

11 March 2010

Thomas Beagle
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Dear Thomas

ACTA NEGOTIATIONS

Thank you for your letter of 10 February 2010 inquiring about the Anti-Counterfeiting Trade Agreement (ACTA) negotiations under the Official Information Act 1982 (the "OIA").

While my responses to your questions are provided below, certain documents or portions of these documents in connection with your questions have been withheld in accordance with certain sections of the OIA.

Where documents or portions of these documents have been withheld under section 6(a) of the OIA, is because the making available of that information would be likely to prejudice the international relations of the Government of New Zealand.

Where documents or portions of these documents have been withheld under section 6(b)(i) of the OIA, is because the making available of that information would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of any other country or any agency of such a government.

Where documents or portions of these documents have been withheld under section 9(2)(a) of the OIA, is necessary to protect the privacy of natural persons and, in the circumstances of the particular case, the withholding of that information is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

Where documents or portions of documents have been withheld under section 9(2)(g)(i) of the OIA, is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown (or members of an organisation) or officers and employees of any Department or organisation in the course of their duty, and, in the circumstances of the particular case, the withholding of that information is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

Where documents or portions of documents have been withheld under section 9(2)(g)(ii) of the OIA, is necessary to maintain the effective conduct of public affairs through the protection of Ministers, members of organisations, officers, and employees from improper pressure or harassment.

Where documents or portions of documents have been withheld under section 9(2)(j) of the OIA, is necessary to enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) and, in the circumstances of the particular case, the withholding of that information is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

1 When did the New Zealand Government decide to take part in the ACTA negotiations?

The decision was taken on 28 May 2008 and that decision was announced by the Associate Minister of Commerce by way of a media statement on 29 May 2008. A copy of that media statement is available from the Ministry's website.

2 Who made the decision to take part in the ACTA negotiations?

The decision was made by Cabinet.

3 What were the key factors that lead to New Zealand to decide to participate in the ACTA treaty negotiations?

These are discussed in the attached copy of the Cabinet paper and report to the Minister seeking approval for New Zealand officials to participate in ACTA negotiations. Parts of these papers are withheld under s6(a), s6(b)(i), s9(2)(j) and s9(2)(g)(i) of the OIA.

4 Please send me copies of any paper or documents that were used in making the decision to take part in the ACTA treaty negotiations.

A copy of that Cabinet paper, including a report to the Minister seeking approval to submit the paper to Cabinet is attached. Parts of these papers are withheld under s6(a), s6(b)(i), s9(2)(j) and s9(2)(g)(i) of the OIA.

5 Was New Zealand's participation with the ACTA treaty negotiations influenced by any indication that it would help negotiate a trade agreement with any country? If so, which countries?

The key factors that lead to the decision to participate in the negotiations are discussed in the attached Cabinet paper and report to the Minister seeking approval for official to participate. Parts of these papers are withheld under s6(a), s6(b)(i), s9(2)(j) and s9(2)(g)(i) of the OIA.

- 6 *Who has developed the negotiating position for the ACTA treaty negotiations?*

The negotiating mandate for the ACTA negotiations was given to officials by Cabinet when it initially took the decision for New Zealand to participate. MED develops New Zealand's negotiation position for each round, in consultation with other government agencies, including the Ministry of Foreign Affairs and Trade (who are leading the negotiations), and the New Zealand Customs Service. The position is determined by comparing each proposal tabled by other ACTA participants for inclusion in the Agreement against the mandate. When a proposal is determined to be inconsistent with the negotiating mandate, the delegation opposes its inclusion in the Agreement.

- 7 *What is the New Zealand position for the ACTA treaty negotiations?*

The mandate given to officials is specified in the Cabinet External Relations and Defence Committee ERD (08) 4/5. This paper is withheld under s6(a) and 9(2)(j).

- 8 *Please send me copies of all documents concerning the New Zealand negotiating position.*

Documents concerning New Zealand's negotiating position for each negotiating round are withheld s6(a), s6(b)(i) and s9(2)(j).

- 9 *Please send my any draft text or other materials that the Ministry of Economic Development has concerning the current proposals and other content of the draft ACTA treaty so far.*

All copies of draft text and documents related to proposals for inclusion in the Agreement are required to be held in confidence by the Ministry in accordance with the terms of the negotiation. Copies of these documents relevant to this request are withheld under s6(a) and s6(b)(i).

- 10 *Who has the Ministry of Economic Development met within New Zealand about the ACTA treaty negotiations?*

Officials from MED, usually in conjunction with officials from the Ministry of Foreign Affairs and sometimes the New Zealand Customs Service, have provided briefings on ACTA to a variety of groups, interested parties and individuals. We do not have a definitive list of every person, party or group who has been briefed on ACTA. Persons, parties and groups that officials have met with include:

Representatives from the ICT

The New Zealand Computer Society, Telecommunications Carrier Forum, Telecommunication Users Association of New Zealand, Internet Service Providers Association of New Zealand, InternetNZ, New Zealand Information and Communication Technologies Group Inc, Google Australia and New Zealand, and Catalyst IT.

