Re: Complaint under section 16 of the Ombudsmen Act 1975, and request for a review under Part 5 of the Official Information Act 1982, in relation to the Ministry of Social Development’s decision to withhold important official information that is of substantial interest to me and the wider public

Dear Ombudsmen, dear staff at the Office of Ombudsmen

[1] Please accept my request for your assistance in the above mentioned matter of concern. In filing this complaint with your Office of Ombudsmen I ask for your assistance in a matter that is not only of my personal interest, but also of significant public interest. It relates to a request under the Official Information Act 1982 (OIA) dated 27 September 2016, with which the release of specified information was sought from the Ministry of Social Development (MSD). While appreciating the partly useful information that was made available, I do have great concern about MSD’s refusal to make available some specified information that I requested, and which I consider should reasonably be expected to be made available.

[2] Already in an email response from the ‘Official and Parliamentary Information team’ at MSD, that I received on 27 October 2016, did the Ministry inform me that it intended to withhold various types of specified information that I had requested. According to that email

the following of my information requests were being refused by the Ministry:

1. A copy of the list of Designated Doctors including their qualifications, location and clients they treat is refused under section 9(2)(a) of the Act.
2. Whether clients with mental health conditions had suffered any medical problems since being referred to Work and Income is refused under section 9(2)(a) of the Act.
3. The number of people who had been approached to be referred for the service is refused under section 18(e) of the Act as the information does not exist.
4. Your request for the ‘Guide for the Designated Doctors’ is withheld under section 9(2)(f)(iv) of the Act as the information is under active consideration.

[3] After a further delay in responding, I finally received the promised response from MSD on Thursday 24 November 2016, again by email, with a PDF file attached to it. A five page reply letter, which was dated 23 November 2016, and a number of other documents were provided to me, but the particular information already mentioned above, had indeed been refused for the already stated reasons. I must mention also, that the quoted information requests in MSD’s response do at least in part not fully correspond with the text of the actual requests I made in my letter dated 27 September 2016.
Refusal reasons given by MSD in their response from 23 November 2016

[4] My requests 5 and 11 appear to have been refused under section 9(2)(a) of the Official Information Act 1982, which says the following:

‘9 Other reasons for withholding official information’ ....

“(2) Subject to sections 6, 7, 10, and 18, this section applies if, and only if, the withholding of the information is necessary to—

(a) protect the privacy of natural persons, including that of deceased natural persons; ..”

[5] My request 12 was refused under section 9(2)(f)(iv) OIA, which says the following:

“(f) maintain the constitutional conventions for the time being which protect—

(iv) the confidentiality of advice tendered by Ministers of the Crown and officials;..”

[6] My request 4 was refused under section 18(e) OIA, which says this:

“18 Refusal of requests

A request made in accordance with section 12 may be refused only for 1 or more of the following reasons, namely: ...

(e) that the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found:..”

[7] My request 5 was also refused under section 18(f) OIA, which says this:

“18 Refusal of requests

A request made in accordance with section 12 may be refused only for 1 or more of the following reasons, namely: ...

(f) that the information requested cannot be made available without substantial collation or research:..”

My disagreement with MSD’s stated reasons for refusals

[8] Already in my letter dated 31 October 2016 did I respond to the email from the ‘Official and Parliamentary Information team’ at MSD from 27 October 2016. I took issue with the various refusals, and with the grounds given for them, by presenting my own considerations and position - point by point. For details I must refer you to that letter, which I will provide as evidence in this complaint matter. Partly based on my concerns and my presented arguments in that letter, and for the rest based on my reflection on the final response by MSD, I will in the following address the various particular refusals by MSD with my detailed considerations.

[9] Refusal 1. – under section 9(2)(a) O.I.A., as mentioned in MSD’s letter:

It was under point ‘11.’ In my request from 27 September 2016 that I asked MSD for the following information:

“11. Information in the form of a complete current list (with names, health qualifications, practice names and addresses, preferably also by regions) of ‘Designated Doctors’ that MSD and WINZ have on their files, and being available to be commissioned to conduct medical and/or work capability examinations on WINZ clients with health conditions and disabilities, and/or persons who they may care for (see for instance also provisions under sections 88E, 40C and 40E of the Social Security Act 1964).”

