



20 August 2018



Dear 

## REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request to the Guardians of New Zealand Superannuation (“**Guardians**”), the manager of the New Zealand Superannuation Fund (“**NZ Super Fund**”, “**Fund**”), dated 23 July 2018 made pursuant to the Official Information Act 1982 (“**OIA**”).

### Your Request

In your email of 23 July you explained that you were “interested in the [NZ] Super Fund’s position on divestment from the four Israeli banks, and how it has evolved since 2014. You said that you did not require “all information” held by the NZ Super Fund, but were interested in:

1. *Super Fund’s communications with Palestine solidarity groups, particularly those who have issued press releases in recent years calling upon Super Fund to divest from the four Israeli banks.*
2. *Any media talking points, or communications with the media.*
3. *Any discussions the Super Fund may have had with other organisations, for example the Government Pensions Fund of Norway or other bodies that the Super Fund consults with on such issues.*
4. *Any references to developments since 2014 such as:*
  - a. *Pension funds in Europe having divested from Israeli banks conducting business with Israeli settlements (for example, PGGM, FDC, Sampension).*
  - b. *The report “Bankrolling Abuse: Israeli Banks in West bank Settlements”, Human Rights Watch, 29 May 2018.*
  - c. *UN Security Council Resolution 2334.*

Please note that, based on the above, we have limited our response to documents produced after 2014.

Per point (1) of your request, we have included correspondence with Palestinian solidarity groups, where the correspondent has identified themselves as representing such a group. We have excluded correspondence in respect of the Fund’s investments in Israeli banks with people who have contacted us as private individuals.

Per point (2) of your request, we have confined our response to media materials and correspondence that relates to the Fund’s investments in Israeli banks. Materials and correspondence relating to other investments has not been captured.

In answer to point (3) of your request, we have not held discussions with other funds or organisations specifically about the Israeli banks.

As per point (4) of your request, we provide background context below on our exclusion approach to companies with operations in the Occupied Palestinian Territories (“**OPT**”) since 2014.

## Context

As you are aware, in deciding whether a company is breaching the Guardians' responsible investment standards and how material that breach is, we take account of the proximity and importance of the company's actions, and our ability to engage with the company to change its business or practices.

We draw a distinction between being directly and materially involved in an activity versus being a supplier of materials or services in the normal course of business. In doing so, we consider whether the product or service is integral to the activity and tailor-made, as opposed to being an off-the-shelf substitute or readily replaceable alternative.

When making the decision to exclude Africa Israel, Elbit and Shikun & Binui from the Fund in 2012, we also reviewed the activities of a number of other companies with business interests in the OPT to ensure that our decision-making was consistently applied. We remain comfortable with where we drew the line on issues of materiality and proximity, and believe we have acted consistently on this issue.

We monitor UN Security Council resolutions relating to the OPT and the New Zealand Government's voting position in order to ensure that our position is aligned with that of the New Zealand Government. In January 2017 we reviewed UN Security Council resolution 2334 (refer doc #2079722) in order to assess if the boundaries on which we had based our exclusion decisions relating to companies operating in the OPT should be reconsidered.

We concluded that the resolution did not draw any additional distinctions around particular business activities that would lead us to look further into potential exclusions based on a business activity. The resolution reaffirmed New Zealand's long-standing position on the issue, fully recognising the illegality of Israeli settlements in the OPT. We reached the same conclusion after our review of UN Security Council resolution 72/240, adopted the following year (refer doc #2531350).

We also regularly review our research on the companies that we have excluded from the Fund due to poor Environmental Governance and Social (ESG) practices, including the companies that have been excluded due to their operations in the OPT, to ensure that our exclusions are based on current information and are as accurate as possible. The most recent review was undertaken in February 2018, and no changes were made to our exclusion list, in respect of the Israeli companies, as a result.

The report "*Bankrolling Abuse: Israeli Banks in West Bank Settlements*", Human Rights Watch, 29 May 2018, brought to our attention two further construction companies that may meet our exclusion criteria; however, neither company is held in the Fund's portfolio.

In document #1601574 we reference our consultations with EIRIS, now Vigeo Eiris, a research agency. Following a review of stakeholder sources, their assessment concluded that there were allegations that one of the company's (being Israel Chemicals) subsidiaries supplied white phosphorus to the US Department of Defence.

Following a conversation with a senior analyst in charge of military research at EIRIS, we concluded that it was not possible, based on stakeholder sources available, to track a credible linkage between the company and a breach of human rights standards or international law by the Israeli Defence Force.

## Our Response

Details of the information we have pertaining to your request, and our response in respect of that request, are set out in **Table 1 below** this letter. The information we are releasing can be found **attached**, at **Appendix 1**.

We have withheld documents, as well as portions of certain documents, on the basis that we have a good reason for doing so under section 9 of the OIA. In **Table 1** we have identified the particular grounds that apply to each document.

The general bases on which it is necessary for us to withhold the information, and the grounds under the OIA that we refer to, are as follows.

