



1 December 2021



Ref: OIA-2021/22-0393

Dear 

Official Information Act request relating to Alert Level requirements

Thank you for your Official Information Act 1982 (the Act) request received on 5 October 2021. You requested:

- 1. Please provide the information and evidence relied on to make the decision to specifically exclude swimming, surfing, scuba-diving, water-based activities involving boating, sailing boats, motorised craft, or motorised equipment, hunting in motorised vehicles, tramping, or flying manned aircraft (“the exclusions”) from the definition of “exercise or other recreation”?*
- 2. In particular, what information and evidence was relied upon to exclude swimming and surfing?*
- 3. If not answered above, were ACC accident/ injury statistics considered in making the exclusions? If so, what specific statistics were considered?*
- 4. If not answered above, in the last 12 months, what is the number of open water swimmers who have found themselves in danger and/or required search and rescue assistance?*
- 5. How does this compare to mountain bikers over the same period?*
- 6. Did you consider that experienced swimmers and surfers could exercise their common sense to not put themselves in danger and therefore did not need to be an excluded activity?*
- 7. Was any consideration given to the effect on mental health of placing a blanket ban on the excluded activities?*
- 8. What was the rationale for allowing other activities, such as mountain biking, roller blading, and skate-boarding to still be permitted providing they are carried out on such a way that does not expose the participant to danger or may require search and rescue services?*
- 9. Did Minister Clark have any input into the Order or previous relevant orders? If so, please provide details.*

The time frame for responding to your request was extended under section 15A of the Act by 20 working days because it necessitated consultations to be undertaken before a decision could be made on the request. Following this extension, I am now in a position to respond.

I believe that questions four and five of your request are more closely connected to the functions of Sport New Zealand. Accordingly, I have decided under section 14(b)(ii) of the Act to transfer these parts of your request to Sport New Zealand. Sport New Zealand has the usual timeframes under the Act from receipt of this transfer to make a decision on your request. The other parts of your request will remain with the Department of the Prime Minister and Cabinet.

In relation to your first question, as part of the design of the Alert Level framework during the COVID-19 response in 2020, permissions for essential personal movement at Alert Level 3 were designed to allow people to undertake limited sports and recreational activities in a safe way. It is important to note that for all activities people can do at Alert Level 3, these apply to people who are both experienced and familiar with the area they are undertaking the activity.

The existing permissions in the COVID-19 Order set out that people can undertake exercise or other recreation as long it does not involve scuba-diving, water-based activities involving boating, sailing boats, motorised craft, or motorised equipment, hunting in motorised vehicles, or flying manned aircraft, and as long as it does not involve any other activities that expose the participant to danger or may require search and rescue services (clause 21 (6)). Because boating activities allow people to travel substantial distances from shore, the risk involved with these activities in the event that emergency assistance is needed was deemed higher than those that are land based, or undertaken close to shore (i.e. swimming at safe spots, kayaking, surfing). On this basis, the recommendation was to prohibit boating activities, alongside recreational flying, at Alert Level 3.

In relation to your third question, statistics from the Accident Compensation Corporation were not used to inform this policy decision.

Recently, the Government announced that New Zealand will move into the new COVID-19 Protection Framework (the Framework) from 11:59pm on Thursday 2 December. As a result of this move, restrictions in Auckland are set to ease as the region enters the Red setting of the Framework. At Red, individuals will be able to partake in sport and recreational activities, including water-based activities such as swimming and surfing. In addition to open water swimming, swimming pools will be able to operate under Red with minimal health restrictions, if COVID-19 Vaccine Certificates are used.

When considering the restrictions imposed on communities by the Alert Level requirements, officials must take into account whether they represent effective measures to limit the spread of COVID-19 alongside the impacts of any measures, both on society generally and to at-risk populations in particular. Within that, public attitudes and compliance are regularly reviewed against the measures in place.

In response to your final question, Minister Clark did not have any input into the Order or previous relevant orders.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on the Department of the Prime Minister and Cabinet's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



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COVID-19 Response