

31 January 2019

Natalie Akoorie
NZ Herald

Dear Natalie

Official Information Act request for the draft investigation report relating to Dr Murray

I am responding to your request for 'the draft investigation report by an Auckland Barrister outlining the findings of the DHB's investigation into Dr Murray's expenses.'

Earlier request

In October 2017 you made a request under the OIA for the draft investigation report conducted as part of the employment investigation into the DHB's ex-CEO, Dr Murray. The DHB decided to withhold that report for the reasons provided in our letter dated 3 November 2017. A copy of this letter is available on our website:

<https://waikatodhb.health.nz/assets/Docs/About-Us/Executive-Team/Copy-of-DHBs-response-to-OIA-requests-relating-to-Dr-Nigel-Murray.pdf>

The DHB's decision to withhold the report was based on the information that was available to us at that time.

Current request

On 1 November 2018 you made a fresh request for the report. Consultations were necessary to make a decision on the request and we extended the time for our response to enable this. As with the previous request, we have considered this having regard to the information that is currently available to us. In the year following our decision on 3 November 2017, more information is now in the public domain due to proactive release by the DHB, media reporting, the State Services Commission Inquiry and other reports.

Decision

The draft investigation report is attached. The DHB has endeavoured to make available as much information as we are able. However it has been necessary to redact a considerable amount of the information.

The redactions in the paragraphs 27, 28, 50, 173, 192 and 194 have been made in accordance with section 9(2)(a) of the OIA "*to protect the privacy of natural persons.*"

The remainder of the redactions have been made pursuant to section 6(c) of the OIA which provides good reason for withholding information "*if the making available of that information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.*"

Ombudsman

You have the right to complain to the Ombudsman about our decision to withhold information. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Yours sincerely,



Lydia Aydon
Executive Director Public Affairs

Draft Investigation Report

**Independent Investigation into conduct of
Dr Nigel Murray, Chief Executive**

For the Waikato District Health Board

Date: 22 September 2017

**Prepared by Maria Dew, Barrister
Bankside Chambers, Auckland**

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A. INTRODUCTION

1. This independent investigation commenced in accordance with the Terms of Reference dated 7 August 2017.
2. I confirm I have undertaken the investigation as an independent investigator. I have not acted as legal counsel for the Waikato District Health Board (the WDHB") and I had not previously met any of the parties or witnesses involved.
3. There are four volumes of documents that accompany this report, as listed in the index above. The first volume contains the Terms of Reference, interview statements and key correspondence (V1/Tabs1-12). The second, third and fourth volumes contain documents produced and considered during the investigation (V2-4/Tabs1-22).

Terms of Reference

4. The Terms of Reference provide that I have been appointed to conduct an independent investigation into Dr Nigel Murray's conduct in the management of his WDHB expenses and any related employment matters.¹
5. The Terms of Reference also provide that if any new and relevant issues come to the investigator's attention the matter will be raised with the Chair who will decide if the additional matter should be included in the investigation. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
6. Under the Terms of Reference, para 3.3, I am required to make factual findings as to the key areas of concern under investigation. The report may also comment on whether, in the opinion of the investigator, the conduct so far as it may be substantiated could amount to a breach of Dr Murray's employment obligations including those set out in his employment agreement and the WDHB policies.

¹ V1/Tab1/1

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[REDACTED]

• [REDACTED]
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[REDACTED]

B. BACKGROUND

18. Dr Murray commenced as Chief Executive of the WDHB on 21 July 2014.

Dr Murray's Employment Agreement

19. The employment agreement was executed on 20 June 2014 (V2/Tab16). The relevant terms of the agreement are contained in the letter of offer dated 16 June 2014 and the individual employment agreement itself.

20. The key terms of the agreement, for the purposes of this investigation, include:

Letter of offer

- (i) "Study expenses and study leave"

You shall be reimbursed actual and reasonable costs towards education/training/conference expenses and associated study leave, accommodation and travel.

Such costs may also be paid directly to the relevant education/conference body.

All education, training or conference attendance and costs shall be discussed and agreed with the Board Chair.

