

# Request for the New Zealand Localities dataset

<b>Legislation:</b>	Official Information Act 1982, ss 9(1), 9(2)(b)(ii), 9(2)(c), 9(2)(e) (see Appendix 1 for full text)
<b>Requester</b>	Koordinates Limited
<b>Agency:</b>	New Zealand Fire Service Commission
<b>Request for:</b>	A copy of the New Zealand Localities dataset
<b>Ombudsman:</b>	Professor Ron Paterson
<b>Reference number(s):</b>	179451
<b>Date:</b>	September 2014

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## Summary

Koordinates Limited (Koordinates) made a request to the New Zealand Fire Service Commission (NZFSC) for a copy of a computer dataset known as NZ Localities, which describes the location of boundaries between different areas of the country. NZFSC provides this dataset free of charge, but asked Koordinates (as it does for all other users) to sign a licence agreement governing use of the dataset. Koordinates declined to sign the agreement. NZFSC then refused the request under sections 9(2)(c) and 9(2)(e) of the Official Information Act 1982 (OIA), as it believed withholding the information was necessary in order to avoid prejudice to measures designed to protect the health and safety of, or to prevent or mitigate material loss to, members of the public. This predicted harm would arise from an unlicensed dataset becoming out of date, and NZFS being directed to the wrong location in an emergency.

Following notification of the Ombudsman’s investigation, the involvement in the governance of the dataset of two state-owned companies, New Zealand Post and Quotable Value, became clear, and their views were sought. The two companies argued that section 9(2)(b)(ii) — which concerns the risk of unreasonable prejudice to the commercial position of the relevant entity — also provided a reason for withholding the unlicensed dataset. Based on the available information, I have concluded that sections 9(2)(c) and 9(2)(e) provided good reason to withhold an unlicensed copy of the NZ Localities dataset, and that the public interest in disclosure of an unlicensed copy of the dataset does not outweigh the reasons for withholding.

## My role

1. As Ombudsman, I am authorised to investigate and review, on complaint, any decision by which a Minister or agency subject to the OIA refuses to make official information available when requested. My role in undertaking an investigation is to form an independent opinion as to whether the request was properly refused.

## Background

2. Koordinates made a request to the NZFSC on 21 March 2009, for a copy of its ‘NZ Localities’ computer dataset. The data stored in the dataset describes the boundaries between different ‘localities’, or parts of the entire country. It might be understood as describing the boundaries between suburbs, but this would not be accurate as many ‘localities’ are not suburbs of a town or city, and public perceptions of

where one suburb starts and another ends may differ from the boundaries defined in the dataset.

3. On 26 March 2009, NZFSC responded to Koordinates' request. NZFSC wrote:

*"The NZ Localities dataset is available for distribution, and NZ Fire Service promote the use of this dataset as all emergency services are using the data for reference and to support emergency response. The dataset is managed and maintained by a consortium including NZ Fire Service, NZ Post and Quotable Value NZ.*

*The NZ Localities dataset is bound by a license agreement as attached. Please complete the license agreement, print out and sign the agreement, and return to me at the address below. The dataset can then be supplied to you."*

4. In response, Koordinates asked if NZFSC was refusing the request under the Official Information Act and, if so, pursuant to which section of the Act.

5. NZFSC wrote to Koordinates on 17 April 2009, refusing the request:

*"I refer to your email of 21 March 2009 and subsequent emails of 25<sup>th</sup>, 26<sup>th</sup> March and 9<sup>th</sup> April requesting a copy of the dataset known as NZ Localities (the Information) pursuant to the Official Information Act 1982 (the Act).*

*The Information is a geospatial dataset built, managed and maintained by a consortium of public sector and local government agencies. The cost of compiling, managing and maintaining the Information is met from public funds appropriated for the purpose of supporting location verification for emergency response and postal addresses. Accordingly, the consortium has put in place appropriate arrangements to ensure the publicly funded Information is used appropriately and to ensure the public is protected from any potential misuse of the Information.*

*As previously communicated to you, the NZ Fire Service makes the Information available to bona fide users free of charge under the terms of a data licensing agreement. If you are not prepared to enter into a data licensing agreement governing the use of the Information then I consider there is good reason for withholding the Information you requested by virtue of sections 9(2)(c) and 9(2)(e) of the Act."*

6. Koordinates made a complaint to the Ombudsman about the refusal of the request on 21 April 2009. The complaint stated:

*"I've been experiencing difficulty trying to extract a map dataset out of the New Zealand Fire Service under the OIA. The dataset in question describes locations and boundaries of New Zealand suburbs.*

*The Fire Service is making their fulfilment of the OIA request conditional on signing of a restrictive license agreement covering how the requested data*

*can be used. If I refuse to sign this license agreement, they're denying the OIA request for reasons of 'public health and safety' and 'material loss'.*

...

*Could the Office of the Ombudsmen please comment on:*

- *whether the New Zealand Fire Service (or any Government agency subject to the OIA) can require a license agreement to be signed before fulfilment of an OIA request*
- *whether the reasons stated by the New Zealand Fire Service are acceptable in denying my request."*

## Investigation

7. This investigation was commenced during the term of office of Ombudsman David McGee. Following his retirement in June 2013, I assumed responsibility for the investigation.
8. The Ombudsman notified the investigation to NZFSC in May 2009. NZFSC was requested to provide a copy of the information at issue, a report explaining the reasons for withholding and any papers relating to the decision on the request.
9. In June 2009, NZFSC provided a copy of the NZ Localities dataset, the licensing agreement it had asked Koordinates to sign ([Appendix 2](#)), most of the papers relating to the decision on the request, and a report on its reasons for refusing the request.
10. A meeting to discuss the issues involved was held with the NZFSC in March 2010. At the meeting, NZFSC suggested additional reasons to refuse the request. It also became clear that the involvement of NZ Post and Quotable Value in the consortium governing the dataset meant that the views of these organisations should also be sought.
11. At the end of July 2010, NZFSC provided details of the relevant people to contact at NZ Post and Quotable Value, and in September 2010 the Ombudsman sought the views of the two organisations.
12. Both organisations responded that they thought section 9(2)(b)(ii) of the OIA provided good reason to withhold the dataset if the requester was unwilling to sign the license agreement. NZ Post also stated that it thought that sections 9(2)(ba)(ii), 9(2)(e), 9(2)(i), 9(2)(k) and 18(h) provided grounds for refusing the request.
13. A meeting was held with NZ Post in November 2010, to obtain further explanation of its concerns. After this meeting, NZ Post wrote to the Ombudsman again, supplying additional information about its concerns with regard to section 9(2)(b)(ii), and its views on copyright and intellectual property.

14. In March 2011, the Ombudsman wrote to Koordinates, seeking to discuss the concerns raised by NZ Post in relation to ensuring the integrity of the data once disclosed, whether the company was willing to agree to the clauses of the data licensing agreement that related to ensuring the integrity of the data, and whether it still required the information. No response was received from Koordinates and it appears from subsequent correspondence that this was because the letter went astray, and was not received.
15. In December 2011, NZFSC was asked to provide a copy of the agreement governing the consortium that produces the NZ Localities dataset, and the contract with the company that maintains the dataset.
16. In January 2012, NZFSC provided a copy of the 2005 agreement between the consortium parties and the company that maintains the dataset, and a copy of a 2007 update to the agreement.
17. NZFSC was next contacted in March 2013, and asked to provide the Ombudsman with a copy of any documents guiding its call centre staff on the procedures for establishing and confirming the location of an incident. It was also asked for a copy of legal advice on Koordinates' request, referred to in its 2009 internal correspondence discussing the request.
18. NZFSC provided a copy of the training manual for call centre staff that sets out the steps to be taken to establish and verify the location of an incident.
19. A meeting was held in March 2013, with officials working for Land Information New Zealand (LINZ), to discuss issues related to the New Zealand Government Open Access and Licensing (NZGOAL) framework and the licensing of datasets for reuse.<sup>1</sup>
20. In March 2013, NZFSC provided a copy of the legal advice referred to in papers relating to the processing of Koordinates' request.
21. A meeting with NZFSC and NZ Post was held in March 2013, to discuss the request and the agencies' concerns. The meeting was also used to clarify points arising from the additional background material provided by NZFSC, and to establish whether any of the issues had changed since the date of the original request. NZFSC was asked to provide the Ombudsman with some further information on the frequency with which the location of an incident reported through its call centres was determined or verified by reference to the locality in which it was taking place. During the meeting, NZFSC referred to occasions when ambulances and fire engines had gone to different locations when intending to attend the same incident, because the ambulance service was using software that relied on different data for locality boundaries to that being used by the Fire Service. NZFSC was asked to provide examples, along with any information it had on the frequency of such incidents before the ambulance service started using the same

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<sup>1</sup> New Zealand Government Open Access and Licensing (NZGOAL) framework, New Zealand Government. Source: <http://ict.govt.nz/guidance-and-resources/open-government/nzgoal> accessed on 20 August 2014.

system as the Fire Service. NZFSC also said it would provide the Ombudsman with a list of the licensees of the NZ Localities dataset.

