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13 June 2015

**Complaint from 09 March 2014 about the Ministry of Social Development (MSD) withholding information sought under the Official Information Act 1982 (O.I.A.) - about Dr David Bratt's presentations (your ref. 3XXXXX); your letter with a provisional opinion from 22 May 2015**

**Dear Ombudsman, dear Xxxxx Xxxxxxxx and Xxxxxx Xxxxxxxx**

- [1] Thank you for your letter dated 22 May 2015. I appreciate the efforts you have made to further investigate and review my original complaint from 09 March 2014, after I did in my letter to you from 03 December 2014 further specify, what remaining information I was still expecting from MSD. While I acknowledge that you have considered the information I provided to you, and also that which MSD made available to you, I must express my disappointment about your opinion that the Ministry was "entitled" to refuse the remaining information that I have sought under the Official Information Act 1982 (O.I.A.). I continue to be of the firm view that the initial response by MSD dated 27 Feb. 2014 was a very unsatisfactory one. Some additional information received from MSD on 12 November 2014, and now also in the form of passed on bits of information in your letter, do still not provide the level of transparency and accountability that must be expected from MSD under the Official Information Act. I continue to maintain most of the concerns I expressed in my letters from 09 March and 03 December 2014. MSD has in its responses to my O.I.A. request from 16 January 2014 failed to provide a significant amount of specified information which I should reasonably be able to expect, and which should have been made available. I also reassert that my request was - and still is - in the public interest, given the mentioned lack of sufficient medical scientific evidence to support Dr Bratt's claims, and the high risks that newly introduced and implemented, draconian welfare reforms pose to the affected sick, injured and disabled persons on social security benefits.
- [2] After receiving only very limited additional information from the Ministry on 12 November last year, I take note that MSD provided yet a bit more information, and some clarifications and explanations to you, which you list on page 3 of your last letter. This is of course also appreciated, but it still leaves a fair few of my request points or questions unanswered. I do not accept the comments made by MSD, that - apart from the information that is supposedly not being held (i.e. in relation to questions 7 and 8) - all remaining requests for information would require substantial collation and research, which would allow the Ministry to refuse providing it under section 18 (f) of the O.I.A.. This is an explanation that appears to be used more and

more often, with the associated claim that such substantial collation of information, or research for it, would *“negatively affect the Ministry’s day-to-day operations”* (see the top of page 5 of your letter). It is my view, that MSD and other state sector agencies do with increasing frequency unreasonably and unfairly take advantage of this provision in the O.I.A. to avoid their obligations under the Act. They are thus exploiting an exception clause in the law to avoid needed transparency and accountability, which severely disables the public to apply scrutiny.

