

13 October 2020

[REDACTED]
By email: [REDACTED]

Tēnā koe [REDACTED]

Official Information Request Regarding Withdrawal of Grieve Decision

We refer to your 16 September 2020 request under the Official Information Act 1982 (OIA) (subsequently confirmed in your emails of 17 and 18 September) for copies of all information, correspondence received or records of conversations which led to removal of the Grieve and Television New Zealand Decision, released on 15 September 2020, from the BSA's website.

Response to your request

We attach the following correspondence relevant to your request:

- 'A' - Copy of text correspondence between Dr Dean Knight and Judge Hastings of 16 September 2020
- 'B' - Internal BSA emails of 16 September 2020
- 'C' - Copy of Tweet by Dr Dean Knight referred to in BSA internal email
- 'D' - Judge Hastings email to BSA of 16 September 2020 advising receipt of texts from Dr Knight
- 'E' - Emails between Judge Hastings and BSA of 16 September agreeing to withdraw the decision.

Where marked in the attached correspondence, we have withheld certain extracts where necessary to:

- Protect the privacy of natural persons (section 9(2)(a))
- Maintain the effective conduct of public affairs through:
 - the free and frank expression of opinions (section 9(g)(i))
 - the protection of employees from improper pressure or harassment (section 9(g)(ii)).

While your request does not seek this correspondence, in the interests of completeness we have also attached an email from one of the Authority members (Leigh Pearson) to [REDACTED] in connection with [REDACTED] report on the matter.

Right of review

We trust that this responds to your request.

You have the right to seek an investigation and review of this response by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you would like to discuss this response with us, please feel free to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Glen Scanlon', written in a cursive style.

Glen Scanlon
Chief Executive
Broadcasting Standards Authority

Dean

Parliament, Quebec.

Wed, 16 Sep, 6:13 AM

Bill: Good stuff on the Bridges complaint! However, the reasons analyse the alert level 3 rules, not the then applicable alert level 4 health order?

Is that a big oops? Did we get the dates wrong?

If we did, gosh darn it, I would expect us to do better.

Tricky:

I think the position on travel to Parliament was murky in the first order—and tweeted at the time.

Dean

Parliament etc wasn't closed and couldn't have been under the legislation.

But the drafting of travel exemptions related to essential businesses, as per a specific definition.

I think they thought Parl was an essential business and travel allowed. But the first order didn't actually say taht.

Wed, 16 Sep, 10:42 AM

We're pulling it from the website. Thanks for letting me know Dean.

Delivered

A

B

Helen Cruse

From: Helen Cruse
 Sent: Wednesday, 16 September 2020 10:28 AM
 To: [REDACTED]
 Subject: RE: Media report

Ok -- can you carry on hunting -- I think you're on the right track in that you're looking for the orders that were revoked under section 13 (but the link to s70 is just the authorising legislation, not the orders). Surely the revoked orders are somewhere -- perhaps buried somewhere in that list of all COVID related legislation?

From: [REDACTED] s 9(2)(a)
 Sent: Wednesday, 16 September 2020 10:13 AM
 To: Helen Cruse <HelenC@bsa.govt.nz>
 Subject: RE: Media report

[REDACTED] ← s 9(2)(g)(i)(ii)
 based on section 13 of the order (Previous orders revoked)
 (<http://www.legislation.govt.nz/regulation/public/2020/0069/latest/LMS339043.html>) [REDACTED]
<http://www.legislation.govt.nz/act/public/1956/0065/latest/DLM307083.html#DLM307083>

The Health Act 1956, s70:

70 Special powers of medical officer of health

(1) For the purpose of preventing the outbreak or spread of any infectious disease, the medical officer of health may from time to time, if authorised to do so by the Minister or if a state of emergency has been declared under the Civil Defence Emergency Management Act 2002 or while an epidemic notice is in force, —

(m) by order published in a newspaper circulating in the health district or by announcement broadcast by a television channel or radio station that can be received by most households in the health district, do any of the following:

(i) require to be closed, until further order or for a fixed period, all premises within the district (or a stated area of the district) of any stated kind or description:

(ii) require to be closed, until further order or for a fixed period, all premises within the district (or a stated area of the district) of any stated kind or description in which infection control measures described in the order are not operating:

(iii) forbid people to congregate in outdoor places of amusement or recreation of any stated kind or description (whether public or private) within the district (or a stated area of the district):

(iv) forbid people to congregate in outdoor places of amusement or recreation of any stated kind or description (whether public or private) within the district (or a stated area of the district) in which infection control measures described in the order are not operating.

(n) [Repealed]

(o) [Repealed]

(1A)

An order under paragraph (la) or (m) of subsection (1) does not apply to—

- (a) any premises that are, or any part of any premises that is, used solely as a private dwellinghouse; or
- (b) any premises within the parliamentary precincts (within the meaning of section 3 of the Parliamentary Service Act 2000); or
- (c) any premises whose principal or only use is as a courtroom or judge's chambers, or a court registry; or
- (d) any premises that are, or are part of, a prison (within the meaning of section 3(1) of the Corrections Act 2004).

