



Mr R. Gavey
fyi-request-13704-5c5a2b5e@requests.fyi.org.nz

16 NOV 2020

Dear Mr R. Gavey

On 7 September 2020, you emailed the Ministry of Social Development (the Ministry) with 18 questions made under the Official Information Act 1982 (the Act) pertaining to the Ministry's policies on benefit fraud investigation processes where a line of enquiry was relationship status. For the sake of clarity your questions are addressed in turn.

1. How does the Ministry of Social Development determine a benefit recipient's relationship status?

The relevant information on how the Ministry determines relationship status, including married, civil union, or de facto relationships is publicly available on the Work and Income website. The information can be found at this link: www.workandincome.govt.nz/map/income-support/core-policy/relationship-status-for-benefit/introduction.html. In accordance with section 18(d) of the Act, this part of your request is refused as the information is publicly available.

Knowing a client's relationship status is important to ensure they are receiving the correct benefit at the correct rate, as benefits are paid at different rates for singles and couples.

Clients are considered to be part of a couple when they are in a relationship with another adult, regardless of the sex or gender of either partner. This includes a couple who are married or in a civil union and they are not 'living apart', or a couple who are living in a de facto relationship.

Section 29A of the Interpretation Act 1999 defines the legal meaning of a de facto relationship. This information can be found at the following link: www.legislation.govt.nz/act/public/1999/0085/latest/DLM31861.html.

2. Furthermore, how does the Ministry of Social Development determine when a relationship started?

Once the Ministry determines that a person's relationship has reached the stage where it would be considered to be a de facto relationship, then they would be considered as in a relationship for benefit purposes.

The relevant information on new and formative relationships can be found on the Work and Income website at the following link: www.workandincome.govt.nz/map/income-support/core-policy/relationship-status-for-benefit/changes-and-reviews-relationship-status-for-benefit/new-or-formative-relationships-01.html. In accordance with section 18(d) of the Act, this part of your request is refused as the information is publicly available.

In addition, the definition of a de facto relationship used by the Ministry can be found at this link to the Work and Income website: www.workandincome.govt.nz/map/income-support/core-policy/relationship-status-for-benefit/de-facto-relationship-definition-01.html.

3. *What are the specific criteria the Ministry of Social Development uses to determine a benefit recipient's relationship status e.g. living in the same house, financial support, etc?*

To be in a 'relationship in the nature of marriage' or 'relationship in the nature of civil union' there must be both a degree of companionship demonstrating an emotional commitment and financial interdependence.

There are a number of indicators the Ministry uses to help determine the situation when considering whether a relationship is 'in the nature of marriage or civil union'. You can find more information about the key indicators the Ministry uses to determine financial interdependence and emotional commitment here: <https://www.workandincome.govt.nz/map/income-support/core-policy/relationship-status-for-benefit/financial-interdependence-01.html> and here: <https://www.workandincome.govt.nz/map/income-support/core-policy/relationship-status-for-benefit/emotional-commitment-01.html>

More information on the assessment of clients living as a de facto couple can be found on the Work and Income website at the following link: www.workandincome.govt.nz/map/income-support/core-policy/relationship-status-for-benefit/clients-living-in-a-de-facto-relationship.html.

4. *Does the Ministry of Social Development use algorithms (artificial intelligence/machine learning) in the process of determining a benefit recipient's relationship status? If yes, when did the Ministry start using such technologies and by whom/how were they designed?*

No. The Ministry does not use this technology to determine a benefit recipient's relationship status.

5. *How does the Ministry of Social Development establish a debt for "marriage type relationship" fraud? Furthermore, how does the Ministry of Social Development determine the amount of debt owed to the Ministry?*

Where it is found that someone has been overpaid a benefit because they have entered into a relationship that affects their entitlement to a benefit, a debt would be established. This debt would be calculated by taking the difference between what was actually paid, and what should have been paid for the period that the incorrect amount of benefit was received.

6. *On what grounds does the Ministry of Social Development decide to initiate an investigation into a benefit recipient's relationship status? What are the common means through which the Ministry receives allegations of "marriage type relationship" fraud?*

The Ministry uses a range of ways to detect and prevent potential fraud against the benefit system. These cases may come from public allegations, referrals from our front-line staff, information matching or referrals from other agencies, or from our Intelligence Unit.