### **MSD’s position on their refusals under section 18 O.I.A., as summarised in your letter**

- [3] I challenge and dispute the **‘Comments by the Ministry’** (page 2 of your letter) - that:
- I supposedly asked *“a number of broad questions”, “concerning information that was not centrally held”*;
  - *“to collate the information from over 100 sources would be a time consuming exercise”*;
  - *“the information sources are highly respected academics whose papers are publicly available”*;
  - *“it would require a significant amount of time from Dr Bratt – approximately two weeks”, to “centrally collate the papers and documents as well as the sources provided”*.
- [4] Having once again carefully read my original O.I.A. request to MSD from 16 January 2014, the responses received on 27 February and 12 November last year, and also my letters to you from 09 March and 03 December 2014, I can say that **my requests were from the outset rather specific**. I did **in my letter** to your Office **from 03 December** then **narrow down my remaining expectations and re-specified what I would still expect in the way of information** from MSD. My letter from then appears to have been passed on by your Office to MSD, for a further response. Therefore I made significant efforts to avoid any ambiguity, lack of clarity and misunderstandings re what specified information I deemed reasonable to expect. For a number of initial requests (points/questions 6 to 9) I even only requested mere examples, not a comprehensive list of information. So I do not understand this repeated claim by MSD that I asked *“a number of broad questions”*, as that was simply not the case.
- [5] While some information may not be *“centrally”* held by the Ministry - that does not mean it would require substantial collation and research, as the location of kept records will be known. I am mystified at the claim that *“information from over 100 sources”* would be necessary, as I only asked for proper sources of certain information in Dr Bratt’s presentations, of which I mentioned only two. In my questions I quoted particular claims made by Dr Bratt in those presentations, and expected medical scientific evidence to back these up. Also did I only ask for the particular source(s) and some other core details for information Dr Bratt referred to in an article by Lucy Ratcliffe in ‘NZ Doctor’ magazine on 01 August 2012. I ask you to re-read ‘Questions’ 2 and 5 in my original request letter to MSD. **In my O.I.A. request I asked for “a number of” scientific reports and sources**, so when the Ministry writes to you about *“over 100”*, it appears that this is an exaggeration, which is not helpful. As Dr Bratt has in his presentations and to media been using the same claims, quotes and statistics for years now, he must know the sources already. And **my expectations for my requests under Questions 6 to 9 were substantially narrowed down in my letter from 03 December 2014**.
- [6] I know that the **“academics”** such as **Mansel Aylward** and **Dame Carol Black** are deemed to be **“highly respected”** by many, particularly those who may seek some “use” of whatever kind from their works. But they are not without criticism, as I have also attempted to prove with information I attached to my letter from 03 December to your Office. Research is always evolving, with former studies and findings being replaced by newer studies and findings, and even contemporary reports are often considered to offer only inconclusive evidence, necessitating further research. On an ongoing basis “findings” are discovered to be “outdated” and not reliable. **There has been a far too narrow focus applied in the particular research into work capability issues, into the effects of health conditions and impairments on work, into disability, and into the so-called “bio psycho social model” by researchers**

like Professor Mansel Aylward and others at the 'Centre for Psychosocial and Disability Research' in Wales. Too little alternative, more independent, research has been conducted elsewhere. Most of this research has been "desk research", by reviewing various statistical and other reports, and then drawing conclusions from them. **Such research may detect some correlations and associations between observed events and occurrences. But these do often lack clear enough evidence for causation.** This gives rise to serious concern, as it is necessary to conduct and assess wider research, to be able to draw clear enough conclusions about health effects of "worklessness". In many of his authored and co-authored reports **Dr Aylward has himself stressed that more research was needed.** His research is lacking when it comes to fully considering the medical, as well as the economic, social and environmental effects on health, disability and work capability. The causes for unemployment are often sickness, injury and disability and less so vice versa, and with the new information you provide (page 3, re Question 7 and 8), Dr Bratt does himself appear to concede that he has no information on whether much ill health and social problems that beneficiaries suffer may actually rather be caused by poverty than "worklessness". And it is poverty which is caused by the restrictive, punitive benefit regime we have.

- [7] It appears highly irresponsible and unprofessional that Dr Bratt as Principal Health Advisor for MSD relies on hand-picked, selected bits of quotes and statistics from such limited, insufficiently and poorly conducted research studies - or even "policy statements" - that were presented and supported by Aylward et al. The information Dr Bratt has quoted and presented is mostly not even firmly based on medical science, which he as qualified doctor should rely on. **So being an academic and "respected" does not leave a person protected from justified criticism.** There has been wider, ongoing debate about these and other topics in the scientific professions for some time, and it is extremely worrying that "research" conducted by vested interest (UNUM Insurance) funded parties gets preferred treatment, ahead of other research that may actually be more independent and less prone to bias. And besides of all this **I dispute the free public availability of most academic medical scientific reports.** Such reports are not easily publicly available, as **most require payment, either for online access, or for hard copies** that can be bought. For MSD to expect me to pay for finding the asked for sources and evidence myself is unreasonable, and not acceptable, and another attempt to avoid responsibility under the O.I.A.. The less useful, politically driven "position statements" by the Australasian Faculty of Occupational and Environmental Medicine (AFOEM), signed by various vested interest holding stakeholders, and the UK government funded report authored (or authorised) by Dame Carol Black are freely available, but they do not deliver the medical scientific research evidence I asked for.
- [8] As for the claims that it would take Dr Bratt approximately two weeks to centrally collate the information I requested, I am not convinced by this. Dr Bratt has regularly been using the mentioned quotes, statistics and supposed scientific information, and he must certainly know where he or his staff do keep, or can find, the source documents. I would not rule out he knows many by hard. The remaining information I asked for with my letter from 03 December is not as comprehensive as the Ministry tries to claim it is. I substantially reduced my expectations re what information I still seek. It will also not be spread all over many Work and Income or Regional MSD Offices all over New Zealand. Most will be readily available in a very few offices, I presume mostly centrally at MSD's Head Office(s) in Wellington, as some of the sources and reports I asked for appear to have also been sighted, read and used by the Ministry during policy consultation and formation, as it seems. If that was not the case, then the Ministry should truly be very worried, as the repeated claim has been, what Dr Bratt has presented, is "evidence based". And as Dr Bratt was able to vacate his job as Principal Health Advisor at the Ministry in Wellington for a month or two early last year, for extensive travel in Europe, I am not convinced that his colleague Anne Hawker, or some of his Regional Health and Disability Advisors, or someone else, could fill the gap for a few days.

