



28 July 2020

Dear [REDACTED]

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request dated **30 June 2020**, made pursuant to the Official Information Act 1982 ("OIA").

Your Request

As clarified via email correspondence with our Head of Communications on 1 July 2020, you have requested the following information:

November 2019 NZ Infra bid documents including all reports prepared by external partners or consultants on behalf of NZ Infra appended to or referenced in the bid documents.

Our Response

We are declining your request based on a number of applicable grounds from the Official Information Act, as set out below.

To explain, the bid was submitted by NZ Infra Limited which is a New Zealand limited liability company established on a commercial basis by the New Zealand Superannuation Fund (NZSF) and Canadian infrastructure investor CDPQ Infra, a subsidiary of Canadian institutional investor Caisse de dépôt et placement du Québec. NZSF and CDPQ Infra are (through subsidiary entities) 50:50 shareholders in NZ Infra.

As part of a competitive and confidential delivery partner selection process run by the Ministry of Transport, NZ Infra developed a comprehensive and detailed proposal for the City Centre to Māngere Light Rail project, utilising the expertise of a range of global and local experts.

The bid documents that were presented to the Government in November 2019, including reports prepared on behalf of NZ Infra by external partners and consultants, are highly commercially sensitive and confidential, and remain the valuable intellectual property of NZ Infra.

In responding to Official Information Act requests we typically provide of a list of the documents that have been requested and the withholding grounds applicable to each. In this case, while we have reviewed these documents and considered whether to do this, we have concluded that their names and nature, including the details of the parties that authored or contributed to these reports, are confidential and commercially sensitive. Disclosing the number, names or nature of these reports in any shape or manner would both breach our confidentiality undertakings and provide readers with an insight into the scope of nature of the due diligence undertaken by NZ Infra. Given NZSF and CDPQ Infra wish to pursue further infrastructure investment opportunities, disclosing this information would be unreasonably prejudicial to our commercial position, by undermining our ability to negotiate with potential advisers and our positioning in future competitive bid processes.

We have considered whether the public interest in favour of disclosing the information outweighs our reasons for withholding it, and have concluded that it does not. We note that the Guardians of NZ Superannuation, the Crown entity that manages, the NZSF has identified domestic infrastructure investment as a key and ideal investment category through which it can advance the Ministerial directive it has received from the NZ Government to explore ways of increasing the allocation to New Zealand assets in the NZSF, in a manner consistent with the NZSF's commercial mandate. This consideration further reinforces the public interest consideration in withholding the information. We also note that the public interest in the relevant information you have requested is significantly reduced given that:

- NZ Infra's involvement in the City Centre to Māngere Light Rail Project has ceased; and
- Significant amounts of information concerning the City Centre to Māngere Light Rail Project are already available to the public.

We have therefore reached the decision that the balancing test required, for each of the reasons outlined in the below table, favours non-disclosure of the information requested. Further detail regarding the grounds on which we have based our decision is provided here.

Clause	Grounds	Explanation
9(2)(a)	protect the privacy of natural persons	The bid documents contain names and CVs of NZ Infra's proposed team members. It is necessary to withhold these names and CVs in order to protect the personal information they contain and the privacy of the individuals concerned. We cannot see any public interest in, or benefit from, the release of this information, and we do not believe it is required for the purposes of transparency and accountability.
9(2)(b)(i)	protect information where the making available of the information would disclose a trade secret	The bid documents and associated reports contain confidential information comprising trade secrets: technical, technological and system/operational information developed using the institutional knowledge and collective expertise of NZ Infra, NZSF and CDPQ Infra, including both information specific to the City Centre to Māngere Light Rail project and confidential information relating to light rail and other relevant investment projects from around the world. This light rail, infrastructure development, stakeholder engagement and financing expertise has been developed over a number of years at considerable effort and cost to NZSF and CDPQ Infra, global institutional investors actively pursuing other investment opportunities, access to many of which are subject of competitive processes. Protecting these trade secrets is critically important to both NZSF and CDPQ Infra's competitive and commercial positioning as investors.
9(2)(b)(ii)	protect information where the making available of the information would be likely unreasonably to	As noted above, releasing the bid documents and associated reports would prejudice the commercial position of both NZSF and CDPQ Infra. NZSF and CDPQ Infra are global institutional investors operating on a commercial basis. In doing so, we compete for the best investment opportunities

