

Case 39: 4 (Complaint ground: 40 - 7)

Contact B

24 October 2017

 **Ombudsman**

Fairness for all

Mr

By email: _____@yahoo.cc

Dear Mr

Official Information Act investigation

Ministry of Social Development

Information regarding services for beneficiaries with health and/or disability issues.

I refer to earlier correspondence concerning your complaint about the response you received from the Ministry of Social Development to your requests for information regarding services to beneficiaries with health and /or disability services.

I know that my staff have apologised for the delays you have experienced in the investigation of your complaints, but I wish to add my own apology for the delays in this case. As you are aware, this file was awaiting allocation to an investigator and it was subsequently allocated to Senior Investigator B _____ to assist me. I acknowledge that the delays have been unacceptable and note steps have been put in place to ensure that such delays do not occur again, once the backlog of cases has been cleared.

I have now received and considered a response from the Ministry to notification of this complaint and am in a position to provide you with my provisional opinion in respect of certain aspects of it.

You raised numerous and extensive issues in your email of 6 March 2015. As Ms _____ explained to you in her letter of 16 May 2017, not all of the issues you raise constitute the basis for OIA complaints. The issues that I have identified as constituting OIA complaints from your wide-ranging comments have been extracted and put to the Ministry for comment.

Where an issue you have raised is not identified and addressed in this letter, it will be because it is not considered to be an issue that falls within my jurisdiction under the OIA.

Request 1

In your email of 2 October 2014 you asked for detailed information about the names, head office and on-site service providers addresses, and the particular services offered for all the providers the Ministry has entered into contracts with to provide 'mental health employment services' (MHES), other supported employment services and supported employment services for sole parents with children.

The Ministry provided you with a table providing the names and addresses of the Sole Parent Employment Service providers and noted the MHES providers' information was previously provided to you.

You complained that information on actual on-site service delivery addresses was not provided.

In response to notification of this complaint the Ministry has noted it may not itself have been provided with all sites' addresses used by providers; the Ministry only contracts with one office, the provider may then have many sites.

The Ministry noted that the providers have websites which contain physical addresses which are publicly available. You have been provided with the name of the providers by the Ministry.

In terms of the OIA, it is my provisional opinion that your request for this information can be refused under section 18 (d) on the basis that it is publicly available, and section 18(g) where the Ministry does not actually hold the information.

Request 2

You asked for information about fees payable by the Ministry to the various providers, including the 'outcome expectations'.

In its response of 26 February 2015, the Ministry provided you with three tables detailing the fee structure for the Sole Parent Employment Service, noting that the fee structure for the MHES providers' contract was provided to you on 24 April 2014.

In your complaint to this Office, you noted you would have expected the Ministry to have communicated certain expectations to the provider as part of the agreements they made.

In response to notification of this complaint, the Ministry has located relevant information about 'outcome expectations' and provided it to this Office.

I have asked the Ministry to now make that information available to you and advise me when it has done so.

Request 3

You asked for wide ranging information about the 'wrap-around services' which were reported in the media as intending to support the clients that WINZ refers to the various service providers mentioned in request 1.

In its letters of 24 April 2014 and 26 February 2015, the Ministry provided you with certain information but noted it did not hold 'details of external providers staff, such as their roles and qualifications'.

In your complaint to this Office, you noted you understood contractual agreements between Ministry and the MHES and the SPES do stipulate what minimum qualifications staff members employed by such service providers must have to deliver 'wrap around services'.

The Ministry has noted that this information is not collected in the manner you have requested and, referring to section 18(g)(i), it notes the Ministry is not required to create information.

I have made enquiries with the Ministry on this aspect of your complaint and am satisfied that section 18 (g) of the OIA provides the Ministry with good reason to refuse your request on the basis that the information is not held.

Request 4

You noted that you asked for information about referrals to the services discussed in question 1 including how many had been successfully placed into employment and how many had terminated working with providers *'preferably per month since commencement of the ...services.'*

The Ministry provided you with details of the number of referrals up to the date of your request, and tables indicating numbers who ceased participation in the MHES and APes and the reasons why.

You complained that information was not provided in the way you had wished and that no information was provided about participants of either service who have been successfully referred into employment.

In response to my notification of your complaint about the form of information provided, the Ministry has noted that, while your preference may not have been addressed, the information was in fact provided. To the extent that the information about the number of referrals and the number (and reasons) for exiting the services, I accept the Ministry's response is reasonable.

In respect of the request for information about numbers successfully placed in employment I asked the Ministry if it held the information in readily retrievable form and, if it did, would it be prepared to release this information to you. The Ministry has provided me with some manually collated data that is relevant to this request, including information that post-dates your request.

