



4 February 2022

Tēnā koe

On 18 and 29 November 2021, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- 1. All information KPMG provided the Ministry of Social Development (MSD) regarding the matter outlined in Written Parliamentary Question (WPQ) 32034 (2021), inclusive of correspondence and communications and any reports or findings KPMG provided MSD.*
- 2. All information MSD provided Minister Sepuloni or her office regarding the matter outlined in WPQ 32034 (2021), inclusive of correspondence and communication between MSD and Minister Sepuloni and her office.*
- 3. The total amount of expenditure on any businesses awarded a contract stemming from the procurement process referred to in WPQ 32034 (2021).*
- 4. All documents, correspondence, reports, advice and information MSD either produced independently or in conjunction with KPMG regarding this procurement process.*
- 5. All complaints the Ministry of Social Development received about this procurement process regardless of their source.*
- 6. The total amount of money the firm awarded the contract from the original procurement process has ever received from the Ministry of Social Development, broken down by specific projects and work the firm did for the Ministry of Social Development.*
- 7. A list of all the projects, policies, initiatives or activities the firm awarded the contract from this procurement process contributed to or participated in at MSD since 2017.*

8. *An exhaustive list of all conflicts of interest declared by Ministry of Social Development staff regarding this particular procurement process, including the date any such declarations were made.*
9. *All reports and evaluations undertaken about the work the firm awarded the contract performed as a result of the procurement process KPMG was asked to look at.*
10. *An exhaustive explanation as to how the procurement process KPMG was asked to look at was inconsistent with expected practice.*
11. *An exhaustive list of what, if any, formal and informal disciplinary action was taken as a result of this procurement process.*

Where the Ministry has decided to grant your request, we are providing you with a summary of relevant information, consistent with section 16(1)(e) of the Act. This has been done to ensure that the privacy interests in the information remain protected, and that the effective conduct of public affairs is maintained, whilst also ensuring sufficient information is provided to address any transparency and accountability reasons favouring the release of the information in the public interest.

### **Privacy interests**

The Employment Relations Act 2000 (ERA) requires the Ministry to work with its staff in good faith. This duty is much wider than implied mutual obligations of trust and confidence (section 4 of the ERA refers). Accordingly, staff both past and present can have a strong expectation of privacy in respect of information about their employment matters and can expect that the Ministry will not disclose information which would unnecessarily infringe upon their privacy.

This is consistent with section 4(c) of the Act which is to protect official information to the extent consistent with the public interest and the preservation of personal privacy.

Much of the information you have requested is personal information in relation to a former staff member at the Ministry and their employment relationship, as well as about individual contractors engaged by the Ministry. There is a clear privacy interest in this information, which if released, would infringe upon the privacy of the individuals concerned. Section 9(2)(a) applies to this information.

## **Maintaining the effective conduct of public affairs<sup>1</sup>**

From July 2021 to September 2021, 84 Written Parliamentary Questions relating to your request were received and responded to by the Minister.

The Minister's office sought information from the Ministry for each of those questions. The Ministry gave that information and explanation within the very short timeframes required by Parliament. That information exchange is by its very nature, free and frank, and it is expected that any information provided to the Minister's office is treated in confidence – with only the Minister's answer to the question then being made public.

The effective conduct of public affairs requires Ministers to provide accurate and timely responses to Written Parliamentary Questions. This can be harmed if Ministers don't get the information and advice they need; or Ministers get some information and advice, but it's not as complete as it could be. This harm would arise if officials become concerned that information they are providing urgently and candidly, would then later be made public. For these reasons, section 9(2)(g)(i) applies to the information exchanged with the Minister's office.

## **Public interest reasons in release**

Notwithstanding the above, the Ministry recognises that there are reasons why some information should be released.

There is a need to release information in the interests of transparency, where that information shows whether proper processes were followed. Also, there is a need to release information in the interests of accountability, to show that when issues are brought to the Ministry's attention, appropriate action is taken.

The Ministry recognises the strength of these interests but does not consider that they outweigh the above interests in withholding the requested information in its entirety. As such, the Ministry is providing you with a summary of the information you have requested.

## **Other information that is refused or withheld<sup>2</sup>**

Regarding your request for information about specific projects and work undertaken, individual contractors report to managers who are responsible for assessing the quality and timeliness of work. The Ministry is not aware of any reports regarding the specific projects or work undertaken by the contractors. However, this information is not recorded centrally, therefore in order to provide you with this information, Ministry staff would have to manually review a large amount of files.

