

8 November 2021

██████████
By email: ██████████

Dear ██████████

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your request to the Guardians of New Zealand Superannuation (“Guardians”), manager of the New Zealand Superannuation Fund (“NZ Super Fund”, “Fund”) dated 30 September 2021, made pursuant to the Official Information Act 1982 (“OIA”). Evidence of your eligibility to submit a request under the OIA was received by the Guardians on 2 November 2021, after follow up emails from Guardians on 4 October 2021 and 8 October 2021.

Your Request

You have requested information relating to the application of the Guardians’ Responsible Investment Framework, and in particular, the processes and principles around divestment decisions, and the recent decision made by the Guardians to divest from a number of Israeli-owned banks. Details of the information we have identified as being within scope of your request are set out below.

Our Response

- 1. You recently responded to a Journalist raising questions about your investments in companies on US blacklists for aiding the genocide of Muslims in China that *“if we exited every company facing conduct concerns, all we’d achieve is to sell our stock to someone who cares less about these issues and is more willing to turn a blind eye.”* This suggests that you have a policy of seeking out unethical companies so that you can crowd out investors who would be “more willing to turn a blind eye” to gross concerns around human rights. Could you please provide evidence of investments made according to this policy over the past year?**

We do not have any such policy, and therefore do not hold the information requested. Information about our approach to divestment is available in our [Responsible Investment Framework](#) and page 65 of our most recent [Annual Report](#).

- 2. Part of the implicit policy is also that you will be strident in raising concerns about human rights with the companies, rather than "turning a blind eye". Could you please provide evidence of correspondence over the past year where you have sought to change the practice of companies you invest in to ensure human rights are upheld?**

The NZ Super Fund is invested in social media companies Meta (owners of Facebook), Alphabet (owners of YouTube) and Twitter. For the past two years, the Guardians has led a global collaborative engagement initiative calling for these companies to strengthen controls to prevent the live-streaming and distribution of objectionable content on their platforms.

More information about the initiative is available on our [website](#), which also includes an open letter to Facebook, Alphabet and Twitter published on behalf of the engagement participants. The initiative was [recently named](#) the Stewardship Initiative of the Year by the United Nations-supported Principles for Responsible Investment.

On [our website](#) we also publish quarterly progress reports outlining the engagements undertaken on our behalf by our external engagement provider Bank of Montreal (BMO). In the most recent quarter (Q3 2021) BMO carried out 24 engagements on human rights issues with companies invested in by the NZ Super Fund.

We note that it is a matter of public record that the Guardians is currently participating in three collaborative investor engagement initiatives related to human rights. These are as follows:

1. Investor Statement on Human Rights and Business Activities in Myanmar. More information is available [here](#).
2. Facial Recognition Initiative. This initiative is engaging with several companies included in our portfolio to address the risks raised by facial recognition technology products and services. More information is available [here](#).
3. Supply chain issues relating to the treatment of minority groups in Xinjiang – we have commenced engagement on this issue, via an external service provider, with companies that source from the region. More information is available [here](#).

While we believe the above addresses your request for evidence, we note that we do not otherwise comment on individual engagements, and therefore decline to provide further evidence of correspondence on the basis that we have good reason to do so, principally under **sections 9(2)(b)(ii), 9(2)(ba)(i) and (ii) and 9(2)(i)** of the Act.

To explain, the Guardians' engagements with investee companies on responsible investment issues are conducted on a confidential basis. For engagements to be successful, the Guardians needs to have a relationship of trust with the investee company in order to gain access to information and develop influence. The companies the Guardians engages with are not likely to work with us if the confidentiality of both the fact of the engagement and the information supplied as part of the engagement process

cannot be upheld. This creates a risk that the supply of information from the companies concerned would be jeopardised, placing future engagements on responsible investment issues at risk.

Publicising the details of specific engagements will undermine the efficacy of current and future engagements, including prejudicing our ability to join collaborative engagement initiatives alongside other investors, which is a critical element of our responsible investment activities. Furthermore, much of the engagement information requested is covered by confidentiality requirements and could also be commercially prejudicial.

- 3. It is also curious that you took the decision earlier this year to divest from Israeli banks because they were lending money for people to buy/build houses. Could you please explain why you are happy for other investors who may be "more willing to turn a blind eye" to this practice to hold stock, and why this is different to the investment you have in the four blacklisted companies referred to in the article?**

We make exclusion decisions based on the clear processes and principles set out in our Responsible Investment Framework. Exclusions can occur in three different ways:

- By country (sovereign bonds of specific countries if they are included in New Zealand's sanctions list)
- By product (companies involved in the production of certain products, by reference to New Zealand laws, international conventions that NZ has signed and significant policy positions of the NZ government). A list of product category exclusions can be found on our website.
- Poor corporate practices.

We do not engage with companies under the first two exclusion categories. In respect of the third category (which is the relevant category for the four companies you are referring to), we may engage with a company first in an effort to use our influence as a shareholder to help the company change its practices. Where companies have not responded to engagement, or we consider engagement is unlikely to be effective, we may choose to exclude that company from our portfolio.

In respect of the four companies you mentioned, we determined that engagement was unlikely to be effective. More information about this decision is available in the [Investment Committee paper](#) proactively released on our website. It was also covered in our recent appearance before the Foreign Affairs, Defence and Trade Select Committee, available to view [here](#).

- 4. I anticipate that you will try to avoid answering the three questions above. Therefore, I seek the information under the Official Information Act if you cannot answer the questions without such enforcement. Further, if the last question is difficult for you to answer directly, I request all correspondence where you discuss the risk(s) of allowing the Israeli stocks to fall into the hands of another investor "more willing to turn a blind eye".**

As we have addressed the three questions above, we are treating this question as not applicable. We have released substantial information about this divestment decision under the Official Information Act, which you can view on our website [here](#) (see 2020/21 tab in the table).

- 5. Moreover, I request all correspondence you have had with experts on the Israeli situation (historical, geopolitical, legal), whether or not they helped you formulate your decision to divest from the banks or not; and all correspondence you had with the banks that showed you were less "willing to turn a blind eye" to their lending.**

We are declining your request for correspondence with experts on the Israeli situation on the basis of **section 9(2)(h)** of the Act, "Maintain legal professional privilege". This correspondence entails certain legal advice to the Guardians that is subject to legal privilege. Legal professional privilege is recognised as an important protection that will not be set aside except in the clearest of 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.

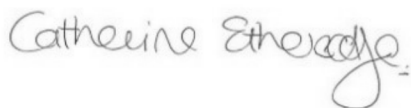
Copies of letters between the Guardians and the relevant companies, and other correspondence, has been released under the Official Information Act and are available on our website [here](#).

Names and contact details of individuals at both the companies and the Guardians have been withheld on the basis of **section 9(2)(a)** of the Act, "Protect the privacy of natural persons". We cannot see any public interest in, or public benefit from, the release of this information. Information regarding the identity of these individuals is not required for the purposes of transparency and accountability of the Guardians' activities. There is no good reason why these individuals in particular should be subject to potential public scrutiny.

General

You have the right to seek a review by the Ombudsman's Office of our decision to withhold some of the information you have requested. Contact details for the Ombudsman's Office can be found [here](#). Please note we may choose to publish our response to your request on our [website](#).

Yours sincerely,



Catherine Etheredge
Head of Communications
Guardians of New Zealand Superannuation