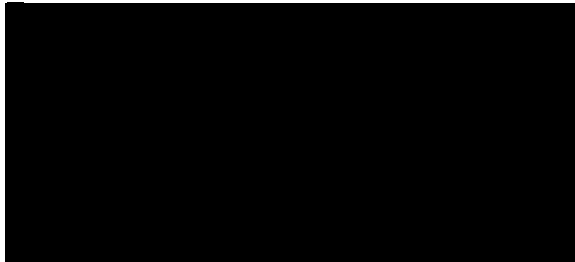


6 July 2022



Official Information Act #21.190 - Response

1. We refer to your request received on 20 May 2022 for a list of the addresses of land covenants entered into by supermarkets and disclosed to the Commerce Commission (**Commission**) during the market study into the retail grocery sector.
2. We have treated this as a request for information under the Official Information Act 1982 (**OIA**).
3. On 20 June 2022, the Commission extended the time frame to communicate our decision on your request to 5 July 2022.
4. On 5 July 2022, we communicated our decision to grant your request in part and advised the information would be provided on 6 July 2022.

Our response

5. As part of the market study into the retail grocery sector, we asked the supermarkets to provide:
 - 5.1 Details of any land covenants (including, but not limited to encumbrances) [supermarket] was or is party to or otherwise involved in which contain clauses or terms relating to the operation of food or retail grocery businesses on that land, including:
 - 5.1.1 the name of the party which lodged the covenant;
 - 5.1.2 the name of the party for whose benefit the covenant was lodged (if different from [5.1.1]);
 - 5.1.3 the address of the location over which the covenant was lodged;

5.1.4 the date on which the covenant came into effect; and

5.1.5 the terms and scope (including duration) of the covenant.

6. The information we hold falling within the scope of your request is the information disclosed to the Commission in 2021 by the three major grocery retailers in response to the above question. This is the information relevant for the findings on covenants in our retail groceries market study. As noted below, some of these retailers have made changes to their covenants since the market study, or covenants have expired. As such, if you require a list of covenants currently in effect, you may wish to contact the retailers for this information.

Foodstuffs North Island Limited

7. In respect of Foodstuffs North Island Limited (**FSNI**), we have **attached** a list of covenants (CC.FSNI.2485) provided to the Commission by FSNI on 9 August 2021.¹
8. We note that in consultation on your request, FSNI prepared a current version of CC.FSNI.2485. We have not included a copy on the basis that it is not the information held by the Commission for the purpose of the retail grocery sector market study. For a copy, you can contact [REDACTED]

Foodstuffs South Island Limited

9. In respect of Foodstuffs South Island Limited (**FSSI**), we have **attached** a list of covenants (CC.FSSI.0745), provided to the Commission by FSSI on 5 May 2021.
10. We note the following comments from FSSI in consultation on your request in respect of CC.FSSI.0745:
- 10.1 CC.FSSI.0745 contains all land covenants affecting any titles currently or formerly owned by FSSI and is not limited to covenants which the Commission identified as restricting competition (for example, there are a number of non-opposition covenants affecting multiple titles in favour of [REDACTED] which FSSI considers have no relevance); and
- 10.2 the list includes multiple titles for each site, rather than limiting the information to the address for each site.
11. FSSI is concerned that, for these reasons, CC.FSSI.0745 could be misleading. It has prepared an amended version of CC.FSSI.0745 containing the covenants it considers relevant to your request. We have not included a copy on the basis that it is not the

¹ We note that FSNI provided covenant information to the Commission in two tranches. It provided one spreadsheet in April 2021 which contained information about covenants up until 2015. A second spreadsheet was provided in August 2021 which contained information up until that time, and included the information previously provided. We have provided you with a copy of the combined spreadsheet received in August 2021.

information held by the Commission for the purpose of the retail grocery sector market study. For a copy, you can contact [REDACTED].

Woolworths New Zealand Limited

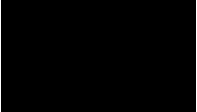
12. In respect of Woolworths New Zealand Limited (**WWNZ**), we have **attached** a list of covenants CC.WW.2996 provided to the Commission by WWNZ on 5 May 2021.
13. As indicated in our response on 5 July 2022, we have decided to withhold one land covenant and a list of the addresses of lease covenants entered into by WWNZ from CC.WW.2996 for the following reasons:
 - 13.1 to prevent an unreasonable to prejudice the commercial position of the person who supplied or who is the subject of the information, under section 9(2)(b)(ii) of the OIA; and
 - 13.2 to prevent prejudice to the supply of similar information, or information from the same source, where it is in the public interest that such information should continue to be supplied to the Commission, under section 9(2)(ba)(i) of the OIA.
14. We consider that good reasons exist for withholding this information and are not outweighed by other considerations which would make it desirable, in the public interest, to make the information available (section 9(1) of the OIA).

Further information

15. We note that the number of covenants contained in the spreadsheets provided differs from the number contained at paragraph [6.77] of our final report. For the purpose of our report:
 - 15.1 records were aggregated by encumbrance number (i.e. a single covenant for multiple titles);
 - 15.2 duplicate records were removed; and
 - 15.3 records were not included which did not clearly restrict competitor store development (e.g. if it is not clear that the covenant restricts supermarket development).
16. 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.

17. The Commission will be publishing this response to your request in the OIA register on our website.²
18. Please do not hesitate to contact us at uia@comcom.govt.nz if you have any questions about this request. We are happy to clarify any aspects of the information provided if it would assist.

Yours sincerely



OIA and Information Coordinator

² <https://comcom.govt.nz/about-us/requesting-official-information/oia-register>