



CABINET OFFICE

5 June 2019

Ross Francis
fyi-request-9138-1086f421@requests.fyi.org.nz

Reference: OIA-2018/19-0293

Dear Mr Francis

Official Information Act request: details of Royal Commissions and Ministerial Inquiries

- 1 I refer to your Official Information Act request received by the Department of the Prime Minister and Cabinet (DPMC) on 27 November 2018 in which you requested “...a list of all Royal Commissions, Commission of Inquiry and Ministerial Inquiries held since 2007 and the name(s) of their chairperson(s)...”.
- 2 On 30 November 2018, DPMC refused your request under section 18(d) on the basis that the information requested is publicly available.
- 3 After receiving a complaint from you about this response, the Office of the Ombudsman has been making inquiries with DPMC to determine whether there is any further assistance that can be provided to you in order to respond to your request.
- 4 There is no comprehensive list or location holding a full record of Royal Commissions, commissions of inquiry and ministerial inquiries conducted since 2007 and the name(s) of their chairperson(s). A research entity such as the National Library, or the Parliamentary Library, may have records of this type that they have compiled from the publicly available information independently.
- 5 This letter provides some further guidance on the location of publicly available information relating to the different types of inquiries that a government can establish. It also sets out the types of information that government agencies hold relating to inquiries, in order to assist with any future requests you wish to submit on this subject.

Publicly available information about statutory inquiries

- 6 The types of statutory inquiries available in New Zealand have evolved since 2007.
- 7 Prior to 2013, the Commissions of Inquiry Act 1908 provided that commissions of inquiry could be established by the Governor-General, by Order in Council, to inquire

into and report on certain matters of public importance. Royal Commissions were appointed by the Governor-General under the Letters Patent. Both types of statutory inquiry had powers and privileges under the Commissions of Inquiry Act.

- 8 The Inquiries Act 2013 is now the governing legislation for inquiries and provides for three forms of inquiry – Royal Commissions, public inquiries, and government inquiries. These are each statutory inquiries, however different mechanisms are used to appoint them. The Governor-General by Order in Council appoints Royal Commissions and public inquiries, under section 6(2) of the Act. A government inquiry is established by a Minister and is notified in the *New Zealand Gazette* under section 6(3) of the Act.
- 9 The *New Zealand Gazette* contains information on statutory inquiries established under both the Commissions of Inquiry Act 1908 and the Inquiries Act 2013. Notices regarding the establishment of statutory inquiries, the terms of reference, appointment of members, and modification of certain aspects of those inquiries are published and are available online at <https://gazette.govt.nz/>.
- 10 Some establishment instruments for Royal Commissions established since 2013 under the Inquiries Act 2013 are also publicly available on the New Zealand Legislation website – www.legislation.govt.nz – and can be found using the website's search function. The Department of Internal Affairs also has a list of current and previous inquiries dating back to 2001 on their website: <https://www.dia.govt.nz/Public-and-Government-Inquiries>.

Publicly available information on ministerial inquiries

- 11 A Minister may establish a non-statutory inquiry, also known as ministerial inquiries. Non-statutory inquiries have no coercive powers, and therefore rely solely on witnesses' cooperation. They offer no immunities for those taking part, including inquirers, lawyers, and witnesses. Information relating to a non-statutory ministerial inquiry will be subject to the Official Information Act in the normal way (Cabinet Manual, paragraph 4.112).
- 12 In order to establish a non-statutory inquiry, the relevant Minister should seek the Prime Minister's agreement and advise Cabinet as soon as possible of the details of matters to be considered (Cabinet Manual, paragraph 4.113).
- 13 A non-statutory inquiry will not be published in the Gazette, but it is usually announced at the time of establishment by the relevant Minister. One source of publicly available information on ministerial inquiries is the Beehive website, where a search for "ministerial inquiries" brings up the press releases from Ministers who have announced such inquiries from 1996 onwards:
www.beehive.govt.nz/search?query=%22ministerial+inquiry%22&=Search
- 14 Archives New Zealand also holds some information that is searchable on its online catalogue Archway: <https://www.archway.archives.govt.nz/>.

Information held by government agencies about statutory and non-statutory inquiries

- 15 The Department of Internal Affairs is responsible for providing administrative support to inquiries. However, another department may be appointed the responsible department if it is better placed to provide technical or subject matter expertise, or if it is determined that it would be inappropriate for the Department of Internal Affairs to be appointed the responsible department (for example, because of an actual or perceived conflict of interest). Where information relating to an inquiry is held may therefore depend on the subject matter of the inquiry.
- 16 Where decisions about the establishment of statutory or ministerial inquiries have been considered by Cabinet, the Cabinet Office, a business unit within DPMC, will hold any relevant papers or minutes as part of the Cabinet record. However some such decisions may not come to Cabinet for a range of reasons – for example, if a group of Ministers has been given “power to act” (power to make the final decision). It would be difficult for the Cabinet Office to verify whether all statutory or ministerial inquiries were considered by Cabinet without substantial collation and research. As noted above, there is no comprehensive list of inquiries conducted since 2007.
- 17 Cabinet material relating to the establishment of an inquiry is the responsibility of the relevant agency or Minister, and requests for such material are, in almost all cases, transferred by the Cabinet Office to the authoring department for a response. This is because the material is more closely connected with the functions of the agency or Minister, and it is difficult for the Cabinet Office to understand the context, accuracy or sensitivity of the information without the necessary subject matter expertise.
- 18 In terms of further requests for information relating to inquiries, we would recommend that these be directed to the government agency that has responsibility for the particular inquiries that are of interest to you. If you are unsure of which department/s to approach for that information, or that is not clear from the publicly available material, we would be happy to assist in directing you to the correct place.
- 19 I note that you have the right to raise this matter again with the Office of the Ombudsman if you are not satisfied with this response.

Yours sincerely



Michael Webster
Secretary of the Cabinet