(ii) *"Relocation"*

The DHB will provide relocation costs up to \$25,000. Such costs shall include:

- *Flights from Canada to New Zealand*
- *Up to 4 weeks temporary accommodation*
- *Up to 4 weeks cost of a rental car and*
- *Cost for relocation of household goods, excluding vehicles and pets.*

Relocation costs should be claimed within 12 months of the Chief Executive's appointment date. The relocation bonding agreement is attached.

Employment Agreement

- (i) **Clause 2.2(a) and (d) – Honesty:** *"Honestly, diligently, and competently fulfil the duties and responsibilities set out in the job description attached as Schedule 1 to this Agreement. In so doing the Chief Executive shall use his best endeavours to promote and protect the interests of the DHB."*

"Promote compliance with all statutory obligations imposed upon the DHB, the Board, or upon employees of the DHB."

- (ii) **Clause 2.3 - Standards of Integrity & Conduct for State Services:** *"In carrying out the Chief Executive's responsibilities under this Agreement the Chief Executive shall comply with his obligations under the Standards of Integrity and Conduct for the State Services and any other standards that may apply to/in the DHB."*

- (iii) **Clause 5.3 – Expectation to take annual leave or bring to notice of Board:** *"The Chief Executive is expected to take annual leave in the year*

in which it is granted and, if accumulated annual leave will exceed 25 days, the Chief Executive must bring this to the notice of the Board.”

- (iv) **Clause 8.1 – Obligation to disclose conflicts of interest:** *“The Chief Executive shall disclose to the Board, in writing, all interests of the Chief Executive and of his immediate family, which may conflict with the interests of the DHB or the Board. The Chief Executive shall make the first declaration of interest on signing this Agreement and thereafter at the request of the Board or as new interests of the Chief Executive, and of his immediate family, arise. The Chief Executive agrees to take such steps as the Board reasonably requires to resolve or manage any such conflict.”*
- (v) **Clause 10.3 – Serious misconduct to include conduct likely to bring the CE, the DHB or the Board into disrepute:** *“For the purposes of this clause the term ‘serious misconduct’ shall include (but not be limited to):*
- a. *Any material breach of the terms of this Agreement.*
 - b. *The commission of any offence involving dishonesty or any offence for which the offender may be proceeded against by way of indictment.*
 - c. *Any situation where the Chief Executive commits any act of bankruptcy, becomes insolvent, or compounds with or attempts to compound with any creditors of the Chief Executive.*
 - d. *Any situation where the Chief Executive behaves in a manner likely to bring the Chief Executive, the DHB or the Board in the disrepute.”*

Job Description

Organisational accountabilities:

- *“Accountability documents and statutory reporting are delivered on time and to a high standard”;*
- *“The Board is informed promptly of any issues/risks on a “no surprises” rule”.*

WDHB Policies

21. The WDHB policies which apply to Dr Murray’s employment include (V4, Tab 15):

(i) The Code of Conduct which refers to the highest standards of employee behaviour required by State Sector employees;

(ii) Staff travel and accommodation policy, including:

- All overseas travel must be authorised prior to bookings being made;
- Expenditure must be able to withstand public scrutiny regarding the use of public funds;
- WDHB shall not pay for any personal travel or accommodation;
- WDHB can organise but will not pay for personal travel or accommodation for persons accompanying a staff member;

(iii) Conflict of Interest policy, including the obligation to disclose actual, potential or perceived conflicts of interest.

22. On 29 June 2017, the Chair of the WDHB, Mr Bob Simcock, raised a number of employment concerns with Dr Murray. These are set out in a letter to Dr Murray dated 29 June 2017. ⁴ These concerns form the basis of this investigation together with other matters that have arisen since that letter.

23.