### Information provided by MSD so far, and questions or issues that arise with it

- [9] Instead of delivering relevant information from requested medical scientific reports, or at least proper, direct references to such sources, MSD only provided a small number of references, mainly to politically driven policy or "position statements". These are again based on narrowly

selected, interpreted statistical reports, on some scientific reviews, on a number of books and other publications based on insufficient research, inconclusive findings and giving selectively qualified recommendations. Most of these were compiled by a small number of well known, mostly UK based “experts”, whose “research” and “findings” have been disputed by others. It is astonishing that MSD considers it appropriate to rely on the same limited number of reports that have been propagated and passed through various organisations and institutions by the same professionals, such as Professor Mansel Aylward, and some of his colleagues, who again influenced “policy” formation by the UK, the Australian and now New Zealand government(s), after also having been able to influence the Australasian Faculty of Occupational and Environmental Medicine (AFOEM), to adopt their ideas and approaches, and to now recommend them for medical professionals to apply in diagnosis and treatment.

- [10] It is extremely disturbing though to read in relation to ‘Question 2’ of my O.I.A. request that MSD agree with Dr Bratt, which means that MSD itself is of the view, that benefit dependence can be likened to *“drug dependence”*, as Dr Bratt has repeatedly stated *“the benefit – an addictive debilitating drug with significant adverse effects to both the patient and their family (whanau)”*. At the same time the Ministry refuses to provide any clear medical scientific evidence for this or other claims I quoted in my O.I.A. request or ‘Question 2’. ‘Question 5’ has also not been properly answered at all, despite of the Ministry’s claims to you that I had been *“previously provided with Dr Bratt’s research resources”*. I asked for a specific report, that Lucy Ratcliffe referred to, not a vague body of various *“research resources”*; I asked for a report that I specified in my request or ‘Question 5’, and all the Ministry mentions is in their response from 27 February 2014 is *“The study was independently undertaken by Cardiff University ....”*, but no name is mentioned, no source, no author and no publication reference. It appears that MSD has also not provided this information in their response to you. As Dr Bratt should full well know the report that he apparently used to base a bizarre claim on, it is not unreasonable to expect him mentioning it by name, author, source and date. This will not necessitate a complex search and collation effort, and it seems rather, as if Dr Bratt can simply not care to look, or he has on the other hand made a claim, that is actually not backed up by any report.
- [11] ‘Question 6’ remains completely unanswered, as before, and the comment by the Ministry, that you list on page 3 in your letter from 22 May is not helpful, where it says: *“Questions 6, 7, 8 and 9 – in relation to Question 6, Mr Xxxxxx also has copies of other Dr Bratt presentations, and they are publicly available. Mr Xxxxxx was also given the overarching links to papers and the substance of the statistics which informed Dr Bratt’s papers. Most of the rest falls under section 18 (f).”* I must stress this once again; I have not seen any presentations from Dr Bratt or links to reports, which answer my ‘Question 6’. I have seen no presentation by Dr Bratt where he focuses on harm caused by work, risks of harm at work-places and the likes, as I described in my original O.I.A. request, so I am still waiting for a response on this. In my letter from 03 December to your Office, I made clear, that just an “example” of such a presentation would suffice. I do not believe for one moment, that Dr Bratt has so many presentations of that kind, so that a search and special (manual) collation effort would be necessary.
- [12] At least I can conclude now, that Dr Bratt and MSD do not hold any information I asked for with ‘Questions’ 7 and 8, which shows how one sided his efforts and emphasis are. This sadly reinforces my concerns about his professional objectivity and commitment. I am unconvinced by the comments quoted in your letter, where it says: *“In response to the request for other examples of the references requested in Questions 6 to 9, and whether Dr Bratt can estimate the percentage of research from the Centre, the Ministry stated that the information is not readily accessible”*. Given the information just referred to above, and the other comments in your letter, this would then only really relate to information I requested with ‘Question 9’. No additional information has been provided, no attempt has even been made, and the explanations given are not sufficiently convincing and therefore not accepted. Preparing such presentations as Dr Bratt has repeatedly used, requires sufficient routine and familiarity with the information quoted and referenced to, and I do not believe that Dr Bratt has no direct access to the information I ask for, or is unable to provide a list and percentage basis for which of the sources are found in the ‘Centre for Psychosocial and Disability Research’ at Cardiff University in Wales, headed by Professor Mansel Aylward. That ‘Centre’ has been used for references again and again, by Dr Bratt, the AFOEM, by MSD and so forth, revealing a rather narrow major source of supposed “evidence” we get presented with.

