The Health and Disability Commissioner  
Te Toihau Hauora, Hauatanga  
Level 10, Tower Centre  
45 Queen Street  
(P.O. Box 1791)  
Auckland 1010  
24 November 2015

Attention: The Health and Disability Commissioner (HDC)

Your response from 17 Nov. 2015 to my Official Information Act and Privacy Act requests for certain specified information re former complaints C11HDCxxxxx and C12HDCxxxxx (from 19 Oct. 2015)

Dear Mr Commissioner, dear Helen Davidson (Principal Legal Advisor)

Thank you for your letter from 17 November 2015, which was in response to my requests for some specified information that I had sought from your Office under the Official Information Act 1982 and the Privacy Act 1993. I thank you for providing most of the information that I had asked for, but must express my serious concern and disapproval regarding two matters.

Withheld letter dated 16 August 2010 referred to by Dr Dxxxx Xxxxxxxx (C12HDCxxxxx)

Firstly, I consider that it is in the public interest that you make available a letter dated 16 August 2010, to which Dr Dxxxx Xxxxxxxx referred in his letter to your Office from 20 September 2012. You stated that you are withholding that letter pursuant to section 9(2)(a) of the Official Information Act 1982 – in order to protect the privacy of individuals mentioned in that letter. You also wrote that: “The “policy” that Dr Xxxxxxxx refers to as being outlined in the 16 August 2010 letter is not, in fact, a statement of HDC policy, but a comment made in relation to another matter.” Re the content of that letter you quote: “[T]he Medical Appeals Board (MAB) is best placed to consider these concerns.”

While you assert that the document in question does not in fact contain “policy” of the HDC, it nevertheless appears to have given Dr Xxxxxxxx clear enough of an impression that it was a very relevant document for your Office to consider, in relation to my complaint C12HDCxxxxx. It appears that the letter presents a position by the HDC that clarifies how particular complaints about medical examiners used by Work and Income should under certain circumstances be dealt with. Furthermore the particular comment, that “most” concerns I raised with my complaint were “best dealt with by the Medical Appeals Board”, was in one form or another repeatedly mentioned in decisions your Office presented to me.
This reinforces the impression that the document making similar comments was of significant relevance and was thus also considered when forming a view about my complaint.

Hence I am led to firmly believe that the letter that Dr Xxxxxxx refers to contains important information that must also have been of relevance to my complaint, at least in his view, and also in the Commissioner’s view. Clearly, all information I have been given so far, leads to the conclusion, whatever that document contains, it was important enough for the Commissioner and your staff to consider in relation to my complaint about Dr Xxxxxxx.

Therefore it is a document of significant relevance to the decisions made on my complaint C12HDCxxxxx, and I do consequently consider it completely appropriate for your Office to reveal the letter to me. Any privacy concerns of other persons mentioned in that letter can easily be addressed by blackening or whitening out their names and other identifiable details.

The public also has a strong interest in sufficient transparency, as to what important information the HDC uses for considering complaints such as the one I made about a third party medical assessor (like Dr Dxxxx Xxxxxxx), and it does certainly have an interest in how the HDC forms views and decisions on matters such as my complaint. I consider that in this case the interests of the wider public outweigh any privacy concerns of the persons mentioned in that document, as these can easily be addressed as I already suggested.

I expect that you make that letter dated 16 August 2010, to which Dr Xxxxxxx referred, available to me in a form that protects the identity of persons that may be mentioned in it.

**Newly presented phone call log entry for 11:39 h on 09 August 2011 (C11HDCxxxxx)**

Secondly, I note that your Office has now made available a phone conversation transcript or log entry, created by Mr Axxx Lxxxxx at the Health and Disability Commissioner Office at 11:39 h on 09 August 2011. It covers details of an outgoing call that he made to me roughly at about that time, which he has recorded in some detail. I do still remember that phone conversation and did at that time also make notes about it, which I have on file.

I must inform you that Mr Axxx Lxxxxx has recorded some incorrect information. Indeed, I am under the impression, he has at a later stage altered the phone log record, probably in order to cover himself from any possible legal challenges about the contents of that conversation that he had with me about the HDC’s refusal to accept my comprehensive complaint that I sent in on 08 August 2011. I do note with great concern, that he apparently made great efforts to also stress, through editing the log, that it was not only due to the alleged technical limitations with your system, but also for the supposed fact, that your staff could not process the large volume of information, that my complaint could then not be accepted.

