



25 September 2019

Our ref. 77804

G Menzies

By email: fyi-request-11156-90b21bff@requests.fyi.org.nz

Dear G Menzies

Official Information Act 1982 request: Number and ethnicity of Royal prerogative of mercy applications

I refer to your FYI request of 6 September 2019 requesting information about the Royal prerogative of mercy under the Official Information Act 1982.

You requested the following information:

"Please may I have information on the number of applications for exercise of the Royal prerogative of mercy applications from 1995-2018 and how many of these applications were referred back to the Court of Appeal. After substantial research I have not been able to locate this information from official sources. If this information is published can you please provide further information of this publication/where to locate this publication.

Secondly, please can you provide information on the ethnicity of all applications for the exercise of the Royal prerogative of mercy from 1995-2018."

I have addressed each part of your request below.

Numbers of applications

About 170 applications for the Royal prerogative of mercy (RPM) were made between January 1995 and December 2018. Of these, there were 16 occasions on which an applicant's case was referred back to an appeal court under section 406 of the Crimes Act 1961. Thirteen of the referrals were to the Court of Appeal and three to the High Court.

Information on the numbers of RPM applicants is regularly requested under the Official Information Act and is occasionally reported, for example, in this *Listener* article of October 2018: <https://www.noted.co.nz/currently/currently-crime/royal-prerogative-mercy-what-is-it-and-why-so-rare> However, the Ministry of Justice does not routinely publish up-to-date figures on RPM applications.

Ethnicity of applicants

My answer to this question is in two parts.

Prior to 2010, the Ministry of Justice did not methodically collect and record information on the ethnicity of RPM applicants.

However, you may be aware that in December 2005, the late Sir Thomas Thorp published a paper called *Miscarriages of Justice*¹. Part of his paper reports on his study of 53 Ministry of Justice files concerning RPM applications received and assessed between 1995-2002. Although the Ministry did not ask applicants to state their ethnicity, Sir Thomas said that he was able to identify ethnicity details for 46 applicants from charging documents and police records associated with the RPM applications.

At page 93 of his paper, Sir Thomas recorded the ethnicity of those 46 applicants as follows:

Caucasian	37
Maori	4
Pacific Islander	1
Other	4
TOTAL:	<u>46</u>

From the beginning of 2010, RPM applicants were asked to complete an application form that is found on the Governor-General's website.² On page 5 of the form, applicants were asked to record their ethnic background for statistical purposes. In the years 2010-2018, 41 applications were made by 38 applicants. Those applicants recorded their ethnic background as follows:

NZ European	20
NZ European / Maori	2
NZ Scottish / Maori	1
Maori	2
Indian	2
Bangladeshi	1
Chinese	1
Rarotongan	1
Samoan	1
Middle Eastern	1
Iranian	1
Australian	1
South African	1
Dutch	1
Not recorded	2
TOTAL:	<u>38</u>

We do not have reliable information on the ethnicity of pre-2010 RPM applicants whose files were *not* studied by Sir Thomas Thorp. While some RPM files may incidentally reveal an applicant's identity, this information could not be obtained from each file without substantial collation and research. For that reason, I am refusing that part of your request under section 18(f) of the Official Information Act.

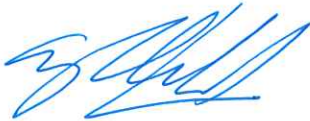
¹ Sir Thomas Thorp, *Miscarriages of Justice*, Legal Research Foundation, 2005.

² https://gg.govt.nz/sites/default/files/2017-05/A4_Application_Form-December_2009.pdf

Conclusion

I trust the above information is helpful. You have the right under section 28(3) of the Official Information Act to complain to the Ombudsman about the decision to refuse your request, in part, under the Act.

Yours sincerely



Edrick Child
Deputy Chief Legal Counsel