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- [REDACTED]
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- [REDACTED]
- [REDACTED]
- [REDACTED]

⁴ V1/Tab1/

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

C. KEY ISSUES - FINDINGS OF FACT

Issue 1: Relocation Costs

24. Dr Murray's employment letter of offer, dated 16 June 2014, sets a maximum relocation costs sum of \$25,000 plus GST (ie: \$28,750 GST inclusive). The bonding agreement (attached the offer), clause 2, clarifies the \$25,000 is a GST exclusive sum. This sum was set after negotiation by Dr Murray and the WDHB. The WDHB agreed to extend the relocation expenses beyond its usual \$15,000 which the WDHB Chair, Mr Bob Simcock, had initially offered.
25. Dr Murray accepts that this sum for relocation costs was not varied at any time after he signed his employment agreement.⁵ However, he states that at some point prior to his starting in the role, Mr Simcock also approved additional travel back to Canada for him to deal with his personal affairs, on the basis that these were "early arrival costs".
26. Dr Murray states that his appointment was leaked to the media and this caused him to have to leave his role in Canada sooner than expected and resulted in the additional "early arrival" travel and accommodation costs. Dr Murray produced the Waikato Times media article dated 6 June 2014, which refers to his being the frontrunner for the role.⁶
27. However, I note that this article appeared well before the relocation costs were finalised on 20 June 2014. The parties were still completing the final negotiations

⁵ V1/Tab7/2

⁶ V2/Tab7/NM7

on the relocation costs by email on 17 June 2014. (V2, Tab 1, pg6). [REDACTED]
[REDACTED]
[REDACTED]

28. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] His resignation from his employment at the Fraser Health Authority in Canada had been announced to the Canadian media on 7 June 2014. ⁷

29. Mr Simcock in his witness statement does acknowledge that at some point prior to arrival in June and then again in late 2014, Dr Murray did seek his approval for one additional flight back to Canada to deal with his outstanding personal affairs. Mr Simcock agrees that he verbally approved this extra flight over and above the \$25,000 relocation costs.⁸

30. However, Mr Simcock is clear that there was no approval sought or given to incurring two flights back to Canada as part of any early arrival costs. Mr Simcock is also clear that there was no approval sought or given to incurring additional accommodation over and above the four weeks or for any other early arrival costs.

31. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁷ Vancouver Sun article dated 7 June 2014, "CEO of Fraser health quits \$444,000 a year job", www.vancouversun.com.

⁸ BS statement, pg 1 and reply stmt pg 2

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32. Attached, as Appendix A to this Report, is the Independent Investigator Review Summary showing my findings on all relocation costs in issue. The total relocation costs paid by the WDHB between August 2014 and January 2015 were \$49,336 (GST inclusive). This calculation has been made based on the GST inclusive figures which match the invoices that have been sighted by the investigator.

33. The total overspends in excess of the \$25,000 plus GST relocation costs, is \$20,586.70 (GST inclusive). The one early arrival flight and associated costs have not been included in the assessed overspend, they are noted in Appendix A as early arrival costs on the basis that the one flight on 5 December 2014 (and associated costs) was justified.

34. [REDACTED]

[REDACTED]

● [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

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42. [REDACTED]

43. The total relocation travel costs are calculated in Appendix A at \$13,639. All invoices except one have been sighted and reconciled for this cost.¹⁶

44. I have not included in this calculation justifiable additional "early arrival costs". I have assessed the "early arrival" costs as separate and restricted this cost to the one return flight to Canada in early December 2014. This also includes the one day car hire and accommodation on 4-5 December 2017 in travelling from Hamilton to Auckland to depart on 5 December 2014. The total early arrival costs are some \$4,736.¹⁷

45. [REDACTED]

¹⁶ The invoice for the relocation flight Canada to NZ for 18 July 2014 cannot now be located. However, Dr Murray accepts that this flight was taken by him and [REDACTED] added it to her spreadsheet calculation in January 2015, following receipt of the invoice. The invoices are at V2/Tab 1/25 – 40.

¹⁷ There is a minor discrepancy as to whether the amount charged to the WDHB is \$3,931 or \$4,164 for the flight departing 5 December 2014. I have adopted the larger figure as it appears to include legitimate flight expenses charged by the airline related to the flight.

