



8 December 2023

Tēnā koe

On 19 October 2023, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

1. *The number of Personal Grievances raised in your Ministry, in the last 3 years broken down by year , and categories (for example: Bullying, Unjustifiably disadvantaged, constructive dismissal etc)*
2. *(in the last 3 years) The number of Mediation that took place broken down by year*
3. *(in the last 3 years) The number of successful mediation broken down by year*
4. *(in the last 3 years) Of the PGs raised, how many went to Employment Relations Authority broken down by year?*
5. *(in the last 3 years) How many cases were found against the Ministry broken down by year?*
6. *(in the last 3 years) How much money – in total- were paid to settle these cases / or pay the fee required by ERA broken down by year?*
7. *How much money was covered by the Ministry's liability insurance?*
8. *(in the last 3 years) How much money – in total – were paid to external Legal consultants to defend the cases filed in ERA or to prepare the responses to the case broken down by year?*
9. *(in the last 3 years) How many ERA cases resulted in reinstatement of employee broken down by year?*
10. *If a case is found against the Ministry (the Ministry lost), what are the consequences to the Manager involved in the incident?*

On 20 November, we contacted you to advise that more time was required to make a decision on your request.

For clarity, I will answer each of your questions in turn.

1. *The number of Personal Grievances raised in your Ministry, in the last 3 years broken down by year , and categories (for example: Bullying, Unjustifiably disadvantaged, constructive dismissal etc*

Personal grievances are most often raised for either an unjustifiable dismissal or an unjustifiable disadvantage. Bullying may make up part of a grievance claim but it may not be recorded as such. Similarly, cases can start as one category and end as another after further investigation. This may not always be updated in the system.

Please find below **Table One** which contains the number of Personal Grievances from financial year 20/21 to financial year 22/23, broken down by category.

Count of Case Number	Financial Years			
PG Category	FY 2020/21	FY 2021/22	FY 2022/23	Grand Total
Disadvantage	1	2	4	7
Discrimination	0	7	1	8
Unjustified Dismissal	0	0	3	3
(blank)	1	0	1	2
Grand Total	2	9	9	20

2. *(in the last 3 years) The number of Mediation that took place broken down by year*
3. *(in the last 3 years) The number of successful mediation broken down by year*

The Ministry does not centrally record the number of mediations that are attended each year. It is common that personal grievances require a mediation and is also possible that more than one mediation could take place for one personal grievance.

A 'successful' mediation is dependent on the parties involved. Mediations are about finding common ground and resolving the employment relationship problem. Success can be subjective in the case of mediations.

Your request for all information is very broad, and substantial manual collation would be required to locate and prepare all documents within scope of your request. As such, I refuse your request under section 18(f) of the Act. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

4. *(in the last 3 years) How many cases were found against the Ministry broken down by year?*
5. *(in the last 3 years) How much money – in total- were paid to settle these cases / or pay the fee required by ERA broken down by year?*
6. *How much money was covered by the Ministry's liability insurance?*

Please find below **Table Two** which contains the number of Personal Grievances that went to the Employment Relations Authority (ERA), from 1 July 2020 to 30 June 2023, broken down by financial year.

Financial Year	Number of Personal Grievances that went to the ERA
FY2020/2021	0
FY2021/2022	0
FY2022/2023	4

The four (4) cases noted above are currently before the Employment Relations Authority and are yet to be heard. Due to this, there are no cases in the last three financial years that were found against the Ministry.

As no cases have been found against the Ministry, there has been no money paid to settle nor fees to be paid. No money was covered by the Ministry's liability insurance as none was required to be paid. Regardless, it is unlikely that the Ministry would draw on its liability insurance to settle these claims.

7. *(in the last 3 years) How much money – in total – were paid to external Legal consultants to defend the cases filed in ERA or to prepare the responses to the case broken down by year?*

This information is not readily available for the Ministry, and substantial manual collation would be requested to find this information. As such, your request is refused under section 18(f) of the Act. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

8. *(in the last 3 years) How many ERA cases resulted in reinstatement of employee broken down by year?*

There were no ERA cases that resulted in a reinstatement of an employee over the last three years.

