

13 May 2021

By email only: [REDACTED]

Dear [REDACTED]

Official Information Act #20.192 - Simone Anderson

1. We refer to your request received on 14 April 2021 for all information held by the Commerce Commission (**Commission**) in relation to Simone Anderson and @SimoneAnderson on Instagram.
2. We have treated this as a request for information under the Official Information Act 1982 (**OIA**).
3. On 15 April 2021, we advised you that the Commission has published a number of OIA responses in relation to Ms Anderson in the OIA register¹ on our website; OIA 19.181², OIA 19.188³, OIA 20.025⁴ and OIA 20.099⁵.
4. We advised that these contain a copy of a complaint received by the Commission about Ms Anderson, the Commission's consideration of the complaint and an outline of the information received from Ms Anderson (and/or her representatives) in relation to the complaint, and asked if additional information was sought.
5. In response, you referred to paragraph [6.1] of the OIA 20.025 response letter⁶ and advised that you would like to understand how the Commission reached its

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

² OIA 19.181: https://comcom.govt.nz/_data/assets/pdf_file/0019/219601/OIA-19.181-Simone-Anderson-Response-Letter-26-June-2020.PDF

³ OIA 19.188: https://comcom.govt.nz/_data/assets/pdf_file/0035/219779/OIA-19.188-Simone-Anderson-Response-Letter-1-July-2020.PDF

⁴ OIA 20.025: https://comcom.govt.nz/_data/assets/pdf_file/0015/224115/OIA-20.025-Simone-Anderson-Response-Letter-31-August-2020.PDF

⁵ OIA 20.099: https://comcom.govt.nz/_data/assets/pdf_file/0024/229308/OIA-20.099-Simone-Anderson-Pretscherer-Response-Letter-1-December-2020.pdf

⁶ "[6] The Commission receives thousands of complaints every year. Each complaint is initially assessed by the Enquiries Team on the basis of the information available at the time. When conducting this initial

conclusion about any possible breach of the Fair Trading Act 1986 (FTA) in relation to Ms Anderson's alleged failure to disclose advertisements as such.

The Commission's complaints screening process

6. To provide context to how a complaint is assessed, we have outlined the Commission's complaint screening process below.
7. When a consumer contacts the Commission with a complaint about a trader, this is logged in the Commission's complaint database.
8. The Commission receives thousands of complaints every year. Each complaint is initially assessed by the Enquiries Team on the basis of the information available at the time.
9. When conducting this initial assessment, the Enquiries Team considers:
 - 9.1 the likelihood of a breach of the relevant legislation (Commerce Act 1986, Fair Trading Act 1986, and Credit Contracts and Consumer Finance 2003);
 - 9.2 the Commission's Enforcement Response Guidelines,⁷ and;
 - 9.3 the Commission's strategic priorities and resourcing constraints.
10. The Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
11. If a complaint is deemed to meet certain criteria, it is reviewed by a panel of managers and subject matter experts from within the Competition Branch. The screening panel decides which complaints are to be prioritised for further consideration by the branch.
12. This process enables us to identify complaints that best reflect our current enforcement priorities.⁸ The outcomes of the process are not final, and we may revisit any complaint at a later stage, should we wish to reconsider the issues it presents.

Our response

13. We have decided to grant your request.

assessment, the Enquiries Team considers: [6.1] the likelihood of a breach of the relevant legislation (the Fair Trading Act 1986, the Commerce Act 1986 and the Credit Contracts and Consumer Finance 2003)".

⁷ Available at: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

⁸ For further information, see: <https://comcom.govt.nz/about-us/our-priorities>

14. The complaint (ENQ0540432) was assessed by the Enquiries Team and considered by the screening panel. The Commission assessed the likelihood of a breach under section 9 of the FTA, which prohibits misleading and deceptive conduct.⁹
15. During the assessment process, the Commission discussed the complaint with the Advertising Standards Authority (ASA) and the Women's Refuge. The ASA advised it would not be investigating the donation issue, but would issue a decision relating to the issue of disclosure around social media advertising.¹⁰ The Women's Refuge advised it had received donations from Ms Anderson.
16. The Commission decided not to take further action in relation to the complaint on the basis that it was unclear whether there had been a misrepresentation as to the amounts that would be donated to charity, due to the fact that the Facebook posts containing the representations were no longer available. It was also noted that the Commission needs to balance available resources when considering matters to investigate.
17. Please note the Commission will be publishing this response to your request in the OIA register on our website. Your personal details will be removed from the published response.
18. Please do not hesitate to contact us at oia@comcom.govt.nz if you have any questions about this request.

Yours sincerely

Mary Sheppard
OIA Coordinator

⁹ Section 9 of the FTA: <https://www.legislation.govt.nz/act/public/1986/0121/latest/DLM96903.html>

¹⁰ The ASA has now issued three decisions in relation to Ms Anderson and social media advertising:
Complaint 20/611: <https://www.asa.co.nz//backend/documents/2021/01/19/20611.pdf>
Complaint 20/612: <https://www.asa.co.nz//backend/documents/2021/01/19/20612.pdf>
Complaint 21/070: <https://www.asa.co.nz//backend/documents/2021/02/23/21070.pdf>