[10] In my letter from 31 October 2016 to MSD, I first expressed my concern that the Ministry’s staff may have misunderstood my question, in particular the following sentence:

“A copy of the list of Designated Doctors including their qualifications, location and clients they treat…”

[11] I did then clarify to MSD that it was not my intention to ask for any information about “clients” that may be “treated” by ‘Designated Doctors’ used by Work and Income (WINZ). I explained that the word “clients” was meant to refer to clients of WINZ, but that I would of course not expect any identifiable information of clients to be made available. All I asked for was
information in the form of a current list of such medical practitioners used by WINZ, with their names, qualifications, practice names, addresses and preferably regions they work in.

[12] Also did I state the fact, that I had been informed that such a list had previously been made available in October 2012 to ACCLAIM Otago, in Excel file format, which contained details on the region, centre, first name, surname, registration, practice name, phone number, facsimile number, address, suburb, town/city and postal code of the so-called ‘Designated Doctors’ that then worked for the Ministry. I did after then view a copy of that file received through contacts.

[13] I pointed out that the ‘FYI’ website, found via the following link, does also clearly state that such information had been made available on 09 October 2012: https://www.fyi.org.nz/request/list_of_designated_doctors_for_b

A published letter on ‘FYI’ - from the Ministry dated 16 Oct. 2012 - refers to the earlier request and the response given then, and at the top of the web-page it says without any doubt “The request was successful”. At least at a later stage the information made available to ACCLAIM Otago was also shared with other persons, so many Designated Doctors that were already then on the list are already widely known to work with or for WINZ. If required I can also mention one or two web based forums, where links to the list were published.

[14] Hence I informed MSD that I consider the refusal of that information to be somewhat irritating and hard to understand, as it appeared to be inconsistent with the previous official information policy by the Ministry. I wrote to MSD that I did not even ask for all the types of information that had then been previously released, and I explained that I could even agree to leaving the qualifications of the ‘Designated Doctors’ out from my request, and have instead only mentioned under what type of ‘registration’ these practitioners do work for the Ministry. I stated that I would uphold my request, and that I’d expect the information I asked for, at least a list of the ‘Designated Doctors’ by name, surname, WINZ region or district, and their registration.

[15] I wrote to MSD that it appeared unreasonable to refuse the information under section 9(2)(a) in view of the fact that such concerns had not previously been expressed. I explained to MSD how the Medical Council of New Zealand (MCNZ) does itself have a publicly available register for all medical practitioners. Any person can check the details of a practitioner’s registration, the vocational scope she/he works under, plus in which geographic district the professional may be based. I also presented a hyperlink to the MCNZ’s website, where a full list of all registered practitioners is available for a fee: https://www.mcnz.org.nz/support-for-doctors/list-of-registered-doctors/

[16] Furthermore did I mention to MSD that the MCNZ even publishes a list of doctors who are currently suspended and also whose registration has been cancelled, and I presented this link: https://www.mcnz.org.nz/support-for-doctors/suspended-doctors/

[17] I expressed my view that when the MCNZ and other registration authorities offer at least the publicly available information as they do, then the Ministry of Social Development should also not conceal information about who is working for it as ‘Designated Doctor’ - or any information about internal or external Advisors that it may use.

[18] In her response from 23 November 2016⁵, Ruth Bound, Deputy Chief Executive at MSD, gave the following explanation for refusing the information I asked for:

“Information about the doctors including their location; practice name, qualifications and the clients they care for is withheld under section 9(2)(a) of the Act. The need to protect the privacy of these individuals outweighs any public interest in this information. Additionally, the doctors have not given the Ministry consent to release their information when requested. I understand the Ministry has released the list previously to another requestor and unfortunately was released in error.”