The Ministry has a three-tiered approach to managing cases of potential fraud. When information is received indicating potential fraud, the information is assessed to determine which response should be used to appropriately manage the issue. The three-tiered approach has a primary focus on fraud prevention, and is summarised as follows:

Tier One – Early Intervention – Making it easier for clients to do the right thing

Tier One is about ensuring that clients are aware of the information the Ministry has received about them and about their entitlements and obligations allowing them to make a decision about their entitlement to a benefit payment. This involves a letter and/or phone conversation with the client. The Ministry's aim is to identify the correct entitlement going forward, rather than establishing an overpayment.

Tier Two – Facilitation – Providing clients with an opportunity to do the right thing

Tier Two is about working with the client to help them do the right thing. It's about having a more in-depth, face to face conversation with a client about their situation, entitlements and obligations so the client can self-assess whether they are receiving their correct entitlements. Again, the Ministry's aim is to identify the correct entitlement going forward, rather than establishing an overpayment.

Tier Three – Investigation – Protecting the integrity of the benefit system

Tier Three is about undertaking an investigation into a client's entitlement where the Ministry believes they may be committing fraud. The outcome in these cases could be an overpayment, the imposition of a penalty, or in the most severe cases, prosecution.

The three-tier system acts as an early intervention and facilitation approach, which has a focus on earlier engagement with clients who we have cause to suspect may not receive the correct amounts of benefit entitlement. This enables the Ministry to work with the client to make sure they are receiving both their correct and full entitlement going forward, and to assist them to limit the unnecessary accumulation of debt, which can become a barrier to independence.

The three-tiered approach helps the Ministry better manage fraudulent activity. All allegations of potential fraud or abuse of benefit payments are responded to in a manner proportionate to the nature of the information received and the potential seriousness of offending.

7. Who conducts these investigations and what relevant qualifications do they have?

The Ministry has a dedicated team of fraud investigators located throughout New Zealand, and an Intelligence team that identifies emerging fraud risks and trends. The Ministry works with other government agencies to identify and reduce incidents of fraud and to investigate cases which arise through allegations from members of the public.

No specific qualification is required to become a fraud intervention services investigator. However, the Ministry's fraud intervention services investigators are subject to a five-week intensive training course and induction, which covers legislation, investigation procedures, collection of evidence and court processes. Investigators also receive practical interview training which consists of theory and scenario-based assessments.

As part of their training, investigators enter a buddy system where they are paired with a senior investigator for at least the first three months of their employment. This is to provide ongoing guidance and support to investigators as they familiarise themselves with the role. Investigators also have access to ongoing training, including regulatory compliance qualifications.

8. *How many specialist fraud investigators does the Ministry of Social Development have currently? If possible, provide this number broken down by year from 2000 to 2020.*

Please find the following table attached at Appendix One:

Table One: The number of Specialist Fraud Investigators employed by the Ministry between 2006/2007 and 2019/2020, broken down by financial year.

The Ministry cannot provide information from pre-2006 as records of persons in the role are not held centrally and it would not be possible to locate this data. This part of your request is therefore refused under section 18(e) of the Act, that the information does not exist, or despite reasonable efforts, cannot be found.

9. *What powers do the investigators have when conducting investigations into benefit recipients' relationship status?*

Ministry staff have powers under legislation administered by the Ministry to obtain information to help assess entitlement to payments. This legislation is varied, but the legislation relevant to your request is the Social Security Act 2018, the Public and Community Housing Management Act 1992, and the Education and Training Act 2020.

The legislation relevant to your request can be found online at the following links:

Schedule 6 of the Social Security Act 2018:
www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784897.html.

Section 125 Public and Community Housing Management Act 1992:
www.legislation.govt.nz/act/public/1992/0076/latest/whole.html#DLM6091013.

The Education and Training Act 2020:
www.legislation.govt.nz/act/public/2020/0038/latest/LMS170676.html.

Please note that the training manuals released to you in response to your request made on 11 September 2020 are currently in the process of being updated to account for recent changes in legislation.

10. *What sources of (personal) data are the investigators permitted to access?*

The Ministry can obtain relevant information from a wide range of sources to help assess benefit entitlement. In most cases Ministry staff are required to seek this information from the client in the first instance, and there are constraints on these powers. The Ministry may seek information directly from third parties without seeking it from the client first, but this is only undertaken in cases where it is believed that seeking the information from the client could potentially prejudice an investigation.

11. What investigation techniques are employed by the Ministry of Social Development when conducting investigations into benefit recipients' relationship status? Do investigators conduct inquiries with benefit recipients' neighbours, friends, family members, workmates, employers, children's schools and acquaintances?

