



20 DEC 2019

Dear [REDACTED]

On 8 October 2019, you emailed the Ministry requesting, under the Official Information Act 1982, the following information:

- *What is the make-up of the Fraud Prosecution Review Panel, in terms of ethnicity, gender and previous position (mostly, were they MSD staff before or not?)*
- *How many people are on the Fraud Prosecution Review Panel?*
- *What are the considerations that they take into account when making the final decision on whether to prosecute?*
- *The most recent outline/policy document, if possible, of the Ministry's Fraud Prevention services, as I understand these have become more effective at detecting fraud earlier.*

The Ministry works hard to protect the integrity of the welfare system to ensure it remains fair for all New Zealanders, which can include prosecution where clear evidence of fraud exists. The Ministry has a dedicated team of specialist fraud investigators throughout the country and an Intelligence team that identifies emerging fraud risks and trends. The Ministry also works with other government agencies to identify and reduce incidents of fraud and investigate cases which arise through allegations from members of the public.

The Ministry uses the Solicitor-General's Prosecution Guidelines as the main reference point when considering a prosecution. As a government agency, any criminal prosecution action brought by the Ministry must be in accordance with the 'Test for Prosecution' set out in the Guidelines. You can access the guidelines on the Crown Law website here: [www.crownlaw.govt.nz/publications/prosecution-guidelines/](http://www.crownlaw.govt.nz/publications/prosecution-guidelines/).

There are two factors considered for the 'Test for Prosecution'. Firstly, a case must meet the requirements of the 'Evidential Test', where the evidence gathered must be sufficient to provide a realistic prospect of gaining a conviction. If the case meets the 'Evidential Test' requirements, the Ministry also applies the 'Public Interest Test' to determine if it is in the public interest to prosecute.

While it will always be appropriate to prosecute some people due to the nature of their offending, the Ministry is conscious that prosecution can negatively impact clients and families who are already in a vulnerable and difficult situation. It is important that the Ministry makes considered and sound decisions on which cases should be prosecuted. This includes considering the individual's situation and the cost to the taxpayer before deciding to prosecute.

Every case is considered on a case-by-case basis. Where on the balance of probabilities it is established a fraud has been committed, an overpayment will be established and we will work with the client to recover the debt at a rate they can afford.

The Fraud Prosecution Review Panel was established in May 2018 and makes the final decision regarding whether cases will involve prosecution. The panel's approach to making prosecution decisions strengthens the process by making sure that responsibility for that decision is broadly shared. In addition, cases considered for prosecution by the panel are assessed blindly, without gender or ethnicity being declared to the panel. By having wide representation from around the Ministry, including Māori representation, the Panel approach helps to provide a broader view of "public interest".

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The panel is chaired by the General Manager of Integrity and Debt (or their nominee) and quorum of five. The quorum must include one representative from Legal Services and one representative from Fraud Intervention Services, with the remainder being made up of senior staff representatives of a range of the Ministry's service delivery functions. There are eleven people in the pool for the panel: four of which are male, and seven female. The Ministry do not hold a breakdown of the ethnicity of each of these individuals as such this aspect of your request is refused under section 18(g) of the Act as the information you have requested is not held by the Ministry and I have no grounds to believe that the information is held by another Minister of the Crown or organisation.

The Ministry has introduced a three-tiered approach to managing fraud activity, which was implemented between November 2018 and February 2019. All allegations of potential fraud or abuse of benefit payments are responded to in a manner proportionate to the nature of the information received and the potential seriousness of offending.

#### *Tier One - Early Intervention – Making it easier for clients to do the right thing*

Tier one is about ensuring clients know of the information the Ministry has received about them and about their entitlements and obligations and letting them make a decision about their entitlement to a benefit payment. This involves a letter and/or phone conversation with the client. The Ministry's aim is to identify the correct entitlement going forward, rather than establishing an overpayment.

#### *Tier Two - Facilitation – Providing clients with an opportunity to do the right thing*

Tier two is about working with the client to help them do the right thing. It's about having a more in-depth, face to face conversation with a client about their situation, entitlements and obligations so the client can self-assess whether they are receiving their correct entitlements. Again, the Ministry's aim is to identify the correct entitlement going forward, rather than establishing an overpayment.

#### *Tier Three - Investigation – Protecting the integrity of the benefit system*

Tier three is about undertaking an investigation into a client's entitlement where the Ministry believes they may be committing fraud. The outcome in these cases could be an overpayment, the imposition of a penalty, or in the most severe cases, prosecution.

Please find attached the Ministry's current Fraud Prevention Strategy. Please note this strategy is currently under review.

The principles and purposes of the Official Information Act 1982 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 shortly. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development'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](mailto:OIA Requests@msd.govt.nz).

If you are not satisfied with this response regarding the Fraud Prosecution Review Panel, 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](http://www.ombudsman.parliament.nz) or 0800 802 602.

Yours sincerely



George Van Ooyen  
**Group General Manager Client Service Support**