

21 May 2021



Dear 

## REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request to the Guardians of New Zealand Superannuation (“**Guardians**”), as the manager of the New Zealand Superannuation Fund (“**Fund**”) dated 2 March 2021, modified on 3 March and clarified on 5 March made pursuant to the Official Information Act 1982 (“**OIA**”).

### Your Request

- You have requested all documents held by the NZ Super Fund that refer to divestment of: Israeli banks, Turkish banks, Saudi Arabian banks, Chinese banks, Australian banks, Canadian banks, US banks, and any other countries’ banks.
- In your response to our request for clarification, you stated that you would also like us to include “divestment that does not specifically include banks (i.e. divestment from country-specific companies, whether banks or otherwise).”

You have limited this request to documents created over the past three years only, and to certain other exclusions set out in our letter of 5 March 2021. You have indicated to us that you are happy to receive documents progressively.

### Interim Response

As we have advised you by separate correspondence, our individual company exclusion decisions are based on the company conduct rather than the company’s domicile. As such, the Guardians has not undertaken a work programme in respect of excluding banks of a particular country.

Therefore, our information search in response to your request has captured only documents referring to divestment from banks which we understand to be financing settlement activities within the Occupied Palestinian Territories and which (albeit this was not the driver of the exclusion) are currently banks which are all domiciled in Israel.

In terms of information about divestment from “country-specific companies”, again, our information search has not captured any documents. As noted above, this is to be expected given our focus is on corporate behaviour of companies in which we are a shareholder.

As set out in our Responsible Investment Framework, we do exclude investment in the government bonds of any nation state where there is widespread condemnation or sanctions by the international community, and New Zealand has imposed meaningful diplomatic, economic or military sanctions aimed at that government. You can find a list of the countries to whom this applies in the second tab of our exclusions lists, available on our website. As your request was focused on the divestment of companies we have not identified any relevant documents.

With respect to the exclusion of the five banks involved in financing settlements in the Occupied Palestinian Territories, the reasons for our decision are set out in the Investment Committee paper proactively disclosed on our website. For your information, a number of other background documents relating to this issue have also been disclosed by us under the OIA. These are available at: <https://www.nzsuperfund.nz/publications/disclosures/oia/>.

Your request has captured a large number of documents referring to the divestment of these banks and it has taken us significant time and effort to identify materials within the scope of the request. We have made decisions in respect to some of these documents. We are continuing to consider and consult on the release of approximately 65 further documents to you and will be in touch as soon as we can in respect of them. We anticipate continuing to release these in batches to you. We apologise for the delay.

Please find below a list of documents that we are releasing to you today at **Table 1**. The information we are releasing is attached at **Appendix 1**. You agreed that you did not require us to release names and contact details of people in the documents. Where names and contact details have been redacted on the basis of this agreement, we have marked the redactions as “s9(2)(a)” in the Appendix so you can see that it is name/contact information that has been withheld.

Where we have withheld information from the documents that we are releasing, we have considered whether doing so outweighs the public interest in the matter, and have concluded that it does not. The relevant withholding grounds are:

- **Section 9(2)(b)(ii) – “protect information where the making available of that information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.”** The Guardians invests the Fund on a commercial basis and undertakes commercial activities in doing so. We compete in a global market for a variety of suppliers such as investment advisers and responsible investment screening agencies. Our business partners and suppliers are each commercial entities in their own highly competitive markets. They are very concerned about protecting their sensitive commercial information. They will not work with us if we cannot uphold the confidentiality of their information. Releasing this information would prejudice their commercial position by making freely available their professional analysis and judgements, for which we have paid a fee on a commercial basis. We strongly believe that it is in the public interest that we can maintain the highest standards of commercial sensitivity with those we work with.
- **Section 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.”** Some of the documents you have requested contain information that our suppliers have provided us on a confidential basis because it is commercially sensitive. We operate in a competitive market and if we cannot uphold the confidentiality of commercially sensitive information provided to us in order to evaluate investments, the supply of such information will be jeopardised. In the event that we were to disclose this confidential information to the public, it is likely that other parties with which the Guardians might wish to contract would be reluctant to engage with us because of the risk that we would disclose their confidential information. It is in the public interest that we can maintain the highest standards of confidentiality and commercial sensitivity with those we work with, in order to compete on a level playing field with other private sector investors and maximise returns to the Fund (and thus taxpayers).