- [13] As for the response now given to my 'Question 10', which you quote on page 3 of your letter, there is again inconsistency in the Ministry's response, which does anything else than generate trust in their statements. You wrote: "*Question 10 – Dr Bratt **only deleted** emails which were **personal in nature and did not relate to official engagements** in his capacity as Principal Health Advisor*". This is in total contradiction to what Debbie Power responded in the Ministry's response from 27 February 2014. There she wrote under '*Dr Bratt and Other Practitioners*': "*Prior and **subsequent** to this visit, Dr Bratt had numerous email and phone conversations **with Sir Mansel Aylward** to confirm the **travel arrangements and conference details**.*" Then in the further response from 12 November 2014 the Ministry added the following comments in relation to 'question 10': "*Dr Bratt **does not keep a record** of the times, dates, types and **contacts he has had with two listed professionals or anyone else. Dr Bratt's emails from that period have been deleted. Many contacts were personal to Dr Bratt. Dr Bratt has never had any contact with Professor Waddell***".
- [14] In view of those three comments I must ask, what is the truth then? All comments are somewhat contradictory, and somehow in conflict with each other, and this does leave me in a situation, where I get the impression that the Ministry is unsure of the truth. Dr Bratt was clearly corresponding with Professor Mansel Aylward **in his professional capacity as Principal Health Advisor**, not just on "personal" or "private" terms, as he was arranging and checking travel and booking arrangements for Mr Aylward **to attend meetings with him and at conferences** here in New Zealand. Mr Aylward can therefore not have been a "personal" contact. It is also bizarre, that in the further response from 12 November a claim is suddenly made, **that Dr Bratt keeps no records of times, dates, types and contacts he has had with said professional(s), or anyone else**. It remains to be my view that as Principal Health Advisor for MSD Dr Bratt was and is required to keep certain records about his correspondence and contacts, and I assert that these were not limited to arrange travel and conference attendance. Professor Aylward was also quoted as **advisor on welfare reform**, and **his input had been sought for formulating new welfare policy** as part of substantial reforms, which started to be implemented from mid July 2013. And re the comments by Ms Power in the letter from 27 February 2014, fair questions must be asked, what were the **subsequent email and phone contacts** about, when Dr Bratt was meant to correspond only about confirming travel arrangements and conference details? Once those events had taken place, one would have thought there was no further correspondence needed for that purpose. I presented you **evidence** of Dr Bratt and Dr Mansel Aylward making joint presentations and participating in media interviews together, and Dr Bratt did so as Principal Health Advisor for MSD. This can hardly be described as contacts only of a "personal" or "private" nature! Even MSD's response from 12 November 2014 concedes that "**many**" contacts were "personal", but that also means **not all**. The information in your letter from 22 Mai implies there were some emails kept. So not all emails from the referred to period can have been deleted after all.
- [15] I can inform you that **the same issue was raised with the Chief Archivist Marilyn Little**, and I will attach correspondence in that matter to this letter, which I will also send to you by email. One of her response letters was dated xx March 2015, and on that same day she wrote to Mr Brendan Boyle, also providing the Ministry with the applicable **General Disposal Authorities (GDA)** for records management and maintenance in the public service. I presume I have not received the guidance you mention in your letter from MSD, as they seem to assume, that I have them already. A second letter from Marilyn Little is dated xx April this year, and **regrettably sees no reason to further investigate the contradictions I observed in comments received from MSD in this matter**. I strongly suggest your Office of Ombudsmen looks into this, as there are so many conflicting claims and comments on record now, none of them appear to reveal the whole truth about what records Dr Bratt kept of his communications and correspondence with Professor Mansel Aylward and with Dr David Beaumont. I strongly suggest you consult with the Chief Archivist at Archives New Zealand about what action to take, to establish what has really gone on at Dr Bratt's Office. I remind you of information I sent you by way of reference material and attachments with my letter from 03 December 2014, showing how much Mansel Aylward was involved in consulting with MSD and the government on welfare reforms. He did not just visit New Zealand to play golf with Dr Bratt, or to "entertain" himself and others by holding a couple of brief speeches at GP conferences, followed by mostly private contacts of whatever types of lesser relevance. Paula Bennett heavily relied on him and his advice to the Health and Disability Panel set up to