11. *If a case is found against the Ministry (the Ministry lost), what are the consequences to the Manager involved in the incident?*

The Ministry take its obligations as an employer to provide a safe and healthy work environment very seriously. As such, the Ministry does not tolerate bullying, sexual harassment or assault. All Ministry staff, including managers, are required to read and sign the Code of Conduct.

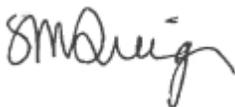
If any performance conversations or employment action was needed, the Ministry would deal with this using its policies and guidelines. Please find attached **Appendix One** which contains a copy of the disciplinary action guidance.

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

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

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



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Magnus O'Neill
General Manager
Ministerial and Executive Services

Disciplinary Action

This page outlines information about the various types of warnings in relation to unresolved performance issues, misconduct or serious misconduct.

Definition

Disciplinary action is a process that is used where there are concerns over an employee's performance or conduct and action needs to be taken. Refer to the [Managing Performance Policy](http://doogole/resources/helping-staff/policies-standards/hr/managing-performance.html) [http://doogole/resources/helping-staff/policies-standards/hr/managing-performance.html] for guidelines on the initial stage of managing performance issues.

The Process

The process provides a clear "rationale" for decisions on disciplinary action taken by the Ministry.

The process consists of a number of steps, and may result in a written warning, transfer to alternative duties or dismissal.

The steps are:

Verbal Warning.

Written Warning.

Final Written Warning.

Cases of serious misconduct will generally follow a different process, and a separate checklist is provided to guide managers.

The guidelines and checklists in the following sections are intended to illustrate processes that will ensure all contractual and legal obligations are met. They are guidelines only, and actual processes applied by managers will need to take into account the particular circumstances of each case.

The "principles" section sets out those matters that must be addressed as a minimum in any disciplinary process, and should guide managers throughout the process.

Mental Health Condition:

It is important that where a mental health condition may be a factor, managers read the Ministry's guidance on managing performance issues which may result from the mental health condition.

Prior to any action being taken, such as talking to, meeting with or writing to an employee, managers must seek advice from the HR Consultancy team.

[Mental Health Guidelines](http://doogole/documents/resources/helping-staff/forms-templates/hr/mental-health-guidance-gmhr.pdf) (PDF 331.84KB) [http://doogole/documents/resources/helping-staff/forms-templates/hr/mental-health-guidance-gmhr.pdf]

Verbal Warnings

Frequently, this is the first stage of disciplinary action. A verbal warning will be issued for relatively minor breaches of standards or for a first incident of misconduct. Before issuing a formal verbal warning the immediate manager must first consult with their own manager. Wherever possible the record of the verbal warning is to be signed by the employee concerned as an accurate record of the event.

Written Warnings

Written warnings may be issued:

After a verbal warning where there has been no significant improvement in performance or there is a further incident of misconduct.

Without a previous verbal warning where an incident is more serious.

As a final written warning where any further incident of misconduct or continuing non-performance will result in the employee's dismissal.

As a final written warning in cases of serious misconduct where there are special mitigating circumstances that do not warrant dismissal.

Before issuing a written warning the immediate manager must first consult with their own manager.

Before issuing a final written warning the immediate manager must first consult with their own manager and an HR Consultant.

Review of Warnings

The duration of warnings will vary, but will not normally be more than 12 months. All warnings must contain an expiry date. Once a warning has expired it is to be removed from the employee's file. The only exception to this is where a further warning has been issued during the period when the previous warning was in effect.

Applying Disciplinary Action

The need to take disciplinary action and the type of action that is appropriate depends on the type and nature of the employee's behaviour or action.

Disciplinary action may arise as a result of:

- Poor performance.
- Misconduct.
- Serious misconduct.

Formal Process - Performance Matters

Continued performance concerns must be addressed through the formal warning process. Performance problems will generally be dealt with informally at first, refer to the Managing Performance policy.

This process is similar to that for general misconduct, the difference being that the employee's performance will be reviewed regularly during the warning period and again at its expiry to determine the next appropriate action.

If, after a reasonable period of time during which appropriate monitoring and discussion have taken place (refer also to the [Managing Performance policy \[http://doogie/resources/helping-staff/policies-standards/hr/managing-performance.html\]](http://doogie/resources/helping-staff/policies-standards/hr/managing-performance.html).) the employee's performance continues to fall short of the standards expected, dismissal is the likely outcome.