22. Following the meeting, NZ Post was asked to provide some information about the financial impact on its business of processing inaccurately addressed mail, and mail that needed to be returned to the sender. This was provided in May 2013.
23. In May 2013, NZFSC provided information on the frequency with which the location of an incident reported through its call centres was determined or verified by reference to the locality in which it was taking place. It also explained that it had tried to obtain the information requested about ambulances and fire engines going to different locations when intending to attend the same incident, but the ambulance service had been unable to provide it.
24. In June 2013, clarification of some issues was sought from Koordinates, and it provided responses to these enquiries on the same day.
25. In July 2013, Koordinates was asked to explain to the Ombudsman which particular aspects of the standard NZFSC licence for the NZ Localities dataset were problematic for it. A response was provided in August 2013.
26. After considering the information at issue, the reasons for withholding it provided by the NZFSC, NZ Post and Quotable Value, and the comments made by Koordinates, I provided Koordinates and the NZFSC with my provisional opinion on the complaint in February 2014.
27. Koordinates provided initial comments on the provisional opinion in March 2014, and further comments and information in April 2014.
28. In April 2014, NZFSC was asked to comment on Koordinates' response to the provisional opinion, and some of the additional information provided. NZFSC responded in July 2014.

## Comments received during investigation

### Comments from the New Zealand Fire Service Commission

29. Following notification of the complaint, NZFSC responded:

*"The Commission maintains that, in the absence of agreement from a requester to properly maintain the New Zealand localities dataset, it has good reason to withhold that information under sections 9(2)(c) and 9(2)(e) of the Official Information Act 1982.*

*The New Zealand Localities dataset is a measure used for the protection of the safety and health of members of the public. The New Zealand Localities dataset is used by the New Zealand Fire Service, the Police and other*

*emergency service providers for location verification when responding to emergencies. For the same reason, the New Zealand Localities dataset is also a measure that prevents and mitigates material loss to members of the public.*

*Consistent with its statutory mandate to protect life and property, the Commission is keen to promote the wider use of the New Zealand Localities dataset to encourage consistent application of location names. However, a failure to ensure that the New Zealand Localities dataset is properly maintained from a single source may have serious consequences affecting the attendance of an emergency service provider to an incident to which it is called. Incorrect location information from a modified version could result in the public using that incorrect information to lodge an emergency and consequently could result in an emergency provider taking longer than necessary to attend an incident or failing to attend to the correct address. Such consequences are likely to be greater if the New Zealand Localities dataset is distributed more widely and the maintenance of the information is not provided for. On the other hand, widespread use of properly maintained location information could assist the public with correctly identifying their location and with speedier response time for emergency service providers. Failure to ensure the consistent application of location names will also undermine the ability of those who rely on the use of the information as accurate, as they do now. For this reason the Commission considers it vitally important, in the public interest, for it to require that [Koordinates] signs an agreement to maintain the information before making it available to [the company].*

### ***An explanation as to why we asked [Koordinates] to sign a data licensing agreement***

*The New Zealand Localities dataset is a dataset built, managed and maintained by a consortium of New Zealand Fire Service, NZ Post and Quotable Value New Zealand. It is governed by a steering committee comprised of these agencies and local government representatives. It is used by those agencies for location verification when responding to emergencies and for postal purposes.*

*The members of the consortium have traditionally managed the provision of the New Zealand Localities dataset under the enclosed data licensing agreement. This is to ensure that the information contained in the New Zealand Localities dataset remains accurate, which ensures that those who rely on the information can continue to do so.*

*The enclosed data licensing agreement is a template document. The Commission is flexible in relation to the inclusion of all the terms of that agreement. As set out above, the fundamental reason for requiring recipients of a data licensing agreement is to ensure the information contained within*

*the New Zealand Localities dataset remains accurate and not to restrict the free distribution of this information.”*

30. At the meeting with NZFSC in March 2010, it raised some further issues. NZFSC expressed concern that the main reason for Koordinates not wanting to sign the licensing agreement was that it wanted to sell the information at issue, and that this might be a reason for non-disclosure under section 9(2)(k) of the OIA. NZFSC also suggested that it may owe a duty of confidence to NZ Post and Quotable Value, who had invested money to develop the dataset, and that section 9(2)(ba)(i) of the OIA might therefore apply. Finally, NZFSC stated that since Quotable Value sells data products that incorporate the NZ Localities dataset, and obtaining the dataset for free might undermine Quotable Value’s business, section 9(2)(b)(ii) of the OIA might apply.
31. In January 2012, when providing the Ombudsman with a copy of the agreements for maintenance of the dataset, NZFSC made further comments on the request and complaint:

*“Governance of the dataset by the parties is managed through a steering group with representatives from NZFS, NZ Post and QV (and also attended by Wellington City Council, as a stakeholder) which meets monthly. The licence agreement was developed a number of years ago by NZFS, and adopted for use by the steering group.*

*We trust the above information is of assistance to you in considering the complaint against our refusal to supply the information.*

*You may find it useful to consider the complaint in the broader context of NZFS’s statutory mandate. NZFS is established under an Act which ‘consolidates and amends the law relating to the protection of life and property from fire and certain other emergencies’. To give effect to that mandate NZFS has put in place a wide range of measures from fire safety public education programmes to investment in capability to respond to emergencies and to suppress and extinguish fires.*

*As fires grow in intensity very rapidly, the speed of response to alarms of fire is a critical determinant in the outcome of any intervention by NZFS. Similarly, timely responses to other types of emergencies will help significantly in NZFS’s response to protect life and property. Prompt processing of alarm calls and the timely despatch of appropriate resources to the precise location of an emergency are therefore important components of the emergency intervention. NZFS operates three computer aided despatch centres that receive 111 calls and use the NZ Localities dataset in the course of processing and responding to alarm calls. The call takers are nevertheless reliant on the integrity of the address information provided by the callers. In our view there is a very clear risk to public safety where, the caller provides the call taker with address information based on a repackaged, on-sold dataset that contains unauthorised changes or does not include authorised updates.*



*Where the caller is a smaller commercial security firm or an alarm monitoring agent that has purchased a modified dataset in good faith the risk to public safety is even greater.*

*We emphasise our refusal to provide the information is qualified. We are willing to provide the information free of any charge subject only to the requester entering into a data licensing agreement. The terms of the licence agreement are hardly onerous. Since 2008 more than 23 agencies, including many commercial companies, territorial authorities, utility companies and Government agencies, have entered into data licensing agreements with the NZFS. NZ Post and QV also have many registered agencies that have acquired the NZ Localities dataset under the license agreement.”*

32. At the meeting with NZFSC and NZ Post in March 2013, NZFSC said that if the dataset were disclosed to someone who had not signed the licence, although that person might be conscientious about keeping it up to date when NZFSC informed them that an update should be applied, others who obtained a copy of the dataset might not be so diligent. They could develop derivative products that become popular and are relied upon, even though not kept up to date with changes to locality boundaries.
33. There was discussion about the likelihood of the harm foreseen by NZFSC. It was put to the agency that for the harm to occur, a person would have to have consulted a website, or device incorporating geographic information, which used an out-of-date or amended version of the dataset (as a result of it having being released without the licence being signed), before or at the time they phoned to report a fire on 111. The caller’s advice to the emergency services call centre of an incorrect locality would then have to result in the call centre staff misidentifying the location of the incident (for example, a road called ‘High Street’ that exists in two different localities), with the result that the fire engine dispatched to attend the incident went to the wrong location. NZFSC said that the consequences of people relying on products that used different definitions of locality boundaries had been seen when the ambulance services used a different product for registering the location of an incident to that used by the Fire Service, and an ambulance dispatched to the same incident as the Fire Service had gone to a different location.
34. In May 2013, when NZFSC supplied the requested data about the frequency with which the location of an incident was identified or verified by reference to the locality, it wrote:

*“All incidents logged in the NZFS Communications Centres and attended by the NZFS were analysed for the use of NZ Localities (suburbs). Please see attached our response:*

1. **66,578** incidents logged in the NZFS Communication Centres and attended by NZFS between 01/01/2012 and 31/12/2012. All of these incidents include NZ Localities (Suburbs) as a locate/verify attribute to determine incident location.
2. Of the above, 1,036 of the NZFS incidents used NZ Localities (Suburbs) **exclusively** as a locate/verify attribute to determine incident location.

3. *Ambulance NZ was provided with the NZ Localities dataset in January 2012. However Ambulance has been unable to provide us with information about incidents before the supply and use of NZ Localities (Suburbs), we are therefore unable to provide the comparative information you have requested.” (emphasis in original)*
35. Following receipt of Koordinates’ response to my provisional opinion, NZFSC was asked for its comments. NZFSC comments were received in July 2014, and addressed four specific issues.
36. First, in relation to how the emergency services call centres use NZ Localities, the NZFSC wrote:

*“[Koordinates’] interpretation of the use of the NZ Localities dataset in the NZ Police/NZFS Communications Centres is incorrect.*

*As one of many uses of the NZ Localities dataset in NZFS, the dataset is a key attribute in the incident locate/verify function used by NZ Police/NZFS Communications Centre personnel (Communicators) in the Computer Aided Dispatch (ICAD) system. The locate/verify function in ICAD assists Communicators to find an incident address using attributes including address number, street name, Locality (NZ Localities), Major Locality (NZ Localities), Locality Alias (NZ Localities). ICAD then automatically assigns the incident location to that address, and emergency responders are dispatched to that location. Where an address is not available, other relevant location information is used to assist Communicators to find an incident. This may include Common Places, enhanced locations of interest, address and suburb aliases, or specific locations known to Communicators or the public.*

*In most instances, the Locality attributes are critical information to assist Communicators to locate an incident, as there can be multiple addresses that are the same across New Zealand (i.e. 5 High Street), and the Locality attributes are used to distinguish between these identical addresses.*

*Using the example highlighted by [Koordinates] in its response, a search of 5 High Street, Auckland was undertaken in NZFS systems with the results set out in the table below. The example shows 9 primary locations of ‘5 High Street’ in different localities throughout New Zealand as being available to the Communicators, along with 18 other locations of 5 High Street in New Zealand. Each of the 27 known addresses is uniquely identified using the NZ Localities dataset attributes.*

