

11 October 2013





REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request dated **27 June 2013** made pursuant to the Official Information Act 1982 ("**OIA**") and for your clarifications received by us on **11 July 2013** and **29 July 2013**.

Your Request

Your request is:

"The information I seek is and includes- inter-departmental memorandums, and emails from 1 June 2009 to 31 September 2010 relating to – (duplicates of documents can be omitted)

- Any communications between NZ Super Fund (or associated person's, entities) and Alan Isaac in relation to Scales Corporation or any associated SCF/Hubbard Assets.
- Any Communications between the NZ Super Fund and Andy Borland, Stuart McLauchlan in relation to Scales Corporation or any associated SCF/Hubbard Assets.
- Any communications between NZ Super Fund and the Treasury, regarding Scales Corporation or any Hubbard/SCF assets."

You confirmed by email on 29 July 2013 that you did not require documents associated with any persons/ entities not specified in your request. You also confirmed that you did not require duplicates of documents or media releases around this issue.

Background to Response to Request

We appreciate your willingness to discuss your request with us and to refine its scope. It has taken some time for us to: collate the documentation potentially relevant to the first request; refine it as agreed with you; consider the extent to which the material we hold falls within the scope of the request; apply the OIA; and, finally, to consult with the NZ Treasury and any other third parties that were referred to in the material.

You will see that we in fact hold no material that falls within the scope of your request. We have, therefore, provided additional documents that we consider may be of interest to you (despite these documents falling outside the scope of your request). We also wanted to provide you with some information about us and the particular transaction you are interested in, to put our response in context for you.

About the Guardians and its activities

As an autonomous Crown entity the Guardians of New Zealand Superannuation, which manages the New Zealand Superannuation Fund, is legally separate from the Crown. Investment decisions are made by the Board and Management of the Guardians.

Under the New Zealand Superannuation and Retirement Income 2001 (the Governing Act), 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.

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

As noted above, the Guardians has the specific obligation to invest the Fund on a prudent, commercial basis. 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. This is why there can potentially be thousands of documents that are relevant to some requests under the OIA.

Transaction

You will see from the documents attached that we were involved in a proposal relating to South Canterbury Finance. However, consistent with our statutory independence from Government, we had little direct contact with Treasury over this proposal. Accordingly, we have no documents that fall within the scope of your request.

We did contact the Minister of Finance's Office regarding the proposal, as part of a 'no surprises' protocol required of us under an annual Letter of Expectations provided to the Guardians by the Minister.

We can confirm that we did not have any communications with Alan Isaac, Andy Borland or Stuart McLauchlan during the formation of the proposal.

Documents Released

As noted above, it appears that there are no documents falling within the scope of your request. However, we have also decided to provide you with additional information we hold because of the proposal. Given that this information is not within the scope of your request, as discussed with you, we have had to obtain consent from various third parties before we could release it, and this has taken some time.

The documents are listed in the table below for ease of reference and attached as Attachment 1.

General

As you may know, you have the right to seek a review by the Ombudsmen's Office of decisions to withhold information. Given we are not withholding information on the grounds under the Official Information Act this review does not apply. That said, given the role of the Ombudsman and our commitment to compliance with the Official Information Act, we set out the details of the Ombudsmen's Office below should you wish to contact the office regarding our response to your request.

The Ombudsmen's details are: at: http://www.ombudsmen.parliament.nz/.

Free phone: 0800 802 602

(+64 4 4739533)

Email:

info@ombudsman.parliament.nz

Fax:

(04) 471 2254

Yours sincerely

Catherine Etheredge

Head of Communications

Contractine Ethoraly

Attachment 1: Released documents

Documents Released Voluntarily With Consent of Third Parties (Contained in Attachment 1)