[19] This ground for refusal is not accepted by me. Firstly, the Ministry admits that the information was already made public by way of an “error”. I have reliable information that the then published ‘Designated Doctor List’ has been shared via the internet and other means, and therefore the names and at least some other details of the practitioners listed in it, are already publicly available. While there may have been some changes to the composition of the list, as it may have been updated since August 2012, it can though reasonably be presumed that the
bulk of the names remain unchanged on the Work and Income list for Designated Doctors, as there has traditionally been only little change by practitioners moving on or off that list.

[20] As the information has already been released, it appears to be unreasonable to maintain the ground for refusal under section 9(2)(a) OIA to protect the privacy of the medical practitioners listed. If the formerly listed practitioners, who I argue will still make up the bulk of that list, have had their details already made available to the public, there is no justification to apply section 9(2)(a). And if it is applied now, then only new practitioners, who may have been added to the list that MSD holds, can rest assured that their details are not publicly available, which though unreasonably prejudices the other practitioners, whose details are already available.

[21] I do also maintain, that there is most definitely a public interest in the information being made available, at least in part, and to a similar degree as the MCNZ makes available information about its registered members. Why should the MCNZ see fit to publish names of registered practitioners, offering a reasonable degree of transparency and accountability, and why should MSD and Work and Income and their Designated Doctors on the other hand be treated differently - in a privileged manner? I consider that the clients that use and depend on the services provided by Work and Income, and that are also required by Work and Income to meet obligations, like having to see a Designated Doctor for a second opinion, must have a right to reasonable transparency. Clients, and for that sake also the wider public, should be informed about who does as a general practitioner, or any other medical or health professional, work for MSD and WINZ as a Designated Doctor to examine sick and disabled persons for their entitlement to benefits or capacity to work.

[22] Designated Doctors should have nothing to hide, should not conceal their name or professional qualification or registration from the public, and should instead be transparent and accountable, as otherwise serious questions about their roles, their competency, their integrity and their ways of working with MSD will arise, which will lead to increased distrust in clients towards their involvement as examiners and assessors for Work and Income.

[23] I may also inform you, that I have myself once experienced great injustice when being wrongly assessed by a WINZ Designated Doctor who “examined” me and followed an unreasonably tight work capacity direction set by the WINZ Principal Health Advisor, declaring me “fit for work”, while my own doctor and specialists agreed in all their reports, that this was definitely not the case. I was even forced to appeal a flawed decision made by WINZ and face a Medical Appeals Board (appointed by MSD!), and then even had to apply for a judicial review at the High Court, to challenge yet another highly questionable decision by that Medical Appeals Board, that largely upheld WINZ’s seriously flawed decision. I will attach evidence of this and other important information of relevance in attachments 6 to 12. That evidence also includes recent findings that MSD’s Principal Health Advisor has been using incorrect data in his presentations, or at least drawn wrong conclusions from inconclusive statistical reports.

[24] Therefore I insist on MSD providing the following information about their Designated Doctors: The full name, the WINZ region or district, and the registration details of their practitioners. I ask you as Ombudsman to thoroughly investigate and carefully consider the matter, and to recommend that MSD makes at least that basic information available, so WINZ clients, or any other interested person in the wider public, can use that information to perhaps obtain additional information from the MCNZ, on any practitioner they may be interested in learning some essential details about, or about whom they have some concerns.

[25] Refusal 2. – under section 9(2)(a) O.I.A., as mentioned in MSD’s letter:

It was under point ‘5.’ in my request from 27 Sept. 2016\(^2\) that I asked for the following information:

*Information on whether any referred Work and Income clients with mental health conditions suffered any noted medical problems (psychological, psychiatric or physical) upon having been referred to 'Work to Wellness’ 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/or by WINZ, to offer support for the
clients affected, and what records have been kept on this? Please provide relevant details, provided such cases exist.”

[26] In my letter to MSD, dated 31 October 2016⁴, I explained that it appeared unjustified to refuse any information on this particular point of my request under the ground stated in section 9(2)(a) O.I.A., as I never asked for the release of any personal information in relation to any identifiable individual person. All I asked for was whether such cases existed, where persons suffered any noted medical problems, and what types of problems these were, what measures were taken to offer support for the clients affected, and what kind of records may have been kept on this.