Misconduct

Misconduct covers the situation where an employee does not meet the standards of behaviour, performance or conduct required of an employee (refer to the [Ministry's Code of Conduct \[http://doogie/documents/resources/helping-staff/policies-standards/hr/msd-coc-2021-sept-final.pdf\]](http://doogie/documents/resources/helping-staff/policies-standards/hr/msd-coc-2021-sept-final.pdf).) and where this would not warrant dismissal. The process needs to focus on identifying the problem with the employee, providing a solution to avoid further instances and issuing a warning so the employee is aware that further or continued instances of misconduct may result in dismissal.

A warning will be of limited duration (usually 12 months) and will be removed from the employee's personal file on expiry. Misconduct may result in a verbal or written warning. A failure to improve or continued actions of misconduct may lead eventually to dismissal.

Actions which are usually treated as misconduct include:

- Unauthorised absence from the workplace.
- Failure to follow a lawful and reasonable instruction.
- Failure to perform work to the required standard.
- Lateness and/or absenteeism.
- Abuse of sick leave.
- Failure to notify the manager of absence due to sickness or emergency.
- Improper or unauthorised use of the Ministry's equipment or other property.
- Use of obscene or abusive language.

Note:the above list is not exhaustive and other actions may constitute misconduct.

Serious Misconduct

Serious misconduct has been described as behaviour that strikes at the heart of the employment relationship, and which destroys the Ministry's trust and confidence in the employee.

It is conduct that the Ministry cannot and will not condone.

Serious misconduct may result in suspension on pay (during an investigation), followed by dismissal.

If, after an appropriate investigation by the Ministry it is established that an employee is guilty of serious misconduct, possible outcomes include:

- A warning (only if extenuating circumstances exist).
- Dismissal (dismissal with or without notice).

Actions which are treated as serious misconduct include:

- Fraud.
- Impaired by unlawful drugs or alcohol at work or while driving a Ministry vehicle.
- Unauthorised removal or possession of the Ministry's property.
- Theft or other forms of dishonesty.
- Conduct or behaviour that results in, or may have resulted in, personal injury to others.
- Failure to comply with a lawful and reasonable instruction.

Sexual or other forms of serious harassment.
Assault/threatening or intimidating behaviour in the workplace or in the course of carrying out Ministry duties.
Deliberately falsifying or destroying Ministry information or documentation.
Acts of willful negligence or gross incompetence.
Conduct that brings the Ministry into disrepute.
Inappropriate accessing of client records.
Breaching Ministry or client confidentiality.

Note: the above lists are not exhaustive and other actions may constitute serious misconduct.

Serious Misconduct – paid leave of absence leading to suspension on pay

An employee may be placed on paid leave of absence (and advised that they will be suspended on full pay after a period of 24 hours) in cases of alleged serious misconduct while a full investigation is undertaken, and/or where the presence of the employee in the workplace could compromise the investigation or pose a risk to the Ministry.

The period of paid leave of absence and reason for considering suspension will be stipulated to give the employee an opportunity to seek legal advice and to have an opportunity to respond to the manager (with delegated authority) as to whether they believe the suspension on full pay is justified.

Following the response from the employee (or failing a response from the employee) within the stipulated time, the manager (with delegated authority) will consider any explanation and then may proceed to suspend the employee (if justified) pending the outcome of an investigation. If it is considered justified, such suspension may be on full pay.

The decision to place an employee on special leave on pay will be made on a case by case basis and the manager (with delegated authority) must consult the required parties prior to taking this step.

Delegations

Authority to place an employee on leave on pay (pending suspension), to suspend an employee or to dismiss an employee rests with:

Service Delivery:

In Regions – Regional Commissioner after consultation with Human Resources and the National Commissioner W&I.

Note: National Commissioner W&I must be notified to enable discussion prior to making a decision.

Only in National Office – National Commissioner W&I or Director after consultation with Human Resources.

Note: Deputy Chief Executive Work and Income must be notified to enable discussion prior to making a decision.

Other areas:

General Manager after consultation with Human Resources.

Disciplinary Action Principles

The following is a summary of the principles that apply when dealing with any disciplinary issue.

These principles are based on the Ministry's Collective Employment Agreements.

The employee is to be advised of their right to representation and/or support person of their choice.

The employee is to be informed of the issue in question and be given a reasonable opportunity to provide an explanation.

