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09 March 2015

Complaint about the Ministry of Social Development (MSD) failing to provide information under the Official Information Act 1982 (O.I.A.), as per my request dated 01 Oct. 2014; your letter with your reference 39xxx4 from 05 March 2015

Dear Ombudsman and dear Sxxxx Xxxxxxx

Thank you for your letter dated 05 March 2015, in which you replied to my complaint from 13 December 2014 that the Ministry of Social Development (MSD) had failed to provide me with specified information that I had sought under the Official Information Act 1982 (O.I.A.). MSD had on 31 October sought an extension to respond to my written request dated 01 October 2014 (received by them by email on 02 October), which I was happy to grant them. But MSD then failed to provide a promised reply with the sought after information by not sticking to their own new deadline on 28 November 2014. After the passing of nearly another month, only a brief email from 03:24 pm on 23 December 2014 informed me that they apologised for the delay, and that they would endeavour to provide me with a response as soon as possible. No reason was given for the delay and no new timeframe for a response.

It is correct that a written response with a fair amount of the information I had sought was finally sent to me by MSD two further months later on 26 February 2015, but some very crucial, expected information that I had requested was again not supplied, without any explanations. Certain other information was withheld for various stated reasons, by referring to section 18 (e), (f) and (g) of the Official Information Act. Some of these refusals appear reasonable, but in at least one case I cannot and do not accept the stated reason.

While I acknowledge and appreciate your letter from 05 March 2015, I cannot agree with your consideration that it is unnecessary to take further action in this matter. The Ministry staff and Chief Executive appear to have accepted they failed to meet their obligations under the O.I.A. to provide the information in the expected time period, and you may as Ombudsman feel satisfied that the Ministry and its staff are aware of their obligations in that regard. But after having now carefully looked at the complete response that I received, it is clear that MSD has most certainly not delivered all the information I requested on 01/02 October 2014, and that I should reasonably have expected. As stated above, there has been no reason given as to why some information was not provided. I will list the problems with the unsatisfactory response in the following:

Regarding Request 1
I had asked for the following specified official information:

“Detailed information about the names, the head office- and on site service provider addresses, and the particular services offered, for all the providers the Ministry of Social Development (MSD) has since mid to late 2013 entered contracts with, to:

- provide so-called “Mental Health Employment Services” (MHES),
- provide OTHER supported employment services for persons on health related benefits with other health conditions and/or disabilities,
- provide supported employment services for sole parents with children on the ‘Sole Parent Support’ benefit category.”

While detailed information about the providers of the ‘Sole Parent Employment Service’ (SPES) was given re their contract relevant head office addresses, NO information was presented about the on site (physical) service delivery addresses of both the ‘Mental Health Employment Service’ (MHES) and ‘Sole Parent Employment Service’ (SPES) providers. For instance APM Workcare will not be delivering all their services from their Albany head offices, and instead have various service locations for regions they cover. The same applies to some other providers.

Hence I must ask that this information on actual service delivery addresses will also be provided in a further response I seek from MSD.

Regarding Request 2

I asked for the following information:

“Details about the fees payable by MSD, the agreed fee structure, the terms for payment of fees, the outcome expectations in the various providers, that were agreed to between MSD and the types of individual providers as listed under question 1. above. This is also in consideration of established “particular service intensity categorisation”, with consideration about other similar categorisations, and details about any such used categorisations would be appreciated.”

MSD have delivered the much appreciated information on the fee structure for the ‘Sole Parent Employment Service’ (26 Feb. 2015), and previously also for the ‘Mental Health Employment Services’ (24 April 2014). But NO information was presented on “outcome expectations”, like for instance in the form of expected or anticipated percentages (or in other measurable forms that had been agreed on) for referred clients to such services, that show how many of them are actually successfully placed into employment. I would expect that MSD will have communicated certain expectations to the providers, as part of agreements they made, and this information would be extremely helpful and appreciated.

Hence I must ask for the presentation of such expected “outcome” or “target” information, provided it was included in contractual agreements between MSD and providers.