[27] I pointed out that upon an earlier request for such information, for instance in my request from 16 January 2014, former Work and Income Deputy Chief Executive Debbie Power stated the following in a letter to me, dated 24 April 2014¹³, replying to my question 6: “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.” That was admittedly in relation to the earlier ‘Mental Health Employment Services’ (MHES). See also my evidence in attachment 13 for the details.

[28] This does though clearly indicate that WINZ have been monitoring such potential risks and incidents for those earlier trials, and gathered some information on them, as there must have been concerns about such things happening. Hence I cannot understand that this information is now being withheld for the ‘Work to Wellness’ services, for “privacy” reasons. The new comments by Deputy Chief Executive Ruth Bound in her response from 23 Nov. 2016⁵, where the same information is also refused under section 18(f) OIA does indicate that the information exists. She also keeps refusing the information under section 9(2)(a), mentioning privacy concerns, i.e. that persons may be identified. I do not accept either of those grounds to withhold or refuse the requested information, which I feel should reasonably be expected to be provided in a form that will not reveal any details about who may have been affected as a client - or as a staff member offering the client support. Surely some statistical information on this must exist, given MSD’s earlier concerns re the MHES trials.

[29] I never expected the release of information of identifiable individuals. Again, there appears to be some inconsistency in how the O.I.A. is being applied in dealing with information requests, as there must have been some information gathered on such incidents, given the earlier comments by Debbie Power in her response dated 24 April 2014¹³. Why would the Ministry decide to no longer collect the information she appeared to be able to have access to? And Ms Bound’s reference to “Ministry staff would have to manually review hundreds of files” is a strange excuse, as she answers to my request 4” in her response from 23 Nov. 2016⁵ that there were at 17 October 2016 only a total of 206 referrals to Work to Wellness services, and 195 enrolments. If MSD would not have separately monitored these cases, the providers will have records that they can make available for such incidents I referred to in my request.

[30] Hence I must ask you as Ombudsman to investigate this matter, given the conflicting information so far provided for separate requests over recent years. I do at this stage maintain my request to MSD for this specified information, which was for such that would not identify any individuals, but that has at least some statistical and descriptive value. My impression is that the withholding or refusal provisions of the OIA are being unreasonably used by MSD to conceal how many persons referred to such services may have suffered psychological problems, psychotic episodes or other health issues.

[31] Refusal 3. – section 18(e) O.I.A., as listed in your email:

With information requests under points ‘4.’ and ‘7.’ I asked in my letter from 27 September 2016⁵ for information that included:

“Also how many were approached to consider being referred, how many agreed to be referred, how many refused to be referred …”

This was asked in relation to both ‘Work to Wellness services’ and ‘Mental Health Employment Services’.
In the OIA response by Ruth Bound, Deputy Chief Executive, Service Delivery, dated 23 November 2016, the further explanations given re my request are:

“The Work to Wellness service commenced at the end of August 2016. The service period for each participant is up to 6 months support. Employment outcomes will be reported as they occur. There are currently no employment outcomes to report. As at 17 October 2016, there had been 206 referrals to Work to Wellness and 195 clients were enrolled in the service. As this is a voluntary service for clients who would like to participate, the number of clients approached is not recorded and the Ministry is unable to report this. As such, your request for the number of people who had been approached for Work to Wellness is refused under section 18(e) of the Official Information Act as this information does not exist.”

I wrote to MSD on 31 October 2016, in reply to their email from 27 October, stating that such information could obviously previously be made available to me in written responses by the Ministry, for instance in a response by Work and Income's Deputy Chief Executive Debbie Power, dated 24 April 2014, where she did on page 3 in her letter list the number of persons referred to the ‘Mental Health Employment Service’ trials, the number of clients “approached to participate”, of those who “agreed to participate” and those who “declined to participate”.

