



16 May 2025

Tēnā koe

### **Official Information Act request**

Thank you for your email of 15 April 2025, requesting a breakdown of prosecutions undertaken from 1 January 2020 to present.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on your request set out below. For the sake of clarity, I will respond to your request in parts.

- 1. How many prosecutions has your agency undertaken between 1 January 2020 and the current date (please break down by year/legislation if possible)?*
- 2. What is the recorded ethnicity of people prosecuted by your agency between 1 January 2020 and the current date?*
- 7. How many prosecutions have been either started and withdrawn, or not started, after other factors in the Solicitor General's guidelines were identified as being inappropriate to take prosecution action between 1 January 2020 and the current date?*

The Ministry works hard to protect the integrity of the welfare system to ensure it remains fair for all New Zealanders. It is vital that the public has trust and confidence in the Ministry to ensure people receive their correct entitlement and do not take advantage of the welfare system.

Since 2015, the Ministry has been strengthening its fraud prevention focus. This saw the introduction of new non-investigative approaches to responding to lower risk allegations of fraud from 2018, and the establishment of a prosecution panel to support decision making in serious fraud cases where prosecution is recommended.

The Ministry's overall approach is to intervene early when concerns are raised, to make it easy for clients to do the right thing and avoid unnecessary overpayments and debt while still responding appropriately to serious fraud. The Ministry has a three-tier graduated model to respond to allegations of benefit and social housing fraud:

- early intervention – engaging with clients early to discuss any integrity issues raised, confirm obligations, and adjust entitlements where appropriate.
- facilitation – working more intensively with a client to assess their situation against their entitlements and adjust these entitlements where

necessary. This could mean an overpayment for a client in some situations.

- investigation – gathering information and acting on serious client integrity issues, which could result in an overpayment and in the most serious cases prosecution. Prosecutions are considered in line with the Solicitor General's guidelines, taking into account the full circumstances of each individual case.

The three-tier approach helps the Ministry better manage fraud activity. 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.

There will always be cases of serious fraud which will be fully investigated and prosecuted where it is appropriate to do so.

This approach has been endorsed by the Welfare Expert Advisory Group report.

Overall, the number of cases responded to across the Ministry's three-tier model has remained relatively stable. A greater proportion are now responded to without investigation or prosecution.

Please attached, as Appendix A, the number of benefit prosecutions the Ministry has completed in the previous six financial years, both successful and unsuccessful, by ethnicity.

A prosecution is successful if there is at least one sentence or one of the court findings is S106 Discharge without conviction under the Sentencing Act 2002.

Your request for a breakdown of the legislation on which the individual prosecutions were based is refused under section 18(f) of the Act, as substantial manual collation would be required to collate it. If held, this information would only be contained within individual client files, which would each require manual review to respond to your request. The greater public interest is in the effective and efficient administration of the public service.

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 also note that we are only able to provide ethnicity data for prosecuted parties that are Ministry clients. The Ministry does not record ethnicity data for those prosecuted that are not Ministry clients.

3. *How many non-prosecution outcomes, such as warning letters, instant fines, or other mechanisms has your agency implemented/imposed between 1 January 2020 and the current date (please break down by year, legislation and outcome if possible)?*
4. *What is the recorded ethnicity of people affected by the outcomes in question 3?*

Your request for the number of "non-prosecution outcomes" following investigations undertaken by the Ministry is refused under section 18(f) of the Act, because providing this information would require a substantial manual review of individual client files. The greater public interest is in the effective and efficient administration of the public service.

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.

5. *What is the process for your agency to review files before commencing prosecution action? Under what circumstances would your agency choose not to prosecute an offender?*
6. *How many prosecutions have been either started and withdrawn, or not started, after ethnic/cultural factors were identified between 1 January 2020 and the current date?*

The Ministry uses the Solicitor-General's Prosecution Guidelines as the main reference point when considering a prosecution for those who retained a welfare benefit or a wage subsidy. 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).

In addition, cases considered for prosecution by the Ministry's Prosecution Review Panel are assessed blindly, without gender or ethnicity being declared to the panel. By having wide representation from around the Ministry the Panel approach helps to provide a broader view of "public interest".

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.

The Ministry's Prosecution Policy can be found on the MSD website here: <https://www.msd.govt.nz/about-msd-and-our-work/about-msd/our-responsibilities/prosecution-policy.html>.

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.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course. 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 my decision on your request, 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.

Ngā mihi nui

pp.



Anna Graham  
**General Manager**  
**Ministerial and Executive Services**