[REDACTED] } s 9(2)(a)

[Click here to subscribe to our newsletter, the BSA Pānui](#)

WARNING: This email contains information which is CONFIDENTIAL and may be subject to LEGAL PRIVILEGE. If you are not the intended recipient, you must not peruse, use, disseminate, distribute or copy this email or attachments. If you have received this in error, please notify us immediately by email or telephone and delete this email. Thank you. The Broadcasting Standards Authority accepts no responsibility for changes made to this email or to any attachments after transmission from the Broadcasting Standards Authority.

From: Helen Cruse <HelenC@bsa.govt.nz>
Sent: Wednesday, 16 September 2020 10:01 AM
To: [REDACTED] s 9(2)(a)
Subject: RE: Media report

Bummer – what were the applicable rules on this point as at 6 April?

From: [REDACTED] s 9(2)(a)
Sent: Wednesday, 16 September 2020 9:44 AM
To: Helen Cruse <HelenC@bsa.govt.nz>
Subject: Media report

Hi Helen,

Here's the report on coverage we've received after the decision release yesterday.

Sorry took so long, a simple task turned out to be not so simple because I noted a problematic Twitter comment. There is one Twitter comment about Grieve (<https://twitter.com/drdeanknight/status/1305967157574995973>) that said we refer to the Alert 3 order. However, when I was doing the decision, and I just double checked and noted that the earliest order is the one we mentioned in the decision: <http://www.legislation.govt.nz/regulation/public/2020/0069/10.0/LMS339029.html> (see here

<http://www.legislation.govt.nz/regulation/public/2020/0069/10.0/versions.aspx>). It is however called the Level 3 Order and came into force later in April after the broadcast date. In the recent High Court decision, it was stated that the original request was an oral request, and it was not put into a formal order until 3 April 2020. See here for the orders by date: <http://www.pco.govt.nz/covid-19-legislation/>

I've included a paragraph in the report below, and leave it up to you on what you'd like to do with it. ☺

Kia ora koutou

Following the release of the seven decisions and one media release yesterday, we have received some coverage, and Twitter mentions. We have compiled the latest coverage to date for your information.

Media Coverage

The media release about the Burne-Field decision was picked up by the following:

- The NZ Herald
The article summarised the decision and highlighted at the end that 'Hastings said they believed Hosking overstated the positions outlined in the sources relied on'.
- The Spinoff
The decision was highlighted in a snippet in the Spinoff's Election Live report. The snippet was a short summary of the findings and highlighted the statement in the decision: 'We urge broadcasters to take care when interpreting statistics and drawing conclusions from scientific or other studies, given that audiences rely heavily on mainstream media to provide authoritative, reliable information on matters of public importance.'
- Stuff
The article summarised the BSA's decision highlighting that 'the BSA said that the decision highlighted the importance of data literacy, particularly in a news and current affairs context.' The article ended included reference to a 2017 BSA decision where Mike Hosking was found to have misled the public, and Mr Hosking's response to that particular decision.

Twitter

Below are links to the Twitter mentions and comments about the Burne-Field decision, and the Grieve decision.

- <https://twitter.com/marcdaalder/status/1305759804657295361>
- <https://twitter.com/SachaDylan/status/1305762692326596609>
- <https://twitter.com/dpfdpf/status/1305790558485405697>
- <https://twitter.com/Sherida7William/status/1305810548227883009>
- <https://twitter.com/ByterNZL/status/1305806253445099520>

We also noted the following response to a Tweet about the Grieve decision stating that the Grieve decision analysis was based on later alert level 3 rules:

- <https://twitter.com/drdeanknight/status/1305967157574995973>

However, the decision refers to the earliest made order on the lockdown rules <http://www.legislation.govt.nz/regulation/public/2020/0069/7.0/LMS339029.html> (for versions of the Order see here <http://www.legislation.govt.nz/regulation/public/2020/0069/10.0/versions.aspx>, and for all Covid-19 related legislation please see here: <http://www.pco.govt.nz/covid-19-legislation/>)

[REDACTED]

) s 9C(2)



Search Twitter

Explore

Settings

[REDACTED]
The @BSA_NZ has ruled that a story by @TVNZ on @simonjbridges stating he had broken Covid-19 lockdown rules was inaccurate and in breach of their accuracy standard.



Grieve and Television New Zealand Ltd - 2020-041 (14 September 2020)
bsa.govt.nz

Tweet

DR DEAN KNIGHT
@drdeanknight

Replying to [REDACTED] @BSA_NZ and 2 others

Yes. Although BSA's analysis of the governing rule is incorrectly based on the later alert level 3 rules, not the then applicable alert level 4 order — text of the earlier order was murky and problematic on travel to Parliament.

8:30 AM · Sep 16, 2020 from Wellington City, New Zealand · Twitter for iPhone

2 Likes



New to Twitter?

Sign up now to get your own

Relevant people

DR DEAN KNIGHT
@drdeanknight
[law + govt] [rugby] [rainbr
— usual discla



BSA New Zea
@BSA_NZ
Broadcasting &
vision is for free
broadcasting.

