



30 MAR 2021

On 23 December 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act) the following information:

1. *The Porirua City Council had a 30% drop in revenue in April 2020. In May 2020 it received higher revenue due to rates being paid, even though the rate payments were not a lot higher than in May 2019. The Council said that it had been told by the MSD to repay the wage subsidy it received.*

Please provide any MSD document giving reasons for this decision and any documents in which it was recommended to not follow this precedent and not to write to all recipients and ask them to make repayments if their revenue had on average not fallen below 30% for the 12 weeks of the wage subsidy they received.

2. *What advice has been given to the Minister of Social Development regarding the need to request wage subsidy repayments due to the lockdown being shorter than anticipated and the business upsurge afterwards being far greater than anticipated?*
3. *Has or will advise be given to the Minister of Social Development regarding any of the following information?*
 - a. *It was very easy for recipients to arrange a 30% or 40% drop in revenue for one month and then have a similar increase the next month.*
 - b. *The IRD has just sent us the attached figures which show that net GST received for the 9 months to 30 September increased by 14% compared to the same period in 2019. The net GST is arrived at by deducting the GST on expenditure from the GST on income. The 14% increase indicates that, despite a short lockdown, business profitability increased significantly. Those who had made losses and were paid refunds declined by 2% in 2020. The net GST was up \$ 2,176 billion and was paid on increased business profitability of \$14,506 billion. In addition, legislation exempted the wage subsidy from GST so it was an added bonus of \$14 billion.*
 - c. *The Reserve Bank figures we sent you showed that business overdrafts had been reduced by \$5.6 billion and business bank deposits increased by \$17.1 billion so businesses were \$22.7 billion better off.*

- d. *There have been over 100 articles in the news media about the wage subsidy and about well known public companies in the same industry who either did not apply for it or repaid it or are now refusing to pay despite reporting high profits. These public companies are just the tip of the iceberg and there is an increasing volume of Government statistics and business statistics which indicate that most businesses have wrongly obtained or retained all or part of the wage subsidy.*
- e. *The data shows that the Government should be writing to all of the 750,000 recipients and require them to repay the wage subsidy unless they can provide evidence that they complied with the Declaration they signed and actually did require the wage subsidy. The amount which could be recovered is estimated to be \$5,000 million to \$10,000 million.*

On 11 February 2021, the Ministry contacted you to extend the timeframe for responding to your request. The Ministry advised you that a decision would be provided to you by no later than 25 March 2021.

I will answer your questions in turn.

1. *Please provide any MSD document giving reasons for this decision and any documents in which it was recommended to not follow this precedent and not to write to all recipients and ask them to make repayments if their revenue had on average not fallen below 30% for the 12 weeks of the wage subsidy they received.*

The Ministry has identified the following documents as being in scope of question one of your request:

- Letter, *Porirua City Council Audit Repayment Letter*, dated 15 October 2020.
- Email Chain, *PCC Wage Subsidy Claim #1*, dated 3 September to 10 October 2020.
- Email Chain, *PCC Wage Subsidy Claim #2*, dated 14 to 15 September 2020.
- Email Chain, *RE: COVID-19 subsidy repayment 53037169*, dated 15 October 2020.

You will note that the names of some individuals are withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

Some information is withheld 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.

Some information is withheld 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.

Some information has also been deemed to be out of scope of your request.

As previously stated to you in past responses, the Wage Subsidy was set up on a high trust model. Furthermore, the Ministry does not hold any documents which outline why a rationale was not formed to write to all recipients of the Wage Subsidy to ask them to make repayments if their revenue had not fallen below 30%. As such, this aspect

of your request is refused under section 18(e) of the Act, as the information requested does not exist.

2. *What advice has been given to the Minister of Social Development regarding the need to request wage subsidy repayments due to the lockdown being shorter than anticipated and the business upsurge afterwards being far greater than anticipated?*

I can confirm that the Ministry has not provided the Minister for Social Development and Employment with any advice regarding the need to request Wage Subsidy repayments due to the lockdown being shorter than anticipated and the business upsurge being far greater than anticipated. As such, question two of your request is refused under section 18(e) of the Act as the information requested does not exist.

3. *Has or will advise be given to the Minister of Social Development regarding any of the following information?*

Furthermore, I can also confirm that the Ministry has not provided the Minister for Social Development and Employment with any advice or documentation regarding question three of your request. As such, question three of your request is refused under section 18(e) of the Act as the information requested does not exist.

