

7 October 2023

By email: Department of the Prime Minister and Cabinet
Te Whatu Ora (formerly the Ministry of Health)
The Minister for COVID-19 Response
Crown Law Office
Department of Internal Affairs
Department of Workplace Relations and Safety

To whom it may concern

OFFICIAL INFORMATION REQUEST – DETAILS OF THE EXEMPTIONS GRANTED UNDER SECTION 12A COVID-19 PUBLIC HEALTH RESPONSE (VACCINATIONS) AMENDMENT ORDER 2021

1. I am writing to you in my personal capacity as a concerned citizen to make an official information request under the Official Information Act 1982 (“**OIA**”).

Background

2. On 10 September 2021, the Ministry of Health (“**MOH**”) confirmed in response to the OIA request that the vaccine had not been tested to ascertain if it reduced transmission. A copy of the MOH’s letter is set out in **Schedule 1** of this letter.
3. As you are aware, on 26 October 2021 Cabinet agreed to mandate vaccination for work in any setting where a COVID-19 Vaccination Certificate (“**CVC**”) would be required under the so-called COVID-19 Protection Framework¹. The Traffic Light System was also implemented taking away rights from ordinary New Zealanders.
4. Under the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (“**the Order**”) there were a range of exemptions for workers to carry out work without being vaccinated. These included the Health Exemptions under clause 9B (“**Health Exemptions**”), Significant Service Disruption Exemptions under clause 12A (“**SSD Exemptions**”), and Other Exemptions under clauses 9 and 9A (“**Other Exemptions**”) of the Order.

¹ <https://www.mbie.govt.nz/dmsdocument/19989-covid-19-vaccination-mandating-vaccination-for-work-at-the-green-level-and-exemptions>

5. The Minister had the power to grant exemption for the COVID-19 vaccination pursuant to section 12A of the Order. A person who committed an offence by failing to comply with a COVID-19 Order faced large fines or imprisonment under the provision of the COVID-19 Public Health Response Act 2020. In addition, many New Zealanders lost their employment, and some lost their businesses, homes, and ability to pay their bills and put food on the table for their families.

Official Information Response

6. On 5 July 2023, a member of the public wrote to Te Whatu Ora requesting the number of vaccine exemption applications that were received and how many were granted. Te Whatu Ora responded on 2 August 2023 (OIA HNZ00023978²) and stated that:

“From 13 November 2021 to 26 September 2022, a total of 478 applications for Significant Service Disruption exemption (SSD) were received. 103 applications were granted, covering approximately 11,005 workers.

Please note that it is not possible to provide the exact number of workers that were covered by SSDs. This is because it was possible for an organisation to submit an application to cover more than one worker.”

7. According to Dr Guy Hatchard:

One source has told me that 95 consultants in the Dunedin region alone benefitted from vaccine exemptions. Another source has pointed to a group of doctors working in Northland who arranged among themselves to remain unvaccinated. The total appears to run to hundreds and possibly more.

It seems that those granted exemptions were restrained by gag orders.

Rule of Law

8. The doctrine that all people are equal before the law is known as the rule of law. The United Nations³ states that:

“...the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to

² <https://fyi.org.nz/request/23284-how-many-clause-12a-exemptions-were-received-and-approved#incoming-88679>

³ <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>

the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.”

9. As noted by Nathan Batts, lawyer, in a 2021 Law News⁴ article:

“[un]reasonable or irrational legal liabilities risk undermining the rule of law”.

10. It would not seem that the rule of law has not been upheld in New Zealand with the Minister making arbitrary decisions about which classes of New Zealanders would be exempted from having to take the vaccine. It would seem that classes of people gained exemptions where those who had underlying health conditions (e.g., previous issues with heart or blood clots) or had an adverse reaction to a prior vaccine were denied exemptions.

Official Information Request

11. Pursuant to the Act, I request the following information:

- (a) **Applications:** In regard to the applications for exemptions, please provide the following:

- (i) The total number of applications under the other exemption categories being the Health Exemptions and Other Exemptions;
- (ii) All the application documents.

- (b) **Exemptions:** In regard to the exemptions granted, please provide the following:

- (i) The total number of exemptions that were granted under the other exemption categories being the Health Exemptions and Other Exemptions;
- (ii) All the documents relating to the consideration of the applications;
- (iii) The formal decision-making documents;
- (iv) The formal SSD Exemption granted including any conditions imposed on the exemptions.

- (c) **Approval:** The names of the individuals that granted the exemptions;

- (d) **Breakdown:** a breakdown of the number of exemptions:

⁴ <https://haighlyon.co.nz/impact-increased-covid-infringement-fees>

- (i) granted for those who worked for the Government, Government funded organisations, and those who worked for private employers;
 - (ii) granted for each of the following categories medical doctors and their specialty, allied health practitioners and their professions, nurses, nurse practitioners, midwives, health sector administrative staff (the term staff includes employees and contractors for the purpose of this letter), Te Whatu Ora, Health NZ and Māori Health Authority staff.
- (e) **Exemption Correspondence:** correspondence including:
- (i) Briefings that discussed the rationale for the exemptions under the Health Exemptions, SSD Exemptions, and Other Exemptions;
 - (ii) Questionnaires that discussed the rationale for the exemptions under the Health Exemptions, SSD Exemptions, and Other Exemptions;
 - (iii) Cabinet papers that discussed the rationale for the exemptions under the Health Exemptions, SSD Exemptions, and Other Exemptions.