The Ministry has advised that it is happy to release this information to you. I have asked it to do so now and advise me accordingly when it has sent the information to you.

Request 6

This request concerned on-site service delivery addresses for Work Ability Assessment (WAA) providers. The Ministry had provided head office addresses but not the on-site service delivery addresses.

In response to notification of this aspect of your complaint, the Ministry have referred to their response to request 1, that is, that the physical address is available from the web site of the providers.

I accept that section 18(d) provides good reason under the OIA to refuse this part of your request on the basis that the information is publicly available.

Request 7

You noted in your complaint to this Office that your request for *'what plans.. exist to change or increase particular expectations and/or criteria for sick, injured or disabled persons... to be referred to...work ability assessments was not answered'*.

In response to my notification of this aspect of your complaint, the Ministry have apologised and acknowledged that they did fail to respond to this particular aspect of your request.

The Ministry has undertaken to now respond to you about this request. I have asked the Ministry to do so and advise me accordingly.

Request 8

You requested information about *'specific performance targets' and 'performance bonuses..or other forms of financial or similar 'rewards'*.

The Ministry provided information on the numbers and amounts of *'performance payments' and 'productivity dividends'*. It noted that these amounts were paid for meeting *'agreed group measures which included increasing efficiency and reducing work duplication'*. It also noted that there are no performance measures for staff to refer beneficiaries to contracted services.

In response to notification of this aspect of your complaint, the Ministry notes that it has provided you with the information you requested.

I have considered your comments and the response provided by the Ministry to your request and to my notification of this complaint. Your complaint essentially seems to rest on what you see as a potential contradiction between the information provided by the Ministry and comments made on a radio programme. However, your comments about the radio programme reflect your interpretation and extrapolation. Under the OIA, my role is to ensure that, where information is held, it is released upon request unless the Act provides good reason to refuse it. It is not part of my investigation and review role to test the overall coherence of information provided from various different sources so that a *'better response'* (in your words) is provided.

I do not consider I can take this matter any further. In my view, the Ministry has clearly answered your request for information and there are no grounds for considering it is withholding relevant official information from both you and this Office.

Request 11

You had asked for information about advice or expectations the Ministry had provided to health professionals when assessing work ability.

The Ministry referred you to the guidance provided online at www.workandincome.govt.nz.

You complained that you were aware that Regional Health, Regional Disability Advisers, Health and Disability Coordinators and the Principal Health Adviser regularly communicate and correspond with various health professionals. You noted that these forms of communicated advice, guidelines and expectations are not covered by the more general information on the website.

In response to my notification of this aspect of your complaint, the Ministry noted that *'[t]he Ministry considers that further advice should have been refused under section 18(f) of the Act as there will not be a centralised repository of 'advice to doctors'. Mr [redacted] requested 'information' on the advice, not the advice itself, and has been provided with this.'*

In the absence of a central repository of 'advice to doctors' I accept that section 18(f) provides the Ministry with good reason to refuse the communications you refer to on the basis that the information cannot be made available without substantial collation and research. Privacy and confidentiality considerations may also be relevant.

If there is a particular communication you are able to identify with due particularity I suggest you make a specific request for it.

Resolution and my provisional opinion

The issues discussed above in respect of Requests 2, 4 and 7 have been resolved by the Ministry's agreement to release to you the further information it has provided to this Office.

In my provisional opinion, for the reasons set out above, the Ministry was entitled to refuse your request for the information I have discussed in respect of Requests 1, 3, 6 and 11.

Your comments

I invite you to comment on my provisional opinion in respect of Requests 1, 3, 6 and 11 before I form my final opinion. If you do wish to comment, please respond by 14 November 2017.

Record keeping by Dr Bratt

In respect of your comments about Dr Bratt's record keeping, I have read and carefully considered your comments of 21 May 2016 (resent on 25 August 2016). You have raised concerns about Dr Bratt '*continually misrepresenting statistical and scientific information*' (and other concerns about Dr Bratt's professional competency) as a response to Professor Paterson's finding that you had an insufficient personal interest in the issue of Dr Bratt's record-keeping. I do not see the link between your expressed concerns about Dr Bratt's professional competency and a personal interest in Dr Bratt's record-keeping. Moreover, concerns about Dr Bratt's professional standards would most appropriately be addressed by his professional body, not by a layperson, such as myself.

For the reasons given by Professor Paterson, I do not propose to investigate your complaint about Dr Bratt's record-keeping.

Yours sincerely



Leo Donnelly
Ombudsman