consult on welfare reform matters in her 'Speech to Medical Professionals' on 26 September 2012. Therefore Mansel Aylward was involved in assisting policy formation by the government!

- [16] In my original O.I.A. request from 16 January 2014 I did not ask for mere scheduling or diary type details about Dr Bratt's contacts with Professor Mansel Aylward and other named professionals. I asked for "*information on the times, dates, types of and purposes of contacts, meetings and communications (including correspondence)*". Nowhere did I talk about ordinary scheduling details for bookings for travel and the likes. I expected information about when Dr Bratt had meetings with Mansel Aylward and Dr Beaumont, and about when and how they corresponded about particular matters (purposes) involving their professional roles and activities. The fact that Dr Bratt and Mansel Aylward prepared and gave joint presentations to GP conferences and the likes, that they jointly faced up to a 'NZ Doctor' journalist to answer questions about their work, and that they professionally worked together in other ways, and early last year also met in their professional capacities in the UK and Europe, that proves that contacts and correspondence were not just "personal" and "private", and that the details I asked for should have been presented in relation to such activities. Details about these activities will have been recorded, and should hence be available. Again, I fear that MSD is taking advantage of provisions in the O.I.A. to avoid more transparency in these matters.

### **My request to you to review your provisional opinion and to ask MSD for the release of remaining specified information**

