

**EXHIBIT NOTE**

This is the annexure marked "TM5"  
referred to in the affidavit of TIM DAVID  
MAHOOD

sworn at AUCKLAND  
before me:

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A Solicitor of the High Court of New Zealand

Ms. Carolyn Gardner  
Legal Counsel  
NIWA, Private Bag 99940  
Newmarket, Auckland 1149,  
New Zealand

Dear Ms. Gardener,

**Re: Freedom of Information (FOI) Application  
Peer Review on the Seven-Station series- Temperature data for Auckland,  
Wellington, Dunedin, Nelson, Masterton and Linclon as carried out by the  
Australian Bureau of Meteorology.**

The Bureau recently received a FOI request from a member of the public seeking specific information on the Peer Review described above. A copy of the request is attached with the name of the applicant deleted.

2. The Bureau identified the following documents as falling within the scope of the request. Copies have not been provided at this stage as I understand that NIWA is fully aware of the contents of these documents. Please advise if you require copies of the documents.

1. Six individual station reports as the Bureau did not produce a report for Hokatiki as this was published by NIWA prior to review by the Bureau.
2. The review covering letter and final report which gave a high level summary of the Bureau's analysis and reviews.
3. Draft reports and supporting documentation provided by NIWA.
4. A document detailing the review process, this is an internal document.
5. Numerous emails between the review team and NIWA.
6. Some analysis underpinning the Bureau reports such as XL spread sheets and text files, and numerous drafts of the final reports.

3. The Bureau decision maker may decide that some or all of the documents identified as within the scope of this request may be exempt under sections 33(a)(iii) and 33(b) and is consulting NIWA to assist it to decide if the documents are exempt documents. The Bureau is seeking relevant information to support and explain a claim for exemption in a statement of reasons to an applicant. Please ensure that the response is provided by a person who has the authority to speak on behalf of NIWA.

4. Sections 33(a)(iii) and 33(b) are extracted below:

**Documents affecting national security, defence or international relations**

A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

- (i) the security of the Commonwealth;
- (ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth; or

(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

5. As I stated before, the Bureau is seeking information that is relevant to establishing grounds for an exemption of some or all of the above documents.

The following issues may be relevant in directing your consideration of whether disclosure of the documents would or could reasonably be expected to cause damage to the international relations between NIWA and the Bureau as the Commonwealth of Australia.

- The mere fact that NIWA has expressed concern about a disclosure is not enough to satisfy the exemption. The Bureau is seeking evidence to support a claim, such as a loss of trust and confidence in the Bureau.
- The expectation of damage to international relations must be reasonable in all the circumstances having regard to the nature of the information, the circumstances in which it was communicated and the nature and extent of the relationship.

6. The following points may direct your consideration in terms of whether the information is exempt under 33(b):

- the nature of the information – was it communicated in confidence by NIWA to the Bureau? Was it communicated under an express or implied understanding that the communication would be kept confidential,
- the circumstances in which the Bureau was given or obtained information from NIWA. e.g. the conventions of the peer review. The understanding of confidentiality may be inferred from the circumstances in which the communication occurred, including the relationship between the parties and the nature of the information communicated,
- the relevance of the information, e.g. is it out of date,
- the extent to which it is publicly known.

7. The Bureau is required to provide a decision to the applicant by 22 April 2011 and therefore requests your response by 15 April 2011. Please advise via email if this is not possible as I will endeavor to arrange an extension of time.

Yours sincerely,

Brenda Coutinho  
Executive officer legal  
03 9669 466