

18 February 2020

H Rogers
fyi-request-12071-195f56ce@requests.fyi.org.nz

Dear H Rogers

Official Information Act 1982 request: Ex-Gratia Payments made for wrongful convictions

I refer to your FYI request of 22 January 2020 requesting the following information under the Official Information Act 1982 (the Act):

Please can you provide me with a list of all ex-gratia payments, the case name and the date of conviction(s) quashed and a brief summary of the facts made by Parliament to people who were found to be wrongly imprisoned.

I ask for this information to cover the period between 1/1/1970 and 22/1/2020.

I have interpreted your request as seeking, for all compensation payments in respect of wrongful conviction and imprisonment between 1/1/1970 and 22/1/2020:

- (a) the name of the claimant(s);
- (b) the nature of their conviction(s);
- (c) a brief summary of facts (including the date their conviction was quashed); and
- (d) the amount of compensation paid.

My response to your request is set out below. However, I consider it would first be useful to provide you with some background information about the compensation process.

Compensation for wrongful conviction and imprisonment in New Zealand

The position in New Zealand is that there is no legal right to compensation for wrongful conviction and imprisonment. Compensation may, however, be paid at the government's discretion on an ex gratia basis. Consideration of applications is done according to the guidelines adopted by Cabinet for that purpose ("Cabinet Guidelines").

Cabinet Guidelines

The Cabinet Guidelines effectively comprise the three following Cabinet decisions:

- In 1998, Cabinet adopted the *Cabinet Criteria for Compensation and Ex Gratia Payments for Persons Wrongly Convicted and Imprisoned in Criminal Cases*;
- In July 2000, Cabinet adopted the *Additional Guidelines on Quantum of Future Compensation*, which set out the steps for assessing an appropriate amount of compensation for successful applicants;

- In 2001, Cabinet agreed to change the standard of proof from innocence beyond reasonable doubt to innocence on the balance of probabilities, and to broaden the eligibility criteria to include individuals convicted by way of court martial.

Information about compensation for wrongful conviction and imprisonment and a copy of the Cabinet Guidelines is available on the Ministry's website:

<https://www.justice.govt.nz/assets/Documents/Publications/miscarriage-of-justice-compensation-for-wrongful-conviction-and-imprisonment-backgrounder.pdf>

Eligibility criteria

Under the Cabinet Guidelines, the category of applicants who are eligible for compensation is limited to those who have had their convictions quashed on appeal without order of retrial, or who have received a free pardon. To qualify for compensation, eligible applicants must establish their innocence on the balance of probabilities.

When it adopted the Cabinet Guidelines, Cabinet also reserved its discretion to consider applications falling outside the Cabinet Guidelines where there are "extraordinary circumstances" and it is in the interests of justice to do so. Applications which fall outside the Cabinet Guidelines are those where the claimant's appeal results in an order for retrial, but the trial does not go ahead or results in an acquittal. Many wrongful conviction claims fall into this category.

Compensation payments made for wrongful conviction and imprisonment

Since the Cabinet Guidelines were first adopted in December 1998, seven applications for compensation have been granted. Of those applications, five fell under the Cabinet Guidelines, because the relevant convictions were quashed without order for retrial. Two were outside Cabinet Guidelines (because when the relevant convictions were quashed, a retrial was ordered) and were considered in accordance with Cabinet's residual discretion.

This number does not include David Dougherty, whose application was not assessed under the Cabinet Guidelines, but under interim criteria adopted in 1997 for that purpose.

Information about these applications (including David Dougherty's) is set out in the table enclosed.

Some information has been withheld under s 18(c)(ii) of the Act on the basis that the information is subject to a suppression order.

For completeness, I note that prior to the adoption of the Cabinet Guidelines, compensation payments were extremely rare and there was no established scheme or guidelines governing such payments. The only compensation payment for wrongful conviction and imprisonment between January 1970 and December 1998 was made to Arthur Allan Thomas.

In December 1978, Mr Thomas was granted a full pardon by the Governor-General in respect of his convictions for the murders of Jeanette and Harvey Crewe, after spending nine years in prison. A Royal Commission of Inquiry was established to examine and report on the Police investigation and Mr Thomas' subsequent prosecution. At the recommendation of the Commission, the government paid Mr Thomas a total of \$1,087,450.35.

General matters

You have the right, under s 28(3) of the Act, to ask the Ombudsman to investigate and review my decision to withhold information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeff Orr', written over a circular stamp or mark.