In addition to obtaining documentary information, Investigators may also talk to witnesses who may be able to provide evidence in an investigation. The client would also always have the opportunity to talk to the Ministry directly.

Information relating to the persons that the Ministry may speak to when conducting enquiries has been provided to you in response to your Official Information Act request submitted on 11 September 2020 for all documents held by the Ministry relating to benefit fraud investigations processes. The information relevant to this question is contained on page 2 of the document entitled: *Community Enquiries*.

12. Are benefit recipients informed when an investigation is initiated?

In the majority of cases, the Ministry would make clients aware of an investigation at its commencement. There are some circumstances, however, where the Ministry may choose not to advise the client initially. This would be for cases where advising the client first would be likely to prejudice an investigation.

13. What rights and entitlements do benefit recipients have during this investigation process?

Clients have a general right not to incriminate themselves. They are not required to answer questions, and they are entitled to seek support for an interview or during an investigation. Clients also have a right to review most decisions made by the Ministry about them.

14. How does the Ministry of Social Development determine whether to prosecute someone for "marriage type relationship" fraud?

15. Who makes this decision within the Ministry?

While it will always be appropriate to prosecute some people due to the nature of their offending, the Ministry is conscious that prosecution can negatively impact clients and families who are already in a vulnerable and difficult situation. It is important that the Ministry makes considered and sound decisions on which cases should be prosecuted.

The Ministry uses the Solicitor-General's Prosecution Guidelines as the main reference point when making a decision about prosecution. As a government agency, any criminal prosecution action brought by the Ministry must be in accordance with the 'Test for Prosecution' set out in the Guidelines.

There are two factors to the 'Test for Prosecution'; a case must meet the requirements of the 'Evidential Test' where the evidence gathered must be sufficient to provide a realistic prospect of gaining a conviction; and if the case meets the 'Evidential Test' requirements, the Ministry applies the 'Public Interest Test' to determine if it is in the public interest to prosecute.

The decision to prosecute is often a complex one. The Ministry must balance considerations of a client's alleged dishonest actions against their personal circumstances and the effect a prosecution might have on their ability to attain independence and their ability to maintain their health and wellbeing.

When an investigation has been completed an investigator may recommend a prosecution. If a prosecution is agreed to by their manager, the case would be referred to a solicitor to assess whether there was sufficient evidence to support prosecution.

If the solicitor agrees that there is sufficient evidence, then the case is referred to the Fraud Prosecution Review Panel to consider whether it is in the public interest to proceed to prosecution. If the panel approves prosecution, then the matter would proceed to having charges laid in a court of law.

16. The Ministry of Social Development client service manager George Van Ooyen was quoted in a 2020 Stuff article saying that: "The ministry is now focused on prosecuting only the more serious cases of fraud that, for example, occurred over longer periods or involved bigger overpayments". Does the Ministry of Social Development still agree with this statement?

Yes. This is still the Ministry's approach in relation to prosecutions for benefit fraud.

17. Has there been a discernible decision within the Ministry (or direction from the government) to use alternative means (other than prosecution) for more minor cases of benefit fraud/overpayment? If yes, when was this decision made and what are these alternative means (e.g. internal debt recovery)?

In addition to the information provided in the response to question six, over the past three years, the Ministry has increased its focus on prevention and early detection, rather than on prosecution. However, there will always be cases of serious fraud which will be fully investigated and prosecuted where it is appropriate to do so.

18. What are the driving considerations in prosecutions e.g. debt recovery, punishment, deterrence, etc?

The main purposes of prosecution are to hold people to account for serious offending and to provide a deterrence to the act of committing fraud. A prosecution is not generally required in order to establish a debt for overpayment of benefit.

19. Any further information in relation to the Ministry of Social Development's policies for "marriage type relationship" fraud (e.g. briefings, policy documents, staff training materials, etc) would also be appreciated.

The relevant documents and information that has been identified by the Ministry in relation to policies on 'marriage type relationship' fraud have been released to you as part of your request for information received on 11 September 2020. No further documents that related to your request were located in the Ministry's search.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response on the Ministry's policies on benefit fraud investigations, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours Sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

**Group General Manager
Client Service Support**

Appendix One

Table One: The number of Specialist Fraud Investigators employed by the Ministry of Social Development between the financial years 2006/2007 and 2019/2020

Financial Year	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
Total	91	84	79	91	95	91	91	108	109	105	103	99	97	98