*This demonstrates that the NZ Localities dataset is critical for emergency services to distinguish between identical addresses. It is therefore critical that any change to the NZ Localities data is managed under licence by emergency services to ensure that it is not modified or altered by third parties.*

*[Table provided with search results for ‘5 High Street’]*

*NZ Localities dataset is also used in other NZFS systems as a key attribute for analysis and modelling of resources, risks and general geospatial data maintenance. Geospatial and Location data is managed and maintained in various systems in NZFS, including Communications Centre Standard Operating Procedures, Geospatial systems & applications and Station Management Systems. NZFS Operations personnel and Communicators also maintain address and other critical operational data in these systems.*

*NZFS is unable to comment on the issues with the example provided by [Koordinates] in relation to the Koordinates location. As demonstrated above, 5 High Street, Auckland (along with 27 other instances of this address) is a recognised and verifiable address in the ICAD system.*

*As has been previously described to the Ombudsman, the NZ Localities dataset is maintained by a consortium that includes NZFS, NZ Post and QVNZ. The consortium also includes advisors from Territorial Local Authorities and Land Information New Zealand.”*

37. NZFSC also responded to Koordinates’ comparison of the NZ Localities dataset with the datasets showing the boundaries of school zones and District Health Boards (DHBs), which Koordinates had stated were freely available without a licence needing to be signed. NZFSC said:

*“Ministry of Education School Zone boundaries and District Health Board boundaries are arbitrary boundaries defined by these organisations for administrative purposes. NZFS has no knowledge of any use of these boundaries to support life critical emergency response, therefore NZFS cannot comment on or compare these datasets with the use of NZ Localities by emergency services.”*

38. The third specific issue NZFSC was asked to comment on was Koordinates’ comparison of the licensing arrangements for the Topo 50, nautical and maritime mapping datasets and those for NZ Localities. On this point, NZFSC commented:

*“Land Information New Zealand publishes various datasets including the NZ Topographic data at 1:50:000 scale and various Hydrographic datasets. Other agencies also publish datasets that support location, administration and operations. Emergency services use these and various other datasets as background information to support location of incidents. Emergency services also use various licensed Government data, classified Government data, and commercial datasets (including Aerial Photography (Imagery)) licensed by companies and restricted due to commercial intellectual property.*

*Comparisons both for and against the current NZ Localities licence agreement terms and conditions could be made against many other geospatial datasets made available by Government and commercial organisations either under restricted licensing or without licence in New Zealand.*

*NZFS reserves any comment on the comparisons, assumptions and comments made by [Koordinates] in the Appendix to its letter dated 20 March 2014, and would refer the Ombudsman to the response below relating to 'Licence Terms'.*

39. Finally, NZFSC commented on the terms on which NZ Localities is licensed, and what Koordinates had written about this:

*"Since 2013, NZFS has been working with the New Zealand Geospatial Office (NZGO) and Land Information New Zealand (LINZ) to establish and mandate the NZ Localities dataset as a fundamental dataset for New Zealand under the NZ Geospatial Strategy and NZGOAL framework. NZFS is also working with NZGO and LINZ to establish the NZFS Commission as the authoritative custodian of the NZ Localities dataset, to establish the NZ Localities dataset an authoritative source of Crown data.*

*It is expected that prior to end of 2014, and subsequent to establishing NZFS as custodian, NZFS will release the NZ Localities dataset under a new Creative Commons licence (CC variation yet to be defined). The NZ Localities dataset will then be released through the Department of Internal Affairs data.govt.nz website and will be available at no cost to the public (as per current access protocols) directly from NZFS under CC licensing."*

40. NZFSC referred the Ombudsman to its statement about its initial consideration of the application of NZGOAL to the NZ Localities dataset, which appears on the Government's data.govt.nz website.<sup>2</sup> In response to a request for NZ Localities to be made available on a Creative Commons licence, NZFSC had stated:

***"Review of Dataset under GOAL criteria***

*Given the nature of the ownership of the Dataset, NZFS will need to first consult with New Zealand Post, Quotable Value, and the other contributors to the Dataset, as part of the assessment of the Dataset against the criteria under GOAL.*

*NZFS will then consider the grounds for restricting the re-use of the Dataset (that is, for not providing for its re-use on the most open of licensing terms) as set out in GOAL (paragraph 26 of NZGOAL), and our preliminary assessment is that the following grounds for restriction may apply, that is that the licensing under the CC-BY licence may:*

- *be contrary to the public interest in having a single authoritative and non-adapted version of a specific data source (paragraph 26(e) of NZGOAL);*

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<sup>2</sup> Data requests: NZ Localities. Response of the New Zealand Fire Service Commission, 14 April 2011. Source: <https://data.govt.nz/datasetrequest/show/4> accessed on 20 August 2014.

- *result in the release of an incomplete work or incomplete material where the release would be materially misleading or likely to cause or contribute to material error by recipients or licensees, and the use of disclaimers or statements might not adequately mitigate this risk (paragraph 26(f) of NZGOAL); or*
- *be contrary to an agency's commercial interests (paragraph 26(c) of NZGOAL) (having regard to the commercial use of the Dataset by NZ Post).*

*NZFS would, as part of the full assessment of the Dataset under NZGOAL, need to consider if the CC-BY or one of the more restrictive Creative Commons licences (as set out in NZGOAL) would be the most appropriate for the release of the Dataset.”*

41. The NZFSC letter to the Ombudsman in July 2014 concluded:

*“The NZFS NZ Localities dataset licence terms and conditions have not been requested to be changed by licensees within New Zealand to date, and all organisations and individuals who have requested access to the dataset have agreed to the Terms and Conditions. There has been one instance of a request to modify the licence agreement by an Australian company due to differences between New Zealand and Australian privacy law, and to provide continued use of data where the licensee has downstream contractual obligations in relation to embedded data.*

*Noting the above actions by NZFS to move the NZ Localities licensing to Creative Commons licensing, the NZFS would defer any change or amendment to the existing licence agreement until the new Creative Commons licensing is established, following appropriate consideration and agreement by NZFS and NZ Localities Consortium members.*

...

*([NZFS notes] that [Koordinates] had not responded to previous offers by NZFS to [Koordinates] to submit a request for change to the NZ Localities terms and conditions).”*

## Comments from New Zealand Post

42. In October 2010, NZ Post advised the Ombudsman:

*“New Zealand Post (we or us) considers that the New Zealand Localities dataset (Localities dataset) should not be provided to [Koordinates] (the complainant) under the Official Information Act 1982 (OIA). We consider that the relevant grounds for refusal include sections 9(2)(b)(ii), 9(2)(ba)(ii), 9(2)(e), 9(2)(i), 9(2)(k) and 18(h). We consider that it would be appropriate to provide the Localities dataset to the complainant subject to the complainant*

*entering into the standard New Zealand Fire Service (NZFS) licence agreement.”*

43. NZ Post supplied further written comments in November 2010:

***“Unreasonable prejudice to commercial position of New Zealand Post (section 9(2)(b)(ii))***

*The standard data licence requires the party acquiring the dataset to use it for a limited period of time, as well as to update it as required and only release current versions of the data to third parties (clauses 4, 8(c), 10). These requirements are in place to ensure that the data released to third parties and used in the public sphere is up to date and accurate.*

*Where the data is not subject to these conditions a risk exists that inaccurate and out of date data will be in the public sphere.*

*Where the public is using incorrect, inaccurate and/or out of date data this will have an effect both on New Zealand Post’s ability to efficiently carry out its core business, as well as potential financial repercussions for New Zealand Post’s customers. Such faulty data means that New Zealand Post’s customers will be using incorrect addressing. Incorrect addressing has the following key commercial impacts:*

- *higher fees being charged to customers; and*
- *reprocessing costs to New Zealand Post.*

*In particular, New Zealand Post’s customers using bulk mailer products are required to meet an address data quality standard described by a ‘statement of accuracy’ with the mail they submit to New Zealand Post’s mail centres. Where address data quality standard is not met (due to incorrect addressing) the outcome can be twofold:*

- *customers are charged higher postage rates; and*
- *New Zealand Post incurs costs in reprocessing such mail manually.*

*Integrity of data and accuracy of addressing are of paramount importance to the efficient operation of New Zealand Post’s core business.”*

44. In May 2013, NZ Post provided further information in support of the comments made at the meeting in March 2013:

***“Financial impact on New Zealand Post’s business of processing inaccurately addressed mail and processing mail that needs to be returned to sender and scale of problem.***

- *New Zealand Post currently processes approximately 240 million Bulk Mail items through its sorting machines per annum at an address*

*accuracy sort rate of 95%. Sort rates vary from site to site — for example, Auckland is 95.4%, Wellington is 94.6% and Christchurch is 91.6%;*

- *that means that there are currently approximately 12 million items per annum which have to be manually sorted. At 5c an item to sort, the annual cost to New Zealand Post of manual processing is \$600,000;*
- *returned mail is a little harder to quantify from a cost point of view. Some items require opening or the need to look up a permit number to identify the sender address. At the very least, the item is stamped for return to sender and typically two manual sorts, followed by a box lobby or postie sort, will be required to return the item to sender. Correctly lodged Bulk Mail is required to have a sender's address so should avoid the opening or look up processes;*
- *to quantify the size of the problem, the Auckland mailcentre (which accounts for a third of mail nationwide) averaged 235,000 return items per month in the final three months of last year. While it is difficult to calculate the exact percentage of this volume that is Bulk Mail, given that 55% of our mail is Bulk Mail, then it is likely that 55% of our return mail is going to be Bulk Mail;*
- *as noted above, a customer will lose its lower Bulk Mail price if it fails to meet the 85% accuracy standard, but it will not be otherwise financially penalised as a result of inaccurate addressing — those costs are borne solely by New Zealand Post.*

...