Jeff Orr
Chief Legal Counsel
Office of Legal Counsel

INTERIM CRITERIA				
YEAR	CLAIMANT	CONVICTIONS	SUMMARY	PAYMENT
2001	David Dougherty	Abduction and sexual violation	<p>David Dougherty was convicted of abduction and sexual violation.</p> <p>In August 1996, the Court of Appeal quashed Mr Dougherty's convictions and ordered a retrial.</p> <p>In April 1997, following a retrial in the High Court, Mr Dougherty was acquitted.</p> <p>Mr Dougherty spent three years in prison.</p> <p>In July 2001, Cabinet agreed to pay Mr Dougherty compensation of \$868,728.</p>	\$868,728

INSIDE GUIDELINES				
YEAR	CLAIMANT	CONVICTIONS	SUMMARY	PAYMENT
2000	M (name suppressed)	Sexual offences against a child	<p>M was convicted of sexual offending against a child in 1995.</p> <p>In October 1996, the Court of Appeal quashed M's convictions without ordering a retrial.</p> <p>M spent 14 months in prison.</p> <p>In July 2000, Cabinet agreed to pay M compensation of \$570,696.</p>	\$570,696
2005	F (name suppressed)	Threatening to kill	<p>F was convicted of threatening to kill by a court martial in 1997.</p> <p>In November 1997, the Courts Martial Appeal Court quashed F's convictions and did not order a retrial.</p> <p>F spent one month in prison.</p> <p>In July 2005, Cabinet agreed to pay F compensation of \$144,221.</p>	\$144,221

2006	Lucy Akatere, McCushla Fuataha, Tania Vini	Aggravated robbery	<p>The three claimants were convicted of the aggravated robbery of a young person in 1999.</p> <p>In October 2001, the Court of Appeal quashed the three claimants' convictions without the order of a retrial.</p> <p>The three claimants spent 7 months in prison.</p> <p>In March 2003, Cabinet agreed to pay the three claimants a total of \$504,782 compensation between them. The offer was accepted in October 2006.</p>	\$504,782 between the three claimants
2016	Teina Pora	Murder, sexual violation, aggravated burglary	<p>Teina Pora was convicted in 1994, and again in 2000, on charges of murder, sexual violation and aggravated burglary.</p> <p>In March 2015, the Privy Council quashed his convictions and did not order a retrial.</p> <p>Mr Pora spent 21 years in prison.</p> <p>In June 2016, Cabinet agreed to pay Mr Pora compensation of \$2,520,949.</p> <p>That amount was subsequently increased to \$3,509,048 in November 2017 to account for inflation following the decision <i>Pora v The Attorney-General</i> [2017] NZHC 2081 [28 August 2017].</p>	\$2,520,949 and subsequent inflation adjustment of \$988,099
2018	Tyson Redman	Wounding and injuring	<p>Tyson Redman was convicted in 2007, on charges of wounding and injuring.</p> <p>In December 2013, the Court of Appeal quashed these convictions and did not order a retrial.</p> <p>He spent two and a half years in prison.</p> <p>In March 2018, Cabinet agreed to pay Mr Redman compensation of \$551,017.</p>	\$551,017

OUTSIDE GUIDELINES				
YEAR	CLAIMANT	CONVICTIONS	SUMMARY	PAYMENT
2011	Philip Johnston Jaden Knight	Arson	<p>Philip Johnston and Jaden Knight were convicted of arson in 2004. In June 2005, the Court of Appeal quashed their convictions and ordered a retrial.</p> <p>Mr Johnston was retried and found not guilty in August 2006. Mr Knight's retrial did not go ahead and he was discharged in February 2007.</p> <p>They spent nine and a half months in prison.</p> <p>In April 2011, following Ministry of Justice advice, Cabinet agreed to pay Mr Knight \$221,936 and Mr Johnston \$146,011.</p>	<p>Johnston - \$146,011 Knight - \$221,936</p>
2011	Aaron Farmer	Sexual violation	<p>Aaron Farmer was convicted of sexual violation in 2005. In June 2007 the Court of Appeal quashed Mr Farmer's conviction and ordered a retrial. The retrial never went ahead, and Mr Farmer was discharged in April 2008.</p> <p>Mr Farmer spent 2 years and 3 months in prison.</p> <p>In May 2011, Cabinet agreed to pay Mr Farmer compensation of \$351,575.</p>	\$351,575