Clause	Grounds	Explanation
	prejudice the commercial position of the person who supplied or who is the subject of the information	<p>globally. Disclosing the requested information has the potential to compromise both parties' commercial and negotiating positions in relation to other market processes, participants and potential bid advisers in the future, by giving away both our intellectual property (which has been developed using significant time and resources) and a sense of the nature and scale of our approach to due diligence. The global infrastructure market is highly competitive, and any disclosure of commercially sensitive information can have a substantially prejudicial impact on the ability to secure new projects at all or on favourable terms. Furthermore, we note that the Government has the option of engaging with NZ Infra to see how the proposal NZ Infra has prepared can support the next phase of the project. If the Crown decides to exercise this option, NZ Infra's commercial position would be prejudiced if the information and know-how the Crown is seeking to access is already public.</p> <p>Aspects of the bid document also reflect technical information provided by the Government. Given that the Government is still assessing how to progress the City Centre to Māngere Light Rail project, any disclosure of commercially sensitive information may have a prejudicial impact on the Government's commercial position should it seek to complete the project in the future.</p>
9(2)(ba)(i)	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, or information from the same source, and it is in the public interest that such information should continue to be supplied	<p>While the Government's partner selection process has ended, confidentiality agreements relating to that process, the shareholders' agreement between NZSF and CDPQ Infra and the work undertaken by external suppliers on NZ Infra's behalf remain in place. As noted above, NZSF has partnered with a third party investor, CDPQ Infra, to establish the NZ Infra company and develop the NZ Infra bid. Disclosing NZ Infra's bid documents and reports commissioned on its behalf and its expense would undermine the willingness of investors to partner with NZSF in future transactions, thus prejudicing the Guardians' ability to invest the NZSF on a commercial and global best practice basis, as required by its legislative mandate. It is critical that we maintain the highest standards of commercial confidentiality in our dealings with such investors. They will not wish to work with us if we cannot uphold the confidentiality of commercially sensitive information.</p> <p>Critically, NZSF needs to partner with top tier investors, including private sector and international investors, in direct investment transactions and substantial infrastructure transactions such as this. This is because NZSF is unable, under its founding legislation, to own more than 50% of an operating entity.</p> <p>There is therefore a very strong public interest in ensuring NZSF is able to maintain and develop</p>

Clause	Grounds	Explanation
		strategic investment partnerships with leading investors such as CDPQ Infra. Given NZSF is for the benefit of all New Zealanders, it is in the public interest that we can continue to attract capable and compatible private sector and international investors to work with us and share commercially sensitive information and expertise with us on investment opportunities.
9(2)(i)	enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities	<p>The reasons here are the same as in 9(2)(b)(i), 9(2)(b)(ii) and 9(2)(ba)(i). NZSF and CDPQ Infra are global institutional investors operating on a commercial basis. In doing so, we compete for the best investment opportunities and investment partners globally. Disclosing the requested information has the potential to compromise both parties' commercial and negotiating positions in relation to other market processes, participants and potential bid advisers in the future, by giving away our intellectual property (which has been developed using significant time and resources) and a sense of the nature and scale of our approach to due diligence, and undermining the willingness of other investors and business partners to deal with us. Doing so would significantly impair our ability to undertake our commercial investment activities.</p> <p>As noted above, the Government continues to explore options to progress the City Centre to Māngere Light Rail project by separate means. Disclosing the requested information could prejudice its ability to undertake this commercial activity effectively.</p>
9(2)(j)	enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	The Government has the option of engaging with NZ Infra to see how the proposal NZ Infra has prepared can support the next phase of the project. If the Crown decides to exercise this option, the two parties will need to enter into negotiations. If the Crown decides to exercise this option, NZ Infra's negotiating position would be prejudiced if the information the Crown is seeking to access is already public.
9(2)(k)	prevent the disclosure or use of official information for improper gain or improper advantage.	The Government has indicated that it remains committed to the City Centre to Māngere Light Rail project. Given this, disclosure of NZ Infra's bid documents and associated reports would give other parties who might wish to explore future opportunities to invest in, build or operate City Centre to Māngere Light Rail an improper gain in that they would get the benefit of the very substantial work undertaken by NZ Infra and the various global and local consultants paid for by NZ Infra without having had to contribute to the cost of this work. Moreover it may provide insights into NZSF and CDPQ Infra's methodology, processes

Clause	Grounds	Explanation
		and commercial assessments that third party competitors could exploit in other unrelated infrastructure processes.

If you wish to discuss this decision with us, please feel free to contact Catherine Etheredge on cetheredge@nzsuperfund.co.nz or 0274 777 501.

General

You have the right to seek a review by the Ombudsmen's Office of our decision to withhold the information. Contact details for the Ombudsmen's Office can be found at: <http://www.ombudsmen.parliament.nz/>.

Yours sincerely



Matt Whineray
Chief Executive Officer