*It is New Zealand Post's view that such a result would clearly 'unreasonably' prejudice New Zealand Post's commercial position for the purposes of section 9(2)(b)(ii) of the Official Information Act.*

*The 'unreasonableness' of the likely prejudice to New Zealand Post's commercial position is further illustrated when one considers that:*

- *the New Zealand Localities Dataset is currently made available for free by the New Zealand Fire Service;*
- *the terms of the New Zealand Localities Dataset licence are reasonable and have been accepted by the large number of current licensees of that dataset; and*
- *the requester is seeking access to the New Zealand Localities Dataset under the Official Information Act solely for commercial gain."*

## Comments from Quotable Value

45. In its letter to the Ombudsman in September 2010, Quotable Value commented:

*“Quotable Value Limited (QV) cites clause 9(2)(b)(ii) in this instance. Part of our core business involves the collation and sale of data. The New Zealand Localities dataset is embedded in our data and integral to the commercial success of our organisation. I believe the New Zealand Fire Service would prejudice its own and its partners’ commercial interests by releasing data where the user does not agree to the reasonable terms of use.”*

## Comments from Koordinates Limited

46. During the investigation, and in response to the provisional opinion, Koordinates provided extensive comments on why it made the request, the use of NZ Localities in emergency services call centres, the licensing and availability of other geospatial datasets, concerns about the NZFSC licence and the public interest in disclosure.
47. In June 2013, in light of the comments made by NZ Post about Koordinates seeking the information *“solely for commercial gain”*, Koordinates was asked to clarify the reasons for the request and the relationship of the request to Koordinates’ activities.
48. Koordinates responded by explaining why the request was made, and the business model of Koordinates:

*“Firstly, [a Director of Koordinates] filed the OIA request for the NZFS data in my personal capacity and as part of a long-standing interest in open Government information that predates Koordinates. Koordinates’ involvement in publishing open data came out of that, not the other way around.*

*In regards to Koordinates business model, our primary (>95%) business is the provision and support of branded data portals for the storage, viewing and online distribution of datasets (mostly geospatial). We also provide related services such as the development of new functionality to meet customer needs.*

*As you know, koordinates.com itself hosts numerous free datasets. These are provided at no charge to users, with the exception of ‘download fees’ charged for downloading certain very large aerial photo layers (viewing is still free). As the councils don’t pay us, we recover some costs from users for storage and processing of those larger datasets.*

*We have a minor side business in koordinates.com acting as a marketplace for commercial data. But that is not \*our\* data, we are the middleman.*

*We also charge ‘courier delivery fees’ to process data on koordinates.com onto a hard drive or DVD etc and deliver it to an address. This again is to cover costs.”*



49. In relation to the company's publication intentions, if the NZ Localities dataset were disclosed to Koordinates, a Director of Koordinates advised in June 2013:

*"Yes, I'd publish it (for free download) on koordinates.com. I believe it's an important 'base' NZ dataset funded by NZ taxpayers (and the insurance companies!) that should be freely and easily accessible to anyone. It's even more important now we know it's deeply integrated into the real estate pricing system."*

50. In the March 2014 response by Koordinates to the provisional opinion, a Director of Koordinates provided their understanding of how the NZ Localities dataset is used by the emergency services call centres. It is this use of the dataset which is at the heart of the refusal of the request under sections 9(2)(c) and 9(2)(e) by the NZFSC.

*"In 2010 following the initiation of my OIA complaint, I sought and received a tour of the Central Communications Centre. This tour was facilitated by Intergraph (who deliver and support the comms and mapping software), and NZ Police staff. Central comms is the Wellington centre, one of three nationwide, that houses NZ Police, NZ Fire Service, and sometimes ambulance staff responsible for despatching their respective resources in response to 111 and direct calls to Police, Fire and ambulance stations.*

*During this tour I investigated how their mapping software, the NZ Localities dataset, and another NZFS dataset called 'the Common Placenames Database' was actually used by NZFS staff going about their day-to-day duties, rather than simply trusting the IT division of NZFS word that this dataset was key to their operations.*

...

*Summary of points from this [tour]:*

- *Suburb names as identified in NZ Localities are 'additional information', not 'key information', and often differ from what members of the public identify as the suburb or locality. NZFS comms staff are able to handle this work. This substantially undermines NZFS' argument that this dataset underpins NZ's public health and safety, let alone that providing a copy to me absent its current license terms could pose a threat to NZ's public health & safety. If one were to use the same somewhat hysterical argument as NZFS' comments supplied to the Ombudsman, one could argue with more force that NZFS persisting with NZ Localities, full stop, is a public health & safety problem. But I will only point out their language in their responses to the Office of the Ombudsman is out of whack with their own internal use of this data.*
- *When necessary, hopefully rarely, NZFS comms staff use external systems outside the control of NZFS IT to verify the existence of businesses, buildings and addresses. Those systems include free 'search'*

*websites with no clear data update procedures, which may or may not be using licensed copies of NZ Localities to identify suburb names. They also use the websites of businesses which contain addresses using various local suburb names not coincident with NZ Localities. NZFS comms centre staff are apparently able to handle these issues without triggering a major public health and safety problem.*

- *In 2010, there was no apparent quality control processes in place to improve NZ Localities based on NZFS interactions with the public (I asked comms staff explicitly), remembering that comms staff weren't even aware it existed as a separate dataset.*

*On 19 March 2014 I reconfirmed most of the above facts via currently operational NZFS comms centre staff:*

- *Comms centre operators still regard the suburb name displayed in Intergraph and derived from NZ Localities as non-critical 'additional information' which may or may not coincide with the suburb name reported by a caller.*
- *Suburb names are still displayed for certain incidents, e.g. along state highways in rural areas, which have no operational relevance at all for NZFS appliances and comms centre staff, and aren't derived from 'local knowledge'. It's unclear where these boundary localities originate.*
- *Comms centre operators still have no QA process to improve NZ Localities based on information supplied by 111 callers. It's been 4 years since my tour of Central Comms and this situation has still not improved ... is this the sign of a dataset of critical importance to NZ public health & safety?"*

51. In response to the information provided by NZFSC about the frequency with which the location of an incident was verified by reference to a locality, Koordinates commented:

*"This response might be strictly accurate, but NZFS has failed to provide the context allowing the importance or unimportance of this information to be judged by the Office of the Ombudsman.*

- *All incidents have an address component from NZ Localities as the Intergraph software populates this. NZFS has also designed NZ Localities to have '100% interlocked coverage' of NZ land, whether there's recognised local suburbs or not. So it would be highly irregular (ie a major software bug) for an incident location to lack an address component from NZ Localities. Thus 100% of incidents have one.*
- *In regards to Point 2 [the number of incidents where NZ Localities was used 'exclusively' as a locate/verify attribute to determine incident location], it's difficult to know exactly what they're referring to without*

*having a chat with them, but the comms staff I talked with presumed this refers to 'sections along state highways and the like ...', which don't have full street addresses, but like all other incidents, are forced to have an NZ Localities name even though it's irrelevant to the operational response to the incident and not directly entered by the comms operator. In those cases the NZ Localities name is identified by the Intergraph software from the 'latitude and longitude' of the incident point, rather than from the street address. Thus, it is strictly correct that the NZ Localities name is present 'exclusively' as the 'locate/verify attribute', while also being a side detail of how the Intergraph software operates. (note that 'attribute' has a very specific technical meaning in the geospatial world).*

*In short, an NZFS appliance doesn't get sent to 'the middle point of a polygon named Thorndon as it exists in NZ Localities', it gets despatched to a fire or automobile crash (etc) incident location, and that incident location is a point on a map which may or may not have a full street address associated with it. But every single incident is forced to have an NZ Localities name by a combination of the Intergraph mapping software and the design of NZ Localities."*

52. Koordinates' response to the provisional opinion compared the availability and licensing of the NZ Localities dataset to several other geospatial datasets. In explaining the background to the request for the unlicensed dataset held by the NZFSC, Koordinates stated that in March 2009 it had also requested two other datasets that describe the location of boundaries between School Zones held by the Ministry of Education and District Health Boards held by the Ministry of Health.

53. A Director of Koordinates commented:

*"The Ministry of Health and Ministry of Education promptly delivered the requested datasets, and currently the Ministry of Health pro-actively provides updates to theirs when DHB boundaries change (which is rare). Neither required any license terms to be signed, but I informed them I would apply the Creative Commons license for anyone else I provided copies to."*

54. In a subsequent communication in April 2014, Koordinates compared the availability of NZ Localities to the Topo 50 mapping dataset and nautical and maritime datasets, suggesting that these datasets are "more 'sensitive' than NZ Localities (using the NZFS argument of the theoretical impact on emergency services of them having an inconsistent view of the same data vs each other, their partners and 'the public')". Noting that these datasets are available via the LINZ Data Service, Koordinates suggested this was because the relevant agencies had "decided the public interest far outweighs the assessed risks".