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 and attachments on the Ministry of Social Development'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.

Yours sincerely



George Van Ooyen
Group General Manager, Client Service Support

Emails between Out of Scope [REDACTED] regarding PCC.

National Fraud Manager s9(2)(a) OIA [REDACTED] Senior Accountant Financial Determination -
s9(2)(a) OIA [REDACTED] Principal Lawyer s9(2)(a) OIA [REDACTED]

From: s9(2)(a) OIA [REDACTED] @msd.govt.nz>
Sent: Tuesday, 15 September 2020 11:01 AM
To: s9(2)(a) OIA [REDACTED] @msd.govt.nz>; s9(2)(a) OIA [REDACTED]
s9(2)(a) OIA [REDACTED] @msd.govt.nz>
Cc: s9(2)(a) OIA [REDACTED] @msd.govt.nz>
Subject: RE: PCC Wge Subsidy claim

Hi [REDACTED] OIA [REDACTED]

That makes sense to me s9(2)(h)OIA [REDACTED]

s9(2)(a) OIA [REDACTED]

From: s9(2)(a) OIA [REDACTED] @msd.govt.nz>
Sent: Tuesday, 15 September 2020 10:46 AM
To: s9(2)(a) OIA [REDACTED] @msd.govt.nz>; s9(2)(a) OIA [REDACTED]
s9(2)(a) OIA [REDACTED] @msd.govt.nz>
Cc: s9(2)(a) OIA [REDACTED] @msd.govt.nz>
Subject: RE: PCC Wge Subsidy claim

Hi s9(2)(a) OIA [REDACTED],

Revenue is the key word. And as I understand the employer can choose the month upon which to make the calculations.

For most businesses, invoicing is monthly, but not councils (there are others, such as insurance companies who might invoice annually).

The key issue is revenue recognition and the timing of it. In cash accounting it would be on date of payment. With accrual accounting revenue is recognised before the cash is received. As per the Local govt Act 2002, Councils follow generally accepted accounting practice (GAP). This follows a recognition principle that revenue is recognised when the delivery of promised goods or services matches the amount expected.

Thus the date of the invoice is not indicative as to the timing of the revenue. Rates invoices are issued in advance, thus as each week goes past, the rates in that week become liable. Simply put, rates 'revenue' is an even spread across 52 weeks, it is not a revenue just at the 4 times of the year in which invoiced.

My advice is that the Council be advised that for COVID purposes rates revenue must be apportioned over a 52 week period, regardless of the month they wish to compare and we believe this is consistent with generally Accepted Accounting Principles.

If they believe we are not correct, they should be asked to make a detailed argument as to why and we can reconsider.

I suspect this might result in them accepting our portion and withdrawing.

Apologies if this varies from yesterday's view, however I have had more time to consider this.

Regards,

From: s9(2)(a) OIA [REDACTED] @msd.govt.nz>
Sent: Tuesday, 15 September 2020 9:48 AM
To: s9(2)(a) OIA [REDACTED] @msd.govt.nz>; s9(2)(a) OIA [REDACTED] s9(2)(a) OIA [REDACTED] @msd.govt.nz>
Cc: s9(2)(a) OIA [REDACTED] @msd.govt.nz>
Subject: RE: PCC Wge Subsidy claim

Hi s9(2)(a) OIA

[REDACTED] this is a useful summary thanks. s9(2)(h)OIA [REDACTED]

s9(2)(a) OIA – what has our approach been to other councils and rates?

s9(2)(a) OIA - any view from an accounting perspective about how to deal with the difference in invoicing for rates (which might technically be quarterly) and receipt (which individual rate payers may arrange to pay quarterly, monthly or fortnightly?).

Cheers

s9(2)(a) OIA

From: s9(2)(a) OIA [@msd.govt.nz>](mailto:@msd.govt.nz)
Sent: Monday, 14 September 2020 4:13 PM
To: s9(2)(a) OIA [@msd.govt.nz>](mailto:@msd.govt.nz)
Cc: s9(2)(a) OIA [@msd.govt.nz>](mailto:@msd.govt.nz); s9(2)(a) OIA
s9(2)(a) OIA [@msd.govt.nz>](mailto:@msd.govt.nz)
Subject: RE: PCC Wge Subsidy claim

Hi s9(2)(a) OIA

I have had a brief discussion with s9(2)(a) OIA and due to the timeliness requirement, have completed a brief summary of what the situation appears to be.