UPDATED	Doc Ref	Doc Date	Document Name
NUMBERING			
1	170325	6/09/2010 5:16pm	Email from Matt Whineray (NZSF): "FW: fyi in confidence"
2	173470	6/09/2010 5:26pm	Email from Brett Sutton (NZSF): "RE: fyi in confidence"
3	173468	6/09/2010 7:28pm	Email from Brett Sutton (NZSF) "Re: fyi in confidence"
4	173467	6/09/2010 9:41:54pm	Email from Brett Sutton (NZSF) and various: "Re: fyi in confidence"
5	173499	13/09/2010 12:51pm	Email trail between Brett Sutton (NZSF) and various legal advisers:
			"FW; Bianca Commercial Points."
6	173512	13/09/2010 3:11pm	Email from Brett Sutton (NZSF): "Project Bianca"
7	173670	14/09/2010 5:22:pm	Email from Adrian Orr (NZSF): "RE: Letter"
7a	u.	14/09/2010 5:22:pm	Email from Brett Sutton (NZSF): "FW: Letter"
7b	u.	14/09/2010 3:59:pm	Email from Forsyth Barr (NZSF): "Fw: Letter" attaching external email
8	172253	15/09/2010 8:39am	Email from Brett Sutton (NZSF): "RE: Letter"
9	173663	16/09/2010 4:50pm	Email from Brett Sutton (NZSF): "Bianca Update"
10	173525	17/09/2010 6:20pm	Email from Brett Sutton (NZSF): "Bianca"
11	799314	15/09/2010 8:57am	Email from Brett Sutton (NZSF): "FW: Letter"
11a	tt	14/09/2010 3.59 pm	Email from Forsyth Barr with attached email from third party.
12	799320	14/09/2010 4:57pm	Email from Paul Gregory (NZSF) to various: "RE: Letter"
12a	tt	14/09/2010 4:04pm	Email from Brett Sutton (NZSF) to various
13	799333	13/09/2010 6:13PM	Email from Brett Sutton (NZSF) to various: "Bianca"

Doc Ref 170325

From: Matt Whineray

Sent: Monday, 6 September 2010 5:16 p.m.

To: David Rae; Neil Woods **Cc:** Brett Sutton; Adrian Orr **Subject:** FW: fyi in confidence

Dave and Woodsy

See attached emails re Dairy Holdings.

Adrian, Brett and I had a discussion with rescribed re SCF this morning. It has since concentrated on the Dairy Holdings stake. The current proposal is essentially an opportunity to get an option on the Dairy Holdings stake as part of a larger deal to be put to the Crown – our non-OIO status being our key merit here).

Brett describes the proposed deal below following a discussion with Forbarr this afternoon. Can you have a look at the email trail – the question right now would be what is a ballpark figure for the stake. Brett has attached some very summary thoughts from Carolyn from a while ago, purely based on \$/ha, \$/kgms numbers. We'll get some more metrics from Forbarr over night, but any views you have would be useful.

We would need to figure out how we would use Farmright in relation to this (e.g. advisory, diligence, ongoing investment management, representation on Board etc).

Matt

Doc Ref 173470

2

From: Brett Sutton

Sent: Monday, 6 September 2010 5:26 p.m.
To: Adrian Orr; Matt Whineray
Subject: RE: fyi in confidence

Forsyth Barr sending through material – financials, metrics, financing, etc Spoke to overnight.

Doc Ref 173468

From: Brett Sutton

3

Sent: Monday, 6 September 2010 7:28 p.m.
To: Adrian Orr; Matt Whineray
Subject: Re: fyi in confidence

Matt, you free for call @ 815pm. Keen to talk through approach back to forbars in particular getting

docs underway. Brett

Doc Ref 173467

4

From: Brett Sutton

Sent: Monday, 6 September 2010 9:42 p.m.

To: Adrian Orr; Matt Whineray **Subject:** Re: fyi in confidence

Spoke to He will get lawyers underway on draft documentation. Told him we'd focus on valuation piece and revert late tomorrow morning. I've got message into Sarah to call me-we'll need our lawyers to take a look. Also indicated we can probably get some form of first look at Scales and Helicopter business if we table it. On political side, they spoke with Treasury tonight and continue to receive mixed messages. Suggests offer may not be tabled as soon as they hoped for. No doubt we'll add value to that process if we decide to engage. Matt can you get Lisa to round up Woodsy, Dr Rae and Carolyn for meeting at 1030am tomorrow morning. I should be in office by 930am. Residual issue for me is what our internal approval process will be and how we'd intend communicating with Board given PR issues - tomorrow's job. Brett

Doc Ref 173499

5

From: Brett Sutton

Sent: Monday, 13 September 2010 12:51 p.m.

To: Matt Whineray; Sarah Owen

Subject: FW: Bianca - Commercial Points [KS-KSNATIONAL.FID172726]

FYI

From: [mailto: @russellmcveagh.com]

Sent: Monday, 13 September 2010 12:23 p.m.

To: Brett Sutton
Cc:

Subject: RE: Bianca - Commercial Points [KS-KSNATIONAL.FID172726]

I hope so!

I have just tried to put a call through to a call back shortly.