Regarding Request 3

I asked for the following information:

“Relevant details about the provided “wrap-around services” that were already mentioned in media reports, such as an article in the “Herald on Sunday” on 30 June 2013 - titled “Govt will pay to shift mentally ill into work”, which are intended to support the clients that Work and Income (WINZ) refers to the various service providers as listed under question 1. above. I am in this question asking about “wrap-around services” that are provided by health-, disability- and/or addiction treatment and support service providers contracted by WINZ, or at least cooperated with through WINZ. What kinds of such extra clinical support services have been agreed on, who will pay for them, and what are the roles and expected qualifications of staff at those presumably external “wrap around
service" providers that may offer health-, disability and/or addiction treatment and support services - in whatever types and forms? Detailed information in relation to the various types of providers and their services will be much appreciated, provided of course, such services are used.”

I appreciate the clarifications by MSD that the Ministry (and Work and Income) does not itself offer access to - or provides - “wrap around services” provided by professional health-, disability- and/or addiction treatment and support service providers within the framework for the ‘Mental Health Employment Services’, but leaves it up to contracted providers to support participants to access any “additional services that they may require”.

But as Work and Income generally places certain expectations on sick and disabled to seek treatment for treatable health conditions that may otherwise hinder them from finding and accessing employment, I am astonished that there seems to be no arrangement between the contracted MHES providers and MSD to gather information on who needs extra support.

The concept of ‘Mental Health Employment Services’ would appears to mean that this is employment focused support involving also the provision of “wrap around” mental health services. Hence I would expect that contracts between MSD or Work and Income and the provider would include the payment for services that the provider needs to supply to clients referred to them. This would appear to include certain additional “mental health support” services. As I had expected that agreements between MSD and the mentioned providers would cover this aspect as part of their “wrap around services”, I need to ask whether this information is also being withheld, or does not exist, or is also not “centrally held”.

At the top on page 4 in the response from 26 February 2015 MSD state: “The Ministry also does not hold the details of external providers staff, such as their roles and the qualifications.”

I have reason to believe that contractual agreements between MSD and the MHES and SPES do stipulate what minimum qualifications staff members employed by such service providers must have to deliver the “wrap around services” to participants. Hence I had at least expected a mention of these particular qualifications and types of positions, not in relation to named individuals, just as information relating to the particular providers.

If these supposed “wrap around services” in a more clinical form of health support are indeed simply provided as part of the ordinary, accessible public health care services presently available through District Health Boards, I would appreciate a clear statement to that effect. This would then clarify that no extra spending is put into additional health services for WINZ clients.

This particular information I seek appears to not have been provided and is therefore still expected. If the MHES and SPES providers do not themselves employ staff with professional health-, disability-, and/or addiction treatment and support services experience, and are not expected to do so, I also appreciate a clear statement in that regard.

Regarding Request 4

I asked for the following information:
“Information in broken down detail, on how many beneficiaries suffering “moderate” mental health conditions, musculo-skeletal or other disabling health conditions, and also on how many sole parents on benefit receipt, have to this date been referred to such services as mentioned under question 1. above? Also how many were approached to consider being referred, how many agreed to be referred, how many refused to be referred, how many have been successfully placed into employment? How many have had to terminate their efforts working with providers of “Mental Health Employment Services”, or with any other
type of supported employment services, and of them, for what reason did they do so? Records on this, preferably per month since commencement of the mentioned services, are requested, up to the most current month, otherwise per year. As some information on MHES was received some time ago, an update on the previous information is sought.”

It is certainly appreciated that MSD have provided numbers in a table on 534 “fully enrolled Mental Health Employment Service participants” that had exited the service as at the end of October 2014 for a number of reasons. But the information that is given appears unclear and confusing. In my request point 4 I had asked for broken down details on how many participants have had to terminate their efforts working with providers of MHES, or with any other type of supported employment service, for whatever reasons - for specified periods. With that I had asked for information preferably per month since commencement of the services, and up to the most current month - or otherwise per year.

The numbers for people referred, approached, for those who agreed to participate, and those who declined are clear and highly appreciated and clear, but I request clarification whether the table on page 4 of the letter from 26 February lists ALL the “exits” of participants for the stated reasons, that occurred for the whole period from the start of service delivery, up to the end of October 2014, or whether the figures are just for that one month of October last year.