I understand s9(2)(a) OIA originally granted the application as the Council maintained they had the revenue decline of the required % from COVID in the month they referred. This was a month in which rates were not invoiced, thus the revenue comparison was against variable revenues that were exposed to COVID impacts and thus would more easily enable the reduction % to be achieved.

Further to this issue, various emails have arisen, one of the latest (below) refers to the Council questioning why they were required to produce a 'cash' based report. I tend to agree with their statements – the standard understanding of revenue in the business/tax /accounting world is that revenue is based on accrual accounting, not cash. If there was to be a departure to this, one would have expected the rules to say so.

However the cash verse accruals matter is not the substantive issue here.

Apparently other Council cases reviewed have resulted in decisions that the rates must be included in the calculation. Some of these other councils have been advised and accepted this. As rates would show no revenue decline and are a very high proportion of a councils revenue (perhaps 65%), including a month with rates would make it nigh impossible to qualify on the % revenue reduction criteria. Thus in order to show the required decline, the Porirua Council have opted for a non-rates month.

I do not see why they cannot do this. All businesses receiving COVID have variations in the timing of their revenue streams, all have been free to choose the months they wish to compare. The Council are not unique in this respect. I suspect it highly likely other councils have not chosen not to do this on some sort of moral grounds, rather than legal ones.

s9(2)(h)OIA

[REDACTED]

Depending on this decision, then this leaves the issue of auditing the required reduction % and the need to show this was COVID related. At this stage we seem to have received only limited 'proof', that being the attached 'clip' –

| | 2019GA - GL Actual 2018/19 | 2020GA - GL Actual 2019/20 | change |
|------------------------------|-------------------------------|-------------------------------|----------------|
| 11 - Rate revenue | (236.95) | 0.00 | (236.95) |
| 12 - Fees and charges | (2,134,335.96) | (1,143,225.97) | (991,109.99) |
| 13 - Subsidies and grants | (1,131,198.83) | (670,939.65) | (460,259.18) |
| AC - Arts and Culture | (1,177.13) | 0.00 | (1,177.13) |
| AR - Aquatics and Recreation | 34,782.60 | 0.00 | 34,782.60 |
| PR - Parks and Reserves | 99,555.77 | 0.00 | 99,555.77 |
| RD - Roading | (1,208,386.53) | (615,461.36) | (592,925.17) |
| SW - Solid Waste | (55,973.54) | (55,478.29) | (495.25) |
| 14 - Investment revenue | (40,773.23) | (24,011.42) | (16,761.81) |
| 17 - Gain on sale of assets | (14,289.26) | 0.00 | (14,289.26) |
| Total | (3,120,834.23) | (1,838,177.04) | (1,482,657.19) |
| Excluding NZTA Subsidies | (2,112,447.70) | (1,222,715.68) | (889,732.02) |

I have not seen an explanatory commentary regarding this extract, I do not believe it is detailed enough to prove the reduction.

Thus we have two matters to attend. One to establish if the rates month must be included, and secondly that [REDACTED] seeks more clarification around this 'proof' of reduction, including showing that any reduction was COVID related.

I hope this assists.

Regards,

Out of Scope

From: s9(2)(a) OIA [REDACTED]@poriruacity.govt.nz>
Sent: Friday, 16 October 2020 3:46 PM
To: COVID19subsidy_refund_request (MSD)
Cc: s9(2)(a) OIA
Subject: RE: COVID-19 subsidy repayment 53037169

Good Afternoon

This Email is to confirm that today Porirua City Council has processed the payment for the repayment of the Wage Subsidy.

Ngā mihi,

s9(2)(a) OIA

General Manager Corporate Services/CFO
Pouwhakahaere Ralonga Rangatōpū/Kaiārahi Pūtea Matua

poriruacity

s9(2)(a) OIA
poriruacity.govt.nz

From: COVID19subsidy_refund_request (MSD) s9(2)(a) OIA [REDACTED]@msd.govt.nz>
Sent: Thursday, 15 October 2020 8:32 AM
To: s9(2)(a) OIA [REDACTED]@poriruacity.govt.nz>
Subject: [EXTERNAL] COVID-19 subsidy repayment 53037169

Kia ora s9(2)(a) OIA

A recent audit of the wage subsidy payment you have received has identified that some of the subsidy needs to be repaid. The attached letter provides the details for repaying this.

