



13 June 2024

Tēnā koe

Official Information Act request

Thank you for your letter dated 13 May 2024, requesting information about the Benefits Review Committee (BRC) process and Official Information Act 1982 requests.

I have considered your request under the Official Information Act 1982 (the Act). For the sake of clarity, we will answer each of your questions in turn.

1. Who in MSD is responsible for the internal review?

Information about the Internal Review is publicly available on the Ministry's website. For ease of reference, I have copied the information relevant to your question, below, given your request that website links not be included:

Stage 1 – Internal review

This is an administrative process only. When the applicant applies for a Review of Decision, it is appropriate for the Ministry to take another look at the original decision before the case goes to the Benefits Review Committee.

The original decision should be revisited. Consider the following:

- *relevant legislation and policy*
- *the information presented at the time*
- *any new information to hand*
- *reasons for the original decision*
- *the reason the applicant is not happy with the decision and any points raised by them or the client representative*
- *any other appropriate means of assistance available to the applicant*

The original decision maker completes an Internal Review template available in HIYA¹ and makes a recommendation.

¹ HIYA or Here Is Your Answer is the Ministry's system which stores the Review of Decision application.

The Internal Review is forwarded to the manager who will make a decision on the internal review.

The manager will decide to either:

- *uphold the decision*
- *uphold the decision in part or*
- *overturn the decision.*

Note: *HIYA should be updated with the outcome of the internal review. The applicant must be advised by letter of the decision made. All letters are available in HIYA.*

Please let me know if you would like me to provide you with the link to the relevant page on the Ministry's website where this information is publicly available.

2. How long does an internal review take?

We do not have centrally recorded statistics relating to the time taken at different stages of the BRC process. We would therefore have to manually go through individual Review of Decision (ROD) records in order to answer this question.

Regarding parts two and three of your request, for the Ministry to provide you with this information, personnel would need to be diverted from their core duties and allocate extra time to complete this task. The diversion of these resources would impair the Ministry's ability to continue standard operations and would be an inefficient use of the Ministry's resources. As such, your request is refused under section 18(f) of the Act, requires substantial collusion. 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 requests 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.

However, I can advise that the Ministry's National Standard requires an Internal Review to be completed within five working days. Depending on the complexity of the case and demands at the site completing it, some Internal Reviews may take longer.

3. How often does MSD have a backlog of internal review exceeding 3 weeks?

We do not have centrally recorded statistics relating to the number of times that the Ministry has a backlog of internal reviews. However, I can advise that as at 30 April 2024, the Ministry had 288 ROD cases (excluding cases that were before the Courts) which were awaiting completion of the Internal Review process.

4. Who in MSD selects the Ministry 2 reps for a BRC?

Most Work and Income regions and units have a pool of staff who are available to be Ministry representatives on a BRC Panel. It is the responsibility of the BRC Co-ordinator of a Region or Unit to select the Ministry representatives in a BRC Panel, for any Hearing in that Region.

5. *Who in MSD selects the Community Rep for a BRC hearing?*

It is the responsibility of the BRC Co-ordinator of a Region or Unit to select the Community representative for a BRC Panel.

However, the position of Community representative to the BRC is a Ministerial appointment made at the discretion of the Minister for Social Development and Employment. This means that the Minister decides who can act as a Community representative and for what period of time. The Minister has decided that from November 2015, Community representatives are appointed for a fixed term of five years.

6. *Would the person hearing be aware of there MSD and Legal responsibility?*
7. *Would all/any MSD employee's involved in the BRC process be aware of the requirements as set out in there guideline packs?*

We have interpreted question six as relating to the BRC Panel and the question is whether the Panel members are aware of their responsibilities as a panel member. I advise that there is nothing to indicate that panel members and Ministry staff involved in the BRC process are not aware of their responsibilities, and each panel member is provided with the Benefits Review Committee – Panel Members Information Pack.

8. *How long before a BRC hearing does MSD allow the 2 reps time of notice to prepare*
9. *How long before a BRC hearing does MSD allow the application/applicant notice? of hearing date?*

In the normal course, the process allows for a period of ten working days after the report to the BRC has been issued to both the client and the panel members to prepare for the BRC Hearing. This can be dependent on the availability of all those involved.

10. *If a valid claim that correct process had not been adhered to with positive evidence by way of a complaint how long would it take MSD to respond*

Please refer to my letter to you of 16 May 2024, which answers this question.

11. *How long Before a MSD hearing should be allow to the applicant for notice of date and the case for the Ministry of Social Development? (Service)*

Please refer to the responses to questions eight and nine, above.

12. *Does MSD make sure that all those involved are aware of their obligations as set out in all the MSD available manual relating to their position and obligation concerning the position they hold in the due process of a BRC hearing and application?*

Please refer to the responses to questions six and seven, above.

13. *MSD would not allow someone purporting to be someone that's not to attend a BRC would they?*

A BRC hearing would be attended by the BRC Panel members, the Ministry presenter and the client. The client could also be accompanied by a support person, advocate, or a lawyer. In some cases, the Ministry presenter may also have a Ministry's lawyer present.

14. What does a MSD date stamp mean?

A date stamp of the Ministry on any document is indicative of the date the document was received by the Ministry site where the date stamp was affixed.

15. Does a date stamp represent the date of presentation to MSD?

Please see my answer to question 14, above.

16. The only people able to access a MSD data stamp are MSD is that correct?

Only Ministry staff have legal access to a Ministry date stamp.

17. When MSD receive an OIA request does MSD Ministerial Services acknowledge receipt of the OIA?

Yes.

18. When MSD receive an OIA request how long does MSD have to respond?

Under section 15 of the Act, the Ministry must communicate our decision to a requester as soon as reasonably practicable and no later than 20 working days after the day on which the request was received, unless a valid extension to the timeframe is made.

19. If MSD are not able to meeting the timeframe obligations for OIA does MSD have the decency to notify the applicant requesting the OIA?

In some situations, the Ministry might extend the timeframe for responding to a request under the Act. There are only limited reasons for a valid extension to the timeframe, which are set out in section 15A of the Act.

Where the Ministry decides to extend the timeframe for responding to a request, my staff will advise the requester of the reason for the extension and provide the extended due date.

In the event I am not able to respond to an official information request within the timeframe required under the Act, my staff will contact the requester to let them know and apologise for the delay.

20. MSD wouldn't be ignorant to the MSD code of compliance would they?

In their interactions with clients, staff members are expected to observe the Code of Conduct, which requires them to treat others fairly, be responsible, avoid conflicts of interest, behave politically neutral, and keep information confidential.

All Ministry staff are required to read and sign the Code of Conduct.

21. *If the internal review process for a ROD application was delayed timeframe wise would MSD do the decent thing and keep the applicant informed.*

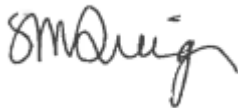
The Ministry acknowledges that best practice is to keep applicants informed on how their ROD is progressing.

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

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 my decision on your request, 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

pp. 

Magnus O'Neill
General Manager
Ministerial and Executive Services