Also did Ms Power respond with more such information in a letter dated 26 Feb. 2015, then in response to my request from 01 October 2014. On page 4 of her response she listed broken down figures for persons referred to ‘Mental Health Employment Service’ trials, for those “approached to participate” in them, for those who “agreed to participate” and those who declined to do so. She also provided a table with some further information on the number of persons who ceased participation for a number of reasons. On page 5 of her response she provided the same for the ‘Sole Parent Employment Service’.

It is therefore evident that the Ministry did collect and record information on how many persons fell into those categories, and also on how many were “approached” to participate, in whatever form, certainly for the MHES. Thus I find it difficult to understand that this kind of information has now been refused by MSD, for the stated reason that it appears to not exist. I must though presume that the information may be available after all, unless, of course, the Ministry has decided to no longer collect it, which I would require further clarification. As for both the Sole Parent Employment Service (SPES) and Mental Health Employment Service (MHES) trials, I would conclude from the ‘Appendix’ to the OIA response from 23 Nov. 2016 (last page 78 in PDF), the ones “placed on call list” and particularly the ones “able to be contacted”, would represent the information I had sought for those services, as they must have been called and thus “approached”. That explains why no renewed refusal ground was given in relation to my request point 7 (see page 3 of the OIA response from 23 Nov. 2016).

Re the ‘Work to Wellness’ services, I note from the ‘Appendix - Services, Outcome(s) to be Achieved, and Performance Measures’ on page 42 of the OIA response from 23 November 2016, apparently being part of the ‘Outcome Agreement’ between MSD and providers, that the following terms are listed under ‘3. Referral of Clients’:

‘Work and Income identified referrals’:

“Recruitment is the process of engagement between the Provider and Work and Income. Service Centres/Community Links to facilitate referrals. Recruitment of clients to this service is the responsibility of the Provider. This includes marketing and promotion conducted in a productive and proactive manner with Work and Income staff to ensure a managed approach to referrals is implemented. The Provider will need to control participation volumes, including the acceptance of referrals.”

“Referral is the process of identifying a client as a potential participant and providing appropriate information to the client and service Provider. The Provider will ensure that all participants attending the service are referred to them from a Work and Income Service Centre/Community Link through the SORT Tool. Once the Ministry has referred the client to the service, it is the Provider’s responsibility to ensure that all accepted clients remain on the service.”

“Provider identified referrals”

Providers may identify suitable Work and Income clients to participate in the Work to
Wellness service either through marketing and promotion, client self-referrals, relationships with general practitioners or other health support providers. The Provider is responsible for providing appropriate information to the client about the service. Where the client agrees to participate, the Provider will identify and refer the client through SORT (or a mutually agreed reporting process).”

[39] Given the just quoted information, it is quite clear, that there will be clients of Work and Income approached directly by WINZ front-line staff (possibly by promoting the service through information made available, offering referrals). From the above I conclude that WINZ staff will inform clients that meet certain criteria of the services Work to Wellness providers offer. That is besides of steps that providers may take separately, through promoting their service, perhaps through calling WINZ clients themselves (given access to phone contact details), through certain workshops or information events (possibly at WINZ Offices), through other activities like cooperation with general practitioners or other health support providers. In any case, it appears that clients will be approached, to participate and be referred, which clearly involves WINZ staff and Offices (checking criteria for access, possibly also facilitating meetings between interested clients with providers), as there is little likelihood of clients self-referring based on the little information they may have or usually look for. WINZ workers are at the coal face, and the logical de-facto recruiters for the provider, and the terminology chosen in that ‘Appendix 1’ to the agreement between MSD and a Provider seems to be ambiguous, rather confusing the reader, while it is somewhat clear, that clients will be approached.

[40] There is also mention of a “SORT Tool” being used for referrals and resulting enrolments, which will in all likelihood be a computerised system that will record data on clients, about them being approached, upon that referred and then enrolled. So with that in place, I find it hard to believe that MSD can claim that no information exists on clients being approached, when the interactions will be recorded after all. WINZ case managers always make notes of the little information they have with clients, and when they provide certain advice, this will be recorded into their existing SWIFTT or other systems. It must also be presumed that the Provider offering Work to Wellness services will record details about persons they contact and approach directly. It would seem highly unprofessional to not do so. I may re this also point to ‘Appendix 3 - Regular reporting by the Provider’ (page 49 in the PDF with the OIA response). Referrals will perhaps not necessarily represent all persons approached, but may at least give a good reflection of the number of persons that may have been approached.

