

13 October 2021

REF: IR-01-21-26923

Pryce Payne
fyi-request-16614-4374fca6@requests.fyi.org.nz

Dear Pryce

Thank you for your Official Information Act 1982 (OIA) request dated 3 September 2021 regarding the attack that took place at Countdown Lynnmall on 3 September 2021. My response to each part of your request can be found below.

Recently (3/09/21) there was a fatal shooting by an "undercover police officer" according to media reports after a suspect stabbed 6(?) civilians in a countdown supermarket. I would like to request the subsequent report of the officer following this incident.

The shooting that occurred at Countdown Lynnmall on 3 September 2021 is subject to an Independent Police Conduct Authority (IPCA) investigation, and an inquest in the Coroners Court. As such, your request for the report relating to the shooting incident is refused under section 6(c) of the OIA, as release of the 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.

I would also like to request the type of surveillance, ...

Many aspects of covert policing and particularly surveillance are sensitive policing tactics which we closely guard. This ensures that criminals cannot take steps to defeat our investigation techniques. Further, it would not be in the public's long-term interests if police or others were to publicly disclose covert tactics or tradecraft. To ensure we can prevent crime and harm we need to keep much of this activity away from undue publicity. Intrusive surveillance techniques are used under the authority of the Search and Surveillance Act 2012 and are generally used where persons are suspected of involvement in serious criminal offending, including terrorism related offending. Surveillance provides police with evidence that often links a suspect to that offending.

In respect of your request for the type of surveillance undertaken in this instance, release of this information would disclose sensitive policing tactics. Therefore, your request is refused under section 6(c) of the OIA, as release of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences.

... time he was under surveillance, ...

I can confirm that the individual was subject to a variety of surveillance methods on an intermittent basis between 2016-2018, and for the period from his release from custody on 13 July 2021 until 3 September 2021.

Police National Headquarters

180 Molesworth Street. PO Box 3017, Wellington 6140, New Zealand.

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... why he was under surveillance ...

This portion of your request is refused under section 18(d) of the OIA as the information is publicly available. I would direct you to several publicly released documents which provide information relevant to your question. I have provided links to three of these documents below:

<https://www.courtsofnz.govt.nz/assets/cases/2021/R-v-S-summary.pdf>

<https://www.immigration.govt.nz/about-us/media-centre/media-releases/immigration-history-and-processes-relating-to-the-new-lynn-terrorist>

https://www.corrections.govt.nz/news/2021/corrections_statement_regarding_the_management_of_terror_attack_offender

The final portion of your question, asking '*what prevented you from arresting him prior*' seeks an explanation from Police. It is important to note that the OIA does not require agencies to form an opinion or create information in response to requests. This part of your request is therefore refused pursuant to section 18(g) of the OIA as the requested information is not held and Police has no reason to believe it is held by another agency. In a general sense, Police are required to have evidential sufficiency of an offence before a person can be charged. What constitutes evidential sufficiency is outlined in the Solicitor General Prosecution Guidelines which can be viewed at the following link:

<https://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf>

The IPCA, the Office of the Inspectorate at the Department of Corrections, and the Inspector-General of Intelligence and Security have agreed to conduct a coordinated review of the actions of New Zealand Police, the Department of Corrections and the New Zealand Security Intelligence Service leading up to the attack at New Lynn Countdown on 3 September 2021.

It is intended that the review will be completed and reported on by mid-March 2022. Terms of reference for the review are available at the following link:

<https://www.ipca.govt.nz/Site/publications-and-media/2021-media-releases/2021-sep-16-co-ordinated-review-new-lynn-countdown.aspx>

You have the right, under section 28(3) of the OIA, to ask the Ombudsman to review my decision if you are not satisfied with the way I have responded to your request.

Yours sincerely



D C Lynch
Detective Superintendent
New Zealand Police