What's happening

US elections · LIVE
Trump continues to in
could be discharged fr
hospital as soon as Me
physicians say
Trending with President

Trending in New Zealand
#NZHellhole

Trending in New Zealand
Jacinda
4,555 Tweets

COVID-19 · LIVE
COVID-19 in New Zeal

Trending in New Zealand
Level 1
104K Tweets

Show more

Terms of Service · Privacy Policy
More ▾ © 2020 Twitter, Inc.

Log in

Don't miss what's happening
People on Twitter are the first to know.

D

Helen Cruse

From: Hastings, Judge <Judge.Hastings@justice.govt.nz>
Sent: Wednesday, 16 September 2020 10:34 AM
To: Helen Cruse
Subject: The Bridges decision

Helen, I've had a legal academic contact me about the Bridges decision:

Good stuff on the Bridges complaint! However, the reasons analyse the alert level 3 rules, not the then applicable alert level 4 health order. I think the position on travel to parliament was murky in the first order. Parliament etc wasn't closed and couldn't have been under the legislation. But the drafting of travel exemptions related to essential businesses, as per a specific definition. I think the BSA thought parliament was an essential business and travel allowed. But the first order didn't actually say that.

Would you mind getting someone to check this?

W K Hastings
District Court Judge
Chair, Broadcasting Standards Authority

Judges' Chambers
District Court Building
47 Ballance St
Private Box 5094
Wellington
New Zealand

Tel: +64 4 918 8042
Fax: +64 4 918 8054

S 9 2(a)

Confidentiality notice:

This email may contain information that is confidential or legally privileged. If you have received it by mistake, please:

- (1) reply promptly to that effect, and remove this email and the reply from your system;
- (2) do not act on this email in any other way.

Thank you.

E

Helen Cruse

From: Hastings, Judge <Judge.Hastings@justice.govt.nz>
Sent: Wednesday, 16 September 2020 10:42 AM
To: Helen Cruse
Subject: RE: The Bridges decision

I agree.

From: Helen Cruse <HelenC@bsa.govt.nz>
Sent: Wednesday, 16 September 2020 10:40 AM
To: Hastings, Judge <Judge.Hastings@justice.govt.nz>
Subject: RE: The Bridges decision

* s 9(2)(a)
9(2)(j)(i) + (ii)

We're on it. [redacted] picked up the comment in her scanning of twitter. The Level 3 rules were in place during alert level 4 but we were applying a version that came into effect on 27 April (after the broadcast) – implementation of the orders must have lagged. [redacted] is currently looking for the 'murky' Order that was in place at the time of the broadcast but whatever that says the decision will not be strictly accurate - sorry. I think we should pull it from the website and I notify the Board. Do you agree?

From: Hastings, Judge <Judge.Hastings@justice.govt.nz>
Sent: Wednesday, 16 September 2020 10:34 AM
To: Helen Cruse <HelenC@bsa.govt.nz>
Subject: The Bridges decision

Helen, I've had a legal academic contact me about the Bridges decision:

Good stuff on the Bridges complaint! However, the reasons analyse the alert level 3 rules, not the then applicable alert level 4 health order. I think the position on travel to parliament was murky in the first order. Parliament etc wasn't closed and couldn't have been under the legislation. But the drafting of travel exemptions related to essential businesses, as per a specific definition. I think the BSA thought parliament was an essential business and travel allowed. But the first order didn't actually say that.

Would you mind getting someone to check this?

W K Hastings
District Court Judge
Chair, Broadcasting Standards Authority

Judges' Chambers
District Court Building
47 Ballance St
Private Box 5094
Wellington
New Zealand

Tel: +64 4 918 8042
Fax: +64 4 918 8054

[redacted]

s 9(2)(a)

Confidentiality notice:

This email may contain information that is confidential or legally privileged. If you have received it by mistake, please:

- (1) reply promptly to that effect, and remove this email and the reply from your system;
- (2) do not act on this email in any other way.

Thank you.

Confidentiality notice:

This email may contain information that is confidential or legally privileged. If you have received it by mistake, please:

- (1) reply promptly to that effect, and remove this email and the reply from your system;
- (2) do not act on this email in any other way.

Thank you.

F

Helen Cruse

From: Leigh Pearson [REDACTED] S 9(2)A)
Sent: Wednesday, 16 September 2020 5:10 PM
To: [REDACTED]
Cc: Helen Cruse
Subject: BSA

Hi [REDACTED]

As discussed, appreciate you are unable to remove the report on [REDACTED] but appreciate you adding the following from the BSA.

With thanks and kind regards,
Leigh

1. The BSA has withdrawn a decision published on 15 September relating to a One News item about travel during lockdown by the then Leader of the Opposition Hon Simon Bridges.
2. It has come to our attention that the decision was made on the basis of an incorrect assessment of lockdown regulations.
3. The BSA is reviewing its decision and will reissue it as soon as possible.
4. The BSA regrets this situation.

