

**Tertiary Education
Commission**
Te Amorangi Mātauranga Matua



Tertiary Education Commission investigation guidelines

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The Tertiary Education Commission's monitoring role

Understanding the TEC's monitoring role

These guidelines will help you understand how the Tertiary Education Commission (TEC) undertakes investigations and what you can expect during an investigation.

You should read these guidelines if you:

- › have been notified of an upcoming investigation of your organisation
- › are a third party who has been selected to assist the TEC with an investigation, or
- › are an advisor to any of these people.

The Tertiary Education Commission

The TEC invests approximately \$3 billion every year into tertiary education. We regularly monitor approximately 700 tertiary education organisations (TEOs) to ensure they are performing and meeting their funding agreements.

As the Government's key investor in tertiary education, our monitoring helps ensure TEOs deliver agreed services, so New Zealanders can get the knowledge and skills they need for lifelong success. Tertiary education is a substantial commitment of time and resources for learners, taxpayers, and government, and they deserve full value for their investment.

TEC takes a flexible and graduated approach to monitoring. We work with TEOs to assist where necessary and to make sure that when intervention is required, both the TEO and TEC only invest as much time and effort as is necessary in the circumstances.

By using the extensive information and data we have available from across the education sector, we take an intelligence-led, proactive approach to monitoring. This means we can identify issues early, provide relevant and timely support, and respond appropriately.

Our monitoring work goes beyond traditional compliance to working collaboratively with TEOs, informing and educating TEOs on their obligations and helping them perform to their absolute best.

These guidelines are not exhaustive and are therefore illustrative rather than indicative. They are not a statement of the law and are not intended to have a legal effect. These guidelines are provided for public education purposes only. We may revise them from time to time in accordance with developments in our practices, and in our organisational objectives and priorities.

Terms and acronyms

These guidelines feature some abbreviations and specialist terms. A [TEC Glossary is available on our website](#).

Types of monitoring

The TEC's responsibility to monitor TEOs comes from The Education Act (1989)¹, and the funding conditions to which each TEO agree in order to receive TEC funding.

As part of the TEC's flexible and graduated approach to monitoring, we undertake different monitoring processes based on potential risk. Risk is defined as the chance or uncertainty of something happening that may have an effect on the ability of a TEC-funded TEO to provide services prescribed by legislation and TEC funding conditions. Risk is measured in terms of impact and likelihood.

¹ Section 159YC and 159YD

Investigations

What is an investigation?

The TEC will initiate an investigation if we become concerned about practices or behaviours which may put student interests or government funding at risk. An investigation is a detailed examination of a TEO's activities, and may focus on one or a range of courses or issues.

An investigation is not an indication that a breach has necessarily occurred.

Who carries out investigations?

The TEC will either conduct an investigation internally, or engage an external consultant to provide support throughout the investigation. This will be determined based on the nature and complexity of our concerns, and the competing demand on our resources.

When we engage an external consultant, they will act on the direction of the TEC and be held accountable to our decision makers.

Audits

Funded TEOs may be subject to one of three types of audits:

- › self-audits
- › desktop audits
- › on-site audits.

If a TEO is identified for audit, the TEC will provide separate guidance on the processes and timelines involved. Any TEO that receives funding may be subject to an audit. They may be scheduled or undertaken in response to information or complaints received by the TEC.

The three levels of audit allow our monitoring activity to be better matched to the size of a TEO or the nature of any concerns we may have.

System reviews

We also conduct reviews of sector based activities from time to time. Reviews are not TEO focused, and are generally based on a strategic issue which may need greater understanding. They could be based on a sector, type of delivery, region, course, or other higher level need.

Results of reviews may feed into policy decisions, educational activities, or more targeted investigations.

Business as usual monitoring

The TEC is constantly assessing TEOs to ensure that funding conditions and performance targets are being met.



Monitoring principles

Monitoring principles

We aim to undertake all of our monitoring work in accordance with the following principles. The text below each principle is designed to assist you to understand what we mean by each principle.

Principle 1: We are objective, fair, and impartial

- › We will act fairly and in accordance with the law. When making decisions we adhere to the principles of natural justice.
- › We perform our monitoring duties, functions, and powers with integrity and professionalism.
- › We will seek all reasonably available relevant information, and base our decision on the information before us.
- › Where necessary to gather information, we rely on our powers under the Education Act and the conditions of funding that each TEO agrees to.
- › We recognise that our investigations can have important consequences for parties who are investigated by us or who are otherwise affected. We consider all information thoroughly and with an open mind.