[REDACTED]

Container removal costs

46. The container removal costs are NZ\$22,975 (GST not applicable) as invoiced in November 2014²¹. This calculation was derived from the conversion rate for the CA\$20,566 into \$NZ as at December 2014.

47. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

49. There are differences in the way the SSC CE expenses for the year to July 2015 were compiled, as these are GST exclusive figures and included additional "early arrival" costs, as applied by Dr Murray to his additional 2014 Quest accommodation and December 2014 flights.

50. [Redacted]

²¹ V2/Tab1/13

²² Refer January 2015 Spreadsheet, Tab 1/14-15.

51.

[REDACTED]

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59. The WDHB appears to have accommodated this description of costs in order to resolve a late filing of expenses and avoid further adverse media and SSC scrutiny. However, it was Dr Murray's conduct in deferring any resolution of his expenses that caused this to occur. It does not accord with the employment obligations that Dr Murray had in 2014/2015 to limit his relocation (\$25,000) and early arrival costs (one flight) as agreed with Mr Simcock.

Repayment made in 2017

60. Dr Murray has now repaid a total of \$29,404 in respect of his relocation overspend, being the following amounts:

- (i) \$11,904 – Paid on 13 June 2017;
- (ii) \$17,500 – Paid 21 August 2017.

\$29,404 - Total

61. I have assessed that this repayment amount is substantially correct. The total overspend on the relocation costs maximum \$25,000, is as set out in Appendix A, being \$20,586. However, account may also be taken of the 8 weeks additional Quest accommodation that Dr Murray was not entitled to claim.²⁴ This equates to a repayment required of \$8,754. It is also reasonable to make some allowance for

²⁴ The relocation costs, of \$25,000, was a maximum figure, it did not provide for additional accommodation beyond 4 weeks to be incurred to make up to \$25,000.

estimating likely international personal calls over the period June to December 2014.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

67. [REDACTED]

68. The Tandem Travel records confirm the eventual travel as being from 20 to 31 March 2015.²⁷ It confirms the flights being:

- (i) 20 March 2015 - Auckland – San Francisco – Las Vegas;
- (ii) 22 March – Las Vegas to San Francisco;
- (iii) 24 March , San Francisco to Vancouver;
- (iv) 31 March, Vancouver – San Fran – Auckland (arrive Auckland 2 April 2015).

69. The WDHB Travel Request Form was not completed until sometime in February 2016, when the SSC reporting was being prepared. The undated Travel Request Form is signed by Bob Simcock and confirms the reason for travel as *“IS Strategy development visit”*.²⁸ It incorrectly refers to part of the travel to “LAX” when it appears the travel was in fact to include Las Vegas.

70. [REDACTED]

²⁷ V2/Tab2/27

²⁸ WDHB Travel Request Form V2/Tab 2/25

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

97. The total accommodation costs for the period 3 August to 21 August 2016, which I have assessed as a personal stay by Dr Murray are \$189 per night x 18 nights, totalling \$3,402. This sum remained outstanding to the WDHB from August 2016 until Dr Murray made repayment towards this sum in amount of \$2,795 75 on 13 June 2017.⁴⁵

[REDACTED]

⁴⁵ MC statement, pg 6

[Redacted]

[Redacted]

[Redacted]

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Issue 4 : Travel to USA to Canada 18-26 October 2016

101. Dr Murray's employment agreement provides for study leave and study expenses, as set out in his letter of offer. The provision provides for reimbursement of actual and reasonable costs towards education/training/conferences and associated study leave, accommodation and travel. The provision also requires that all such *"attendance and costs shall be discussed and agreed with the Board Chair"*.

102. [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[REDACTED]

106. Dr Murray departed New Zealand on 18 October 2016 to travel via Los Angeles to New York and then on to Moncton, in the province of New Brunswick, Canada. The actual travel and expenses involved the following:

- (i) New York 19 to 21 October 2016;
- (ii) Moncton 22- 24 October 2016;
- (iii) Return Auckland 26 October 2016;
- (iv) Car Hire Moncton 20 October to 20 November 2016;
- (v) Car Hire Moncton 20 November to 23 December 2016;
- (vi) Staff expense claim form dated 25 November 2016, 19 to 22 October New York meals and taxi claimed and the reason given was "CARES project virtual health"⁵⁰.