For example, this Ministry of Business Innovation & Employment Briefing dated 12 November 2021 concerning mandating vaccination for work at the green level and exemptions:

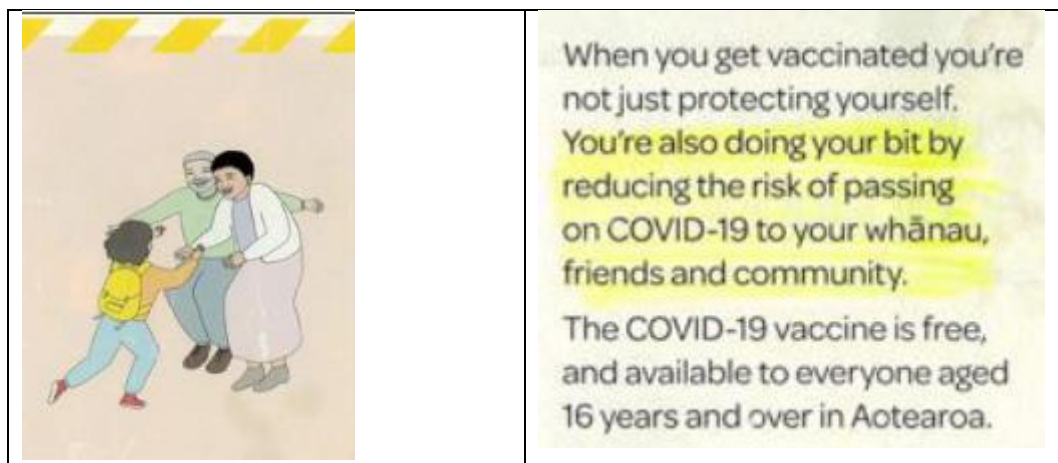
<https://www.mbie.govt.nz/dmsdocument/19989-covid-19-vaccination-mandating-vaccination-for-work-at-the-green-level-and-exemptions>

- (f) **Information on Exemptions:** I note from the link below that exemption information was circulated to Government agencies. All general correspondence sent to private employers on how to obtain exemptions for their employees;

<https://www.transport.govt.nz/assets/Uploads/Application-Exemption-from-COVID-19-Public-Health-Response-Vaccination-Order-2021-clause-12A.pdf>

- (g) **Crown Law Advice:** all the advice from Crown Law concerning the Health Exemptions, SSD Exemptions, and Other Exemptions;
- (h) **Members of Parliament:** the number of members of parliament that received an exemption;

- (i) **Non-Disclosure Agreements:** A copy and/or copies of the template for the Non-Disclosure Agreement(s), or similar document, that people that received exemptions were required to comply with as a term of the exemption and/or sign;
- (j) **Pfizer Contract:** I once again request a copy of the contract between the supplier of the vaccine and the Government which has previously been denied due to commercial sensitivity.
- (k) **Transmission:** All information including briefing, legal advice, other advice, questionnaires, cabinet papers, etc, and similar information which stated that the vaccine had not been tested to ascertain if it stopped transmission. Due to the anticipated volume of information concerning this issue, I am happy for the information to be sent to me in tranches;
- (l) **Advertising Briefs:** All advertising briefs indicated that New Zealanders should take the vaccine to stop the transmission of COVID-19. For example, the advertising brief that resulted in this pamphlet being distributed to letterboxes around New Zealand:



- (m) **Clinical Evaluation:** the Clinical Evaluation dated January 2021 (“the Clinical Evaluation”) raised concerns about the vaccine. I request the names of the members of parliament, the minister, and directors (e.g., the Director of Health) who received a copy of the Clinical Evaluation and the date that it was sent to them. A link to the Clinical Evaluation is set out below for your convenience:

<https://www.docdroid.net/xkCxrt/h202106950-response-documents-redacted-83-97-1-pdf>

12. I look forward to receiving the above information promptly.

Yours sincerely

Kirsten Murfitt

SCHEDULE 1

The MOH's letter dated 10 September 2021



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10 September 2021

Josephine Marsden

By email: josephinemarsden10@gmail.com
Ref: H202110912

Tēnā koe Josephine

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health (the Ministry) on 22 August 2021 for:

"copies of all Pfizer Vaccine studies and Pfizer Vaccine trials that relate to the demonstration of the efficacy of the vaccine in reducing the transmission of Covid-19 in the community."

Reducing transmission was not an outcome measured in trials of the Pfizer vaccine. Therefore, your request is refused under section 18(g)(i) as the information requested is not held by the Ministry of Health and there are no grounds for believing it is held by another agency subject to the Act.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā

A handwritten signature in black ink, appearing to read "Nick Allan".

Nick Allan
Manager OIA Services
Office of the Director-General