[41] In my view the explanations given by MSD are not quite convincing, and the ground for their refusal to make available this information that I asked for under my request ‘4’ from 27 Sept. 2016 is unconvincing. Also am I not convinced of the comments that the participation of persons suffering mental health conditions like depression or stress in these trials is completely “voluntary”. Persons who were considered suitable for participation in MUES trials were described on page 1 under ‘Overview’ of the evaluation report ‘Effectiveness of Contracted Case Management Services on Off Benefit Outcomes’ (see page 64 of the PDF with the OIA response) with the following: “Clients receiving Jobseeker Support benefit with part-time or deferred work obligations and any depression or stress medical incapacity”.

[42] Section 88F of the Social Security Act 1964 does outline the “obligations on beneficiaries” receiving that benefit type. Section 88F(2) says: “The chief executive must after granting a person jobseeker support on the ground of sickness, injury, or disability, and may at any later time, determine whether the person has, while receiving that benefit, the capacity to seek, undertake, and be available for part-time work (as defined in section 3(1)).” From that I must conclude that the clients approached were considered fit for at least part time work, as otherwise MSD would appear to have acted outside of the statute law when allowing medically diagnosed unfit persons to participate in such trials. Section 88F(4) does state clearly that such clients have some work test obligations. Section 88F(7) provides for work test obligations of those who are sick, injured or disabled to be deferred, and section 88J provides further provisions for some other obligations to apply. Of much relevance are also obligations to prepare for work, such as under section 60Q(1A) and (2), which states that Jobseeker Support recipients who have work test deferrals do still have “a general obligation to take all steps that are reasonably practicable in his or her particular circumstances to prepare for employment and (in particular) an obligation to comply with any requirement under subsection (3).” As for sole parents, the ones approached by MSD for
SPES will all clearly have had an obligation to participate in either such trials or already existing programs, given that they were on Jobseeker Support with full time work obligations, no matter what MSD may comment to the wider public (see section 20E(a) of the Social Security Act 1964).

[43] With such contradictions about supposedly “voluntary” trial participation and claims that the asked for information does not exist, or is not available, I so far remain unconvinced by the comments by Ms Ruth Bound, Deputy Chief Executive, and I therefore ask you as Ombudsman to investigate this particular refusal by MSD as well, as I have again been presented contradicting comments, and statements that do not correspond with the law.

[44] Refusal 4. – under section 9(2)(f)(iv) O.I.A., as listed in your email:

It is with serious concern that I note that my request under point ‘12.’ In my letter from 27 Sept. 2016² for the release of the ‘Guide for Designated Doctors’, or any similar, replacement guide, has been refused under the new section 9(2)(f)(iv) O.I.A..

[45] In her response from 23 November 2016⁵ Ruth Bound, Deputy Chief Executive, gives the following explanation for MSD’s refusal to make this information available:

“The current status of the guide for designated doctors is currently being updated and a refreshed guide will be available once this has occurred. As such, this part of your request is refused under section 9(2)(f)(iv) of the Official Information Act as it is under active consideration. The release of this information is likely to prejudice the quality of information received and the wider public interest of effective government would not be served.”

[46] Well, I can inform you as Ombudsmen, that I was provided a copy of the Ministry’s former ‘Guide for Designated Doctors’ (effective Sept. 2010), together with an Official Information Act response, by former Chief Executive Mr Peter Hughes on 24 March 2011¹⁵ (upon my request from 29 Dec. 2010). I may refer you to the attached evidence and the bullet points at the bottom of page 7 in that letter. In a further O.I.A. request dated 01 October 2014 I did with request ‘11’ ask for information on the guidance given to ‘Designated Doctors’, and also asked where a copy of the ‘Guide for Designated Doctors’ could be found. This was after I had earlier been told, it could be found on the Work and Income website. In her response to me, dated 26 Feb. 2015¹⁴, Ms Debbie Power then responded that: “All guidance for medical practitioners on about the Medical Certificate is now provided online at: www.workandincome.govt.nz.”