55. In relation to the nautical and maritime datasets, Koordinates commented:

*"LINZ is also the home to the NZ Hydrographic Office, which is an official body established under international maritime agreements to create, maintain and*

*distribute maritime navigation charts per agreed standards. These charts and their underlying data are also released for free via the LINZ Data Service under the NZGOAL recommended license:*

<https://data.linz.govt.nz/data/category/hydrographic-maritime/chart-images/>

*As per international agreements, LINZ cannot release this data for use in ships over a certain weight class and nor should downloads of this data be used for 'navigational purposes' (i.e. for use in an auto-helm device controlled via GPS). Those ships and devices are instead supposed to use specially encrypted files, which contain exactly the same data. To address this problem of being able to release maritime data as openly as possible while complying with international agreements, LINZ added an additional term to the Creative Commons data license for their nautical & maritime data. This term says the data shouldn't be used for navigation purposes. Otherwise this dataset is as open to re-use as the Topo50 data described above. (note the NZFS could take the same approach: release their data under Creative Commons but add a license term requiring it to be updated when updates are available if used for emergency services, or something like that).*

56. Koordinates' comparison of the availability of NZ Localities with other geospatial datasets is based on its concerns about the licence under which NZFSC makes that dataset available. In the March 2014 response to the provisional opinion, Koordinates explained its concerns with the NZFSC licence for NZ Localities:

- *"The NZ Localities license is littered with specialist jargon and terminology, the definitions of which might seem obvious to GIS specialists who helped write it but not to others, e.g. business managers of utilities companies going about their normal business, and solicitors required to understand licenses to interpret risk.*
- *Specifically, the prohibition against not altering boundary shapes is breached in everyday normal circumstances by automated geospatial systems such as koordinates.com, and likely unwittingly by many end-users of NZ Localities.*
- *Additionally, the requirement to apply 'Updates' when made available by the NZ Fire Service is unenforceable in the real world and almost certainly frequently breached by licensees. Does a PDF copy of NZ Localities sitting on someone's network drive need to be updated? Does Google whip into high gear to process NZ Localities into Google Maps whenever the NZ Fire Service releases a new version? Does an offline GPS navigation device in a 2009 Toyota Camry really need to be 'updated' if it contains an old version of this dataset? If it does but wasn't, who is at fault? If a licensee of NZ Localities uploads a copy of it to koordinates.com for their own private use, but fails to update it when an update is provided, what is the situation? These and various other*

*messy questions come to mind with such 'update' clauses, which is why they're generally avoided.*

- *If a licensee actually breaks a term, what remedy is the NZ Fire Service actually likely to seek, given they're not selling the data. Will it simply ignore most infringers, will it send out 'your license is retracted, please cease using this data' letters, will it seek unspecified monetary damages if the licensee refuses to cease their behaviour? It seems unlikely NZFS as an organisation has the ability to track compliance with their license terms and nor does it seem likely NZFS would actually start harassing licensees, raising the question of 'why bother with these license terms in the first place'.*
  - *Based on Koordinates' extensive experience since 2009 (~300,000 data downloads, appropriately licensed using a clearly written off-the-shelf license with a simple 'rights' summary, data downloaded by staff from 6,500 different companies and organisations) I don't believe the majority of existing licensees of NZ Localities have the background or training to judge the appropriateness and applicability of the license terms required by NZFS, meaning they've likely unwittingly breached one or more of its terms, probably repeatedly. This raises questions such as to how many NZ Localities licensees have always been in breach, how far through the NZ economy has this dodgy license seeped, and has anyone bothered to identify and manage the risks around it. The easiest way to clear this situation up is for the data to be released unencumbered by the original license (and ideally under a Creative Commons license), that way these questions don't need to be answered in the first place."*
57. In addition, Koordinates' response to the provisional opinion took issue with one of the statements NZFSC had made to the Ombudsman. As noted in paragraph 29 above, the NZFSC told the Ombudsman that *"The Commission is flexible in relation to the inclusion of all the terms of that agreement"*. A Director of Koordinates commented:
- "I fail to see how this statement that NZFS is willing to arbitrarily alter certain terms in the license can co-exist simultaneously with NZFS original refusal of my OIA request due to my failure to sign the (then supposedly critical) license terms protecting NZ public health and safety. Either those terms are crucial in that OIA defence or they're not, and since they're willing to entertain changing them, apparently they're not so critical after all."*
58. Koordinates provided additional comments on the licensing of NZ Localities in April 2014, relating to the possibility that the dataset might be designated a 'fundamental geospatial dataset' by the New Zealand Geospatial Office (NZGO):
- "For the avoidance of doubt, NZFS' current license terms and the opaque data maintenance and cloudy copyright situation of NZ Localities are incompatible with it being a fundamental geospatial dataset."*

59. Finally, Koordinates made a number of comments relating to the public interest in disclosure of the NZ Localities dataset.
60. In explaining why Koordinates made the request for NZ Localities, its letter in March 2014 identified a public interest in enabling more effective public participation in policy debates, and in enabling economic activity:

*“By 2009, a movement called ‘Open Data’ or ‘Open Government Data’ had appeared worldwide and gained some traction within New Zealand. This movement is built on the idea that basic government transparency in a digital online world requires the free and un-encumbered release of key government datasets to the public, because such datasets underpin government analysis, policies and actions.*

...

*I thought the Official Information Act would apply to these digital boundary datasets from NZ Government, as the fundamental importance to the NZ public and economy in them being open, free and easy to access seemed self-evident, and they were certainly a form of information.”*

61. This was supplemented by Koordinates’ submission in April 2014, that the Government itself must have identified a public interest in making geospatial datasets such as NZ Localities more widely available, or it would not have adopted the 2007 NZ Geospatial Strategy, nor voted money to LINZ to invest in the creation of a ‘spatial data infrastructure’ for the country.

## Analysis and findings

62. Two withholding grounds have been identified by NZFSC as relevant: sections 9(2)(c) and 9(2)(e). Since, in this case, they are two aspects of the same underlying reason for refusing the request, they have been considered together.
63. Additionally, New Zealand Post and Quotable Value argue that section 9(2)(b)(ii) (unreasonable prejudice to commercial position) provides good reason to withhold the information. In light of my conclusion below into sections 9(2)(c) and 9(2)(e), it is not necessary for me to consider the application of section 9(2)(b)(ii).

### **Prejudice to measures re health or safety, or material loss to the public — sections 9(2)(c) and (e)**

#### Interests protected by these sections

64. Section 9(2)(c) provides that information may be withheld (subject to section 9(1)) if, and only if, the withholding of the information is necessary to:

- (c) *avoid prejudice to measures protecting the health or safety of members of the public;*
65. Section 9(2)(e) provides that information may be withheld (subject to section 9(1)) if, and only if, the withholding of the information is necessary to:
- (e) *avoid prejudice to measures that prevent or mitigate material loss to members of the public;*
66. In order for these sections of the OIA to provide good reason for the requested information to be withheld, the following need to be established:
- what the 'measures' in question are;
  - how disclosure of the information at issue might prejudice the effective operation of those measures;
  - whether the likelihood of this prejudice occurring is such that it is 'necessary' to withhold the information; and
  - if that is the case, whether the public interest considerations favouring disclosure outweigh those in withholding the information.

## Application of sections 9(2)(c) and 9(2)(e) to this case

### The measures in question

67. The relevant 'measure' in this case is the system, and its integration into the Fire Service procedures, used for logging reported incidents with the location accurately recorded, so that the correct equipment and people can be deployed to respond to the incident.
68. The software used by the Fire Service call centres to log incidents incorporates the NZ Localities dataset. When someone phones to report an incident, the operator in the call centre logs the incident in a database, and in doing so goes through several steps to determine the location of the incident as precisely as possible. As well as containing fields for house number and street, the database also has a field for locality. The locality field may be less important when someone provides the call centre with a very specific location, but it can be a key piece of data if the person reporting the incident is less precise about the location or if the specific location appears in duplicate across a region. For example, the locality field would not be important if someone reported a fire at '70 The Terrace', but it would be important if the caller simply said the fire was in 'a tower block on The Terrace', since The Terrace spans 'Wellington Central' and 'Te Aro'. They are two distinct localities for the purposes of NZ Localities and the call centre software.
69. In other instances, there may be a number of streets with the same (or phonetically similar) name, and the locality information is important in identifying which particular instance of the street is the location of the incident being reported to the Fire Service. Koordinates' response in March 2014, and the NZFSC letter in July 2014, explore this issue in relation to the address '5 High Street'. The NZFSC points to there being "9

*primary locations of '5 High Street' in different localities throughout New Zealand ... along with 18 other locations of 5 High Street in New Zealand". I note that there are three instances of '5 High Street' in different localities of Auckland.*

70. Determining the location of an incident is important to the Fire Service not only for destination purposes; it also determines where the fire engine should be dispatched from. Thus for an incident on The Terrace, it might make the difference between a fire engine being dispatched from the Thorndon Quay, Oriental Bay or Brooklyn fire stations.
71. The purpose of accurately identifying and verifying the location of an incident is to ensure that the necessary equipment and people can be sent to that place as quickly as possible. The time it takes a fire engine to reach the location of a fire can make a vital difference to saving a life or minimising damage to property and possessions.
72. Section 170 of the Fire Service Act 1975 outlines the specific responsibilities of the National Commander of the Fire Service. They include to make provision for the "*safety of persons and property endangered by fire*" (section 170(a)), and to "*ensure that the Fire Service is maintained in a state of operational efficiency*" (section 170(b)). Section 20 of the Fire Service Act states:
  - (1) *It shall be a matter of prime importance for the Commission to take an active and co-ordinating role in the promotion of fire safety in New Zealand.*
  - (2) *In so promoting fire safety, the Commission shall be concerned to —*
    - (a) *reduce continually the incidence of fire and the attendant risk to life and property:*
    - (b) *achieve unity and completeness of fire safety law and practice.*
73. Obviously, the systems used to efficiently dispatch equipment and fire-fighters to the location of a fire is a key part of the National Commander's and Commission's discharge of their statutory functions. I accept that these systems are therefore '*measures*' to protect the health or safety of members of the public and to prevent or mitigate material loss to members of the public.
74. It is equally clear that the NZ Localities dataset is an integral part of these measures. Without an accurate and up-to-date tool for determining the location of an incident, or removing any ambiguity about which instance of a common street address is relevant, the call centre receiving a report of a fire cannot accurately record and transmit this information to the people who need it in order to attend the incident.
75. The development and continuing maintenance of NZ Localities is therefore also a measure to protect the health and safety of members of the public.