Principle 2: We aim to be as open and transparent as we can be

- › We aim to be as open and transparent as we can be. The TEC is a Crown entity with important public functions for the delivery of tertiary education.
- › There are limits to our ability to be open and transparent. In general, monitoring is not conducted in the public eye. We may not always be able to comment on a matter that we are investigating.
- › We make parties under investigation aware, as soon as we are reasonably able to do so, of the nature of concerns that we have about their compliance with funding conditions, what is likely to be required of them during our investigation, and the timeframes that are likely to apply.
- › We provide notice to parties of our concerns with as much specificity as reasonably possible. We take reasonable steps to provide parties with a chance to comment during our investigation.
- › We take steps to ensure that affected parties also understand the investigation process and what is likely to be required of them during our investigation.
- › Generally investigation outcomes are able to be made public. This could be in the form of a summary of our investigation outcome, or a full report. We will ensure affected parties have had a reasonable opportunity to be heard on the issues, especially when there may be adverse comment.
- › All information we receive is subject to the principle of availability under the Official Information Act 1982 (OIA).

Principle 3: We are accountable for our decisions

- › We are accountable for our performance and expenditure to the Government. One of our statutory functions is to monitor the public monies used to fund TEOs.

Principle 4: We investigate in a timely way

- › We conduct every investigation as efficiently as our resources permit, with the aim of avoiding unnecessary uncertainty and delay.
- › We aim to complete investigations in a timely way and to make decisions as promptly as possible.

Principle 5: We handle information responsibly

- › We will use and protect information provided to us in accordance with the law.
- › We recognise that much of the information we receive is of a private, commercially sensitive, or confidential nature. We take steps to preserve the confidentiality of such information and to provide the appropriate protections against disclosure.
- › Where we gather information that appears to raise concerns relating to suspected criminal activity, we may refer the information to the appropriate enforcement agency. This includes providing information to the Serious Fraud Office in cases of serious or complex fraud.

Observance of Human Rights

We acknowledge and comply with our obligations under the New Zealand Bill of Rights Act 1990.

For example, as a public body we recognise and observe the principles of natural justice to the extent that the TEC may make decisions in respect of a person's rights, obligations, or interests. We recognise that we may be judicially reviewed in respect of such decisions or that we may be the subject of civil court proceedings.

External consultants

At times we engage external consultants to provide support during an investigation. In all cases these investigations are completed with TEC control and oversight. We expect external consultants working with us to undertake work in accordance with the TEC's investigative principles.



How we undertake investigations

How we undertake investigations

Here we set out the typical process that we follow prior to and during an investigation.

We operate an intelligence-led [monitoring framework](#) which brings together information about system trends and individual TEO performance.

We are constantly assessing:

- › what further information is needed to help us reach a view
- › whether further investigation is warranted, and
- › whether new information has come to light that warrants a new line of inquiry or resolves a current line of inquiry.

Risk analysis

We identify matters that may warrant investigation through various sources and methods, including:

- › complaints
- › referrals from other agencies
- › the media
- › audits
- › our own intelligence-gathering, research, and data analysis, and
- › self-identified issues from TEOs.

Once we identify concerns, we carefully consider how to look into and address them. Our monitoring system is designed to ensure the level of resource committed is proportionate to the level of risk.

During this prioritisation stage, we consider:

- › whether there is a reasonable basis for our concerns
- › whether we need to gather or test more information to determine the level of intervention required, and
- › our competing priorities and current monitoring focus areas.

We then determine whether a matter warrants an investigation or a less formal intervention. A lower-level step to resolve the concerns could include an audit or engagement from a TEO's investment manager to resolve the potential funding breaches. If appropriate, we may also refer the issue to another agency.

As appropriate, we will work directly with the TEO, for instance by asking them for an explanation of the issue or gathering more information. Requesting additional information does not necessarily mean we will open an investigation.

Investigation

After we have identified an issue, some matters will be escalated to an investigation.

Scope

This involves gathering and analysing relevant information. We will determine which programmes, courses, or other issues need to be examined. These can be highlighted for investigation based on a multitude of reasons, including having specific concerns about a programme.

The scope can be expanded during the investigation process depending on the matters found.

