



1 August 2022

Tēnā koe

On 1 June 2022, you emailed the Office of the Privacy Commissioner (OPC) requesting, under the Official Information Act 1982 (the Act), the following information:

1. *All correspondence from the MSD to the OPC that set out its interpretation of the change to the "prejudice to the maintenance of the law" exception in 2012 and/or its proposed practice of issuing s 11 notices directly in most cases;*
2. *All correspondence from the OPC to the MSD setting out its concerns as to the MSD's interpretation of the change to the Code;*
3. *The Cabinet Paper presented by the Associate Minister for Social Development referred to at para 2.6.*
4. *The MSD's internal FAQ referred to at para 2.9; and*
5. *Any other documentation where the OPC has expressed concern at the MSD's practice of issuing s 11 notices directly without an individualised assessment of whether the exception applies.*

On 7 June 2022, OPC transferred the request to the Ministry of Social Development (the Ministry) for response as the information was more closely related to our functions and responsibilities.

On 29 June 2022, the Ministry emailed you and also phoned Ord Legal, to ask you to refine your request, for example, by telling us about the specific information you are seeking.

To date, the Ministry has not received a response from you regarding refining your request.

On 6 July 2022, in accordance with section 15(1) and 15A of the Act, your request was extended to 20 July 2022. The reason for the extension was that consultations necessary to make a decision on the request were such that a

proper response to the request cannot reasonably be made within the original time limit.

On 20 July 2022, the Ministry granted your request, namely information which relates to questions three and four. The Ministry required more time to prepare this information for release.

In response to questions three and four, the Ministry has identified three documents that are within scope of the request:

- Cabinet paper - *Social Policy Committee presented by the Associate Minister for Social Development, Tackling Welfare Fraud: Proposed Approach*, dated 27 June 2012
- *Draft Frequently Asked Questions, Code of Conduct for requests for information under Section 11 of the Social Security Act*, dated 3 September 2012, and
- *Frequently Asked Questions, containing comments on the Ministry's draft from the Office of the Privacy Commissioner* dated 3 September 2012.

These documents are attached to this response.

In response to questions one, two and five:

1. *All correspondence from the MSD to the OPC that set out its interpretation of the change to the "prejudice to the maintenance of the law" exception in 2012 and/or its proposed practice of issuing s 11 notices directly in most cases;*
2. *All correspondence from the OPC to the MSD setting out its concerns as to the MSD's interpretation of the change to the Code;*
5. *Any other documentation where the OPC has expressed concern at the MSD's practice of issuing s 11 notices directly without an individualised assessment of whether the exception applies.*

Your request for this information is very broad, and substantial manual collation would be required to locate and prepare all documents within scope of your request. As such, this aspect of your request is refused under section 18(f) of the Act.

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 either case, the Ministry's ability to undertake its work would still be prejudiced.

Please note, if you can refine your request, you are welcome to make a new request to us.

Your request refers to the Office of Privacy Commissioner's 2019 report, "Inquiry into the Ministry of Social Development's Exercise of Section 11 (Social Security Act 1964) and Compliance with Code of Conduct". The report is available here: [Office of the Privacy Commissioner | Inquiry into the MSD's Exercise of Section 11 \(Social Security Act 1964\) and Compliance with the Code of Conduct](#).

In response to the Privacy Commissioner's recommendations, the Ministry reviewed its Code of Conduct governing its use of the section 11 (Social Security Act 1964) information gathering powers. The two FAQs released to you provide context around our response.

The Ministry has made the following progress against each of the Privacy Commissioner's five recommendations:

- Recommendation 1: The Ministry ceased its previous application of the 'prejudice to the maintenance of the law' exception when issuing these notices from April 2019
- Recommendation 2: The Ministry undertook a comprehensive review of the Codes of Conduct (the Codes) governing the use of these powers, with significant input from the Office of the Privacy Commissioner and other stakeholders. Revised Codes were implemented from 1 March 2021 and published on the Ministry's website.
- Recommendation 3: The Ministry implemented revised training and guidance for Investigators, which was developed in consultation with the Office of the Privacy Commissioner, in early 2021 to support the revised Codes coming into effect from 1 March 2021.
- Recommendation 4: The Ministry assessed the powers provided for under Schedule 6 (Social Security Act 2018), including how the current provisions provide safeguards for their use.
- Recommendation 5: The Ministry amended the tool and its use from February 2019, to ensure that any allegations referred are assessed by a manager before a decision is made to commence an investigation. This review coincided with the recent introduction of a new 3-tier approach to responding to allegations of fraud – early intervention, facilitation, and investigation - which means that the majority of these allegations are now dealt with through a non-investigative response.

The revised Codes of Conduct, and an ethical framework, were published to the Ministry's website from 1 March 2021, here:

<https://www.msd.govt.nz/about-msd-and-our-work/about-msd/legislation/index.html>

The principles and purposes of the Act under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

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 this response regarding the 2012 changes to Code for section 11 of the Social Security Act, 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



Magnus O'Neill
General Manager
Ministerial and Executive Services