Current status:

- The Deed of Novation itself is in an agreed form;
- We have reviewed and provided a revised mark-up on the Bid Agreement (on the basis we discussed on the phone) but have not heard whether this has been accepted;
- We have reviewed and provided a revised mark-up of the ASP Business and Assets (but we need to see the final form) - we need to ensure that the new clauses are accepted re the purchase price and transfer notice;
- We need to see the terms of the DHL Agreement, though agreed subject to the points on the Share Purchase Price and the Guardians' name (but again we need to ensure that these work).

Aside from just checking that we are happy with the final form, ________'s comment that there is the "daunting" task of preparing a consolidated mark-up for Treasury is a little worrying - it should simply be a computer comparison of two documents, as we don't want to have to check that the mark-up is accurate and faithful. I will check this when I speak to him.

So generally we seem to be on track for documents going to Treasury this afternoon.

Please give me a call if there is anything you want to discuss. I will email / call as soon as I hear anything further from

Kind regards

From: Brett Sutton [mailto:bsutton@nzsuperfund.co.nz]

Sent: Monday, 13 September 2010 12:15 p.m.

To:

Subject: RE: Bianca - Commercial Points [KS-KSNATIONAL.FID172726]

All gone quiet – assume this is a good thing?

Brett

From: [mailto: @russellmcveagh.com]

Sent: Monday, 13 September 2010 11:09 a.m.

To:

Doc Ref 173499

Cc: Brett Sutton; Matt Whineray; Sarah Owen; Subject: RE: Bianca - Commercial Points [KS-KSNATIONAL.FID172726] Thanks I attach a mark-up of the ASP Business and Assets showing a few minor changes - the most important of which are set out in new clause 6.4 in relation to providing the Share Purchase Price to the Vendor and the Vendor issuing the transfer notice for that price. Please note that due to the urgency this has not been reviewed by our clients, so it is subject to any comments that they may have. Kind regards From: [mailto: @kensingtonswan.com] Sent: Monday, 13 September 2010 10:26 a.m. **Cc:** Brett Sutton; Matt Whineray; Sarah Owen; Subject: RE: Bianca - Commercial Points [KS-KSNATIONAL.FID172726] I attach a mark up of the purchase agrt together with the Scales Novation Agrt (for completeness). Kindly let me have your comments shortly so we can then proceed with the somewhat daunting task of having a marked up draft available for the receivers against the last version they saw. regards Partner **Kensington Swan** www.kensingtonswan.com Level 9, 89 The Terrace, Wellington, New Zealand PO Box 10 246, Wellington 6143, New Zealand A Please consider the environment before printing this e-mail From: Sent: Monday, 13 September 2010 9:53 a.m. To: **Cc:** Brett Sutton; Matt Whineray; Sarah Owen;

Subject: RE: Bianca - Commercial Points [KS-KSNATIONAL.FID172726]

Doc Ref 173499

Thanks for the updated drafts.

I am presently waiting for the main agreement to be returned from wp but it shouldn't be long.

has responded to you on the Bid Agreement.

In relation to the updated drafts I am happy with the updated draft Novation and Terms documents except in tow respect which I don't think will cause concern to you and your clients.

We will be omitting from the documents which go the the receivers et al the reference to the name of your client in the document and the price for the shares.

The price for the shares has been the subject of discussion and that confirmation will be in the Bid Agreement only at this stage. As noted yesterday afternoon, it is intended to disclose the price following signature given the formalities required to kick off the pre-emptive right process under the Constitution and the agreement.

The identity of your client, while known to the receivers and Treasury, does not at this stage need to be in the document since strictly speaking it only needs to be inserted once the Nomination is made.

regards

Partner

Kensington Swan



www.kensingtonswan.com

Level 9, 89 The Terrace, Wellington, New Zealand PO Box 10 246, Wellington 6143, New Zealand

A Please consider the environment before printing this e-mail

From: [mailto: @russellmcveagh.com]

Sent: Sunday, 12 September 2010 11:54 p.m.

Cc: Brett Sutton; Matt Whineray; Sarah Owen;

Subject: RE: Bianca - Commercial Points

As discussed below, I now attach the Bid Agreement, Deed of Novation and DHL Sale Terms referred to below (marked up and clean versions).

I look forward to receiving the ASP Business and Assets tomorrow morning.

Regards

Doc Ref 173499

PARTNER

Russell McVeagh, Vero Centre, 48 S	hortland Street, PO Box 8, Auckland 11	40, New Zealand								
@russellmcveagh.com www.russellmcveagh.com										
(Personal Assistant:	- phone	@russellmcveagh.com)								

From:				
Sent: Sunday	12 September	2010	11:07	p.m.