And NO information has been provided on those participants of either service, who have been successfully referred into employment. The table provided gives NO information on job placements, and whether they lasted for any significant, longer period.

In a response to an earlier O.I.A. request MSD stated on 24 April 2014 that at 27 January 2014 already 328 participants of the MHES had ended their participation with a provider, with no reason given as to why and how, and that only 65 clients had until then achieved an employment outcome. Given those earlier figures, the newly provided figures (from 26 February 2015) appear to not represent those for the whole period since the MHES started in September 2013, until October 2014, who exited the service for the stated reasons.

The same applies to the figures listed in the table on page 5, being for SPES participants. Are those figures perhaps also only for the month of October 2014, or are they for the whole period when the services were being delivered? And how many of all the referred participants were actually successfully placed into employment for any significant, lasting period? I also need to ask for an explanation as to what “end of six month service” means.

Again, only some of my request has been met, and the rest has not been met, without giving any reason or explanation. So the missing information is still asked for and expected, and the confusing information I referred to is asked to be clarified.

Regarding Request 5

I asked for the following information:

“Information on whether any referred Work and Income clients with mental health conditions, with musculo-skeletal or other disabling health conditions, suffered any significant medical problems (psychological, psychiatric or physical) upon having been referred to such service providers as mentioned above, and what types of problems were there, since such services started? Also in relation to this, if such cases occurred, what measures were taken by the provider and by WINZ, to offer support for the clients affected, and what records have been kept on this? Please provide relevant details for each month since these services were started, up to the most recent monthly update, provided such cases exist.”
MSD have stated in their response dated 26 February 2015: “The Ministry does not record information pertaining to the wellbeing of a person following a referral to a service provider. As such this information is refused under section 18 (e).”

In MSD’s response from 24 April 2014 (to my request 6 from 16 Jan. 2014) it was stated: “To date there have been no recorded incidents where a client has suffered significant medical or psychological problems having been referred to MHES. If this situation arises, the service provider will inform Work and Income, who will take the appropriate steps to support the client.”

I cannot help but notice a “slight” contradiction between the two answers about virtually the same problem(s). In light of that I must ask, why could a clear enough answer be provided to my very similar request for information (request 6 from 16 Jan. 2014) in MSD’s letter dated 24 April 2014, and why is such information now suddenly no longer available?

Given the contradiction in responses so far received, I must ask for a proper explanation and clarifications re this. If a proper, clear response could be given on 24 April 2014, I would have expected a clear one also in the new response dated 26 February 2015.

Regarding Request 6

I asked for the following information:
“Details about the names, head office- and service delivery site addresses, and the particular services being offered, by/of contracted providers to perform outsourced work ability and/or medical assessments on beneficiaries (or applicants for benefits) that commenced providing such new services from early 2014 until now. I refer to media reports in the ‘Otago Daily Times’ from 25 Oct. 2013, titled ‘Tests for disabled ‘flawed model’’, and ‘Stuff.Co’, from 03 Nov. 2013, titled ‘Contractors to assess sick and disabled for work’, that mentioned some details on MSD entering contracts with such providers. As some information has already been provided on this by way of a letter dated 24 April 2014, I request and update on these services by Work Ability Assessment (WAA) providers, and the relevant information sought.”

Again MSD refer to a former response they gave on 24 April 2014, where they provided contract related head office addresses for so-called ‘Work Ability Assessment’ (WAA) providers, but not the on-site service delivery addresses for these. Hence that part of the request has not been met. I would appreciate not only the main office addresses of the contracted providers, but also the addresses for the locations where they deliver their services.

The mere mention that the information was provided on 24 April 2014 is only partly correct. I ask for the service delivery addresses of the providers, which are still due and expected.

Regarding Request 7

I asked for the following information:
“Information on what expectations Work and Income currently places on sick and disabled on health related benefits like ‘Jobseeker Support – deferred’, ‘Supported Living’, or applicants for such, in regards to meeting obligations to attend external examinations/assessments for medical conditions and work capability (done by Designated Doctors or WAA health professionals). Also what particular sanctions will be applied if a client objects to, or refuses to be examined or assessed by, a medical or health professional, which she/he will have been expected to see for this? Furthermore, in relation to this, what plans do presently exist to change or increase particular expectations and/or criteria for sick, injured and disabled persons on the mentioned
health related benefits, to be referred to such work ability assessments? I appreciate your detailed response.”