- [17] In view of all the above, I disagree with your formed opinion about the complaint matter and the information you have reviewed. I do not accept the advice and comments given to you by MSD, which I challenge and consider as being unjustified and unconvincing. I do not accept that the remaining information that I seek is of such a large amount that it still requires extensive, substantial (manual) collation and research, and I do not believe that it is going to take two weeks of Dr Bratt's, or any staff member's working time, to gather and present it. It is my view that collating the balance of information will not seriously or negatively impact on the Ministry's day to day operations. It does rather appear that the Ministry does not wish to look into this further, or perhaps does not wish to reveal more information, as it could raise serious questions about the quality of advice they have relied on, and also the quality of advice that Dr Bratt has relied on in preparing and giving his presentations. Some of the referred to information has been used in many of Dr Bratt's presentations, and some of it has been made available to media, to Work and Income staff and clients, some is even mentioned on the 'Work Capacity Medical Certificate' that Work and Income now use. Dr Bratt has presented the quoted information to groups of medical professionals at various conferences, to medical trainers and/or trainees, to the Regional Health Advisors, Regional Disability Advisors, Health and Disability Coordinators working internally under him, and to Designated Doctors, for whose training he is responsible. Dr Bratt's quoted, frequent claims should be supported by solid medical science and not just selected statistical reports and reviews, or even "position statements" formulated largely for policy driven purposes by vested interest holding parties.
- [18] Therefore **I uphold my request and expectation for remaining information to be made available in response to my original O.I.A. request under points/questions 2, 5, 6, 9 and 10.** I ask for the relevant medical scientific evidence supporting the claims in Dr Bratt's presentations and in the NZ Doctor article "*Harms lurk for benefit addicts*", by Lucy Ratcliffe, that I referred to in 'Question 2', and which I reiterated in my letter from 03 December. I also ask for the name, author, source and publishing date of the particular report that Dr Bratt quoted from in the NZ Doctor article from 01 August 2012, claiming that "*of the main obstacles for going to work, medical problems mad up just 3 % of the list*", as mentioned and referred to in my 'Question 5'. The response from 27 February 2014 has not mentioned the study in an identifiable way, and the response from 12 November did not offer any new information. I also ask for information whether Dr Bratt has any "presentations" on the topics and issues I referred to in my 'Question 6', as so far that question has not been answered. I have found no presentation by Dr Bratt on risks to health through work, at work places, through forms of work and the likes, which is what I asked for, and if such exist, I expect these to be mentioned and pointed out, as the further response given in your letter on page 3 offers NO answers. **I do not accept that this particular request falls under section 18 (f) of the Act.** I believe that

'Question 9' deserves to be appropriately responded to, and some relevant information deserves to be provided further to comments in your letter from 22 May 2015. **Most certainly I seek the information I asked for under 'Question 10'**, as I explained above, the Ministry has provided 3 different, somewhat contradictory comments to it, and has refused to deliver any significant information, at one time claiming all emails and contacts were deleted by Dr Bratt. I request your Office takes actions in this matter, to conduct an investigation into the conflicting explanations that have been provided by the Ministry, as some records should have been kept on Dr Bratt's professional meetings and correspondence with Professor Aylward, perhaps lesser so with Dr David Beaumont. Professor Dr Aylward acted as advisor on welfare reform policy to MSD. As you mention yourself in your letter from 22 May, not all emails appear to have been deleted after all, as he only deleted those that were "*personal in nature*".

### **Remaining concerns about the O.I.A. request and complaint handling process**

- [19] My remaining concerns are, that it appears to increasingly necessitate the involvement of your Office of the Ombudsmen, by filing complaints, and to have them assessed and investigated, to actually finally get the information a requester should reasonably have expected from the Ministry in the first place, with their first response. This takes an enormous length of time for the information to be made available, and it is also putting extreme additional stress on the work of your under-resourced, overworked Office. Not only did it in this case require me to file a complaint, but also to respond again by raising remaining concerns after the receipt of the email from MSD dated 12 November last year, to finally get more needed clarifications. This does in my view represent nothing less than an abuse of the Official Information Act process, which should not be tolerated any longer. Another request I made in early October last year was also not responded to until 26 February this year, and then again, some crucial information was not provided, which has led to yet another complaint, not even assessed yet.
- [20] I again assert that it is in the public interest to obtain the remaining sought information upon my O.I.A. request from 16 January 2014, as accountability and transparency are paramount in an area where the health and well-being of people may be at risk. I will await your decision as to how to proceed with this matter, and your further response in due time will be appreciated.

Yours sincerely

Xxxxxxxx Xxxxxxxx

### **Attachments to email/s carrying this letter:**

- 1). 'Ombudsman, Complaint 3xxxxx, MSD, Dr Bratt, presentations, contacts, ltr, X. Xxxxxx, 13.06.15.pdf';
- 2). 'Archives NZ, Chief Archivist, complaint abt Dr Bratt's record keeping, reply, xx.03.2015.pdf';
- 3). 'Chief Archivist, rqst f. guidance, re PHA of MSD, public records, ltr to B. Boyle, MSD, xx.03.15.pdf';
- 4). 'Chief Archivist, rqst f. guidance, re PHA of MSD, public records, reply, xx.04.2015.pdf'.