

5 November 2013

Mr Lance-Desmond Lavery
Fyi-request-1268-0123e34c@requests.fyi.org.nz

Dear Mr Lavery

I acknowledge receipt of your Official Information Act request sent by email on 2 November 2013 to the Ministry of Justice relating to the Judicial Conduct Commissioner.

The Ministry does not hold any information relating to complaints against judges as those complaints are within the jurisdiction of the Judicial Conduct Commissioner.

The Official Information Act 1982 does not apply to the Judicial Conduct Commissioner. The definition of "official information" in the Act expressly excludes any evidence, submission or information given to the Judicial Conduct Commissioner, the Deputy Judicial Conduct Commissioner, or a Judicial Conduct Panel. In addition, section 2(6)(f) of that Act provides that:

For the avoidance of doubt, it is hereby declared that the terms Department and Organisation do not include – the Judicial Conduct Commissioner, the Deputy Judicial Conduct Commissioner, or a Judicial Conduct Panel under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.

I can, however, provide general comment on the questions you raise which may assist you:

1. Is the Office of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, administered by the Ministry of Justice?

The Judicial Conduct Commissioner is an independent statutory officer who receives administrative support provided by the Ministry as required by clause 6 of Schedule 2 of that Act.

2. Who holds the mandate of appointing the current Commissioner?

The current Commissioner was appointed by the Governor-General on the recommendation of the House of Representatives following consultation by the Attorney-General with the Chief Justice (section 7).

3. Can the current Commissioner acting within their public capacity and scope of office, provide information pertaining to complaints of impropriety of individual Judges?

The Commissioner has a statutory duty of confidentiality that requires him (and his staff) to keep confidential all matters that come to their knowledge in the performance of their functions (section 19).

4. Does the Office of the Judicial Conduct Commissioner have an independent complaints process?

Yes. The complaint process is clearly explained on the Commissioner's website www.icc.govt.nz and in Schedule 1 of the Act.

5. How many complaints in the last five years has the Ministry of Justice received pertaining to impropriety of Judges?

The Ministry has not received any such complaints. Those complaints are made to the Judicial Conduct Commissioner. Details about volumes of complaints can be found in the annual reports of the Commissioner on the "Reports and News" section of the Commissioner's website.

6. Can Official Information Act requests pertaining to complaints of individual Judges be made to the Solicitor-General?

As the Solicitor-General does not hold information pertaining to complaints about judges and the Judicial Conduct Commissioner is not subject to the Act, any request would most likely be refused under section 18(g) of the Official Information Act 1982.

7. Can Official Information Act requests pertaining to complaints of impropriety of individual Judges be made to the Attorney-General?

See my response above. In addition, the Attorney-General, as Senior Law Officer, is himself not subject to the Official Information Act.

I hope this is of assistance to you.

Yours sincerely



Jeff Orr

Chief Legal Counsel