



27 September 2024

Robert Wilde

fyi-request-28271-39a350ab@requests.fyi.org.nz

Tēnā koe Robert Wilde

Official Information Act request

Thank you for your email of 1 September 2024, requesting information about the Ministry of Social Development's (the Ministry) approach to the public interest test.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on each part of your request set out separately below.

Question 1: Please can you provide information that outlines the Ministry's approach to the public interest test.

The Ministry's Prosecution Policy can be found on our website here:

www.msd.govt.nz/about-msd-and-our-work/about-msd/our-responsibilities/prosecution-policy.html.

The Ministry uses the Solicitor-General's Prosecution Guidelines as the main reference point when considering a prosecution for those who retained a welfare benefit or a wage subsidy. 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. You can access the guidelines on the Crown Law website here: www.crownlaw.govt.nz/publications/prosecution-guidelines.

The Guidelines require the Ministry to consider two factors for the 'Test for Prosecution'.

1. A case must meet the requirements of the 'Evidential Test', where the evidence gathered must be sufficient to provide a reasonable prospect of gaining a conviction.
2. If the case meets the 'Evidential Test' requirements, the Ministry also applies the 'Public Interest Test' to determine if it is in the public interest for the Ministry to prosecute.

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.

During an investigation, an Investigator, supported by their manager and/or the Ministry's Legal Team, may consider public interest factors to determine whether a case should be referred to the Ministry's Prosecution Panel.

The Ministry's Prosecution Panel (the Panel) makes the final decision regarding whether these cases will be prosecuted.

In addition, any benefit fraud cases being considered for prosecution by the Panel are assessed blindly, without gender or ethnicity being declared to the Panel. By having representation from around the Ministry, the Panel approach helps to provide a broader view of "public interest".

Question 2: Specifically, please provide data on how many potential prosecutions have not been advanced on the basis the public interest test has not been met. If possible, please provide some general reasons as to why the public interest test was not met in each situation.

As noted above, the public interest test is applied during an investigation as well as when the case is referred to the Panel. For context, in the financial year ending 30 June 2024, the Ministry's Client Service Integrity business group completed 1,015 investigations into allegations of benefit system fraud. Because of this, substantial manual collation would be required to review each case completed for the period to understand whether the case was closed due to the public interest test not being met.

To provide you with this information, the Ministry would need to divert personnel from their core duties and allocate extra time to complete this task. The diversion of these resources would impair the Ministry's ability to continue standard operations and would be an inefficient use of the Ministry's resources. As such, your request is refused under section 18(f) of the Act, requires substantial collation. The greater public interest is in the effective and efficient administration of the public service.

Question 3: Please provide data on how many prosecutions have been advanced to court in the last 2 years. Please specify whether these were for supplier fraud, benefit fraud, other fraud etc.

Table One below provides the number of prosecutions completed over the 2023/2024 reporting years. A prosecution is successful if there is at least one sentence or one of the court findings is a section 106 Discharge without conviction under the Sentencing Act 2002.

Table One: the number of prosecutions completed and, of those, the number of successful prosecutions, in relation to benefit system fraud for the last two financial years.

| Prosecutions | FY2022/23 | FY2023/24 |
|---------------------|------------------|------------------|
| Completed | 31 | 36 |
| Number Successful | 29 | 31 |

The Ministry is also responsible for investigating matters of Wage Subsidy Scheme fraud. Information on the Ministry’s Wage Subsidy Integrity and Fraud programme is publicly available here: msd.govt.nz/about-msd-and-our-work/work-programmes/wage-subsidy-integrity/index.html. This includes information on Wage Subsidy cases taken to court, and the sentences handed down. Since its inception in 2020, to 30 August 2024, the Ministry’s Wage Subsidy Integrity and Fraud programme has filed charges in court for 77 individuals.

Due to how prosecutions are recorded in Ministry systems, we are unable to provide a breakdown of the type of offence/s involved as this would require a review of individual client files.

To provide you with this information, the Ministry would need to divert personnel from their core duties and allocate extra time to complete this task. The diversion of these resources would impair the Ministry’s ability to continue standard operations and would be an inefficient use of the Ministry’s resources. As such, your request is refused under section 18(f) of the Act, requires substantial collation. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your requests given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry’s ability to undertake its work would still be prejudiced.

Question 4: Please provide information on how long (on average) it is taking for MSD investigators to advance an investigation case from anonymous tip off/referral to outcome.

The Ministry does not collate the average time from allegation to outcome as part of its standard reporting, including for investigations. This part of your request is refused under section 18(g) of the Act as this information is not held by the Ministry, and we would be required to create new information in order to answer this question.

However, I can provide an overview of the relevant factors Ministry investigators consider:

- When an allegation is received, the information is assessed based on the level and quality of information available to assess the level of fraud and risk posed. Based on this assessment, some cases will not be followed up,

for example, if the information provided is already known to the Ministry, or because there is insufficient information to warrant further action.

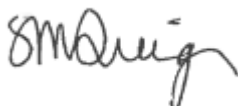
- The Ministry has a three-tier graduated model to respond to allegations of benefit system fraud, including early intervention, facilitation, and investigation. The three-tier approach helps the Ministry better manage fraud activity. All allegations of potential fraud or abuse of benefit payments are responded to in a manner proportionate to the nature of the information received and the potential seriousness of offending. Cases referred for one response may later be referred for a different response, based on the information available.
- Where we do investigate, we have made changes to the way we gather information, especially sensitive personal information. This followed the Privacy Commissioner's inquiry in 2019 into the Ministry's use of Schedule 6 powers (Social Security Act 2018) in fraud investigations, and a review of the Codes of Conduct which govern these information collection powers. Revised Codes of Conduct came into effect from 1 March 2021 and were published on our website alongside a new Ethics Framework for our investigators at the following link: www.msd.govt.nz/about-msd-and-our-work/about-msd/legislation/index.html.
- Each investigation undertaken will be specific to the nature of the alleged offending, the information required to be gathered as part of the investigation, and the circumstances of the individual or individuals involved.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

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 my decision on your request, 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.

Ngā mihi nui

pp. 

Magnus O'Neill
General Manager
Ministerial and Executive Services