[47] The information found on the WINZ website is very general and rather sparse in contents, and never answered the requests that I made earlier. The only other document ever found on the website has been an application form for Designated Doctors, hence there is no information available for public scrutiny, what a current ‘Guide for Designated Doctors’ does contain, and what detailed advice the Ministry gives to such professionals it works with, when examining sick and disabled clients, or applicants, which includes assessing their capacity to work.

[48] I must consider this to be a very serious lack of transparency, which is in my view not warranted and not fair and just in this time and age. There have been many anecdotal reports of cases where clients have felt unfairly treated, and where reports completed by ‘Designated Doctors’ appear to be inconsistent with a client’s medical records, including reports and advice. As already mentioned, I can add my own personal experience to theirs.

[49] Therefore one should expect that the Ministry would make available a copy of the present Guide, as it appears to now have been “under active consideration” for years, which is unacceptable. There must at some point in time be transparency offered for persons who wish to obtain more detailed insight into how ‘Designated Doctors’ are informed, advised and offered “guidance” by the Ministry, as otherwise serious questions will continue about the fairness, objectivity and reasonableness of Designated Doctors, when performing their work.

[50] Given the unavailability of a ‘Guide for Designated Doctors’, the present situation in regards to guidance and advice given by MSD to its Designated Doctors may somehow resemble a situation, where common citizens are expected to declare or even defend themselves, in front
of persons having decision making powers over them, while being denied access to relevant legal and other relevant information to inform themselves about how decisions may be formed. It may also resemble a situation, where persons facing examinations by law enforcement officers - or hearings by persons with jurisdictional powers, are being denied any access to information that would assist them to understand how decisions about them would be formed. This is in my view a denial of basic legal rights a person should have.

[51] It must also be considered that every day dozens if not hundreds of persons are expected to reveal sometimes very private, intimate details about their living and health situation, when applying for benefits or when having to meet various obligations they have as clients of Work and Income. At the same time I note that the Ministry now often sends email responses from its Online Service, which bear no names, at best they may only have a number at the bottom. Even the Official and Parliamentary Information team does not mention any names of the author of emails at the bottom of them; see again attachment 3 for an example.

[52] This represents a growing serious imbalance between the expected transparency, accountability and access to information that exists between the Ministry on one hand, and its clients on the other. Some persons may even think that it is perhaps not surprising that the relationship between staff and clients has over recent times worsened, because of such realities, which could create a great sense of injustice in many clients of WINZ and MSD.

[53] Therefore I ask for the investigation and intervention by the Office of Ombudsmen, to have clarified why an updated ‘Guide for Designated Doctors’ has not been made available for years now. I would expect that such a Guide is made available, and if the present one may not be the appropriate one to publish, as it may have passed its “use by date”, then MSD should be advised and expected to make a new Guide available within the foreseeable future, and offer a link to a copy via one of their websites. It is in my view simply unacceptable that such an important document, apparently still currently being used by ‘Designated Doctors’, is still under ongoing consideration or being reviewed by MSD. Hence I would expect that a more current version will be made available to the public in the very near future.

Report ‘Effectiveness of Contracted Case Management Services on Off Benefit Outcomes: Mid-Trial Report’:

[54] Regarding the remainder of the information that MSD provided upon my written request from 27 September 2016², I note that a report with the following title has been made available: ‘EFFECTIVENESS OF CONTRACTED CASE MANAGEMENT SERVICES ON OFF BENEFIT OUTCOMES: MID-TRIAL REPORT’. This is a report from mid 2015, as I understand it, and covers “outcomes” of the trials until 31 March 2015. Some of this kind of information appears to have already been made available before to the opposition spokesperson on Social Security, Carmel Sepuloni, MP, and to the ‘New Zealand Herald’ in September 2015: ‘Back-to-work programme labelled a fail’, see the online article via this hyperlink: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11514141