## The impact of disclosure on the effective operation of the measures

76. The NZ Localities dataset is regularly disclosed under licence by the NZFSC to others. Indeed, the NZFSC encourages the use of NZ Localities by others as, in the absence of an official definition of suburb or locality boundaries (for most of the country), this helps to entrench the governing consortium's definition of such boundaries as an authoritative definition. The existing use of NZ Localities appears to be one of the reasons why the NZ Geospatial Office is considering whether to designate NZ Localities as a 'fundamental geospatial dataset'.
77. However, as noted above, the dataset is provided only after they sign a licence agreement that requires them to meet certain conditions ([Appendix 2](#)). The most important of these is that the licensee use only the most up-to-date version of the dataset (clause 10). This requirement is designed to ensure that any products or tools that incorporate the dataset report a specific location as being in the same locality as the tool being used in the emergency services' call centres (and in the tools used by the other governing organisations, NZ Post and Quotable Value).
78. The licence agreement also prohibits modification or alteration of the data contained in the dataset (clause 9(a)). This provision too is designed to ensure that the current version of the dataset distributed to licensees retains its utility to NZFSC.
79. The licence agreement does permit a licensee to distribute the current version of the dataset to a third party, but only if that third party has also signed the licence agreement that binds them to only using the most up-to-date version of the dataset (clause 8(c)).
80. Thus, it is the unconditional disclosure of the NZ Localities dataset which NZFS are concerned may prejudice the effective operation of the measures for protecting the health and safety of members of the public. Outdated or modified versions of the locality boundaries within the dataset are more likely to enter into widespread use without the licensing regime. NZFSC argues that it is this prejudice to the continuing integrity of NZ Localities as the authoritative source of information about the location of locality boundaries that would, in turn, prejudice the systems and processes used by the Fire Service (and others) to identify and verify the location of incidents where the health and safety of the public, or their material possessions, are at risk.
81. Koordinates argues that the licence constraints on use or manipulation of the dataset, have the effect of inhibiting more widespread use of the governing consortium's preferred definition of locality boundaries. This in turn increases the risk that someone may give an emergency call centre an account of their location that differs from the location indicated by the call centre software. Koordinates also argues that a relevant consideration is not only the impact on the quality of the dataset resulting from unlicensed disclosure of the dataset, but the impact of withholding it. I discuss these points in relation to the public interest below, in paragraphs 91 to 107.
82. I have identified possible additional prejudicial effects that may stem from unlicensed disclosure of the dataset in response to an OIA request. If a requester who received an unlicensed copy of the dataset decided to publish it (by making it available for download

from the Internet), NZFSC might decide to initiate legal action against the requester for a breach of copyright (such proceedings being preserved under section 48(2) of the OIA). Alternatively, or additionally, NZFSC might decide that it needs to take compliance action against existing licensees who might feel that unlicensed disclosure of NZ Localities meant that they no longer had an obligation to comply with the licence requirements, such as updating the version of the dataset they are using when asked to do so. Either of these courses of action to protect the effectiveness of the NZ Localities dataset would divert NZFSC's limited resources. Crucially, these are remedial actions only available post-licence breach.

### **The likelihood of the prejudice occurring**

83. NZFSC claims that unlicensed disclosure of the dataset will inevitably lead to the prejudice envisaged. It argues that if the dataset is disclosed without Koordinates having to sign the licence agreement, either the company — or third parties to whom the company subsequently makes it available — will be free to use outdated versions of the dataset, and to create modified versions of the dataset, containing different definitions of where the locality boundaries lie. The NZFSC regards it as inevitable that these different versions of the dataset will be incorporated into products that members of the public will use. Once the modified or outdated locality boundaries are incorporated into a consumer product, a member of the public using that product may report that a fire is taking place in one location, but the version of the NZ Localities dataset used in the NZFS call centre software would indicate a different location. Fire engines and fire-fighters may then be dispatched to the wrong location. The consequent delay in the equipment and personnel getting to the correct location is likely to lead to people suffering greater damage to property, or more serious injury, including potential loss of life.
84. Koordinates says it has no interest in distributing either a modified or outdated version of NZ Localities, as the value of the dataset is that it shows the current locality boundaries used by other organisations. Koordinates asserts that equally, any third party who accessed the dataset from its website would also want to use the most recent version of the dataset, and that they too would have a strong interest in ensuring they updated any products or services that used the dataset. This raises the question, however, of why Koordinates declines to sign the licence.
85. The NZFSC response to this argument is that although Koordinates might not intend to distribute an outdated (or modified) version of the dataset, once the dataset is made available to others who have not signed the licence, there is nothing to stop them modifying the boundaries or using an outdated version of the dataset in their products. Moreover, even if all of the third parties who accessed the dataset from Koordinates used the current version of the dataset, and were conscientious about updating their products over time, there is no guarantee that the purchasers or users of those products would download, install, access or purchase the updates. The device on which they access the information may be outdated and not capable of installing or accessing the updated software or information, or the owner may decide for other reasons not to renew a subscription to an information service but instead continue to use what then becomes an outdated version of the information. In short, there is no guarantee that

unregulated market mechanisms would ensure the widespread use of the up-to-date version of NZ Localities. This risk exists at present, as Koordinates has pointed out, but is mitigated by the licence requirements.

86. It is not possible to determine the likelihood of a consumer product coming to market based on a modified or outdated version of NZ Localities resulting from unlicensed distribution of the dataset. The NZFSC asserts that not only is that scenario a certainty, but that *any* increased possibility of a delayed arrival of a fire engine at an incident is unacceptable, and therefore meets the test of it being 'necessary' to withhold the dataset from requesters unless they have signed the licence agreement.
87. The information supplied to the Ombudsman by NZFSC on the frequency with which the location of an incident is determined or verified solely by reference to the locality is useful in illustrating the likelihood of this risk eventuating. Of the 66,578 incidents logged by the Fire Service in 2012, the locality field was the exclusive means of determining or verifying the location of the incident in 1,036 cases. As a proportion of all incidents, 1.55% may not sound like a lot. But it still represents more than 1,000 instances where conflicting information (between the caller and the call centre) about the relevant locality could have serious consequences. The chances of this occurring after unlicensed disclosure of the dataset may be relatively low, but this would provide little comfort to someone whose house was more seriously damaged by fire, or whose family member was injured, through delayed attendance by fire-fighters resulting from a mistake in identifying the correct location of the incident.
88. In reference to Koordinates' comparison of NZ Localities to the more liberally licensed Topo 50 and maritime mapping datasets, I consider that the likelihood of the potential prejudice to public health and safety occurring may be roughly equivalent. But I am not considering a refusal to disclose either of those datasets, nor the harm that would result from their wider availability. I have to consider the likelihood of prejudice to the measures the NZFSC has in place to protect public health and safety that would result from unlicensed disclosure of NZ Localities.
89. In my opinion, a conservative approach is prudent when considering the necessity of avoiding prejudice to measures that are designed to protect against potentially devastating consequences. I am persuaded that the likelihood of adverse consequences, and the desirability of minimising the risk of their occurrence, means that withholding an unlicensed copy of the NZ Localities dataset is necessary to avoid prejudice to the measures the Fire Service has in place to protect public health and safety, and to protect or mitigate against material loss to members of the public.
90. As required by section 9(1) of the OIA, it remains to consider whether, in the circumstances of this case, the withholding of the information is outweighed by public interest considerations that favour disclosure. The public interest factors are addressed below, in paragraphs 90 to 106.

## Public interest — section 9(1)

91. Having formed the opinion that sections 9(2)(c) and 9(2)(e) apply, it is necessary to consider whether there is a public interest in disclosure that outweighs these reasons for withholding the information. The public interest factors in this case include both the participation and the accountability purposes described in section 4 of the OIA, and as identified by Koordinates.
92. Koordinates' statement that "*free and easy access*" to the NZ Localities dataset is of "*fundamental importance to the NZ public and economy*" is supported by the Government's *Declaration on Open and Transparent Government*.<sup>3</sup> It is also supported by a December 2010 Cabinet Paper on '*Capturing economic benefits from location-based information*'. These documents recognise the public interest in proactive disclosure to stimulate new knowledge creation, enable possible commercial exploitation of data held by the Government on behalf of the public, and improve efficiency of public services. I note that the Cabinet paper stated:<sup>4</sup>

*"Government's location-based information is a proven catalyst for economic growth and improved government efficiency. Accelerating progress to better connect that information will address several policy drivers of the Government's economic objectives, namely: investment in infrastructure; better, smarter public services for less; and innovation and business assistance."*

93. More specifically, LINZ has stated: "*Geospatial information added \$1.2 billion in productivity-related benefits to the economy in 2008. However this figure could be much higher if New Zealand's datasets are more freely available and accessible.*"<sup>5</sup>
94. The public interest in the widespread use of NZ Localities has been identified by the NZ Geospatial Office (NZGO). To place this in context, I note that NZGO hosts the secretariat for the Open Government Information and Data Programme, initiated in 2008 to:
- "*make non-personal government-held data and information more widely available and discoverable, easily usable and compliant with open government data principles within the NZ legal context; and*

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<sup>3</sup> *Declaration on Open and Transparent Government*, New Zealand Government. Source: <http://www.ict.govt.nz/programmes/open-and-transparent-government/declaration-open-and-transparent-government/> accessed on 2 September 2014.