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<sup>1</sup> This answers part two of your request along with the section titled *Communications with the Office of the Minister for Social Development and Employment* on the last page.

<sup>2</sup> This answers part 9 of your request, particularly the first and second to last paragraphs

As such, I refuse your request under section 18(f) of the Act. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

You have asked for all documents, correspondence, reports, advice and information produced independently or in conjunction with KPMG regarding this procurement process. There was an internal Ministry memo from November 2020 addressed to myself, as the Deputy Chief Executive People and Capability, that related to this procurement process. This memo contained advice on the procurement process which was input into the employment investigation. This information is withheld in full under section 9(2)(h) of the Act in order to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.<sup>3</sup>

As part of the procurement process, we also provided a copy of a proposal from Contractor X's company. This information is withheld in full under section 9(2)(b)(ii) of the Act as, if released, it would be likely to prejudice the commercial position of the person who supplied or who is the subject of the information. The greater public interest is in ensuring that the commercial position can be maintained.

Additionally, the outcome of the procurement selection process is also withheld in full under section 9(2)(b)(ii) of the Act. However, the Ministry can confirm the criteria used for this procurement included price, access to required skills, quality of response, having a presence in Auckland and the ability to host resources if required.

Finally, I can confirm that the Ministry did not complete any reports in conjunction with KPMG, as KPMG was only asked to provide advice and not a report. As such, this part of your request is refused under section 18(e) of the Act, as the information does not exist. The advice provided by KPMG is referenced in the Response to your request section.

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<sup>3</sup> This answers part 4 of your request.

## Response to your request

### *The concerns raised<sup>4</sup>*

Concerns were raised in the context of the Ministry's ICT procurement practices, at a time when the Ministry needed to rapidly scale up our ICT workforce to deliver some major programmes of work.

In hindsight, the Ministry did not have a wide enough range of pre-approved providers available to undertake the range and scale of ICT work underway. The Ministry has now undertaken a more considered procurement process and established two new panels of providers that better meet our ICT needs. This process included publicly advertising Request for Proposals in the Government Electronic Tender Service (GETS) in March and April 2021. The larger provider involved in this matter was successful in their tender to be included in one of the new panels.

The Ministry has also implemented an additional layer of accountability so that approval of contractors occurs at the Deputy Chief Executive level. In addition, in October 2020, the Ministry established a dedicated Commercial Operations team which includes the Procurement function and appointed an experienced Group General Manager to lead this area.

The Ministry has also improved the conflicts of interest processes for commercial IT procurements to better identify and manage such situations in future.

The Ministry is satisfied that all the work the contractors engaged in was necessary and that the contractors had the suitable capabilities to undertake the work required. The Ministry has been happy with their work.

A total of \$7.89 million in procurement was involved, comprising of contractors from one provider and a sole contractor from another provider.<sup>5</sup> These contractors were engaged from mid-2019 to mid-2020. The contractors focused on improving Ministry systems and processes for Work and Income clients by making them simpler for clients to access and complete, thereby freeing up time for frontline staff to support clients with more complex needs. The Ministry also took the opportunity to continue strengthening the resilience of its IT systems capability by building up its IT presence outside of Wellington. The sole contractor was engaged to help the Ministry develop and implement an integrated portfolio work planning process and delivery mechanism across

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<sup>4</sup> This answers part five of your request along with the *Initial steps taken by the Ministry* section of the next page

<sup>5</sup> This answers part three and six of your request. As this is a summary response, the Ministry will not be providing a list of all projects contracted to the firm broken down by project as this information is not stored centrally and would require manual collation. As such, the Ministry has provided the overall amount.

the Ministry which required specialist workflow and prioritisation process design skills.<sup>6</sup>

In July 2020 a Ministry staff member raised concern that another staff member (Staff Member A) had initiated a procurement process to engage contractors from a vendor, where one of the vendor's directors was already engaged as a contractor with the Ministry (Contractor X).<sup>7</sup>

A further concern was raised in relation to the hiring of another contractor (Contractor Y) who, two months after they were engaged, became a director and shareholder of a company in which Staff Member A's spouse was also a director and shareholder.