107. Following Dr Murray's return on 26 October, he made further arrangements on 4 November 2016 to extend the rental car hire in Moncton. This is recorded in an email from Tandem Travel to Dr Murray on his private email.⁵¹ However, the rental car voucher shows it as chargeable to the WDHB.⁵² [REDACTED]

⁴⁹ V2/Tab4/13
⁵⁰ V2/tab4/37
⁵¹ V22/Tab4/67
⁵² V2/Tab4/69-73
⁵³ V2/Tab4/81-87

108. [REDACTED]

109. [REDACTED]

[REDACTED]

[REDACTED]

112. In July 2017, Dr Murray repaid 39 days of the car hire being \$4,259. However, this amount remained outstanding and undisclosed to the WDHB as personal expenditure between October 2016 and May 2017.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

118. [REDACTED]

119. On 21 August 2017, Dr Murray reimbursed the WDHb the sum of \$6,275 for this study leave period and equates it to the air flights cost. This payment is confirmed in his reconciliation of repayments made NM1 attached to his interview statement.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

125.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

130. [REDACTED]

[REDACTED]

Issue 6: Langham Hotel, 8 to 12 April 2017

132. The period of this stay was from Saturday 8th April to Wednesday 12 April 2017.

133. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

137.

[REDACTED]

[REDACTED]

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[REDACTED]
[REDACTED]

145. During October 2014, Dr Murray arranged for Ms Sainiuk, a Canadian resident working in healthcare, to come to New Zealand to conduct a peer review of the DHB Quality Management Strategy. The WDHB has not been able to locate any document created by Dr Murray confirming the terms of her engagement.

146. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

147. Ms Sainiuk stayed at the Quest, Hamilton over the period of her stay from 12 to 26 October 2014. [REDACTED]
[REDACTED] Her accommodation was paid for by the WDHB.

148. [REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

149. The documents produced confirm that Ms Sainiuk was involved in attending meetings at the WDHB over the period of her visit and that she was involved in some follow up review of the Quality Strategy document in January 2015.⁷⁷

[REDACTED]
[REDACTED]
[REDACTED]

⁷⁷ V3/Tab7/119-129.

150.

[REDACTED]

[REDACTED]

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[REDACTED]

173. This booking was made by Dr Murray from San Francisco to Auckland. Dr Murray made the booking by phone via Tandem Travel for [REDACTED] charging the WDHB account for her economy class ticket valued at \$1,617. The booking was made on 15 May 2017.⁹⁴

174. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹⁴ V3/Tab7/6

[REDACTED]

179.

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[Redacted]

192. The Terms of Reference seeks an investigation into [Redacted]

[Redacted]

193. Dr Murray's employment agreement provides at clause 5 for:

5.1 *"annual leave of 25 working days for each 12 month period" of the employment agreement in addition to public holidays."*

5.3 *"The Chief Executive is expected to take annual leave in the year in which it is granted and, if accumulated annual leave will exceed 25 days, the Chief Executive must bring this to the notice of the Board."*

194. Dr Murray has currently been employed for just over 3 years. [Redacted]

[Redacted]

[Redacted]

[Redacted]

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195. [Redacted]

[Redacted]

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197.

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203.

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Issue 10: Resignation of Chief of Staff 17 May 2017

208.

[REDACTED]

[REDACTED]

209.

[REDACTED]

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D. Draft Summary of Findings and Recommendations

228. The draft findings are set out below.

Allegations	Draft Finding
1. Relocation Costs	[REDACTED]
2. Travel to USA and Canada 19-31 March 2015	[REDACTED]
3. Langham Hotel 30 July to 24 August 2016	[REDACTED]
4. Travel to USA and Canada 18-26 October 2016	[REDACTED]
5. Travel to Canada 26 November – 7 December 2016	[REDACTED]
6. Langham Hotel 8 to 12 April 2017	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Signed

Maria Dew, Barrister
22 September 2017