Cc: 'Brett Sutton'; 'Matt Whineray'; 'Sarah Owen';

Subject: Bianca - Commercial Points

and

I have now discussed with NZSF the commercial points that we ran through earlier this evening.

NZSF's position is as follows:

Bid Agreement

- Notice to Proceed NZSF is uncomfortable deleting items (c)(i) and (ii) of the definition. It is, however, willing to add a long stop date of an additional 4 weeks. The effect of this would be that the Exclusivity Period would end 6 weeks after the ASP Business and Assets is signed and, after that time, could give the Notice to Proceed if either of (i) or (ii) was satisfied or if an additional 4 weeks has passed.
- Disclosure of Share Purchase Price for DHL Shares This has been discussed by Brett with NZSF does not think that a minimum price concept will work, and cannot see how the Receiver will be able to get the level of certainty it will require prior to signing as to the value proposition for the sale of the DHL Assets if the purchase price is not disclosed.
- Clause 7.3 NZSF does not want to add the words "and any other amounts due in respect of them" in relation to the Debts. It considers that payment of the face value of the Debts together with accrued but unpaid interest should be sufficient. A reference to any other amounts due is too broad and uncertain.

DHL Sale Terms

 Shareholder Advance Purchase Price - NZSF had agreed to pay the aggregate face value of the known Shareholder Advance and any additional Shareholder Advances it agrees to purchase, but is not willing to pay any interest or other amounts due in respect of them.

In addition, I have checked the position in relation to the Lowest Purchase Price clause. NZSF is happy for this to be deleted.

We will circulate to you shortly the Bid Agreement, Deed of Novation and DHL Sale Terms, marked up with the accepted edits from the mark up of these documents received from you earlier this evening.

Kind regards

Doc Ref 173499

5

PARTNER

Russell McVeagh, Vero Centre, 48 Shortland Street, PO Box 8, Auckland 1140, New Zealand

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Russell McVeagh

OFFICIAL LAW FIRM OF RUGBY WORLD CUP 2011

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Doc Ref 173512

6

From: Brett Sutton

Sent: Monday, 13 September 2010 3:11 p.m.

To: Adrian Orr; Matt Whineray; Sarah Owen; Paul W. Gregory; John Payne; Carolyn Steele; Neil

Woods

Subject: Project Bianca

People,

We have agreed legal documents with and plan to execute shortly.

plan to meet Treasury to table the documents around 3.15pm today. The documents will go to the Receiver at the same time.

will provide feed back to us post the Treasury meeting.

Then everyone can retire to there respective corners, get towelled down, and await the bell for round 2.

Thanks everyone to getting us through round 1 relatively unscathed – I think we're ahead on points at this stage in the contest.

Brett

Doc Ref 173670

7

From: Adrian Orr

Sent: Tuesday, 14 September 2010 5:22 p.m. **To:** Brett Sutton; Matt Whineray; Sarah Owen; (Section 1); Paul W. Gregory

Subject: RE: Letter

No – don't go public.

Doc Ref 173670

7a

From: Brett Sutton

Sent: Tuesday, 14 September 2010 4:04 p.m.

To: Matt Whineray; Adrian Orr; Sarah Owen; ' ; ; ; Paul W. Gregory

Subject: FW: Letter

See below.

Adrian/Paul – I think we need to respond to re their desire to go public (we won't want our name used in public context).

Paul, helpful if you can craft some words on how I should respond and circulate around our group for discussion/input.

Cheers, Brett

Doc Ref 173670

7b

From:

Sent: Tuesday, 14 September 2010 3:59 p.m.

To: Brett Sutton Subject: FW: Letter

Hi Brett

The attached letter and email below are self-explanatory.

We are still trying to establish with Treasury and the receiver how they intend to deal with the offer.

The current thinking is that in the absence of any real progress over the next 24 hours, the recommendation will be to look at announcing the offer publicly.

Has NZSF had any feedback from the Minister's office of any substance, or any useful conversations?

Cheers

Doc Ref 172253

From: Brett Sutton

Sent: Wednesday, 15 September 2010 8:39 a.m.

To:

Cc:

Subject: RE: Letter

Thanks for update and copying the letter from the receivers.

We haven't had any feedback from the Minister's office.

Please also note that NZSF do not wish to be named or otherwise involved in any proactive public engagement on the offer.

Happy to chat through our rationale if required.

Regards,

Brett

Doc Ref 173663

From: Brett Sutton

Sent: Thursday, 16 September 2010 4:50 p.m.