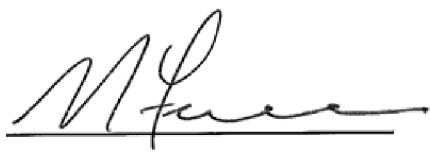
**Section 9(2)(a)** – *“Protect the privacy of natural persons”*. Names and contact details pertaining to individuals other than senior managers have been withheld in order to protect the privacy of natural persons. We cannot see any public interest in, or benefit from, the release of such personal information. Information regarding the identity of these individuals is not required for the purposes of transparency and accountability of the Guardians’ activities.

**Section 9(2)(g)(i)** – *“Maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown.”* It is important for our efficient and effective operations that our staff and officers are able to express their opinion freely and frankly. The information in question includes opinions of staff members who prepared those materials. The release of such information is likely to inhibit frankness and candour in the future which will be detrimental to good investment decision making and contrary to the public interest.

## General

You have the right to seek a review by the Ombudsmen's Office of our decision to withhold the information. Please note that we may choose to publish our response to your request on our website at [www.nzsuperfund.co.nz](http://www.nzsuperfund.co.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Fennell', is written over a horizontal line. The signature is enclosed in a thin black rectangular border.

Mark Fennell  
Acting Chief Investment Officer

**Table 1**

Pg.	Document Number	Date	Title	Relevant Sections	Status	Withholding Grounds (if applicable)
1	1269669	01/08/2018	Responsible Investment - FAQs	"Why have you excluded some companies active in the illegal settlements in the Occupied Palestinian Territories and not others?"	Partially released	Relevant section extracted
2	2079722	21/03/2017	Adoption of resolution 2334 by the UNSC	All	Released in full	
5	812254	18/02/2016	List of companies in OPT from various sources.xlsx	All	Released in full	
6	2531350	03/07/2018	Adoption of resolution 72/240 by the UN General Assembly on 20 December 2017	All	Released in full	
8	839945	05/03/2013	FW: Letter for Gavin Walker attached - Palestine (2013-03-05)	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
9	<i>Attachment</i>	-	Palestine - superfund - 4 March 2013			
14	1171462	21/05/2014	FW: RI data for the Wellington Palestine Group	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
15	<i>Attachment</i>	-	1167177 - RI - For Wellington Palestine Group			
16	1307281	04/08/2014	FW: NZ Govt must respond to Israel's Gaza onslaught - Green Party Media Release	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy

18	1306562	04/08/2014	RE: NZ Govt must respond to Israel's Gaza onslaught - Green Party Media Release	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
20	1309283	06/08/2014	Op-ed from Adrian Orr, CEO NZ Superannuation Fund	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
21	<i>Attachment</i>	-	1306191-5 How we invest op ed			
23	1331729	21/08/2014	Petition circulating on internet - FYI	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
25	1391825	20/11/2014	As discussed	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
27	1390047	20/11/2014	NZ Super Fund - delegation from Palestine Solidarity Network	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
28	<i>Attachment</i>	-	Palestine Solidarity Network letter 20 November 2014			
29	1392420	12/12/2014	Letter from the Chairman & Meeting - Palestine Solidarity Network	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
30	<i>Attachment</i>	-	Letter to Palestine Solidarity Network from the Chairman, 10 December 2014			
31	1420202	27/01/2015	Re: Letter from the Chairman & Meeting - Palestine Solidarity Network	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
32	1450275	17/02/2015	RE: stakeholders	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy

34	1619239	26/04/2015	NZSF complicit in Israel's war crimes against children in Gaza	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
37	1601574	15/05/2015	RE: Palestine Solidarity Network	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
40	Attachment	-	1561669 - Israel Company Holdings 26 April 2015			
41	1610267	22/05/2015	FW: Letter from Adrian Orr re. Palestine Solidarity Network	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
42	Attachment	-	Letter to Philippa Mcneale, Palestine Solidarity Network from A. Orr, 22 May 2015			
43	1619243	04/06/2015	RE: NZSF complicit in Israel's war crimes against children in Gaza	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
46	1784426	05/09/2015	White Papers	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
47	Attachment	-	Letter to CE re white papers 050915			
48	1972408	28/08/2016	Attention: Matt Whineray	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
49	Attachment	-	2016-08 WPG NZ Superfund			
60	1974624	01/09/2016	Fwd: RE: Letter to Matt from Wellington Palestine Group - response needed	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
62	1976221	05/09/2016	Sent on behalf of Mr Whineray - New Zealand Superannuation Fund	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
63	Attachment	-	NZSF MW Respond to Wellington Palestine Group Sept 2016			

64	2515812	31/05/2018	RE: FYI	All	Partially Released  Staff names and contact details redacted	Section 9(2)(g)(i) – Free and Frank  Section 9(2)(a) – Privacy
67	2523663	18/06/2018	Divestment of Israeli banks	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
68	2523774	19/06/2018	RE: Divestment of Israeli banks	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
70	2539092	20/06/2018	NZ Super Fund subject of petition to parliament on Israeli investments	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy
71	2523568	02/07/2018	Letter Response - Investments in Israel - Palestine Solidarity Network	All	Released in full other than staff names and contact details	Section 9(2)(a) – Privacy