



19 April 2017

Karen Martyn

By email - fyi-request-5509-02b6c718@requests.fyi.org.nz and fyi-request-5565-b6f72bcf@requests.fyi.org.nz

DOIA 1617-1121
DOIA 1617-1132

Dear Karen Martyn

I refer to your emails dated 17 March 2017 in which you asked the following:

- (1) "Please list the cases where a director or company was found in breach of s189 of the Companies Act 1993 separating cases from 1993 to the present (under the current Companies Act 1993) and any New Zealand cases prior to 1993".
- (2) Provide confirmation that:
 - "no company or board or director since 1993 has been found in breach of failing to give proper Notice, record and/or retain proper Minutes, voting irregularities, or has had any court invalidate the resolutions of a board meeting due to some technical defect (eg loss of quorum or defective Notice);
 - failing to put Minutes in the Minute Book has no penalty or consequence."

As these 2 requests are related, they are being dealt with together. We would note that your earlier Official Information Act 1982 request related to prosecutions for breaches of Schedule 3 of the Companies Act 1993 ("the Act"). You were advised that because those matters set out in Schedule 3 were not offences, the Registrar had not prosecuted a board of a company under Schedule 3. As the matters you have referred to in point 2 above could be breaches of section 189 of the Act, our response on these is included in the information provided in relation to section 189.

As you were previously advised, the Companies Office only holds information on those successful prosecutions which the Registrar of Companies has commenced in relation to breaches of the Companies Act 1993. The NZ Police or other agencies may have also brought prosecutions under the Companies Act which the Companies Office does not hold information on. In addition, the Companies Office does not hold information on any civil prosecutions brought against a company and/or the director(s).

Section 189 of the Act requires that a company must keep certain documents at its registered office. These include a copy of the constitution (if any), the share register, minutes of all meetings and

resolutions of shareholders within the last 7 years and minutes of all meetings and resolutions of directors and directors' committees within the last 7 years. If a company fails to comply with section 189(1) the company commits an offence and is liable on conviction to the penalty set out in section 373(2) and every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

Information relating to successful prosecutions brought by the Registrar of Companies for breaches of section 189 is available on the Companies Office website. Below are links to convictions and the penalties imposed for each of the years from 2010 to 2016. Any person or company convicted of a breach of section 189 will be available for viewing in these links.

2010 - <https://www.companiesoffice.govt.nz/companies/about-us/enforcement/conviction-results/2010/convictions>

2011 - <https://www.companiesoffice.govt.nz/companies/about-us/enforcement/conviction-results/2011/2011-convictions>

2012 - <https://www.companiesoffice.govt.nz/companies/about-us/enforcement/conviction-results/2012/2012-convictions>

2013 - <https://www.companiesoffice.govt.nz/companies/about-us/enforcement/conviction-results/2013/2013-convictions>

2014 - <https://www.companiesoffice.govt.nz/companies/about-us/enforcement/conviction-results/2014/2013-convictions>

2015 - <https://www.companiesoffice.govt.nz/companies/about-us/enforcement/conviction-results/2014/2013-convictions>

2016 - <https://www.companiesoffice.govt.nz/companies/about-us/enforcement/conviction-results/2016/2016-convictions>

2017 – no convictions to date.

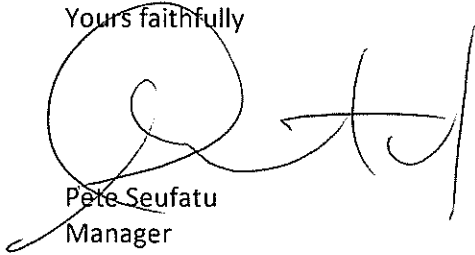
Your request for information which the Companies Office may hold prior to 2010 is refused under section 18(f) of the Official Information Act as the information requested cannot be made available without substantial collation or research. To provide you with copies of the information would require significant Ministry resources and, therefore, the greater public interest in the effective and efficient administration of the public service would not be served. I have considered whether the Ministry would be able to respond to your request given extra time or the ability to charge for the information requested. I have concluded that, in both cases, the Ministry's ability to undertake its work would still be prejudiced. I do not consider that consulting with you in relation to the request would enable you to make the request in a form would remove the reason for the refusal.

You have the right to seek an investigation and review of my response by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsman
PO Box 10-152
WELLINGTON 6143

If you wish to discuss any aspect of your request or this response, please email RIET@companies.govt.nz

Yours faithfully

A handwritten signature in black ink, appearing to read 'Pete Seufatu', written over the 'Yours faithfully' text.

Pete Seufatu
Manager
Registries Integrity and Enforcement Team