) in protecting these trade secrets outweighs any public interest that might exist in release of this information.

Prejudice to commercial position (categories 1, 2, 3, 5, 6 and 7)

The Guardians considers that good reasons exist for withholding information relating to the due diligence undertaken on Ogin (category 1), the financial transaction documents (category 2), the business case (category 3), the financial assessment used by the Fund to address the risks associated with its investment in Ogin (category 5), the Fund's credit

assessment of Ogin (category 6) and Ogin's liabilities (part category 7) on the basis that withholding this information is necessary to protect information where making it available would be likely unreasonably to prejudice the commercial position of the Guardians and/or Ogin.

As detailed in the section above headed "About Guardians and its activities", the Guardians' activities are primarily commercial and it operates in competition with other investors. Ogin also operates in a very competitive industry and, as a start-up business, is currently particularly vulnerable to commercial pressures.

The information you have sought in the categories above comprises highly sensitive commercial information relating to the Guardians' and Ogin's respective and joint business activities including (but not limited to):

- Ogin's assets and liabilities, financing details, contractual obligations, technology and intellectual property, risk position and business strategy;
- the Guardians' internal commercial business decisions, details of its commercial drivers and investment strategy; and
- details of the terms on which both Ogin and the Guardians were prepared to transact in this case.

Disclosure of this information to the public would unreasonably prejudice Ogin's and the Guardians' commercial positions by:

- giving Ogin's competitors information about the current strengths and risks of Ogin's business, the extent of its technology development, Ogin's approach to pricing and its business plans and strategy generally, which could be used by such competitors to Ogin's detriment;
- giving Ogin's potential future counterparties and investors insights into the basis on which Ogin has previously been willing to transact (including in relation to the concessions or trade-offs that Ogin has been prepared to make in order to secure capital investment), which might prejudice Ogin's ability to negotiate different or more favourable terms in the future;
- giving the Guardians' competitors (i.e. other investors) information about Guardians' approach to investment, relevant considerations and commercial drivers and its strategy generally, which could be used by such competitors to Guardians' detriment;
- giving the Guardians' potential future counterparties (including other entities in which the Guardians might wish to invest) insights into the basis on which the Guardians has previously been willing to transact (including in relation to the concessions or trade-offs that Ogin has been prepared to make in order to secure capital investment), which might prejudice the Guardians' ability to negotiate different or more favourable terms in the future;
- discouraging the Guardians' potential future counterparties (including other entities in which the Guardians might wish to invest) from transacting with the Guardians because of the risk that confidential information about their business might be disclosed to the public under the OIA.

There are already processes and measures in place to hold the Guardians accountable to the Government and the public in respect of their management of the Fund. The public interest in mitigating the risk of the Guardians being constrained in their future investment and contracting opportunities (and thereby achieving a lower return on the Fund's

investments) also weighs in favour of withholding the information. In short, we do not consider that the public interest in disclosure of this information outweighs the reasons for withholding it.

Information subject to an obligation of confidence (categories 1, 2, 3, 5, 6 and 7)

The Guardians considers that good reasons exist for withholding information relating to the due diligence undertaken on Ogin (category 1), the financial transaction documents (category 2), the business case (category 3), the financial assessment used by the Fund to address the risks associated with its investment in Ogin (category 5), the Fund's credit assessment of Ogin (category 6), and Ogin's liabilities (part category 7) on the basis that withholding the information is necessary to 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 and it is in the public interest that such information should continue to be supplied, or would be likely otherwise to damage the public interest.

Much of the information in the Guardians' possession relating to Ogin comprises confidential information provided by Ogin solely for the purposes of enabling the Guardians to invest in it. This information was provided to the Guardians subject to express confidentiality obligations. In the event the Guardians were to disclose this confidential information to the public, it is likely that other entities in which the Guardians might wish to invest (or other parties with which the Guardians might wish to contract) will be reluctant to engage with the Guardians because of the risk of disclosure of their confidential information. That outcome would damage the public interest in ensuring that the Guardians is able to compete on a level playing field with other investors and maximise returns to the Fund.

Legal professional privilege (categories 1 and 3)

The Guardians considers that good reasons exist for withholding information relating to the due diligence undertaken on Ogin (category 1) and the business case (category 3), to the extent that information includes legal advice, on the basis that withholding the information is necessary to protect legal professional privilege.

The Guardians engaged external legal service providers to undertake legal due diligence on Ogin, and the due diligence documentation contains information subject to legal professional privilege. Some of this legally privileged information was also incorporated into the business case. Legal due diligence reports are also captured by the Guardians' non-disclosure agreement with Ogin.

Legal professional privilege is recognised as an important protection that will not be set aside except in the clearest cases. In this case, whatever public interest (if any) that might exist in release of this legally privileged information is outweighed by the Guardians' interest in protecting its rights to legal privilege.

Prevent improper gain or improper advantage (categories 1, 2, 3, 5, 6 and 7)

The Guardians considers that good reasons exist for withholding information relating to the due diligence undertaken on Ogin (category 1), the financial transaction documents (category 2), the business case (category 3), the financial assessment used by the Fund to address the risks associated with its investment in Ogin (category 5), the Fund's credit assessment of Ogin (category 6), and Ogin's liabilities (part category 7) on the basis that

withholding the information is necessary to prevent the disclosure or use of official information for improper gain or improper advantage.

The reasons for this are the same as those set out in the subsection above entitled "Prejudice to commercial position". In short, disclosure of information in the categories above will enable competitors and counterparties of both Ogin and the Guardians to obtain an improper advantage in circumstances where similar information about those competitors and counterparties is not available to the public.

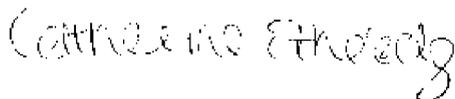
Further, disclosure of due diligence and financial/credit assessments prepared in respect of the Guardians' investment in Ogin would provide to other parties who might wish to explore opportunities to invest in Ogin the benefit of the substantial work undertaken by the Guardians' various consultants and paid for by the Guardians. That would give those other parties an improper gain or advantage in that they would have the benefit of this work without having had to contribute to its cost.

Your right to seek a review by the Ombudsmen's Office

You have the right to make a complaint to the Office of the Ombudsman and seek an investigation and review of the Guardians' decision to withhold information under the OIA as set out above. Contact details for the Office of the Ombudsman are set out below.

Free phone: 0800 802 602 (+64 4 4739533)
Email: info@ombudsman.parliament.nz
Fax: (04) 471 2254
Website: <http://www.ombudsmen.parliament.nz/>

Yours sincerely



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