My question or request asked for clear expectations WINZ currently places on sick and disabled on health related benefits, or applicants for such, in regards to meeting obligations to attend external examinations/assessments for medical conditions and work capability. The information and explanations given by MSD in a response from 24 April 2014 (page 5), in reply to my request 10 from 16 Jan. 2014, do not clearly state any forms of sanctions that may be imposed. When does a benefit rate get cut in half, or stopped altogether, if a person refuses or fails to cooperate, without “good and sufficient reason”, thus resulting in an “obligations failure”? A response with information clarifying that for instance is what I had expected. I am afraid that my request has not been fully answered.

Also has my request for information on any plans that may presently exist to change or increase particular expectations and/or criteria for sick, injured and disabled persons on mentioned health related benefits, to be referred to such work ability assessments, not been answered. If no such plans and no information about such plans exist, a brief comment in that regard would suffice. I ask whether such plans exist and for their records, if they exist.

Regarding Request 8

I asked for the following information:

“Information on what specific performance targets (e.g. in measured output criteria and numbers, like in successful referral numbers for clients, in cost savings achieved for MSD and/or WINZ, or in any other tangible, countable measure) do Work and Income case managers, branch office managers, Regional Health Advisors, Regional Disability Advisors, or for that sake staff collectively operating as individual WINZ branch office teams, have to meet, or are they encouraged to achieve? This question is in regards to clients being referred to, or placed into employment or training, like –

- ordinary unemployed beneficiaries on the ‘Job Seeker Support’ category,
- beneficiaries on ‘Job Seeker Support’ with a health issue and/or disability (i.e. on ‘Jobseeker Support – deferred’),
- beneficiaries in receipt of the ‘Supported Living Payment’ benefit,
- beneficiaries on Sole Parent Support.

Also in relation to this, are there any performance bonuses or other forms of financial or similar “rewards” or “benefits” paid to the mentioned staff of MSD at WINZ, even if these are not directly related to specific targets achieved, but in consideration of general achievements by the various staff or branch offices? Details about types of any annual or other bonuses, special awards, benefits and similar will be appreciated.”

My request for the specified official information has in this case also not been fully met. I did not only ask for information on “bonuses” to staff, “additional leave in recognition of service”, or similar “performance measures”, but firstly for specific performance targets (e.g. successful referrals of clients into work, training and so forth), which may not be linked to any such “rewards”. Performance targets may be set for branches without bonuses and the likes being paid, simply as part of ordinary operational performance expectations, for all staff working with clients. There must be certain goals and targets that MSD sets itself and their staff, to achieve annually.

In a 22 minute long interview on Radio New Zealand National’s ‘Nine to Noon’ program on 15 April 2014 Director for Welfare Reform Sandra Kirikiri clearly stated to Kathryn Ryan, that MSD and WINZ case managers definitely have “targets” to meet, when working with clients, including such as those referred to MHES. See the following information re this: http://www.radionz.co.nz/national/programmes/ninetoonoon/audio/2592666/winz-expands-scheme-to-support-unemployed-with-illness-issues

“WINZ expands scheme to support unemployed with illness issues”
(Listen from 11 minutes and 45 seconds on, particularly between 12 minutes and the 10 to 15 following seconds! Miss Kirikiri most clearly answers, “they definitely have targets”)

Given the comments by Sandra Kirikiri, I am led to believe that some forms of “targets” exist, for achieving outcomes for clients, in some forms and numbers. That is the information I had asked for, and which has not been provided in writing.

I read on page 7 in the response dated 26 February: “There are no performance measures for staff to refer beneficiaries to contracted services. I am therefore unable to provide any information under section 18 (e) of the Official Information Act 1982, as it does not exist.” But then it also states: “Work and Income monitors its business indicators and the number of people on a benefit at a national, regional and service centre level.”