<sup>4</sup> '*Capturing Economic Benefits from Location-Based Information*', Cabinet Economic Growth and Infrastructure Committee, New Zealand Government, December 2010. Source: <http://www.linz.govt.nz/sites/default/files/docs/geospatial-office/cabinet-paper-capturing-benefits-of-location-based-information.pdf> accessed on 2 September 2014.

<sup>5</sup> LINZ press release, 3 November 2010, '*Koordinates Ltd to help make LINZ data more accessible*' <http://www.linz.govt.nz/about-linz/news-publications-and-consultations/news-and-notices/corporate/2010/1103-LINZ-data-more-accessible> accessed on 2 September 2014.

- *facilitate agencies' release of the non-personal government-held data and information that people, communities, and businesses want to use and re-use.*"<sup>6</sup>
95. NZGO is currently considering whether to designate the NZ Localities dataset a 'fundamental geospatial dataset'.
- "One of the criteria used to evaluate whether a geospatial dataset is fundamental is whether the dataset is available under an NZGOAL Creative Commons licence. In February this year, the New Zealand Fire Service (NZFS) approached the NZGO to open a dialogue regarding the status of the NZ Localities dataset as a potentially fundamental dataset. Since then, NZFS and NZGO representatives have met several times and are progressing with formalising NZ Localities as a fundamental geospatial dataset, and NZFS as custodian of the dataset. Responsibilities of custodianship include appropriately licensing the dataset, promoting the dataset to users, and ensuring the dataset is accessible and discoverable."*<sup>7</sup>
96. The fact that the NZFSC is working with the NZGO on how to increase the accessibility, public awareness and use of the dataset, through a revised licensing arrangement under Creative Commons licensing, suggests that on this aspect of the public interest in disclosure, Koordinates and the NZFSC may be in agreement.
97. I note that there are six possible licences under Creative Commons licensing (in version 3.0 for NZ Government datasets). They begin with a licence permitting broad access and use, with attribution, through to the most restrictive of the six licences which allows others to download and share a dataset, with attribution, but not to change it in any way or use it commercially.<sup>8</sup>
98. In 2011 the NZFSC gave a public undertaking to review the licence agreement against the criteria of the NZGOAL framework.<sup>9</sup> NZFS has now confirmed, by letter of 24 July 2014, that:
- "Since 2013, NZFS has been working with the NZ Geospatial Office (NZGO) and LINZ to establish and mandate the NZ Localities dataset as a fundamental dataset for NZ under the NZ Geospatial Strategy and NZGOAL framework. NZFS is also working with NZGO and LINZ to establish the NZFS Commission as the authoritative custodian of the NZ Localities dataset. ... Prior to the end of 2014, and subsequent to establishing NZFS as custodian, NZFS will release the NZ Localities dataset under a new Creative Commons licence (CC variation yet to be defined)."*

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<sup>6</sup> Refer <http://www.linz.govt.nz/geospatial-office/about> accessed on 2 September 2014.

<sup>7</sup> Email from NZGO to my Office, 17 April 2014.

<sup>8</sup> Source : <http://creativecommons.org.nz/licences/licences-explained/> accessed on 2 September 2014.

<sup>9</sup> Data requests: NZ Localities. Response of the New Zealand Fire Service Commission, 14 April 2011. Source: <https://data.govt.nz/datasetrequest/show/4> accessed on 2 September 2014.

99. For the sake of completeness, I note that Koordinates has raised two further public interest arguments in support of disclosure. Responding to the NZFSC statement that it makes the dataset available for free because it wants people to use the dataset, Koordinates argues that the constraints placed on the use or manipulation of the dataset by the NZFSC licence has the effect of inhibiting more widespread adoption of the locality boundaries. This, in turn, increases the risk that someone may give a call centre an account of their location that differs from the call centre software — increasing the risk of delay in despatching the correct equipment and people to the right location. Koordinates' comparison of the NZ Localities dataset to the Topo 50 and nautical and maritime datasets, and suggestion that the latter datasets' licensing arrangements have increased the likelihood that all people involved in an incident would be working from a common understanding of the location of the incident, has merit.
100. Koordinates also argues that, contrary to the NZFSC position that controlled licensing of the dataset is necessary to maintain the quality of the dataset over time, its quality would actually be improved by disclosure on more liberal terms. Koordinates suggests this is because the present arrangements for access do not facilitate feedback to correct apparent gaps or errors in the dataset, whereas greater access to the dataset would stimulate the governing agencies to develop a better system for gathering and responding to feedback. Koordinates uses the example of the call centre software not correctly identifying the location '5 High Street, Auckland CBD', during a tour of the call centre in 2010. However, it would appear from the High Street example provided by the NZFSC on 24 July 2014, this apparent gap in the system has since been filled.
101. I recognise the significance and weight of these public interest arguments favouring disclosure.
102. However, I consider that NZFSC's willingness to provide the NZ Localities dataset free of charge, to anyone who seeks it and is willing to become a licensee, largely satisfies the public interest in disclosure of this information. In light of the potential for harm arising from out-of-date datasets in the public domain, I do not consider the licence requirement for updating the dataset when requested, to be onerous.
103. Critical to this consideration is that NZGOAL itself allows for differing levels of licensing for government datasets, some more restrictive than others. So NZGOAL recognises that the public interest in access to and use of government datasets is not unfettered. Instead, there are valid competing priorities to be balanced.
104. Further, the list of existing licensees of NZ Localities indicates that under the current licence some commercial use of NZ Localities is already occurring. Whether there are provisions in the current licensing regime that may inhibit additional economic benefits to the country is something for any potential licensee to discuss and negotiate with the NZFSC.
105. In the current matter before me, I understand NZFSC indicated to Koordinates its willingness to negotiate on the licence terms. It is not clear whether the company took up this offer. Nonetheless, given NZFSC's advice that it is currently contemplating the

appropriate Creative Commons licence applicable to the NZ Localities dataset, it would seem that now is an ideal time for those with concerns about the terms on which NZ Localities is made available for use to make these concerns known to the NZFSC and the NZGO.

106. In summary, I am not persuaded that the public interest considerations in favour of disclosure, under s 9(1) of the OIA, outweigh the public interest in avoiding prejudice to the measures designed to protect public health and safety, and to prevent or mitigate material loss to members of the public. The effectiveness of those measures depends on those using it being required to use the most up-to-date (and unmodified) version of the dataset. There is no doubt that completely unlicensed distribution of the dataset would undermine this.
107. Finally, the public interest in disclosure is significantly enhanced by the availability of the dataset for free, so long as the licence agreement is signed. This enables use of the dataset while still maintaining its integrity, so that it can serve the purposes for which it was created.

## Ombudsman's opinion

108. For the reasons set out above, I have formed the opinion that sections 9(2)(c) and 9(2)(e) provided good reason to withhold an unlicensed copy of the NZ Localities dataset, and that the public interest in disclosure of an unlicensed copy of the dataset does not outweigh the reasons for withholding.

## Appendix 1: Relevant statutory provisions

### Official Information Act 1982

#### 4. Purposes

The purposes of this Act are, consistently with the principle of the Executive Government's responsibility to Parliament,—

- (a) to increase progressively the availability of official information to the people of New Zealand in order—
  - (i) to enable their more effective participation in the making and administration of laws and policies; and
  - (ii) to promote the accountability of Ministers of the Crown and officials,—  
and thereby to enhance respect for the law and to promote the good government of New Zealand:
- (b) to provide for proper access by each person to official information relating to that person:
- (c) to protect official information to the extent consistent with the public interest and the preservation of personal privacy.

#### 5. Principle of availability

The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it.

#### 9. Other reasons for withholding official information

- (1) Where this section applies, good reason for withholding official information exists, for the purpose of section 5, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.
- (2) Subject to sections 6, 7, 10, and 18, this section applies if, and only if, the withholding of the information is necessary to—
  - (b) protect information where the making available of the information—
    - (i) would disclose a trade secret; or
    - (ii) would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; or
  - (c) avoid prejudice to measures protecting the health or safety of members of the public; or ...
  - (e) avoid prejudice to measures that prevent or mitigate material loss to members of the public; or



**28. Functions of Ombudsmen**

- (1) It shall be a function of the Ombudsmen to investigate and review any decision by which a department or Minister of the Crown or organisation—
- (c) imposes conditions on the use, communication, or publication of information made available pursuant to a request made in accordance with section 12; or

**48. Protection against certain actions**

- (2) The making available of, or the giving access to, any official information in consequence of a request made under this Act shall not be taken, for the purposes of the law relating to defamation or breach of confidence or infringement of copyright, to constitute an authorisation or approval of the publication of the document or its contents by the person to whom the information is made available or the access is given.

## Appendix 2: NZFSC Licence for NZ Localities

### Data Licence Agreement

New Zealand Fire Service Commission (**the Licensor**) agrees to grant a licence to

**Insert legal name**

**(the Licensee)** to use the New Zealand Localities dataset subject to the terms set out below.

1) **Definitions: In this Agreement:**

**“Agreement”** means this data licence agreement between the Licensor and Licensee;

**“Data”** means data licensed to the Licensee under this Agreement, specifically the dataset known as New Zealand Localities, as more particularly described at [www.fire.org.nz/data](http://www.fire.org.nz/data) as updated from time to time;

**“Documentation”** means any user and technical documentation supplied by the Licensor with the Data to enable the use of the Data, including metadata;

**“Intellectual Property Rights”** includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks, registered or unregistered designs, circuit layouts, databases, confidential information, know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields anywhere in the world, together with all rights, interest or licence in or to any of the foregoing;

**“Product”** has the meaning given to the term in clause 8(d);

**“Reproject”** means to transform the Data to another mapping projection and or datum;

**“Support”** means support services, if any, to be provided by the Licensor under this Agreement, as specified in Schedule One; and

**“Territorial Authorities Data”** means any suburb data developed and owned by a Territorial Authority and provided to the Licensor for inclusion in the Data.