#### *Initial steps taken by the Ministry*

Given the nature of the concerns raised with the Ministry, we asked KPMG in July 2020 to help us assess whether the procurement process was fit for purpose.

Throughout August and September 2020, KPMG spoke to Ministry staff and companies involved in contracting services to the Ministry, reviewed documentation and gained external procurement advice.

In early September 2020, KPMG approached the Ministry and asked if we would be willing to speak to the Managing Director of a company that they had spoken to as part of the process, to hear their perspective on the concerns raised. As a result, we spoke with the Managing Director on 14 September 2020.

The main matters raised by the Managing Director were that following a long-term relationship with the Ministry of around 15 years, that work opportunities had tapered away, and that Ministry staff had passed on concerns to them about the use of contracted resources. On 8 April 2021, the Ministry held a follow up meeting with the Managing Director and explained our view of the matters raised, as reflected in this letter.

#### *Findings and actions taken<sup>8</sup>*

Where contracts are for more than \$100,000, providers must either be on the All of Government Recruitment Service Panel or have an existing Master

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<sup>6</sup> This answers part 7 of your request. The Ministry will not be providing a list of all projects, policies, initiatives or activities contracted to the as this information is not stored centrally and would require manual collation. As such, the Ministry has summarised the work they were involved in.

<sup>7</sup> Concern was also raised that there was a long-standing relationship between Staff Member A and Contractor X. However, it was later determined that Staff Member A was not responsible for engaging Contractor X – this was an independent decision of a more senior manager.

<sup>8</sup> This section answers part one of your request. We have provided a summary of the preliminary view provided by KPMG along with our own internal findings

Services Agreement with the Ministry. In this case contractors were engaged from a provider that did not satisfy these requirements.

Two other providers that were on the All of Government Recruitment Service Panel were asked to provide the Ministry with services from these nominated providers. This process is known as using the Payroll-only service component of the All of Government Recruitment Services Panel. This process is best used for engaging individual contractors that are already known to an organisation – it was not appropriate to use in this situation as the engaged contractors were not known to the Ministry before being engaged. On this occasion, a secondary procurement process was undertaken when a primary process should have been used.<sup>9</sup>

Neither Staff Member A nor Contractor X and Y declared any conflict of interest (actual or potential) to the Ministry. In all cases, declarations should have been made, and there should have been a careful plan to manage any potential or actual conflicts of interest.<sup>10</sup>

The Ministry commenced an employment investigation in relation to Staff Member A. There was a risk that the relationship between Contractor Y and Staff Member A's spouse could be perceived as a conflict of interest. Staff Member A should have known that. The Ministry found no evidence that Staff Member A, or their spouse, had received any personal gain as a result of these matters.

The Ministry has taken action in relation to Staff Member A's handling of these matters. The Ministry considers these issues are concluded between itself and its employee. Out of respect to the privacy interests of our staff the Ministry will not release further information in relation to the employment investigation.<sup>11</sup>

Findings in relation to Contractor X: The Ministry found that Staff Member A had passed on the details for Contractor Y to one of Staff Member A's own direct manager reports. This is not an irregular occurrence, and the Ministry was satisfied that the manager concerned did not feel obligated to employ this contractor.

Findings in relation to Contractor Y: The Ministry had no contractual relationship with the company Contractor Y later registered after they were engaged. The terms of the agreement between Contractor Y and Staff Member A's spouse when setting up the company also negated the possibility of Staff Member A or their spouse benefitting from Contractor Y's work at the Ministry. As stated earlier, the Ministry found no evidence that Staff Member A, or their spouse, had received any personal gain as a result of these matters.

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<sup>9</sup> This answers part ten of your request.

<sup>10</sup> This answers part eight of your request.

<sup>11</sup> This answers part eleven of your request.

However, the Ministry concluded that there was a perceived conflict of interest which should have been declared.

Contractor's X and Y no longer work for the Ministry. Staff Member A has also finished working for the Ministry for reasons that are unrelated to the employment investigation that was concluded before they left.

*Communications with the Office of the Minister for Social Development and Employment*

The Ministry provided a verbal briefing about this matter to the Minister for Social Development and Employment on 1 April 2021. No further information about the matters in this letter have been shared with the Minister or her Office aside from the matters outlined at the start of this letter.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter available to the wider public. The Ministry will do this by publishing this letter on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi nui



Stephen Crombie  
**Deputy Chief Executive  
People and Capability**