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19 July 2022

Mark MacDonald

By email: fyi-request-18974-b0e8c4dc@requests.fyi.org.nz

Dear Mark

Information Request – Additional Complaints Processes

I refer to your official information request dated 28 May 2022 asking for further information about complaints and our related processes. On 27 June 2022 we wrote to you advising of an extension of the time to make our decision, to 19 July 2022.

Your request has been assessed in accordance with the provisions of the Official Information Act 1982. Fire and Emergency New Zealand's response to each of your questions is set out below.

1. Attachment 2 didn't answer my question. I didn't ask for a list of positions that might hypothetically be decision-makers. I asked which positions HAVE BEEN the decision makers on each complaint. I asked: "for all complaints that were at some point in their lifespan dealt with within a version of the BCO ... FENZ provide the job/position of the decision maker(s) ..., whether a decision was ever made on the complaint or not".

I refer to your original request quoting Raewyn Bleakley's public statements about recommendations for action going to a decision maker, where disciplinary action takes place. In that context, we have interpreted your question to relate to who makes decisions on disciplinary action. Disciplinary action is only taken where misconduct or serious misconduct is proven following an investigation.

Prior to 4 October 2021, the Interim Behaviour and Conduct Office did not have an investigation capability, and investigations were managed by Human Resources on behalf of the Interim Behaviour and Conduct Office. The job title of the decision maker was not recorded on these complaints in the Interim Behaviour and Conduct Office register. To obtain these, we would need to check each individual complaint file and cross reference with information contained in other Fire and Emergency systems. This would require substantial collation and research. Consequently, your request for this information prior to 4 October 2021, is declined under section 18(f) of the

OIA.

For investigations managed by the permanent Behaviour and Conduct Office (from 4 October 2021 onwards) this information is recorded. Decision makers that have been appointed hold the following positions:

1. Region Manager
2. District Manager
3. Deputy Chief Executive.

2. I am aware that some complainants believe the decision on their complaint was made by the BCO, yet you do not include this in your response. Can you please confirm whether the BCO has been a decision maker on complaints? (This request will be superfluous when you answer the original request as it will be answered by the data on actual (not hypothetical) decision makers when you provide it).

The Behaviour and Conduct Office has a monitoring and oversight role for the end-to-end complaint process. It is responsible for receiving, managing, and investigating complaints of unwanted interpersonal behaviour. Once an investigation report has been finalised, it is passed to the decision maker.

The Behaviour and Conduct Office does not make decisions on disciplinary action. Its role is to monitor the progress of decision-making and have oversight of the outcome.

3. What is BH&V?

Bullying, Harassment and Victimisation.

4. Who does "Resigned during process" refer to? Is which party resigned?

This category has been used in both situations. In some cases, the outcome refers to the complainant having resigned, and in others the subject having resigned. The Behaviour and Conduct Office is in the process of reviewing our records to improve the consistency, accuracy, and integrity of historical data.

5. Does "disciplinary action" include paid and volunteer firefighters?

Disciplinary action refers to cases involving paid and volunteer firefighters, as well as all other personnel.

6. What does "disciplinary action" mean? It must not include termination, dismissal, discharge, final written warning, informal action, or written warning, because they all have their own categories?

Disciplinary action is a high-level category that has been available in the list of outcomes. This is in addition to the specific categories, which are also particular examples of a type of disciplinary action. Cases in the register have used either term to indicate some form of disciplinary action. The Behaviour and Conduct Office is in the process of reviewing our records to improve the consistency, accuracy, and integrity of historical data.

7. Is dismissal/discharge for volunteers only and does "termination" refer to paid staff?

Dismissal/Discharge is recorded as an outcome on complaints made against both paid and volunteer staff. Termination has also been used for complaints involving paid staff only. As noted above we are in the process of reviewing our complaints data to ensure consistency and accuracy in our records.

8. How can there be a category "HR historic outcome not recorded" when the BCO has only been running since late 2019? Surely there would be an outcome on every matter that is not in the "ongoing" category. Even if the complaint was from pre-BCO times, the BCO would still have to give the complainant an outcome because that's its job.

As noted above, the Behaviour and Conduct Office is carrying out a review of our records to improve the consistency and integrity of historical data. The category you have identified does not necessarily indicate that a complaint does not have an outcome, it indicates that the outcome was not readily identifiable at the time the record was transferred to the Behaviour and Conduct Office in our review of case data. These cases require detailed investigation into historical case records to identify the specific outcome as part of our ongoing processes of improving our records.

9. What does "Informal action" mean and how is this different to "Resolved - informal", "Educational Approach", "Facilitated Intervention", "Provided Information", and "Resolved - Team restorative process" which are all informal actions?

Informal action has been recorded as an outcome on some historical cases instead of the more specific action that occurred, which could include the other examples you have cited. It means that informal action was taken to resolve the complaint and is the same as "Resolved – informal".

Facilitated interventions and Team Restorative Process are categories that were applied to assist the Interim Behaviour and Conduct Office in tracking the pilot stage of the restorative intervention process, as it was being developed under our Positive Workplace Culture programme.

As noted, we are in the process of reviewing our records to improve the consistency, accuracy integrity of historical data.

10. For the 3 "resolved" categories, is it FENZ who decides if it's resolved? Or the complainant?

A complaint has historically been recorded as resolved by Fire and Emergency based on the circumstances of each individual complaint. The categories you refer to provide a high-level indication of the type of outcome – i.e. whether informal resolution was achieved between the parties, whether a team restorative approach was followed that led to the outcome being resolved, or whether it was resolved by a formal investigation.

As noted, we are in the process of reviewing our records to improve the consistency, accuracy integrity of historical data.

11. I know that some complaints over this time period weren't handled by the BCO (possibly due to the NZPFU advising its members not to engage or participate with Behaviour and Conduct Office stating that it believe the process to be "a shambles with the most basic principles of procedural fairness not being adhered to").

Have you included the complaints that weren't handled by the BCO in the statistics you provided? If not, please provide the same information previously requested for all other complaints over the same period of time.

Yes, the response to the original request identified complaints handled by both the Behaviour and Conduct Office and outside of the Behaviour and Conduct Office.

12. Does the BCO record complaints that aren't handled by it? Is there is a central complaints statistics reporting mechanism that records all complaints? Or is there the BCO reporting system plus other reporting systems all separate?

The Behaviour and Conduct Office maintains a centralised record of complaints of unwanted personal behaviour received since its establishment. Non-behavioural complaints are outside the remit of the Behaviour and Conduct Office and consequently are not recorded by the Behaviour and Conduct Office. Some records of complaints of unwanted behaviour from prior to establishment of the Behaviour and Conduct Office are held outside the Behaviour and Conduct Office.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Yours sincerely



Sid Wellik
Acting Deputy Chief Executive, Office of the Chief Executive

