



24 April 2013

Grace Haden

By email: fyi-request-801-83dddf12@requests.fyi.org.nz

Dear Ms Haden,

Official Information Act Request – Withdrawal of charges against Terry Hay

I refer to your email addressed to the Ministry of Economic Development dated 28 March 2013 requesting information pursuant to the Official Information Act 1982 (“the OIA”) regarding the decision to withdraw criminal charges brought by the Ministry against Mr Terry Hay. I note that as of 1 July 2012 the Ministry of Economic Development became part of the Ministry of Business, Innovation & Employment (“the Ministry”).

You have specifically requested:

“...all information

- 1. which relates to the decision to drop these charges and show how the decision to drop these charges was determined.*
- 2. all communications from Mr Hay’s lawyers to the MED making an offer of settlement several years ago and any further correspondence from Mr Hays lawyers or persons representing him with regards to the charges.*
- 3. All documents which consider action against Terry Hay under the FCPA (the foreign corrupt practices act US legislation) to make him accountable for his actions against NZ company law.”*

As you have previously been advised, the decision to withdraw charges against Mr Hay was made on the advice of the Crown Solicitor in Auckland. I attach a copy of the ‘Joint memorandum in respect of withdrawing charges’ that was filed with the Auckland District Court in January of this year. You will note that the factors considered relevant to the decision to withdraw the charges are listed in the joint memorandum.

All other information held by the Ministry relating to the decision to withdraw the charges against Mr Hay, including any correspondence from Mr Hay’s lawyers, is withheld on the following grounds:

- information that consists of personal information about Mr Hay is withheld on the grounds that the withholding is necessary to protect Mr Hay’s privacy (s 9(2) OIA);
- information relating to Mr Hay’s financial or commercial affairs is withheld on the grounds that the making available of the information would be likely unreasonably to prejudice the Mr Hay’s commercial position (s 9(2)(a) OIA);
- information that was provided to the Ministry under an obligation of confidence is withheld on the grounds the that the withholding is necessary to protect such information as the making available of the information would be likely to prejudice the supply of similar

- information from defendants in criminal prosecutions, and it is in the public interest that such information should continue to be supplied (s 9(2)(ba)(i) OIA);
- information that consists of communications by or between the Ministry and the Crown Solicitor regarding the decision to withdraw the charges is withheld on the grounds that the withholding is necessary to maintain legal professional privilege in relation to the information (s 9(2)(h) OIA).

I am satisfied, in terms of s 9(1) of the OIA that, in the circumstances of this case, the withholding of this information is not outweighed by other considerations which render it desirable, in the public interest to make the information available.

You have the right by way of complaint under s 28(3) of the OIA to an Ombudsman, to seek an investigation and review of my refusal to release the information referred to above.

I advise that the Ministry holds no information relating to the consideration of action against Mr Hay under the Foreign Corrupt Practices Act of 1977 (US).

You have also requested that the matter is investigated to ensure that there was “no bribery involved in the dropping of the charges.” The circumstances of this case have been reviewed and I am satisfied that:

- the factors that were relevant to the decision are limited to those listed in the joint memorandum to the Court;
- the decision was not influenced by any offer of payment to the Ministry by or on behalf of Mr Hay; and
- that no such payment was made.

Yours faithfully



Mandy McDonald

General Manager, Business Integrity Services
Ministry of Business, Innovation & Employment

**In the District Court
Held at Auckland**

Between **Ministry of Business, Innovation and Employment**
 Informant

And **Terry HAY**
 Defendant

**Joint memorandum in respect of
withdrawing charges**

S J Eisdell Moore SC
Crown Solicitor - Auckland

MEREDITH | CONNELL
BARRISTERS AND SOLICITORS

B H Dickey
PO Box 2213, Auckland 1140, DX 24063
Ph: 09 336 7500, Fax: 09 336 7629
brian.dickey@meredithconnell.co.nz

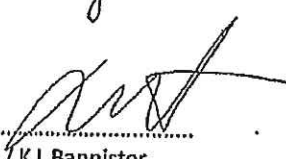
Joint memorandum in respect of withdrawing charges

MAY IT PLEASE THE COURT:

1. The informant seeks leave to withdraw all charges against the defendant, namely:
 - a) 7 x Making a false statement pursuant to s377 Companies Act 1993 (Companies Act);
 - b) 9 x Making a false statement pursuant to s256(2) Crimes Act 1961 (Crimes Act);
 - c) 5 x Fabricating evidence with intent to mislead court proceedings pursuant to s 113 Crimes Act; and
 - d) Carrying on business fraudulently pursuant to s380 Companies Act.
2. The Crown Solicitor has reviewed the case and does not consider there is merit in proceeding with this prosecution in the current circumstances.
3. The following factors were considered relevant:
 - a) The victims who suffered losses as a result of the defendant's offending have been compensated in full.
 - b) The charges were laid in May 2008, the informant would find it difficult to present a case given the time passed since charging, if the defendant was committed and this matter proceeded to trial.
 - c) Medical evidence confirms that the defendant suffered depression at the time of offending and has had on-going psychological problems in the interim.
 - d) The defendant has on-going serious health issues and has suffered for the duration.
 - e) The charges were laid against the defendant and a co-offender (who pleaded guilty to one charge) and has been dealt with for her role in the offending. The co-offender has been consulted through her lawyer and raises no objection to the withdrawal of the charges against the defendant.
 - f) The defendant consents to the withdrawal of the charges.
4. The informant also seeks for the warrant to arrest the defendant be withdrawn.

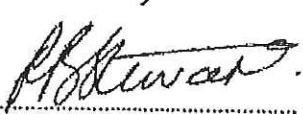
Date: 21 January 2013

Signature:


B H Dickey / K L Bannister
Counsel for the informant

Date: 21 January 2013

Signature:


B Stewart
Counsel for the defendant

To: The Registrar, District Court, Auckland