



14 December 2021

Tēnā koe

On 21 November 2021, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information in response to WPQ 49667 (2021):

- 1) *The full text/s of all correspondence, communication and information regarding Mr Brosnahan the Ministry of Social Development (MSD) received both prior to his employment and during his employment from people/organisations outside of MSD, regardless of whether such information was solicited or unsolicited.*
- 2) *All notes/records of information Mr Brosnahan's referees provided MSD.*
- 3) *All information the Department of Corrections or Rimutaka Prison provided MSD about Mr Brosnahan prior to or during his employment at MSD if any such information was provided by either organisation.*
- 4) *The full notes recorded of the phone call where a client raises concerns about Mr Brosnahan having access to her personal information referenced in this article: <https://www.stuff.co.nz/national/crime/300458120/ministry-of-social-development-admits-sexual-assault-complainant-called-and-told-them-newlyhired-staffer-was-under-police-probe>*
- 5) *Any notes, correspondence, communications or complaints about Mr Brosnahan the Ministry of Social Development received beyond that referenced in the above bullet point regardless of their source.*
- 6) *All and any information which documents the steps and actions the Ministry of Social Development took in response to information or concerns MSD received about Mr Dean Brosnahan (regardless of the source of the information and/or concerns) and the date and actions these steps and actions were taken.*
- 7) *A copy of any briefings or updates provided to the MSD Chief Executive Officer or anyone else in the senior leadership team about Mr Dean Brosnahan.*
- 8) *A summary of the work Mr Dean Brosnahan completed for MSD during his employment at MSD.*

The Ministry is providing you with as much information it considers is possible. Where the Ministry has decided to grant your request, it has done so by providing you with a summary of the relevant documents (section 16 of the Act refers). This has been done to ensure that the privacy and confidentiality interests in the information remain

protected, whilst also ensuring sufficient information is provided to address any transparency and accountability reasons favouring release of the information.

I explain this further below, and then respond to each of your questions in turn.

Privacy interests in the information requested

The Employment Relations Act 2000 requires the Ministry to deal with its staff in good faith. This duty is much wider than implied mutual obligations of trust and confidence (section 4 of the ERA refers). Accordingly, staff (past and present) can have a strong expectation of privacy in respect of information about their individual and collective employment matters and can expect that their employer will not disclose information which would unnecessarily infringe upon their privacy.

This is consistent with the one of the purposes of the Act which is to protect official information to the extent consistent with the public interest and the preservation of personal privacy (section 4(c) of the Act refers).

Much of the information you have requested, such as communications, notes and records, is personal information about Mr Brosnahan, and his employment relationship. There is clearly a privacy interest in this information, which if released, would infringe on his privacy, and section 9(2)(a) of the Act applies.

Information which is subject to an obligation of confidence

Some of the information you have requested relates to reference checks. The referees provided candid character information to the Ministry and expected that it would only be used to determine Mr Brosnahan's suitability for the role. The reference information is subject to an obligation of confidence.

Release of this information would be likely to prejudice the willingness of referees to contribute so candidly in the future, knowing that what they say would later be made public. It is in the public interest that the Ministry can receive honest and complete reference checks, to help make suitable appointments. Section 9(2)(ba)(i) of the Act therefore applies.

Some of the information you have requested relates to client concerns about unauthorised access to their information by Mr Brosnahan, and certain actions which he took. The clients would have expected the Ministry would not disclose this information in a way that was inconsistent with investigating their concerns. This information is subject to an obligation of confidence.

Release of this information would be likely to prejudice the willingness of clients to raise their concerns so freely in the future, knowing that what they say would later be made public by the Ministry. It is in the public interest that the Ministry can receive frank concerns from its clients, which enables the Ministry to take prompt action when serious matters are raised. Section 9(2)(ba)(i) of the Act therefore applies.

Public interest reasons in releasing the information

Notwithstanding the above, the Ministry recognises that there are some reasons why some of this information should be released.

There is a need to release information in the interests of transparency, where that information shows that proper employment practices were followed. Also, there is a need to release information in the interests of accountability, to show that when issues are brought to the Ministry's attention, appropriate and proportional action is taken.

The Ministry recognises the strength of these interests but does not consider that they outweigh the privacy and confidentiality interests in withholding the information in its entirety. Therefore, where necessary, the Ministry has provided you with a summary of the information you requested.

Response to your information request

Summary of information regarding employment practices

It is vital that all those employed, contracted or engaged by the Ministry are honest and trustworthy.

Following advertisement, shortlisting, and interview, the Ministry undertakes background checks for any prospective employee. This consists of referee checks with the applicant's nominated referees, an internal Ministry check, police vetting, validation of identification and for some roles, a children's worker check or a national security clearance.

The purpose of the background check is to confirm some key details about the applicant and explore any areas with referees to confirm key skills, experience and any potential areas of uncertainty that have arisen during the selection process.

Reference checking is one of the most important steps in the selection process and must be done for every preferred applicant or contractor before any contractual obligations are confirmed or offer made.

Referee checks include questions on whether the applicant has ever, to their knowledge, had a serious misconduct investigation, upheld or currently occurring, or has been dismissed from employment.

Reference checking is based on the consent of the applicant. If the applicant has not agreed to approaching a person, the Ministry cannot approach them for information.

Applicants are asked to provide the names and contact details of two referees, one of which should be a current or recent manager.

The Ministry undertakes further integrity checks. All applicants are asked to declare on their application form: any criminal convictions; any pending charges; any current complaint and or disciplinary action against them that is still active; and whether they are currently the subject of a complaint and or disciplinary review.