If you have any questions about this repayment, please reply to this email. If you have questions about other assistance, please phone 0800 40 80 40 for the wage subsidy line or 0800 559 009 for Work and Income general enquiries. You can also go to www.workandincome.govt.nz for more information.

Ngā mihi

s9(2)(a) OIA
Service Delivery | Ministry of Social Development, PO Box 1556 Wellington 6140

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Porirua City Council Local Authority
PO Box 50218
Porirua 5240

IR number: s9(2)(b)(ii) OIA

15 October 2020

s9(2)(a) OIA
Tenā koe

Thank you for participating in the audit of your subsidy application.

As a result of the audit and based on the information that you provided it has been assessed that a repayment of \$2,564,916.00 is required.

You can pay this amount by internet banking using the details below:

Account number: s9(2)(b)(ii) OIA
Account name: Ministry of Social Development (MSD)
Bank and Branch: Westpac, NZ Government Branch, Wellington
Particular: s9(2)(b)(ii) OIA
Analysis Code: Business name (first 12 letters)
Reference: s9(2)(b)(ii) OIA

If you have any questions regarding this repayment, please reply to the email.

If you have questions about other assistance, please phone 0800 40 80 40 for the wage subsidy line or 0800 559 009 for Work and Income general enquiries. You can also go to www.workandincome.govt.nz for more information.

Ngā mihi

s9(2)(a) OIA

Debbie Raines
National Manager Fraud Intervention Services
Ministry of Social Development

Out of Scope

From: s9(2)(a) OIA
Sent: Thursday, 8 October 2020 4:27 PM
To: s9(2)(a) OIA
Cc: s9(2)(a) OIA
Subject: PCC Wge Subsidy claim

s9(2)(a) OIA
Dear [REDACTED]

Thank you for your recent correspondence setting out the reasons why you consider Porirua City Council was entitled to receive the wage subsidy. You have stated that it was entitled to do so on the basis that it met the eligibility criteria, specifically that it had a reduction in revenue of more than 30% for the relevant period, excluding any income from rates.

The Ministry's view is that, for the purposes of the wage subsidy, rates revenue must be apportioned over a 52 week period. This is consistent with generally accepted accounting principles which councils are required to comply with in accordance with the Local Government Act 2002. This means that income from rates must be taken into account in calculating revenue for the relevant period. As a result, Porirua City Council did not meet the eligibility criteria for receiving the wage subsidy.

As per your declaration, thank you for complying with your obligations and notifying us about your changes. In these obligations, you also agreed to repay the subsidy if you were not or stopped being eligible for the subsidy. As your revenue loss does not meet the 30% threshold, we will commence a refund process.

If you have any further information you consider to be relevant to your eligibility to receive the wage subsidy, please provide that information, otherwise the Ministry will proceed based on the information provided to date.

Yours sincerely,

s9(2)(a) OIA

s9(2)(a) OIA |
Ph: s9(2)(a) OIA
s9(2)(a) OIA @msd.govt.nz

Ministry of Social Development: 22 Bridge Street | Private Bag 24, Nelson 7040

MSD purpose:

We help New Zealanders to be safe, strong and independent
Manaaki tangata, manaaki whanau

From: s9(2)(a) OIA
Sent: Thursday, 3 September 2020 4:41 PM
To: s9(2)(a) OIA
Cc: s9(2)(a) OIA
Subject: PCC Wge Subsidy claim

s9(2)(a) OIA

The following is PCC response to your query of 27 July regarding the cash flow assessment, and where you requested we re-visit our calculations taking into account all streams of revenue, including rates payments received.

We would appreciate knowing why you seem to be wanting to review the basis of Revenue calculation. We submitted our application in good faith based upon normal accounting revenue recognition rules including GAAP. You seem to be suggesting that "cash accounting" is how revenue should be based. This was never set out in any of your publications etc, and indeed the recent advice re extension of the scheme continues to talk of Revenue – not cash.

Nevertheless, we have performed the exercise on a cash basis as requested. This has taken considerable time and effort to achieve as all our records are on an accrual basis. We needed to go back and analyse every deposit received to understand its make up as represented "cash revenue". This was particularly challenging for April 2019 data. Clearly it would not have been governments intention to make this process difficult and as time consuming that the "cash" approach clearly is.

