

APPENDIX 2

16 June 2017

Michelle Hippolite
Chief Executive
Te Puni Kōkiri
PO Box 3943
WELLINGTON 6140

Beverly Penjueli
Chief Legal Advisor
Te Puni Kōkiri
PO Box 3943
WELLINGTON 6140

Dear Michelle and Beverly

Access to official records for commissioned research purposes
Our Ref: DFO037/332

1. As you may be aware, the Waitangi Tribunal is currently inquiring into claims of Māori military veterans (Wai 2500). The Tribunal has commissioned three substantial research projects for the inquiry's evidential casebook. The Crown has signalled to the Tribunal its intention to cooperate in order to progress this research, to the extent appropriate. This letter seeks your support to promote the efficient provision of relevant evidential material to the Tribunal.

Tribunal is a Commission of Inquiry

2. Under the Treaty of Waitangi Act 1975, the Tribunal is a standing commission of inquiry with all the rights and obligations of a commission of inquiry as regards evidential matters. The powers of a commission of inquiry differ from considerations under the Official Information Act. For your reference, the relevant powers are set out in an **Appendix** to this letter. In brief, a Commission of Inquiry has powers similar to those of a Court to order production of evidence. Those powers are subject to the same privileges as witnesses have in the general Courts.

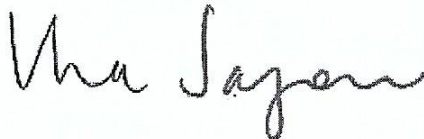
Access to government files

3. Those commissioned by the Tribunal to undertake research are all professional researchers. They are subject to the Waitangi Tribunal Unit's Code of Practice (**attached**) and are operating under commissions from the Tribunal to undertake the research (also **attached**).
4. In discussions between Crown counsel and Tribunal staff, procedures have been proposed to increase the efficiency of the research process where appropriate and to minimise government agency workload where possible. The judge presiding over the Wai 2500 Tribunal inquiry, Chief Judge Isaac, Chairperson of the Waitangi Tribunal, has instructed Tribunal staff to offer administrative assistance if required.
5. Your agency may be asked to make decisions on access to restricted files that are, or may be, relevant to the commissioned research. Such access, if approved, would be on the

assurance that the commissioned researchers are fully aware of their obligations in providing evidence to a Commission of Inquiry and will treat sensitive information – such as the personal details of individuals – with appropriate care (see the Code of Practice attached).

6. A necessary aspect of the initial stages of research is undertaking a wide sweep of files to determine relevance. For the purposes of this inquiry, the commissioned researchers have agreed, to the extent possible, to confine their requests to relevant and necessary information in order to streamline the work for agencies. Researchers will welcome constructive conversation with agencies to achieve efficiencies wherever possible. However, the determination of relevance to the inquiry ultimately sits with the researcher, not the Crown. Any files ultimately identified as relevant by the researcher will need to be assessed by your agency in the normal manner. In some circumstances, this may involve requests for a large number of files.
7. As stated above, commissions of inquiry generally have powers to access information, subject to the usual privileges witnesses have in the general courts. These broad powers of access are accompanied by responsibilities in how the information, once accessed, can be used. Agreements relating to the appropriate access to, and use of, particularly confidential or sensitive material can be discussed between your agency and the Tribunal-commissioned researcher. Where agreement cannot be reached, Crown counsel can assist. Where necessary, such matters may be referred to the Tribunal and Courts.
8. If you consider it useful and appropriate, Tribunal staff and/or Crown counsel are happy to meet with you to develop further high-level filters or processes to assist efficiency and reduce resource requirements on your agency arising from requests especially at the stage of determining relevance.
9. We look forward to your cooperation in enabling this Tribunal-directed research to proceed expeditiously and with appropriate access to the official information essential to fulfilling its purpose in assisting the Military Veterans inquiry. If they have not already, Tribunal-commissioned researchers will likely be in touch shortly. Please don't hesitate to contact my team at Crown Law to discuss any matters arising (Jason Gough 04 494 5956 or Caitlin McKay 04 494 5659).

Nāku noa, nā
Crown Law



Una Jagose QC
Solicitor-General