



14 October 2022

Tēnā koe

On 28 August 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *They say never say never. I am sorry but Peter Hughes's testimony before the Royal Commission requires me to make one more request relevant to the Oversight Bill.*
- *I request under the OIA all information relating to the funding of the Office of the Children's Commissioner from the period 2010 to 2022 inclusive. This request is limited to: records of discussions with Ministers about funding of the Office (whether between the Commissioner and Ministers or between officials and Ministers); budget bids by the Office of the Children's Commissioner; and analysis and advice concerning the funding of the Office, including analysis and advice concerning the funding of the Office outside of the Budget cycle and concerning specific budget bids, including analysis and advice about the relative priority of the bids in relation to other budget bids.*

On 16 September 2022, the Ministry contacted you over the phone to discuss the scope of your request. You advised that you were interested in the context of the Ministry's involvement in the funding of the Office of the Children's Commissioner (OCC), in specific relation to Peter Hughes' following statement:

"I wouldn't see the CE MSD having any role whatsoever in controlling or limiting available funding."

On 21 September 2022, you emailed the Ministry to confirm the interpretation of your request as follows:

- *I have two priorities: confirming whether or not the Ministry has played more than a coordinator role in regard to funding for OCC (ie*

has also had an advisory function) and, assuming it does (as I would expect) have an advisory function role, then the substantive reports (analysis and advice) that have examined its funding issues since 2010. I apologise for the 2010 date, but the Minister has made 2010 something of an anchor point in the public debate, so I feel it is necessary to go back this far.

On the same day, the Ministry emailed you to advise that more time was required to respond to your request, due to the consultations necessary to make a decision being such that a proper response to the request could not be made within the original time limit.

I will respond to your request in two parts. First, I will address the Ministry's involvement in the funding of the OCC as I believe this is necessary context to address the statement you have referred to. Second, I will address your request for all information relating to the Ministry's involvement in the funding decisions.

Funding Arrangements

Crown Entities

The OCC is an Independent Crown entity as prescribed in section 7 schedule 1 (part 3) of the Crown Entities Act 2004, with relationships to the responsible Minister and monitoring agency.

Independent Crown entities are independent of government policy and are established to operate at 'arm's length' from Ministerial direction. This can be for a range of reasons, such as ensuring accountability of Ministers in their decision making, ensuring independent accountability of the operation of the Crown entity, when particular skills or experience are required for decision making within the Crown entity, and when the Crown entity is responsible for decisions that should not be politically influenced.

Crown entities are collectively responsible for a large portion of Crown funding, physical assets, and employed workforce.

Responsible Minister

Under the Crown Entities Act 2004, the role of the responsible Minister is to oversee and manage the Crown's interest in the entities they are responsible for.

Usually, the Minister for Children is the responsible Minister for the OCC. The Prime Minister has delegated this role to Hon Carmel Sepuloni, the Minister of Social Development and Employment (the Minister).

The Minister's role for the OCC includes recommending the appointment of each Children's Commissioner to the Governor General, participating in the process of setting the entity's strategic direction, and reviewing the entity's

performance and ensuring prudent governance and management on behalf of the Crown.

The OCC largely relies on Parliamentary appropriations to cover the cost of its operations, like many other Crown entities. The Minister is responsible for approving the total amount of funding to be appropriated from Parliament for the OCC, in conjunction with Cabinet.

Monitoring Agency

The Ministry is the designated monitoring agency of the OCC.

Under the Crown Entities Act 2004, the Ministry's role is to advise and support the responsible Minister of the OCC with performing their duties. The Ministry is not responsible for how much funding is appropriated from Parliament for the OCC.

The Ministry does hold policy functions which fall within the scope of the Children's Commissioner's oversight and advocacy role. The Ministry has structural separation at the Deputy Chief Executive level which prevents the Ministry's policy functions from influencing its role as the monitoring agency of the Children's Commissioner.

Memorandums of Understanding

Monitoring agencies or responsible Ministers often initiate a Memorandum of Understanding (MoU) with Crown entities to set out the key aspects of the relationship and how they will work together. The MoU will determine how the Crown entity can continue to perform their work, while allowing the responsible Minister to carry out their oversight role.

The OCC has an MoU with the responsible Minister, and does not have an MoU with the Ministry. The MoU covers planning and reporting deliverables, and the role of the Ministry as the monitoring agency with respect of funding for the OCC.

The Ministry's involvement in funding

Consistent with the Crown Entities Act 2004, a Crown entity may not submit appropriation requests directly to Parliament; the relevant monitoring agency requests an appropriation on their behalf via the responsible Minister. If the Crown entity is successful in its appropriation request, the monitoring agency draws down on the funding, which Crown entities usually access by submitting invoices for payments, consistent with the terms set out in the MoU.

In its capacity as monitoring agency during the budget process, the Ministry addresses two functions. The Ministry actively supports the OCC with the preparation of budget bid proposals, consistent with their independent organisational objectives and functions. The Ministry also provides advice to

the responsible Minister as to the relative merit of these proposals, without consideration of the potential policy implications, if any, for the Ministry.

It is the responsibility of the Minister and Cabinet to consider the relative risks and merits of these proposals and any trade-offs that may arise.

Conditional release of funding

In 2021, the MoU between the Minister and the OCC included conditionality relating to the release of additional funds.

Cabinet approved \$1.2m as part of Budget 2021 to assist the OCC to develop a transition plan to support the establishment of the Independent Children's Monitor. While Cabinet did not initially invite the OCC to submit this bid, they agreed to consider a time-limited bid on the special recommendation of the responsible Minister.

The focus of the transition plan was to ensure that the OCC had the capability prior and up to 30 June 2022 to continue to carry out its statutory functions, and to provide a smooth transition for the Independent Children's Monitor.

To incentivise the timely production of an agreed transition plan, Cabinet agreed that any additional funding would be conditional on the plan's production, as it had been advised by the Treasury and the Ministry as monitoring agency.

To ringfence this additional funding, it was appropriated to the Ministry, rather than to the OCC. The conditionality was agreed between the responsible Minister and the Children's Commissioner and was formalised in the MoU dated 20 June 2021. This gave the responsible Minister the option of transferring the additional funding to the OCC once she was satisfied that significant progress had been made with the transition.

If you would like to read more about Budget funding for OCC, and the Budget process in general, I encourage you to view information on the Treasury's website, here: www.treasury.govt.nz/publications/budgets.

Your request

- *I request under the OIA all information relating to the funding of the Office of the Children's Commissioner from the period 2010 to 2022 inclusive. This request is limited to: records of discussions with Ministers about funding of the Office (whether between the Commissioner and Ministers or between officials and Ministers); budget bids by the Office of the Children's Commissioner; and analysis and advice concerning the funding of the Office, including analysis and advice concerning the funding of the Office outside of the Budget cycle*

and concerning specific budget bids, including analysis and advice about the relative priority of the bids in relation to other budget bids.

Your request for all information is very broad, and substantial manual collation would be required to locate and prepare all documents within scope of your request. 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.

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 and any attached documents 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.

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 or 0800 802 602.

Ngā mihi nui



Magnus O'Neill
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