Copyright user groups and others

New Zealand Open Source Society, Creative Freedom Foundation, Tech Liberty NZ, and a number of individuals, whose identities are withheld under s.9(2)(a).

Right holders, their licensees and representatives and others

New Zealand Retailers Association, Recording Industry Association of New Zealand, New Zealand Federation Against Copyright Thief, TradeMe Ltd, Cosmetic Toiletry and Fragrance Association of New Zealand Inc, Gemella Australia Pty Ltd, Henry Hughes Ltd, Baldwin Intellectual Property, James and Wells, New Zealand Institute of Patent Attorneys, Inc, AJ Park, Kensington Swan, Lowndes Jordan and a number of individuals whose identities are withheld under s9(2)(a).

- 11 *Please send me copies of minutes from all consultation meetings that the Ministry for Economic Development have taken part in.*

To date MED has provided an open and transparent public consultation process by inviting the public to provide written submissions, rather than holding meeting with any particular groups, interested parties or individuals. Summaries of submissions received during the consultation periods have been published on MED's website.

Officials did, however, meet with the Council of the New Zealand Institute of Patent Attorneys, Inc on 27 May 2009 to solicit their comments on the discussion paper entitled *Invitation for Further Submissions, 15 May 2009*. The outcome of that meeting is included in the summary of responses to the discussion paper published on the Ministry's website at http://www.med.govt.nz/templates/MultipageDocumentTOC_42015.aspx.

- 12 *At what venue will the April round of the ACTA treaty negotiations take place?*

The hosting of Round Eight, which is scheduled for 12-16 April 2010, is being held in Wellington. Information about the Wellington venue is being withheld under s9(2)(g)(ii).

- 13 *Will interested parties be able to attend the ACTA treaty negotiations in New Zealand as observers?*

No, only officials from participating governments will be attending the negotiating round.

- 14 *Has the Ministry of Economic Development done any economic analysis of the cost/benefits that may come from participating in the ACTA treaty? If so, please send me copies.*

MED has not undertaken any economic analysis of the impact of the proposed Agreement at this point in time. It is only after the Agreement is concluded that the potential impacts will be known and, therefore, such analysis can be undertaken.

In accordance with Cabinet Office Guidelines regarding decisions concerning joining international treaties, a National Interest Analysis assessing the advantages and disadvantages; the costs and benefits; and the social, economic, cultural and environmental effects must be completed to assist the government to decide whether or not to join the treaty. Parliamentary Standing Orders require the text of any treaty that the government has agreed to join and its National Interest Analysis to be table in Parliament and reviewed by a Select Committee.

- 15 *At which point in the ACTA treaty negotiations did the participants decide to keep the proceeding secret?*

ACTA participants agreed by consensus at the commencement of negotiations that information relating to formal negotiating positions of governments should be protected while the text of the Agreement is being developed. The countries participating in the development of ACTA did agree that general information about ACTA's objectives and the negotiating process should be made public. In that regard, the Ministry of Economic Development (MED) has published this information on its website. Information about the proposed Agreement, including the key elements under discussion has been published on the MED's website at http://www.med.govt.nz/templates/ContentTopicSummary_34357.aspx.

- 16 *Which country or countries pushed for the ACTA treaty negotiations to be kept secret?*

No country or countries participating in the negotiations have pushed for the negotiations to be kept secret, rather countries participating agreed by consensus to keep the negotiations in confidence.

- 17 *Who within the New Zealand negotiating team or New Zealand government agreed to keep the contents of the ACTA treaty negotiation secret?*

The government took a decision for New Zealand to participate in the development of the proposed Agreement. In order for New Zealand to participate, the New Zealand delegation had to work with the other participants to establish some agreed rules under which the negotiations would to be conducted. The principal rule agreed to for the negotiations was that all decisions should be by consensus.

Different ACTA participants have different views about what information should be disclosed to the public about the contents of the proposed Agreement under negotiation. In order to advance the negotiations, the New Zealand delegation agreed to a request by other participants that information relating to formal negotiating positions of governments should be protected while the text of the Agreement is being developed and, thus, the negotiations should be in confidence.

The New Zealand delegation continues to work with other participants to increase the amount of information currently available about the contents of the proposed Agreement under negotiation. Any decision to increasing the amount of information currently made available, however, must be by consensus.

You have the right by way of complaint under section 28(3) of the Official Information Act 1982 to an Ombudsman, to seek an investigation and review of my refusal to release the information referred to above or to answer your questions.

Yours sincerely



George Wardle

Senior Analyst

Intellectual Property Policy Group