To: Matt Whineray; Sarah Owen; Paul W. Gregory; Adrian Orr

Subject: Bianca Update

Spoke to seeking Minister who can make decision around whether Treasury should engage with English has declared himself conflicted due to our participation (odd). Thinks Minister likely to be Joyce or Brownlee. Supposedly meeting with Minister this afternoon and will revert tomorrow morning with a can/can't engage message. Not sure what this means. Could simply be holding/delaying strategy on Treasury's part or is a genuine issue given Minister's workloads due to earthquake. All (or nothing) will be revealed tomorrow. Sarah/Paul – also worth noting at our meeting with Treasury this afternoon, the officials opening salvo was no discussions on SCF. Obviously sensitive issue.

Doc Ref 173525

From: Brett Sutton

Sent: Friday, 17 September 2010 6:21 p.m.

To: Matt Whineray; Adrian Orr; Paul W. Gregory; Sarah Owen; ' @russellmcveagh.com';

@russellmcveagh.com'

Subject: Bianca

Received call from and

Receiver has rejected offer saying price too low due to "pricing" of vendor financing. (This seems to indicate they accept vendor financing required to sell good and bad bank).

Receivers have provided letter sighting 6 or 7 other reasons why they rejected offer. will provide copy of letter together with their response in next few hours. I will circulate when received.

want to engage with Receivers on Monday/Tuesday but sounds as though view reasonably entrenched i.e., we're running contestable process, join it if you think you're offer is that good.

We need to round up as a group (NZSF team) early next week to determine our next steps. Not sure engaging with Treasury and/or politicians assists us if Receivers in charge. confirmed Receiver running investment bank appointment process (also confirmed in media release from Receiver earlier today).

Have good weekend.

Brett

Doc Ref 799314

11

From: Brett Sutton

Sent: Wednesday, 15 September 2010 8:57 a.m.

To: Matt Whineray; Paul W. Gregory

Cc: Sarah Owen; Adrian Orr; ' ;

Subject: FW: Letter

FYI has responded that he understands NZSF's position and reconfirmed won't do anything publicly without our knowledge. He also confirmed that it is very unlikely they'd make a public announcement prior to the offer expiring on Friday. Brett

Doc Ref 799314

11a

From: Brett Sutton

Sent: Wednesday, 15 September 2010 8:39 a.m.

To:

Cc: Subject: RE: Letter

Thanks for update and copying the letter from the receivers.

We haven't had any feedback from the Minister's office.

Please also note that NZSF do not wish to be named or otherwise involved in any proactive public engagement on the offer.

Happy to chat through our rationale if required.

Regards,

Brett

Doc Ref 799320

12

From: Paul W. Gregory

Sent: Tuesday, 14 September 2010 4:57 p.m.

To: Brett Sutton; Matt Whineray; Adrian Orr; Sarah Owen; '

Subject: RE: Letter

Brett my two cents (have spoken with Matt):

First – we do not wish to be named or otherwise involved in any proactive public engagement on this offer

Second – we are unsure of the value of going public at this time

- 1. Don't think it is a good idea to give Treasury until Friday but go out before then
- 2. More broadly (and more importantly) the publicity is more likely to entrench any opposition that exists than loosen or get around it
- 3. It is unlikely to foster a positive Treasury/Government mindset toward which could well endure beyond this particular transaction

Cheers,

Doc Ref 799320

12a

From: Brett Sutton

Sent: Tuesday, 14 September 2010 4:04 p.m.

To: Matt Whineray; Adrian Orr; Sarah Owen; ' ; Paul W. Gregory; Paul W. Gregory

Subject: FW: Letter

See below.

Adrian/Paul – I think we need to respond to re their desire to go public (we won't want our name used in public context).

Paul, helpful if you can craft some words on how I should respond and circulate around our group for discussion/input.

Cheers, Brett

Doc Ref 799333

13

From: Brett Sutton

Sent: Monday, 13 September 2010 6:13 p.m.

To: Matt Whineray; Sarah Owen; '@russellmcveagh.com'; '@russellmcveagh.com'; Adrian Orr; Paul W. Gregory

Subject: Bianca

AII,



Received a good hearing. Deadline on offer 5pm tomorrow but realistic enough to know they have to give Treasury et all time to work through. Treasury expected to revert early tomorrow and indicated would have final view before end of week.

Adrian provided your name as contact person at Fund if they want to put a call in.

will make contact tomorrow once he hears back from Treasury.

Brett