An appropriate investigation will be undertaken before any substantive action is taken.

Any corrective action required together with a reasonable period of time to improve performance or change the conduct will be advised.

Where this is a performance issue, consideration should be given to appropriate alternative work, coaching, additional training, and counselling.

Any disciplinary action is to be recorded in writing, signed by the employee and placed on their personal file. If the employee refuses to sign the record, this refusal should be noted by the manager on the record, dated and filed.

A written warning will specify the duration of the warning and will be removed from the employee's personal file on its expiry date.

In cases of alleged serious misconduct the employee may be placed on special absence on pay (to give them an opportunity to seek advice and to respond to the advice that suspension on full pay is being considered pending the outcome of an investigation) and then suspended on pay while an investigation is undertaken. (Refer to Serious Misconduct - paid leave of absence leading to suspension on pay).

Preliminary Review

When an issue of possible misconduct is brought to a manager's attention, the manager may need to make initial enquiries to establish that there is/may be some substance to the issue.

Once this has been done the manager will decide whether the issue requires further investigation.

Where appropriate (e.g. a minor matter that is unlikely to recur) it may be that the matter can be resolved informally before it becomes a disciplinary matter.

If a manager is in doubt of the correct procedure they must contact a HR Consultant before proceeding with a disciplinary situation.

Investigation

A full and fair investigation of the situation must be carried out to determine the facts and circumstances associated with the disciplinary matter.

At all stages of an investigation a manager should keep written records that will be used to reach a decision if this is necessary at some later stage. The records should also be kept in case the process is later challenged.

An employment relationship is based on trust and confidence and there is a duty on a manager carrying out the disciplinary investigation, to do so in a fair and reasonable manner and in good faith to consider both sides of the issue.

During the investigation there should be ongoing consideration as to whether there is sufficient evidence for the investigation to continue.

Information and evidence collected should be provided to the employee. Some people providing evidence may wish to keep their identity secret. Managers should contact their HR Consultant where this is the case.

A manager should conduct the investigation and interview the employee as early as possible.

A manager should provide the employee with a real opportunity to explain their point of view.

A manager should not allow bias (e.g. personal likes or dislikes, relationships, or personality issues) to affect the investigation.

A manager should consider the problem from the employee's perspective and determine the extent of the problem and possible causes of it.

A manager should use only information that is relevant to the case.

A manager should keep an open mind until all facts are known and base decisions on fact alone.

Employee Interview

An employee should be given reasonable advance notice of an interview. However, in cases of a serious nature there may be a need to take quick action e.g. where there is a security risk.

In all cases the employee should be told in advance why they are being interviewed and what the interview will be about as well as being advised of the allegations/information the Ministry has, and the potential outcome of the meeting/investigation.

This information must be conveyed to the employee verbally and should also be conveyed in writing as well.

The manager must remind the employee of their right to representation and all reasonable attempts must be made to ensure that the employee has the opportunity to have their representative present. Managers should also have support present.

Managers must keep a detailed record of the meeting. If any agreement is reached, or any admissions/concessions made it is important that these are recorded for later reference.

In the meeting, the manager must clearly state the allegation and the Ministry's position on it. The employee must be given every opportunity to respond and put their case forward.

The employee's explanation must be properly considered before a decision is made. This may require an adjournment to follow up on information arising, and reconvening the meeting later.

Possible courses of action, suggestions and alternatives may be discussed.

Where an employee feels that they have been aggrieved by the actions of the Ministry, they are to be advised of their right to raise a personal grievance.

In all cases where the Ministry terminates employment the formal letter to the employee must outline the reasons for the dismissal.

Disciplinary Action Procedure

This procedure outlines the steps a manager can follow where a staff member has a performance issue that has not been resolved through the normal process for managing performance, or if there is an issue of alleged misconduct or serious misconduct.

The [procedure contains links \[http://doogole/resources/helping-staff/procedures-manuals/hr/formal-disciplinary-procedure.html\]](http://doogole/resources/helping-staff/procedures-manuals/hr/formal-disciplinary-procedure.html) to checklists that can assist managers with the disciplinary action process.

HR Consultants

If a manager is in doubt about any of the steps or issues, an [HR Consultant \http://doogole/business-groups/organisational-

[solutions/who-we-are/human-resources/index.html](#)] should be contacted.

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