

**From:** [Natalie.Muir@fma.govt.nz](mailto:Natalie.Muir@fma.govt.nz)  
**To:** [REDACTED]  
**Cc:** [andrew.park@fma.govt.nz](mailto:andrew.park@fma.govt.nz); [Andrew.Park@fma.govt.nz](mailto:Andrew.Park@fma.govt.nz)  
**Subject:** Your Official Information Act request: Value for Money litigation CRM:006901440  
**Date:** Thursday, 22 June 2023 9:56:30 am  
**Attachments:** [image001.jpg](#)

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Kia ora [REDACTED]

We refer to your OIA request for: '*Any documents or correspondence between FMA officials, staff, counsel and/or third parties concerning civil litigation (including potential civil litigation) relating to the FMA's Value for Money guidance.*'

The Managed Fund Fees and Value for Money Guidance, available on FMA's website here [Managed-fund-fees-and-value-for-money-guidance.pdf \(fma.govt.nz\)](#), ('Guidance') provides guidance and principles to help managers and supervisors of KiwiSaver schemes and other managed investment schemes to demonstrate how they are meeting their existing obligations, statutory duties, and conduct expectations in respect of fees and value for money.

We can advise that the FMA does not have any particular litigation (civil or otherwise) in progress, currently pending, nor previously commenced and closed relating to this Guidance. We therefore do not hold any documents or correspondence concerning this. This being the case we can confirm information about such litigation is not held by the FMA. Further, given the nature of this information we have no grounds to believe it would be held by another organisation subject to the OIA and is not connected more closely with another such organisation's functions. We consider section 18(g) of the OIA applies and the request is declined on that basis, ie 'information requested is not held'.

We have additionally considered more broadly if we hold any information concerning civil litigation relating to the development or content of the Guidance.

- The Guidance was carefully considered. In it FMA outlines existing relevant obligations of managers and supervisors, and (as noted) seeks to provide help to managers and supervisors to demonstrate how they are meeting their existing obligations in respect of fees and value for money.
- The Guidance also includes a section starting page 14 'How the FMA can respond'. You'll see this advises that if the FMA determined a fee is unreasonable, it has a wide range of enforcement options available to it under the FMC Act. It outlines the options, including in terms of civil litigation, 'Court action' and relating to KiwiSaver schemes the additional options in the KiwiSaver Act relating to unreasonable fees (see page 15).
- Beyond this publicly available information, we hold some analysis concerning civil litigation undertaken by and discussed internally with our internal legal advisers relating to the development or content of the Guidance. This is legally privileged and is therefore withheld on the basis of section 9(2)(h) of the OIA.

Additional to the publicly available Guidance noted above, other publicly available documents are of interest. See the Proposed Guidance consulted on available on the FMA's website here: [Consultation: Proposed guidance on KiwiSaver fees and value for money | Financial Markets Authority \(fma.govt.nz\)](#), and the FMA's publicly available Submissions Report: Manage Fund Fees and Value For Money is available on FMA's website here: [Submissions report: Managed fund fees and value for money](#). Further, we hold the record below of a staff discussion at a FMA staff (KiwiSaver Strategy Group) meeting on 12 May 2021 that touches on a matter concerning civil litigation relating to the Guidance. Staff discussed a matter raised by TCA (now known as CTA - Corporate Trustees Association).

'Legal costs arising from disputes. [REDACTED] supervisors are wary of

*differences of opinion with managers about reasonable fees and value for money ending up in court, with legal costs for all parties being met from the fund.*

*Our view is, if the difference of opinion could be classed a grey area, the supervisor might reasonably decide not to endlessly pursue their view. In starker cases, however, we would be willing and able for the manager to be passed to us. This is a risk appetite question, but IM [reference is to Investment Management Team of FMA] has the appetite and object lessons – as some in the industry have also noted – would usefully reinforce the guidance, and certainly our will to back it and the supervisors in the front line of delivering it.'*

The first redacted extract is redacted on the basis of s 9(2)(ba) of the OIA - information subject to an obligation of confidence, release would prejudice supply of similar information from CTA or other market participants which is important to FMA's effectiveness in carrying out its regulatory role. The second redacted extract is redacted on the basis of s 9(2)(g) of the OIA – internal staff comment, it's important staff can share information candidly internally.

Please let us know if you have any further questions about this matter. You will also be aware that you have the right, in accordance with s 28 of the OIA, to complain to the Ombudsman regarding our assessment of your OIA request.

Ngā mihi  
Natalie Muir

**From:** [REDACTED]  
**Sent:** Wednesday, 24 May 2023 10:39 am  
**To:** [questions@fma.govt.nz](mailto:questions@fma.govt.nz); [questions@fma.govt.nz](mailto:questions@fma.govt.nz); [questions@fma.govt.nz](mailto:questions@fma.govt.nz); [questions@fma.govt.nz](mailto:questions@fma.govt.nz)  
**Subject:** Official Information request: Value for Money litigation

To whom it may concern,

Please supply the following information under the Official Information Act:

- Any documents or correspondence between FMA officials, staff, counsel and/or third parties concerning civil litigation (including potential civil litigation) relating to the FMA's Value for Money guidance.

If you need any more information from me please let me know as soon as possible.

Regards

[REDACTED]

[REDACTED]



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[REDACTED]

[REDACTED]