

27 July 2022

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Official Information Act #21.214 - Second Response

1. We refer to your request received on 29 June 2022 for information about which land and lease covenants and/or geographic locations the Commerce Commission (the **Commission**) has prioritised for further investigation.
2. This request followed your 28 June 2022 request for a list of the addresses, terms of property covenants and lease exclusivity agreements disclosed to the Commission during the market study into the retail grocery sector. We responded to your 28 June 2022 request on 7 July 2022.
3. We have treated this as a request for information under the Official Information Act 1982 (**OIA**).

Our response

4. We have decided to withhold the information requested for the reasons set out below.
5. The Commission has been given [new powers](#) to help it assess compliance with the amendments to the Commerce Act that were made through the Commerce (Grocery Sector Covenants) Amendment Act 2022, and which make existing covenants unenforceable. These powers allow us to require supermarkets to hand over information relating to contracts, arrangements and covenants and will be used to actively assess compliance within the sector. The Commission can take enforcement action in appropriate cases, including through the courts, if covenants are anticompetitive.
6. We currently have three sets of investigations open into land and lease covenants, relating to each of Foodstuffs South Island, Foodstuffs North Island and Woolworths

NZ (ie, an investigation for each supermarket retailer relating to a “set” of covenants for each retailer).

7. Before the new law was introduced, we considered the covenants identified in our grocery market study and prioritised specific geographic areas for in-depth investigation, including a range of urban and rural areas. We are also continuing to receive new information regarding the scale and scope of covenants and will continue to consider our prioritisation of covenants we know about in relation to this new information. We expect to be able to announce more details on these investigations later in the year.
8. We are therefore unable to provide any further information about our investigations at this time. We consider that good reasons exist under section 6(c) of the OIA to withhold the information requested as making it available would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.
9. If you are not satisfied with the Commission's response to your OIA request, section 28(3) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.
10. The Commission will be publishing this response to your request in the OIA register on our website.¹
11. Please do not hesitate to contact us at ويا@comcom.govt.nz if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator

¹ <https://comcom.govt.nz/about-us/requesting-official-information/oia-register>