Requests for information

We may request information from your organisation during our investigation. It is a condition of funding that TEOs will provide any financial, statistical, or other information that the TEC requires.² The TEC will generally allow 10 working days for the TEO to consider the request and provide the required information.

Assessment

We will undertake an assessment of the processes and practices undertaken to ensure that TEOs:

- › are using TEC funding lawfully, responsibly, and for the purposes for which it is provided
- › are using funding in a manner consistent with the appropriate use of public funds
- › have not received funding that is greater than it should have been, or that the TEO was not entitled to receive
- › are adhering to the funding conditions set out in their funding confirmation letters
- › are financially viable
- › have robust governance and management structures, and
- › anything else which is identified through the course of the review.

The assessment can include, but is not limited to:

- › on-site visits
- › data analysis, and
- › interviews with students, tutors, and staff.

At any stage during an investigation process, the TEC may revisit and change the scope and focus of the investigation (e.g. investigating additional programmes, reviewing financial information, etc) or notify other government agencies.

Initial findings

Once we have completed the enquiry phase of the investigation, we will consider the interim findings. If an investigation is substantial enough to warrant a report, we will draft a report setting out our findings. Reports will reflect the scope of the investigation and can vary in size and complexity. If there are no substantial findings, we may only produce a summary of interim findings.

² Section 159YC(1) The Education Act 1989

We will provide the draft report, or summary of our interim findings, to the TEO under investigation for comment, in order to address any potential factual inaccuracies in the report. The TEC will generally provide 10 working days for the TEO to consider the interim findings and provide comments.

It is the TEO's responsibility to provide the interim findings to any other affected parties (e.g. subcontractors, former staff, etc). In cases where the TEO no longer has a relationship with the affected parties, the TEC will take reasonable steps to contact them separately.

The TEC will then consider the TEO's submission, and amend our findings as appropriate. All feedback will be considered, but final decisions are at the discretion of the TEC.

Final findings

Once we have finalised our findings, we will consider whether any corrective actions are necessary. Corrective actions will depend on the nature of issues investigated and identified, but commonly include funding recoveries, reporting resubmissions, process improvements and improvement action plans. We will provide the TEO under investigation with our final findings, as well as a letter setting out any required corrective actions and associated timeframes. We will work with the TEO to make improvements to their practices to ensure better compliance in the future.

At this stage, we will also provide the TEO with the information which we will be publishing - whether that is a final redacted report or a summary of findings.

If significant issues are identified, we will generally undertake a follow-up investigation once an appropriate amount of time has passed. This is to ensure good practices have been established and the issues identified have not reoccurred.

Publication

We generally publish investigation outcomes on our website as part of a transparent, consistent approach to monitoring. It is in the public's interest to see the results of our monitoring processes to provide assurance that public funds are being well managed. Publication of investigation findings is also a key way in which we share learnings from monitoring activities with the sector, and help other TEOs improve their performance and compliance.

The TEC reserves the discretion, however, to not publish an investigation report or outcomes. Any such decision would always be made with reference to the provisions of the Official Information Act 1982. For example, where there are no material findings, or issues identified are only minor, publishing the fact of an investigation may reduce public confidence in a TEO at a level disproportionate to the issues investigated. The TEC would seek to share any valuable learnings from such investigations with the sector in another way, including through regular monitoring updates provided to the sector.

The TEC will provide the TEO under investigation with the material that will be published. The TEO and the TEC consult in preparation for any necessary communication around the release.

It is the TEO's responsibility to provide the documents for publication to any other affected parties with which they still work and coordinate their response. In cases where the TEO no longer has a relationship with the affected parties, the TEC will take reasonable steps to contact them separately.

Publishing reports

If the findings were substantial enough to warrant a report, the full report will be published. The report will be redacted as appropriate, in accordance with the provisions of the Official Information Act 1982. At this point the TEO will have 10 days to request that additional redactions be made in accordance with the provisions of the Official Information Act. All feedback will be considered in accordance with the Act, but final decisions on the publication of investigative material are at the discretion of the TEC.



Working with TEOs and other parties during an investigation

TEC conduct during an investigation

This section explains how the TEC will work with TEOs and other parties during the course of an investigation.