The Ministry's vetting team also undertake Police vetting, to ensure that applicants meet the Ministry and Public Service standards of integrity and honesty. Employment offers may be conditional, and dependent on the satisfactory completion of Police vetting.

Where Police vetting indicates issues, or is returned as 'incomplete', the result is first discussed with the applicant, who is invited to provide further information. This is to enable the manager to determine whether those matters may impact on the applicant's suitability for the position.

In Mr Brosnahan's case, I can confirm that the Ministry followed its usual practices, as explained above.

Mr Brosnahan did not disclose any information of concern in his application form. He nominated two referees, one of whom was a recent manager. Both reference checks were undertaken in January 2020. Each was favourable and revealed nothing of concern about Mr Brosnahan's suitability for employment.

The Ministry also submitted the Police vetting form in January 2020. That was returned as 'incomplete' in February 2020, during the first month of Mr Brosnahan's employment. The vetting did not mention any criminal charges. Police invited the Ministry to re-submit the vetting request in May 2020.

The vetting result was discussed with Mr Brosnahan who told the Ministry it was likely for unrelated charges that were laid against him in 2011 that were subsequently dropped. The Ministry asked him to provide further information.

Before the Ministry could re-submit the vetting application, it was informed of charges laid against Mr Brosnahan.

The Ministry took immediate action and at the start of June 2020 met with Mr Brosnahan to raise its concerns about him continuing as a Ministry employee. A formal Code of Conduct process was initiated.

Over a three-week period, two of the Ministry's attempts to meet with Mr Brosnahan were delayed by him. When the Ministry was able to meet with Mr Brosnahan, he resigned two days later, and before the Code of Conduct process could be concluded. Mr Brosnahan's employment with the Ministry ceased on 18 June 2020.

Summary of information regarding complaints by clients

A complaint can be made verbally, through the online complaint form on the Ministry's website, or in writing. Complaints can be lodged with contact centres, service centres, regional offices or national office.

The client should be updated as their complaint is progressed. Once all relevant information has been received, the person who has been assigned to resolve the complaint should contact the complainant to inform them of the outcome.

In Mr Brosnahan's case, I can confirm that the Ministry received two complaints about him.

The first complaint was made by a client in March 2020. They called a Ministry Contact Centre to say that they were concerned over potential unauthorised access to their personal information as they alleged, they had been assaulted by him.

This matter was immediately referred to the Ministry's integrity team, who in turn confirmed that Mr Brosnahan had not accessed the client's information. Regrettably, the Ministry did not update the client at that time.

The Ministry accepts that it should have communicated the outcome of its check to the client. The Ministry subsequently apologised for this omission and confirmed to the client that her records were not accessed.

The Ministry also recognises that the client's comment about assault had not been passed on for further follow-up. Had it been, then further advice would have been sought about raising that concern with Mr Brosnahan.

The Ministry's guidance on complaint handling makes clear that the complaint should be investigated fully. Training on complaint handling, and the Ministry's guidelines, is routinely provided to Contact Centre staff to help ensure a high level of service is provided, and that our clients feel as though their concerns are handled appropriately.

The second complaint was by a client who sent a series of communications in September 2020, January 2021 and June 2021, broadly concerning the Ministry's decision to employ Mr Brosnahan, and certain actions taken by Mr Brosnahan in his role with the Ministry. The Ministry responded to each of those communications.

Items (1), (4) and (5): information from outside organisations; the full notes of the phone call where a client raised concerns about unauthorised access to their information; and any other information received about Mr Brosnahan.

For the reasons explained above, I am refusing this aspect of your request under sections 9(2)(a) and 9(2)(ba)(i) of the Act but have provided you with a summary of this information to address any public interest reasons favouring release.

Item (2): information provided by Mr Brosnahan's referees.

For the reasons explained above, I am refusing this aspect of your request under section 9(2)(a) and 9(2)(ba)(i) of the Act but have provided you with a summary of this information to address any public interest reasons favouring release.

Item (3): information provided by the Department of Corrections or Rimutaka Prison.

Aside from the reference information summarised above, the Ministry did not receive any information from the Department of Corrections nor Rimutaka Prison about Mr Brosnahan. This aspect of your request is refused under section 18(e) of the Act as it does not exist.

Item (6): information about the Ministry's actions in response to concerns about Mr Brosnahan.

For the reasons explained above, I am refusing this aspect of your request under section 9(2)(a) of the Act but have provided you with a summary of this information to address any public interest reasons favouring release.

Item (7): briefings or updates provided to the Chief Executive or Senior Leadership team about Mr Brosnahan.

For the reasons explained above, I am refusing this aspect of your request under section 9(2)(a) of the Act but have provided you with a summary of this information to address any public interest reasons favouring release. I also wish to explain that no specific briefing was provided to the Chief Executive or Senior Leadership team about Mr Brosnahan, but on occasion they would have been made aware of this matter through the Ministry's responses to Written Parliamentary Questions and media enquiries.

Item (8): information about the work completed by Mr Brosnahan.

For the reasons explained above, I am refusing this aspect of your request under section 9(2)(a) of the Act but have included a copy of the position description for the role Mr Brosnahan was employed in to address any public interest reasons favouring release.

Publication and further contacts

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter available to the wider public shortly. The Ministry will do this by publishing this letter on the Ministry's website. Your personal details will be deleted and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

Bridget Saunders

Bridget Saunders
**Manager Issue Resolution
Service Delivery**