Our analysis of our cashflow for both April 2019 and April 2020 has determined that there was a 26% reduction in cashflow when comparing April 2019 to April 2020. Had the requirement been for cash only then clearly at @26% we would not have met the criteria and would not have applied.

When PCC submitted our original application, we believe we abided by the rules in place at the time and verified that PCC had realised a greater than 40% drop in revenue. PCC used normal revenue recognition rules that are used in local government to make this calculation. These rules have been in place for years and are agreed by our auditors.

We believe your query has resulted from approaches from one of our ratepayers who has challenged our approach with regards how rates were treated in the calculation. This relates to the accounting policy regarding when rate revenue is recognised. Our policy and that used within the sector is that the full annual rate charge is recognised as revenue at the time the annual rate assessment is sent to ratepayers - usually in July. Below is an extract from Auckland Council's reports to show how it is applied across the sector

AUCKLAND COUNCIL GROUP INTERIM REPORT - 31 DECEMBER 2019

Tauāki ā-moni whiwhi, ā-whakapaunga pūtea **Statement of comprehensive revenue and expenditure**

For the six months ended 31 December 2019

| DESCRIPTION | 2019/20 | UNAUDITED 1 JULY 2019 TO 30 JUNE 2020 | UNAUDITED 1 JULY 2018 TO 30 JUNE 2019 | ADJUSTED 1 JULY 2019 TO 30 JUNE 2020 |
|---|---------|--|--|---|
| REVENUE | | | | |
| Rates | AT | 1,621 | 1,778 | 1,700 |
| Leads and user charges | | 725 | 661 | 1,312 |
| Grants and subsidies | | 341 | 243 | 612 |
| Development contributions | | 68 | 99 | 576 |
| Other revenue | | 251 | 733 | 664 |
| Vedette assets | | 229 | 239 | 886 |
| Unapplied revenues (restated using effective interest method) | ? | 9 | 15 | 1 |
| Other finance revenue | | | | 1 |
| Total revenue excluding other gains | | 3,494 | 3,761 | 4,570 |
| Expenditure | | | | |
| Employee benefits ¹ | | 498 | 647 | 911 |
| Depreciation and amortisation | | 464 | 454 | 672 |

He pito kōrero mō ngā Tauākī Tahua Pūtea

Notes to the Financial Statements

Section A: Financial performance

A1 Revenue

Rates revenue is recognised in full at the point of issuance of the ratings notice and measured at the amount assessed, which is the fair value of the cash received or receivable.

Sources of revenue are consistent with prior periods.

A2 Net other gains and losses

| MILLION | UNAUDITED 13 MONTHS TO 31 DECEMBER 2019 | UNAUDITED 13 MONTHS TO 31 DECEMBER 2018 | AUDITED 13 MONTHS TO 31 JUNE 2019 |
|---|---|---|---|
| Net gains/(losses) from financial instruments and derivatives | (57) | (187) | (163) |
| Net gains/(losses) on other | 16 | (9) | 12 |
| Total net other gains and losses | (41) | (176) | (151) |

The drop in “lost revenue” to 26% under a cash basis is that you are requiring us to account for a rate instalment, which drives up the total cash revenue in the period. The drop-in revenue from our operating activities remains the same but because the “base” is higher it results in a lower percentage change – simple maths.

NZ accounting conventions need to be respected. PCC is concerned that you are looking to impose a different approach to us that was not set out in any of the guidelines etc that MSD produced.

A change in approach would need to be applied to all entities that had applied for the subsidy.

We appreciate that revenue recognition within our sector can be difficult to understand, but it does follow the standards set out by Government and the Office of the Auditor General.

If MSD still have issues with PCC claiming the subsidy we would request a meeting to resolve the matter.

We would also like you to note that we are working with our insurers in contemplating a Business Interruption insurance claim for lost revenue because of covid-19 lockdown. The quantum contemplated may result in us not meeting the 30% limit which would then see us refund the subsidy received. However, there is much uncertainty about success with the claim at this stage as

- *The insurer would need to accept the total amount claimed to see us fall under 30% and*
- *The claim falls under a collective policy with other councils in the Wellington region but is capped to a maximum pay-out of \$1m – depending upon other councils claims under the policy our claim limit may be adjusted proportionately.*

Regards

s9(2)(a) OIA

Principal Advisor Strategic Finance
Mātanga Matua Pūtea Rautaki

poriruacity

s9(2)(a) OIA
poriruacity.govt.nz

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