[55] The now released ‘Mid-Trial Report’ is of relatively little usefulness, given the limited types of evaluation information that were included and the limited reliability of the data gathered. The only real focus appears to have been to somehow measure time “off benefit”. Also is there only a comparison between newly outsourced, contracted services with existing services, which for MHES are at a lower intensity and participation level anyway. As MSD contracted providers for MHES in 2013, and started the trials from September 2013, we have now had more than three years pass since their commencement. One should have expected some more up to date information, but it appears it is not yet available. Also would I have expected information on the actual placement into jobs for varying duration, but this appears to not have been gathered. The question arises, whether it was accidental or intentional not to gather more detailed information about actual job placements and their duration.

[56] Therefore I am afraid, the information provided in that report does not respond to some of the questions I had raised re SPES and MHES in this and some earlier OIA requests, some of which are still due to be assessed and investigated by your Office of Ombudsmen.
Conclusion

[57] I will attach to this letter relevant correspondence and evidence for your assessment and review of this complaint matter, and I must refer you to the attachment list at the end of this letter. Those PDF file attachments will be sent with email(s) carrying this letter.

[58] In closing off with this letter, I would appreciate it if your Office could investigate the above stated issues I raised re MSD’s refusal of specified information that I had requested, and if you could make a recommendation to MSD that the so far withheld information will made available. For the case that MSD may in part or in full maintain its position to not make more information available, and where you may agree with their actions in doing so, I do at least seek some further clarifications and explanations for their reasons in doing so. Your respected considerations, decision and response in this important matter will be most appreciated. I do look forward to your response in due time.

Yours thankfully and sincerely

Xxxxxxx Xxxxxx

Attachments (PDF files to be sent by email only):

1). ‘Ombudsman, complaint, MSD, OIA rqst, info withheld, Des Drs, DDR Guide, X. Xxxxxx, 03.12.16’;
2). ‘MSD, C.E., O.I.A. request, Work to Wellness and MHES services, X. Xxxxxx, 27.09.16.pdf’;
3). ‘MSD, Official and Parliamentary Information team, preliminary OIA reply, email, 27.10.16.pdf’;
4). ‘MSD, C.E., O.I.A. request, Work to Wellness and MHES, X. Xxxxxx, follow up ltr, 31.10.16.pdf’;
5). ‘20161124 OIA Response XXXXXXX.pdf’ (last OIA response from MSD, signed by D.C.E. Ruth Bound, and with letter dated 23 Nov. 2016);
7). ‘High Court, Jud. Review, Xxxxxx SOC final xx.xx.11 (fd xx.xx.11) Copy [1], filed xx.xx.2011.pdf’; (see particularly paragraphs 25 to 38 or 39, and also paragraphs 40 to 51);
9). ‘MSD, Jud. Rev., Settlement, 1xxxxxx_Xxxxxx_Apology Letter, Dep. C.E., undated, rec’d by email, xx.0x.12.pdf’;
10). ‘MSD, W+l, ‘Ready, Steady, Crook’, C1 1515 Bratt-Hawker, presentation, 2010.pdf’ (one of a number of presentations by MSD’s Principal Health Advisor, Dr Bratt, likening benefit dependence to “drug dependence”, see also pages 13, 20, 21 and 35);
11). ‘NZMJ, G. Purdie, AFOEM, MSD use false info, Purdie-1874FINAL1425, 20.11.15.pdf’ (see publication on New Zealand Medical Journal, challenging the correctness and usefulness of data used in Dr Bratt’s presentations, e.g. on pages 22 and 23 in ‘Ready, Steady, Crook’);
12). ‘NZMJ, AFOEM reply to G. Purdie’s criticism of ‘evidence, Wyatt-2181-NZMJ-1430-FINAL.pdf’ (the AFOEM’s admission of incorrect information being used in Dr Bratt’s presentations);
13). ‘Xxxxxxx, Xxxxxxx - Final response dated 24 April 2014#2.pdf’ (OIA response by Deputy Chief Executive (D.C.E.), Debbie Power, dated 24 April 2014);