Timing of an investigation

We aim to complete every investigation and make every decision as promptly as possible. **Due to the varying nature and complexity of our investigations, and the competing demands on our resources, there is no uniform or typical investigation duration.** Some relatively straightforward investigations can be resolved within a few weeks or months. Other more complex or large-scale monitoring processes can take longer, such as investigations entailing:

- › novel or complex legal, economic, or evidential matters
- › difficulties in accessing relevant information
- › minimal students or tutors available for interview
- › multiple or overseas parties, and
- › a large volume of documents.

If you wish to know more about the timing of an investigation, you should contact your key TEC contact point for the investigation.

Communication during an investigation

Generally our monitoring is not conducted in the public eye. We need to:

- › balance the competing interests of open government with the need to follow due process
- › ensure public confidence in TEOs is not reduced at a level disproportionate to the concerns being investigated, and
- › the commercial position of TEOs is not unreasonably prejudiced.

We may not always be able to communicate on a matter that we are investigating.

Communicating with the party under investigation

As soon as we are reasonably able to do so in the context of investigations, a staff member will contact the TEO to let them know that we have opened an investigation, the nature of the concerns that we are investigating, and an indicative timeframe for our process.

Each investigation is unique and the exact time an investigation may take varies. The length of the investigation can depend the complexity of the issues, the discovery of new lines of enquiry, the number of potential breaches, and the ease with which we can access evidence and information. We will endeavour to provide the investigated party with an indicative timeframe, but this can only be a guide and not a commitment.

We aim to provide the investigated party with regular progress updates during the process when we are able to do so, and upon request.

We will also, when we are reasonably able to do so, communicate any changes in the scope. Routinely, new avenues of inquiry are opened during investigations.

We will take reasonable steps to provide investigated parties with a chance to comment on or provide evidence about the complaints or concerns that we are investigating. Input from the TEO is sought

throughout the inquiry, and TEO comments and explanations are reflected in the draft findings. The TEO is given an opportunity to comment at the interim findings stage of the report.

Communicating with other affected parties

Where there are other affected parties which the TEO:

- › still has business with, it is the TEO's responsibility to communicate with them to notify them of investigation, gather their comments on the interim findings, and advise them of publication
- › no longer works with, the TEC will take reasonable steps to communicate with them throughout the investigation.



How the TEC deals with information

How the TEC deals with information

This section describes:

- › how we use information during an investigation
- › our obligations to make information available under the OIA
- › how we protect confidential information during an investigation and review, and
- › when we share information with other agencies.

The majority of information that we receive during our investigation is information that is not otherwise in the public domain. We are conscious of the need to ensure that parties can have confidence in our use and retention of information, including our commitment to respecting as far as possible any privacy, confidentiality, or commercial sensitivity of the information.

Sharing information within the TEC

We can and do share within the TEC any information that we receive.

We adhere to the Official Information Act

The Official Information Act 1982 (OIA) provides the framework for disclosure of the information that the TEC holds. Under the OIA all information is to be made available unless good reasons exist to withhold it.³ This is known as the principle of availability.

The TEC does not need to receive an OIA request for information in order for the principle of availability to apply. We can release information that in our assessment should be made publically available.

There are a number of reasons that the TEC may withhold information from disclosure. In some cases the existence of particular facts is a conclusive reason to withhold the information. These include, most relevantly, where release would prejudice our investigation.⁴

In other cases the TEC must balance potential reasons to withhold against the public interest in the information being released. This includes, most relevantly, where:

- › release would unreasonably prejudice the commercial position of the TEO⁵
- › withholding the information is necessary to protect the privacy of natural persons⁶
- › we received information under an obligation of confidence, and if we were to make that information available it would:
 - prejudice the supply of similar information to us (by any person) where it is in the public interest that such information continues to be supplied to us⁷
 - be likely otherwise to damage the public interest⁸, and
- › the information is the subject of legal professional privilege.⁹

³ Section 5 Official Information Act 1982

⁴ Section 6(c) Official Information Act 1982

⁵ Section 9(2)(b)(ii) Official Information Act

⁶ Section 9(2)(a) Official Information Act

⁷ Section 9(2)(ba)(i) Official Information Act 1982

⁸ Section 9(2)(ba)(ii) Official Information Act 1982

⁹ Section 9(2)(h) Official Information Act 1982

If we think that any of these potential reasons for withholding apply, we must still consider the public interest in release.¹⁰ As the principle of availability applies, the information may only be withheld if the potential harm from releasing it is greater than the public interest in disclosure. This ‘balancing exercise’ means that in some cases information can be released where nonetheless there is some possible harmful effect that might appear to justify withholding it.