In light of that information just mentioned, either Miss Kirikiri must be wrong, or the response in the letter from 26 Feb. 2015 must be wrong. What is the purpose of “monitoring” data, when this is also not used to work out achievable “targets”?

A clarification and the requested information are expected in the form of a better response.

Regarding Request 11

I asked for the following information:

“Information on what advice or expectations MSD has communicated to medical practitioners - like general practitioners (GPs) and also medical specialists (orthopaedic surgeons, psychiatrists, psychologists, and so forth), for them to consider when asking questions to, and when assessing health conditions and work ability of their patients who require a ‘Work Capacity Medical Certificate’ for benefit purposes? Have particular sets of questions been sent or presented to GPs, as a format to work with, have particular criteria been communicated, beyond of what is contained in the medical certificate forms, or the ‘Guide for Designated Doctors’. In regards to the latter, where can a current copy of that “guide” be found, as nothing could be found online on the Work and Income website.”

I appreciate the information provided and referred to on the Work and Income website. This does though only cover general and mostly widely available information that MSD communicates to medical practitioners, specialists and other health professionals, who conduct assessments on health conditions and on work ability of clients.

Through earlier Official Information Act requests to MSD I have already been informed that Regional Health Advisors, Regional Disability Advisors, also the Health and Disability Coordinators, and the Principal Health Advisor, do all regularly communicate and correspond with various medical practitioners and other health professionals working with MSD and Work and Income. This happens particularly with designated doctors. I am informed and aware that there are other forms of direct Advisor to practitioner “advice” and “expectations” being communicated to such health professionals. These forms of communicated advice, guidelines and expectations are NOT covered by the mostly more general information on the website.

I had also asked: “Have particular sets of questions been sent or presented to GPs, as a format to work with, have particular criteria been communicated, beyond of what is contained in the medical certificate forms, or the ‘Guide for Designated Doctors.’”

Hence my request has in that regard not been met. I must therefore ask again that such information is provided, which would not be case specific, and which is applied more generally. This kind of information is not available via the website, and it goes beyond information on the ‘Work Capacity Medical Certificate’, and in some cases also beyond of
what was once available through a "Guide for Designated Doctors". If there are reasons to withhold it, I am sure MSD can mention and explain these.

Last not least I also asked for a source to find the once used ‘Guide for Designated Doctors’, which has also not been provided, certainly not on the Work and Income website. All that is offered are links to download an application form (in PDF) for “designated doctors” and to access “READ Codes” to use by doctors. See the following link:

That part of my question appears to also not have been answered. If there is no longer such a Guide, or if it is withheld for particular reasons, it must be expected that this is clarified. The same should be expected if that former “Guide” has been replaced by another document.

Closing comments

These are the requests I presented, and which have not been completely and appropriately answered. Again I wish to state that I appreciate the other information that has been received, but without the information that is still missing, some of the details provided to me are only of very limited assistance to understand the actual performance, effectiveness and fairness of measures and policies that MSD and WINZ apply in the areas that were covered by my O.I.A. request from 01 October 2014.

I ask you as Ombudsman to take up these presented issues with MSD to seek appropriate clarifications, and to ensure that my reasonable request for the specified information is met. If the still due information continues to be withheld without good, acceptable reasons, a thorough investigation is necessary.

Recently I also received another letter from Txxxx Sxxxxxx at your Office, dated 04 March 2015 and relating to two other active complaints under your reference 36xxxx. I acknowledge the information contained in that other letter and will await your Office’s further responses as the investigations progress.

Yours most thankfully and sincerely

Xxxxxxx Xxxxxxx

Attachments to email carrying this letter:

1. PDF file with a scan copy of my original O.I.A. request dated 01 Oct. 2014, file name: ‘MSD, O.I.A. request, MHES, WAA, other supported services, issues, sundry questions, X. Xxxxxx, 01.10.2014.pdf’;
4. PDF file with a scan copy of this letter to your Office of Ombudsmen, filing a complaint about MSD’s renewed failure to comply with the O.I.A., dated 09 March 2015, file name: ‘Ombudsman, complaint, MSD, failure to comply w. O.I.A. rqst fr. 01.10.14, ltr, 09.03.2015.pdf’.