



26 February 2019

Mr Gregory Soar
fyi-request-9396-3c7b5955@requests.fyi.org.nz

Dear Mr Soar

Official Information Request
Our Ref: SSCOIA 2019-006 and SSCOIA 2019-007

I refer to your official information requests received on 12 January 2019 and 15 January 2019, where you have asked several questions that relate to the Ministry of Social Development's Chief Executive, Mr Brendon Boyle and a recent High Court decision on the use of pseudonyms.

On 12 January 2019 you asked:

MSD has admitted in writing using false names on documents that were issued and intended to be acted upon by the recipients.

- 1. As it is the legislated requirement of the State Services Commissioner to ensure MSD is operating legally and in a manner that upholds faith and confidence in our state Services especially the MSD does the State Services Commissioner intend to bring criminal charges against Boyle (his ended employment is irrelevant) and the MSD?*
- 2. If the State Services Commissioner does not intend to bring criminal charges against Boyle and the MSD please supply all information as to your decision to not do so.*
- 3. If the State Services Commissioner does not intend to bring criminal charges against Boyle and MSD please supply the information on how that meets the legislated duties of the State Services Commission.*

On 15 January 2019 you asked:

- 4. Why did the State Services Commissioner take no action to stop actions ruled as NOT LEGAL by the Social Security Appeal Authority until a later High Court defence? The non legal actions should have been made to stop until a higher Court defence was won. I refer use of false names on legal official documents.*
- 5. Under what legal authority did the State Services Commissioner take no action to end ruled non legal activities at the MSD post the Social Security Appeal Authority considering it is his legislated duty as defined herein by the State Sector Act 1988?*
- 6. How does the State Services Commissioner, having taken no action once the Social Security Appeal Authority had ruled current actions as NOT LEGAL fulfill the legal requirement of the State Sector Act sections by taking no action as was legally required by the State Sector Act?*

7. *How does the State Services Commissioner feel he upholds public confidence as required by having taken no action to end non legal activities once so ruled by the Social Security Appeal Authority?*

In response to questions 1,2 and 3, it is not part of the State Services Commissioner's functions to investigate or prosecute possible criminal offences. Therefore, your request for all the information on the Commissioner's decision not to bring criminal charges against Brendon Boyle, is refused in accordance with section 18(e) of the Official Information Act 1982, as the information requested does not exist.

In response to your questions 4,5,6,7, as a general principle, decisions of the Authority are entitled to respect. However, they do not have precedential effect outside the context of the specific case in which they were made.

In the *L* case, upon receiving the Authority's decision regarding the use of pseudonyms, MSD sought to clarify the law through an appeal. Upon receiving the High Court's decision – which does have precedential effect outside the *L* case – MSD adjusted its practices to ensure consistency with the Court's decision.

As stated in our response to you dated 11 January 2019, the State Services Commissioner is satisfied that this is an appropriate and adequate response to the Court's decision.

If you wish to discuss this decision with us, please feel free to contact Ministerial.Services@ssc.govt.nz.

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.

Please note that we do not intend to publish our response to your request.

Yours sincerely



John Ombler
Deputy State Services Commissioner
State Services Commission