



10 October 2022

Ombudsman reference 557842
MBIE reference OMB2122-040

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Tēnā koe Phil

This letter is in response to your complaint to the Office of the Ombudsman about the Ministry of Business, Innovation and Employment (MBIE)'s decision on your request under the Official Information Act (OIA) regarding our use of the Cobwebs intelligence tools (our reference DOIA 2021-2563).

As you will recall, the information within scope of the request – namely the *Privacy Impact Assessment* and *Short Form Business Case* relating to the Cobwebs tools – was withheld in full under section 6(c) of the OIA, to avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences. We sent our response outlining this decision to you on 27 July 2021.

Revised response

After being notified of the Ombudsman's intention to investigate your complaint, we undertook a point-in-time reassessment of the documents within scope of the request to determine what information, if any, can be released to you, and whether there is any information that is better protected under other grounds in the OIA. As a result, we are now releasing the two documents to you with some revised redactions, which are outlined overleaf.

We still consider that releasing the documents in full would be likely to cause unacceptable prejudice to our efforts in the specific area in which we use the Cobwebs tools. However, having reviewed the documents within scope, we believe that our revised redactions strike the right balance between transparency and accountability for the use of social media and related tools, and the need to withhold information to mitigate specific and significant operational risk.

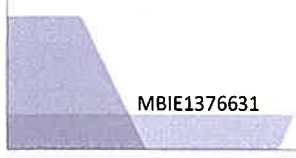
We believe that the information we are releasing to you shows that MBIE has procured, and is using, the Cobwebs tools with robust processes in place to prevent misuse and/or improper conduct.

Impact of improper release of information

It is important to note that we always approach the release of information under the OIA on the basis that it should be made available, unless good reason exists not to. By extension, this means that information can only be withheld where there is good reason to do so.

In the case of certain information about the Cobwebs tools, we believe that the criteria for withholding under sections 6 and 9(2) of the OIA, as well as relevant Ombudsman best practice guidelines, have been met.

The Cobwebs tools are used on behalf of a specific business group within MBIE to assist in meeting legislative responsibilities. Where we have withheld information in the documents, it is because we consider that the release of this information into the public domain would compromise our ability to uphold these



responsibilities, by assisting the very behaviours MBIE is required to stop. Our basis for redacting is therefore to protect this specific function.

Both documents within scope of your request refer in detail to the information we collect, with what resource, and how we use the collected information. The documents also specifically and repeatedly disclose the specific area in which the Cobwebs tools are used to assist MBIE in meeting its legislative responsibilities.

We believe that if information about the way we use the Cobwebs tools were to be released into the public domain, the impact on the function the Cobwebs tools are connected to would be significant. Disclosure of this information would enable and embolden individuals and groups seeking to undermine our efforts in the specific area.

We are aware of activity overseas showing an intent (and ability) of such groups to do exactly this, specifically in response to the public release of information of the kind we are withholding, including tactically altering their behaviour, increasing their operational security or deliberately injecting misinformation to reduce the effectiveness of collection methods.

It is difficult to precisely quantify the real-world likelihood of an individual effort being prejudiced to the extent that we are unsuccessful in meeting our legislative responsibilities. However, if even a moderate event in this particular area were to eventuate, the consequences for New Zealand could be significant and costly to fix.

Revised redactions

As noted overleaf, we are now releasing to you the documents within scope of your request, with some information withheld under the following sections of the OIA:

- 6(a), to avoid prejudice to the security or defence of New Zealand or its international relations, including references to specific information received from our international partners
- 6(c), to avoid prejudice to the maintenance of the law, including the detection and prevention of offences. This includes references to specific Cobwebs products; certain aspects of our methods and skills; information that would disclose the specific area in which the Cobwebs tools are used, so as not to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences
- 9(2)(a), to protect the privacy of natural persons, including the names of key MBIE and project staff (excepting key decision makers) involved with the *Short Form Business Case and Privacy Impact Assessment*, to protect them from being identified in line with MBIE's obligations under the Government's Protective Security Requirements
- 9(2)(b)(ii), to avoid prejudice to the commercial position of the source or subject of information, and includes references to specific arrangements with the vendor as part of the commercial agreement signed between MBIE and Cobwebs Technologies; operational or capital expenditure costings which would enable someone to derive the specific costing arrangements set out in the commercial agreement; references to specific companies (excepting Cobwebs Technologies)
- 9(2)(ba)(i), to protect information collected under an obligation of confidence, including references to specific information received from domestic partners; and
- 9(2)(g)(ii), to protect officers of the department from improper pressure or harassment, in this instance, a key shared mailbox address.

In line with section 9(1) of the OIA, where we have withheld information using the grounds in section 9(2), we have only done so where the reason for withholding outweighs the public interest in its release.

Upon review, we have also determined that certain parts of the documents should have more appropriately made been out of scope of the request, based on its original wording. These are:

- a risk register included with the *Privacy Impact Assessment*; and

- two appendices included with the *Short Form Business Case* as additional context for decision makers, as these appendices do not mention the procurement or use of the Cobwebs tools.

Information already in the public domain

The way MBIE gathers information from publicly available sources, such as social media, in the course of performing our regulatory compliance and law enforcement functions is outlined in several documents. These are publicly available on our website including:

- Our *Transparency Statement*, at <https://www.mbie.govt.nz/about/open-government-and-official-information/transparency-statement/>, which explains how we gather information for regulatory compliance, law enforcement and protective security purposes in order to keep people in New Zealand safe and prevent harm;
- *Procedures for MBIE staff using social media for verification and investigation purposes to support regulatory compliance and law enforcement work*, at <https://www.mbie.govt.nz/dmsdocument/14003-procedures-for-mbie-staff-using-social-media-for-verification-and-investigation-purposes-to-support-regulatory-compliance-and-law-enforcement-work-july-2019>; and
- *Policy for Information Gathering for Regulatory Compliance, Law Enforcement and Protective Security Functions*, at <https://www.mbie.govt.nz/dmsdocument/13997-policy-for-information-gathering-for-regulatory-compliance-law-enforcement-and-protective-security-functions-april-2019>.

The Cobwebs tools have been procured and are used in accordance with these policies and guidelines. This includes undertaking a privacy impact assessment and regular assurance where personal information is to be gathered, to ensure staff act lawfully and appropriately with this information.

Next steps

I trust that this letter and the information we are now releasing in response to your request provide sufficient detail regarding the steps we took to procure the Cobwebs tools and how we use them, as well as our rationale for continuing to withhold some information.

From here, I understand that the Office of the Ombudsman will be in touch with you to see whether our decision to release information has resolved your complaint and, in the event that your concerns are not resolved, the Ombudsman will continue with the investigation and review the information that remains withheld.

Nāku noa, nā



Jacqui Ellis
General Manager, Data, Insights and Intelligence
Deputy Secretary, Digital, Data and Insights

cc: Alison McDonald, **Deputy Secretary, Immigration New Zealand**
Tomas Wakefield, **Investigator, Office of the Ombudsman**

