



25 January 2023

[REDACTED]

[REDACTED]

[REDACTED]

Official Information Act 1982 request dated 5 January 2023
Our Ref: OIA353/1

1. We refer to your request for official information dated 5 January 2023 under the Official Information Act 1982 (**OIA**) where you sought:

...formal advice from Crown Law, requesting information as to the legal status of an individual who has applied to the NZ Family Court for a declaration of Sex – when it has been granted.

...

...in light of the amendments to the BDMRR Act, I ask if there are any proposed legal changes to NZ Laws concerning applicants – who hold that granted legal declaration in NZ – when a birth certificate is changed and issued overseas because that is where they were born ‘overseas’.

2. It is not entirely clear from your request what information you are requesting.
3. The first part of your request could be interpreted as a request for Crown Law to provide you legal advice. Crown Law provides legal advice and representation to the Government. It cannot provide legal advice to members of the public. Further, there is no obligation under the Official Information Act for an agency to form an opinion, provide an explanation or create information to answer a request.¹
4. In light of this, we have interpreted your request as seeking:
 - 4.1 First, copies of information held by Crown Law about the legal status of individuals who have been granted a declaration of sex by the Family Court under s 28 of the Births, Deaths, Marriages, and Relationships Registration Act 1995 (**BDMRR Act**); and

¹ Office of the Ombudsman *The OIA for Ministers and Agencies: a guide to processing official information requests* (April 2019) at 6.

- 4.2 Second, information held by Crown Law about any proposed legal changes, in light of the recent amendment to the BDMRR Act, to allow individuals who have been granted a declaration of sex (as described above) in New Zealand, but who were born overseas, to have their overseas issued birth certificates amended/corrected.
5. Please let us know if we have misunderstood your request, by emailing any necessary clarification to: OIA@crownlaw.govt.nz.

Part one

6. Crown Law holds several documents that broadly discuss the legal status of individuals who have been granted a declaration under s 28 of the BDMRR Act. However, all but two of these documents are covered by legal professional privilege and this is not outweighed by other considerations which render it desirable, in the public interest, to make them available. As such, we decline to release these documents under s 9(2)(h) of the OIA.
7. Both of the documents that are not covered by legal professional privilege are publicly available, therefore, we decline to release them under s 18(d) of the OIA.²

Part two

8. Crown Law does not hold any information relevant to part two of your request. Therefore, we refuse this part of your request under s 18(g) of the OIA.
9. Through a Google search we have identified that Te Tari Taiwhenua (the Department of Internal Affairs) is currently considering a process for people born overseas to register their gender.³ Given the lack of clarity with your request, it is unclear to us whether this work will consider or address your concerns. If you consider it will, you may wish to make an OIA request to Te Tari Taiwhenua for this information. Alternatively, if you confirm our understanding of your request by emailing OIA@crownlaw.govt.nz, we can transfer this part of the request to Te Tari Taiwhenua for you.

Final matters

10. Please note that we may publish this response (with your personal details redacted), and any related documents, on Crown Law's website if we decide proactive release of this information is or may be in the public interest. If you have any concerns about this, please let us know within 10 working days of the date of this letter.

² For your convenience we note that they can be found at the following links: https://www.beehive.govt.nz/sites/default/files/2019-02/Crown%20Law%20advice%20BDMRR%20Bill%20_0.pdf and <http://www.nzlii.org/nz/cases/NZFC/2008/62.html>.

³ See: <https://www.dia.govt.nz/bdmreview---recognising-gender-on-birth-certificates>. See also the following proactively released material: [https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases/\\$file/Cabinet-Paper-self-identification-regulations-and-registering-gender-1.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases/$file/Cabinet-Paper-self-identification-regulations-and-registering-gender-1.pdf).

11. You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.
12. If you wish to discuss this decision with us, please feel free to contact: OIA@crownlaw.govt.nz.

Yours faithfully
Crown Law



Proactively Released by the Crown Law Office