We aim to be as open and transparent as we can be. However, during our investigations we are not always able to release the information that is requested of us. Our investigations are not generally conducted in the public eye. In order to avoid prejudice to an investigation we will generally not release information about it until the investigation has been completed.

All investigation outcomes are able to be made public shortly after the completion of the final report.

How we protect confidential information

Where a party provides us with information that they believe is confidential or commercially sensitive, they should clearly assert that qualification when (or before) they provide the information to us.

We will not always accept at face value a party’s assertion that information is confidential or commercially sensitive, and we may test this with the provider of the information. We are at all times guided by the principles of the Official Information Act.

Where we want to test one party’s information with another person, we will weigh any assertions of confidentiality before we make a decision about disclosing the information. We may consult with the supplier of the information before we reach a decision. The TEC may request that “public” copies of documents or information are provided, with the sensitive or confidential material redacted.

We will not disclose any information we consider to be commercially sensitive in a media statement, public report, or in response to a request, unless it is in the good of public interest to do so in a particular case. These cases are likely to be rare.

Sharing information with other regulators

Where we gather information that appears to raise concerns under a law that another government agency enforces, we may advise that agency of our concern and possible sources of information for its own enquiry.

Joint monitoring

When conducting a joint investigation with another government agency, we may provide information to that agency.

Before providing confidential information to another enforcement agency during a joint investigation, we will ensure that the other agency has provided appropriate assurances that it will:

- › keep the information confidential, and
- › use it only for the purposes for which it is provided.

¹⁰ Section 9(1) Official Information Act 1982

Serious Fraud Office

Where information obtained suggests that serious or complex fraud¹¹ has been committed, we will provide that information to the Serious Fraud Office.¹²

We will advise the Serious Fraud Office if the information has been obtained in confidence.

Other criminal offending

Where we obtain information that suggests other serious criminal offending in New Zealand that falls outside our responsibilities, the information will be provided to the New Zealand Police or other relevant agencies (such as the Inland Revenue Department).

We will advise the New Zealand Police and other relevant agencies if the information has been obtained in confidence.

Issues of public safety

Where we obtain information that suggests a serious threat to public health or public safety, we will provide that information to any person or agency who has a relevant interest in preventing, or a duty to prevent, that serious threat.

Other regulators

The TEC works closely with a number of government agencies, including the New Zealand Qualifications Authority (NZQA), the Ministry of Social Development (MSD), Immigration New Zealand (INZ), and the Ministry of Education (MoE) in an all-of-government approach. Where we obtain information that will affect any of these agencies, we will provide them with that information.

We will advise the relevant agency if the information has been obtained in confidence.

Public or media comment by the Tertiary Education Commission

As discussed above at Principle 2, we aim to be as open and transparent as we can be.

We will apply the principles in the Official Information Act 1982 to determining what information we can make public.

The Official Information Act provides that we can withhold information if releasing information would prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.

Opening of an investigation

We do not as a matter of course announce in the media when an investigation is opened. However, where an investigation - including whether we are investigating - is a matter of considerable public interest we may publish information about what we are investigating.

This can include situations where the matter is already in the public domain or the subject of public comment. Where we are reasonably able to do so, such announcements would be discussed and coordinated with the TEO under investigation.

¹¹ Serious or complex fraud includes a series of connected incidents of fraud which, if taken together, amount to serious so complex fraud.

¹² Section 38 Serious Fraud Office Act 1990.

During an investigation

During an investigation we will release publically information in accordance with the Official Information Act. As stated elsewhere in these guidelines, we generally do not release information about an investigation until it has been completed, in order to avoid prejudicing the conduct of the investigation.

When an investigation is completed

At the end of an investigation, we generally inform the public of the outcome of our investigation by publishing either the final report, or a summary of the investigation, on our website. Investigation outcomes can include funding recoveries, working with the TEO to update their data or records keeping, and other corrective actions.

The TEC has a public education function, and we may decide to publish information about issues of concerns to us. This will particularly be the case where the matter has been one of considerable public interest. Full information about our publication process is on p13.

Complaints about our investigations processes

Any person who wishes to complain about our investigations process in a particular case should contact the Chief Executive's office at chiefexecutive@tec.govt.nz.

If you are not satisfied by our response, you may bring your concerns to the Office of the Ombudsman (<http://www.ombudsman.parliament.nz/make-a-complaint>).