The latter comments by Ax Lxxxxx are actually things he did not say to me then. All he did at that actual time and date tell me was that the emails I sent in were allegedly “freezing” your Office’s computer system. He said then, the emails could not be opened and made other comments of that type. There were NO comments that he made, which may have simply been about the volume of the information I sent, that were related to non technical problems.

As I have stated in earlier correspondence with your Office, the comments by Mr Lxxxxx were not credible, as I received confirmation from other HDC staff, that my emails had all been received and internally been passed on! All emails were of a standard ordinary type and with normal size attachments (mostly PDFs), and they will have been possible to be opened by any ordinary email and computer system. Hence I did not give any credit to Mr Lxxxxx’s claims then, and will not do so now. There was a clearly detectable reluctance by him to process my complaint, by giving very questionable, unconvincing explanations.

Mr Lxxxxx has also been “convenient” with the truth, when stating in that log entry, that I “eventually came to accept this”, what he claims to have explained to me. I did never accept
his explanations then, nor do I now, and it is my view that Mr Lxxxxx has without proper 
authorisation and without valid justification interfered with that record at a later stage, and 
“edited” it by amending it, so it would protect him from any negative consequences, should a 
further investigation and review of the handling of my complaint reveal what he had initially 
told me during that particular phone conversation. The only reason I presented a follow-up 
summarised complaint was for the reason, that I was given NO alternative option to have any 
person at your Office look at my complaint about XXXX counsellors. But to avoid any 
misunderstandings, I made clear mention in that later supplied summary complaint, that it 
must be viewed with the information I had already presented before, on 08 August 2011.

I note also, that this log entry was never previously provided to me upon any of my earlier 
Official Information Act and Privacy Act requests to the HDC Office. Only now has it been 
made available by your Office. I see that the record was “edited” on 06 March 2012, and 
apparently only then added to the file under reference C11HDCxxxxx. A note indicates that it 
had before then been put under an earlier complaint of mine from 2007, which had though 
already been closed off for years, and the note does therefore make no sense. I see that you 
have (with the information now sent to me) also provided a form, which had already been 
sent to me before, and it mentions a “Date of Triage meeting” for 08/08/2011. As this form is 
part of the complete file under reference C11HDCxxxxxx, I must presume that a new file was 
already created then, so it is hard to believe that a phone call by Mr Lxxxxxx on the following 
day (09 August 2011) would be filed under an earlier complaint that had long been closed off.

In view of this appalling, unacceptable conduct by your staff member Axxxxxxx Lxxxxx, who 
has without any fair and reasonable justification later changed (“edited”) an older phone log 
record for 11:39 h on 09 August 2011, I must insist that you hold him to account for his 
conduct and correct the record, at least by adding my position that I have stated above.

The record has in my view been falsified, which is a clear and very serious breach of 
standard public records maintenance and storage guidelines. Also was this phone log entry 
previously withheld from me, while I had made a number of requests under the Official 
Information and Privacy Acts, which raises yet further questions about other breaches of the 
law. I expect that you provide a clarifying explanation to me re this completely unacceptable 
conduct by HDC staff, re which I will consider taking further action, should you not offer a 
convincing enough and valid response, also remedying the issue I have just described.

As for the copies now received by me, I do with regret note that they are double sided copies 
and in part not in proper sequence, yes partly all over the place. I would have appreciated a 
more orderly presentation of the information I had requested. But as I have most of it already, 
I will not bother asking for a resending of this.

I appreciate a response from your Office within the coming two weeks, rather than another 
20 working days. My remaining concerns are clear, will not require renewed collation of 
information, and will simply only require a review of your decision re the letter dated 16 
August 2010 that was so far withheld. Also do I expect and require the mentioned correction 
of the wrongly “edited” phone log for 11:39 h on 09 August 2011, together with a proper 
explanation for why this unacceptable, unjustified “editing” had wrongfully been done.

The matters I have raised above do regrettably give me no reason to alter my past critical 
views and my position towards your Office’s handling of my complaints.

Yours sincerely

Xxxxxxx Xxxxxx