- 2) **Licence:** In consideration of the Licensee agreeing to the terms and conditions contained in this Agreement, the Licensor grants the Licensee a non-exclusive, non-transferable licence to use the Data, subject to the following terms and conditions.
- 3) **Fees:** The Data is provided free of charge.
- 4) **Versions to be supplied by the Licensor:** Where the Data is required to be updated, at the sole discretion of the Licensor, such updates will be available twice yearly at [www.fire.org.nz/data](http://www.fire.org.nz/data). Updates will be available on 1 May and 1 December each year. If there is no scheduled update, a notice to this effect will be posted at the above web address not less than 30 days prior to the relevant scheduled release date.
- 5) **Termination by the Licensor:** The Licensor may terminate this Agreement immediately by written notice to the Licensee if:

- (a) the Licensee commits a material breach of this Agreement and, if that breach is capable of being rectified, the Licensee does not rectify that breach within 30 days; or
  - (b) a decision of any statutory or regulatory authority which is binding on the Licensor necessitates such termination; or
  - (c) the Licensor ceases to maintain the Data,
- provided that, where this Agreement is terminated pursuant to sub-clauses (b) or (c), the Licensee shall have the right to continue to use the Data for 6 months from the date of termination, subject to the restrictions contained in this Agreement.
- 6) **Termination by the Licensee:** The Licensee may terminate this Agreement at any time immediately on written notice to the Licensor. Following such termination the Licensee shall have no right to use the Data.
  - 7) **Consequences of Termination:** If this Agreement is terminated under clauses 5(a) or 6, the Licensee will at the request of the Licensor, and in the manner reasonably specified by the Licensor, return the Data and Documentation to the Licensor, at no charge to the Licensor.
  - 8) **Permitted use of the Data:** Subject to clause 9 and the other provisions of this Agreement, the Licensee may:
    - (a) Use the Data for its business purposes;
    - (b) Install the Data onto its business computer system. The Licensee may install more than one copy of the Data and there is no restriction as to the number of concurrent users of the Data;
    - (c) Distribute the current version of the Data to third parties, provided that those third parties have first entered into a data licence with the Licensor. For the avoidance of doubt, versions of the Data that have been superseded by the most recent update of the Data are not to be distributed by the Licensee to any third party. Data distributed by the Licensee must contain all copyright notices, metadata and any other notices that appear with the current version of the Data from time to time as it appears at [www.fire.org.nz/data](http://www.fire.org.nz/data).
    - (d) Incorporate the Data into databases, maps and other products ("Products"). If the Data is incorporated into a Product in such a way that the Data can be readily extracted from the Product, the Licensee may only distribute the Product to third parties if those third parties have first entered into a data licence with the Licensor. If the Data is incorporated into a Product in such a way that the Data cannot be readily extracted from the Product then the Licensee may distribute the Product to third parties without such parties being required to enter into a data licence with the Licensor.
    - (e) Reproject the Data to another datum and or projection.
    - (f) Provide the Data to (or allow the provision of the Data to, or access to the Data by) any agents or sub-contractors of the Licensee, provided that the prior written consent of the Licensor is first obtained or the agent or sub-contractor enters into a data licence with the Licensor.

- (g) Make a reasonable number of back-up copies of the Data for security purposes. The Licensee may only use such back-up copies for archive retention, system failure retrieval and disaster recovery purposes, and only during the term of the Agreement.
- 9) **Restrictions on use of the Data:** In relation to the Data, the Licensee may not:
- (a) Modify the Data. For the avoidance of doubt, this means that the vector data, names or SUFIs (Static or Stable Unique Feature Identifier) in the Data may not be changed or altered in any way, except that changes to the format of text and reprojection of the Data are allowed.
  - (b) Reverse engineer, disassemble or decompose or build a like or similar product.
  - (c) Sell, lease or otherwise provide or distribute the Data for commercial gain to third parties. For the avoidance of doubt, the Data may be distributed free of charge to third parties in accordance with clause 8.
- 10) **Updates:** Within 6 months of the release by the Licensor of an updated version of the Data the Licensee must cease using any previous version of the Data and commence use of the updated Data
- 11) **Support:** The Licensee may submit to the Licensor proposed changes to the Data. The Licensor will consider each change request and may change the Data at its discretion and timeframe without further reference to the Licensee. Technical documentation on change requests is available at [www.fire.org.nz/data](http://www.fire.org.nz/data).
- 12) **Additional Terms:**
- (a) The Licensee agrees that the Data and the Documentation and all Intellectual Property Rights and other rights in the Data and the Documentation as amended from time to time remain the property of the Licensor and contributing Territorial Authorities and their licensors (as the case may be).
  - (b) The Licensee must not remove or tamper with any copyright notice attached to or used in relation to Data.
  - (c) The Licensee must not make any statement or claim relating to the Data being approved, recommended or endorsed by the Licensor or do anything similar or imply that such is the case, unless the Licensor has expressly given its prior written consent to the form and content of such claim. For the avoidance of doubt entering into this Agreement does not constitute such consent.
  - (d) The Licensee must comply with the requirements of the Privacy Act 1993 and any other applicable law or regulations relevant to its collection, possession, licensing or use of the Data.
  - (e) The Licensee must ensure that its personnel, agents and subcontractors comply with the above terms as if they were the Licensee.
  - (f) The Licensee acknowledges that the Licensor has made no warranty that the Data will be free from errors, omissions, inaccuracies, viruses or other destructive code, or that the Data will be fit for the Licensee's purpose or for use in any specific technical environment.

- (g) The Licensee agrees and represents that it is acquiring the Data and any Documentation for the purposes of a business and that the Consumer Guarantees Act 1993 (New Zealand) does not apply.
  - (h) The Licensee agrees to indemnify the Licensor and keep the Licensor indemnified against any claim, proceeding, damage, liability, loss, cost or expense (including legal costs on a solicitor and client basis), whether arising in contract, tort (including for negligence) or otherwise, arising out of or in connection with any breach by the Licensee
  - (i) When promoting or marketing any product or service of the Licensee which requires the use of any Data, the Licensee must:
    - (i) not knowingly make any misrepresentations or misstatements about the Data or the Licensor;
    - (ii) not knowingly do anything that adversely reflects on, detracts from or otherwise prejudices the reputation or standing of the Licensor, the Data, or any products or services of the Licensor; and
    - (iii) comply with the reasonable directions of the Licensor;
  - (j) The Licensee acknowledges that Territorial Authorities, Land Information New Zealand (“LINZ”) and the Crown hold certain material which has been licensed to the Licensor and incorporated into the Data. The Licensee further acknowledges that any Territorial Authority, LINZ and the Crown shall not, in any circumstances, be liable for any loss or damage (even if the Territorial Authority, LINZ or the Crown has been advised of the possibility of such loss or damage, and including, without limitation, any direct loss, indirect loss, consequential loss, loss of profits, business interruption loss or loss of data) suffered by the Licensee in connection with this Agreement. In the event that any exclusion of the liability of the Territorial Authority, LINZ or the Crown set out in this clause is inapplicable, or is held unenforceable, the liability of each of the Territorial Authority, LINZ and the Crown under or in connection with this Agreement, or arising out of any use, reproduction, modification, or creation of compilations or derivative works of or from the Data by the Licensee, whether that liability arises in tort (including negligence), equity or any other basis, shall be limited to the fees paid by the Licensor for the material incorporated in the Data which gave rise to the loss or damage, exclusive of GST. For the purposes of the Contracts (Privity) Act 1982, this clause confers a benefit on, and is enforceable by, the Territorial Authority, LINZ and the Crown.
- 13) **Notices:** Each notice or other communication under this Agreement must be in writing and be made by email, facsimile, personal delivery or by post to the addressee at the facsimile number or address, and be marked to the attention of the personal office holder (if any) from time to time designated for the purposes of this Agreement by the addressee to the other party. The initial facsimile number, address and relevant person or office holder for each party is set out below. No communication shall be effective until received. The communication is deemed to be received by the addressee
- (a) in the case of an email or facsimile, on receipt of transmission on the business day on which it is dispatched or, if it is dispatched after 5pm (in the place of receipt) on a

business day or on a non-business day, on the next business day after the date of dispatch;

- (b) in the case of personal delivery, when delivered; and
- (c) in the case of a letter, on the third business day after posting by “fast post”.

***Licensor's notice details***

Manager Data and Spatial Applications  
New Zealand Fire Service  
Level 9  
AXA Centre  
80 The Terrace  
Wellington New Zealand

PO Box 2133  
Wellington

Fax; +64 4 496 3731  
Email: data.change@fire.org.nz

***Licensee's notice details***

***[insert details]***

- 14) **Assignment:** The Licensor is entitled to assign or novate its rights and obligations under this Agreement to any entity which:
- (a) maintains or will maintain the Data (or any product which supersedes or replaces the Data) in succession to or replacement of the Licensor; and
  - (b) distributes or will distribute the Data (or any product which supersedes or replaces the Data) on behalf of the Crown as Crown Copyright.
- 15) **General:**
- (a) Neither party is deemed to have waived any right under this Agreement unless the waiver is in writing. A failure to exercise or delay in exercising any right under this Agreement will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in this Agreement.
  - (b) This Agreement is governed by New Zealand law and the courts of New Zealand shall have non-exclusive jurisdiction in any proceeding relating to this Agreement.
  - (c) Any modification to or variation of this Agreement must be in writing and signed by the parties.