We have also withheld a number of documents in full on the basis of **Section 9(2)(h)** of the OIA. They include certain legal advice to Guardians that is subject to **legal professional privilege** and it is necessary for us to withhold this information in order to maintain legal professional privilege. Legal professional privilege is recognised as an important protection that will not be set aside except in the clearest cases. In this case, we do not consider that there is a public interest in the release of this information that outweighs the Guardians' interest in protecting its rights to legal privilege.

### **General**

You have the right to seek a review by the Ombudsman's Office of our response to your request. The Ombudsman's contact details are available online.

Please note that we may choose to publish our response to your request on our website at [www.nzsuperfund.nz](http://www.nzsuperfund.nz).

As previously offered, feel free to call me if you would like to clarify or discuss your OIA requests and our responses in any way.

Yours sincerely

A handwritten signature in cursive script that reads "Catherine Etheredge".

Catherine Etheredge  
Head of Communications  
Guardians of New Zealand Superannuation

**Table 1**

PDF Page No	Document Reference	Document Date	Document Title	Status	Core withholding grounds
1	#2515812	1/6/2018	RE: FYI	All requested information released in full	N/A
4	#2538937	14/6/2018	RE: Israeli investments - letter to PM	All requested information released in full	Identifying personal information (additional to names/contact details) withheld under Section 9(2)(a) - privacy
7	#2529048	14/06/2018	FW: Israeli investments - letter to PM	All requested information released in full	N/A
11	#2523663	18/06/2018	Divestment of Israeli banks	All requested information released in full.	N/A
12	#2539092	21/6/2018	NZ Super Fund subject of petition to parliament on Israeli investments	Released in full	N/A
13	#2523552	19/06/2018	Letter Response - Investments in Israel	Released in full	N/A
15	#2523568	19/06/2018	Letter Response - Investments in Israel - Palestine Solidarity Network	All requested information released in full	N/A
17	#2529312	28/06/2018	Letter Response - NZSF Investments in Israel	All requested information released in full.	N/A
19	#2530391	29/06/2018	Letter Response - NZSF - Investments in Israel	All requested information released in full	N/A
21	#2543492	30/07/2018	RI Digest June-July 2018	All requested information released in full Remainder out scope	N/A
26	#2988221	15/07/2020	Portfolio Monitoring: Bank Leumi July 2020	Partially released	Section 9(2)(b)(ii) – Commercial Sensitivity Section 9(2)(ba)(i) – Obligation of Confidence
35	#2988237	15/07/2020	Portfolio Monitoring: Mizrahi Tefahot Bank July 2020	Partially released	Section 9(2)(b)(ii) – Commercial Sensitivity Section 9(2)(ba)(i) – Obligation of Confidence

PDF Page No	Document Reference	Document Date	Document Title	Status	Core withholding grounds
44	#2988245	15/07/2020	Portfolio Monitoring: Bank Hapoalim July 2020	Partially released	Section 9(2)(b)(ii) – Commercial Sensitivity  Section 9(2)(ba)(i) – Obligation of Confidence
54	#2988246	15/07/2020	Portfolio Monitoring: First International Bank of Israel July 2020	Partially released	Section 9(2)(b)(ii) – Commercial Sensitivity  Section 9(2)(ba)(i) – Obligation of Confidence
63	#2988247	15/07/2020	Portfolio Monitoring: Israel Discount Bank July 2020	Partially released	Section 9(2)(b)(ii) – Commercial Sensitivity  Section 9(2)(ba)(i) – Obligation of Confidence
71	#3051087	10/2020	Israeli bank reactive response Sept 2020	Released in full	N/A
73	#3092317	12/2020	IC Education - Company Exclusions	Released in full	N/A
85	#3137626	19/02/2021	Communications Plan – exclusion of Israeli Banks	All requested information released in full	N/A
92	#3145561	22/02/2021	Email from Guardians to Minister of Finance's office and Treasury: In confidence – No surprises briefing on exclusion of Israeli banks Attachments: <ul style="list-style-type: none"> <li>IC Paper – Exclusion of Israeli Banks January 2021.pdf (this is the paper that is available on our website and to avoid duplication we have not attached it here).</li> <li>#3145484 – Media Statement and Q&amp;A Israeli Banks 2021 – reactive use.DOCX</li> </ul>	All requested information released in full	N/A
98	#3133892	03/2021	Select Committee Q&A March 2021	Relevant portion released in full. Remainder out of scope.	N/A