



Health and Disability Commissioner
Te Toihau Hauora, Hauūtanga

3 February 2022

Gloria Ashton

By email: fyi-request-17969-c6388dac@requests.fyi.org.nz

Tēnā koe Ms Ashton

Re: Information Request
Our ref: E21HDC02364/XX

Thank you for your FYI request of 16 December 2021 requesting the following information about closed file reviews (CFRs):

1. Between 2010 and 2020, how many closed file reviews were undertaken at the HDC?
2. Of these closed file reviews, how many were reviewed by the legal team, and how many were reviewed by a decision-maker (i.e. commissioner or deputy commissioner) who was not involved in the original review and decision.
3. How many complainants requested a closed file review during these years?
4. How many complainants during these years expressed that they were not satisfied with the HDC's decision on their complaint and/or that they wanted more information gathered, further investigation, a formal investigation, re-opening of their complaint, or another form of further action to be taken
5. Of the closed file reviews undertaken, how many resulted in a complaint being re-opened for further information to be obtained, and how many resulted in a different decision being made on that complaint (e.g. no further action decision then changed to formal investigation)?
6. How does the HDC decide whether or not it is appropriate to refer a complaint to the Medical Council?
7. How many times between 2010-2020 did the HDC close a complaint with no action or no further action decision and refer the complaint to the Medical Council?
8. Is it possible for the HDC to refer only part of a complaint to the Medical Council?
9. How does the HDC ensure that it is clear that only part of a complaint, not the whole of a complaint, is being referred when a referral is made to the Medical Council (or to another regulatory/registration authority such as nursing council, dental council etc)?

I have considered your request under the Official Information Act 1982 (the Act). Please see the answers to your questions below.

- 1) *Between 2010 and 2020, how many closed file reviews were undertaken at the HDC?*

We do not have any information centrally stored for this question from between the years 2010 and 2019. As such, your request for this information is refused under section 18(f) of the Act. However, you may find it useful to know that we started

collating this information in 2020. From January 2020 to February 2022, we have undertaken 316 CFRs.

2) *Of these closed file reviews,*

a. *how many were reviewed by the legal team, and*

The legal team can have a varied amount of input into closed file reviews, from answering discrete legal questions to undertaking a thorough review of the whole file. There have been 137 requests for legal assistance on closed file reviews since July 2018. HDC have only been centrally storing this information since July 2018, and as such this is the earliest date from which we are able to provide data. A request for information from before July 2018 would be refused under section 18(f) of the Act, as substantial manual collation would be required to check each individual complaint for legal involvement in a CFR.

b. *how many were reviewed by a decision-maker (i.e. commissioner or deputy commissioner) who was not involved in the original review and decision*

We do not have this information centrally stored. As such, your request for this information is refused in full under section 18(f) of the Act.

3) *How many complainants requested a closed file review during these years?*

We do not keep track of this information separately to the number of closed file reviews that we undertake. As such, your request for this information is refused in full under section 18(f) of the Act.

4) *How many complainants during these years expressed that they were not satisfied with the HDC's decision on their complaint and/or that they wanted more information gathered, further investigation, a formal investigation, re-opening of their complaint, or another form of further action to be taken*

We do not have this information centrally stored. As such, your request for this information is refused in full under section 18(f) of the Act.

5) *Of the closed file reviews undertaken,*

a. *how many resulted in a complaint being re-opened for further information to be obtained, and*

We do not have this information centrally stored. As such, your request for this information is refused in full under section 18(f) of the Act.

b. *how many resulted in a different decision being made on that complaint (e.g. no further action decision then changed to formal investigation)?*

We do not have this information centrally stored. As such, your request for this information is refused in full under section 18(f) of the Act.

6) *How does the HDC decide whether or not it is appropriate to refer a complaint to the Medical Council?*

This would be dependent on many factors. The main considerations are the tests in sections 34(1)(a) and 59(4) of the Health and Disability Commissioner Act. These tests consider whether the appropriateness of a health practitioner's conduct or fitness to practice may be in doubt, or whether action is desirable in the public interest respectively.

7) *How many times between 2010-2020 did the HDC close a complaint with no action or no further action decision and refer the complaint to the Medical Council?*

We do not have this information centrally stored. As such, your request for this information is refused in full under section 18(f) of the Act.

8) *Is it possible for the HDC to refer only part of a complaint to the Medical Council?*

Yes. Section 34(1)(a) of the Health and Disability Commissioner Act specifically states that we can refer matters in part to the appropriate authority. HDC can also make a partial referral under section 59(4) of the Health and Disability Commissioner Act. It will often be the case that only part of the complaint is relevant to the appropriate authority, and in these cases a partial referral can be the most appropriate action.

9) *How does the HDC ensure that it is clear that only part of a complaint, not the whole of a complaint, is being referred when a referral is made to the Medical Council (or to another regulatory/registration authority such as nursing council, dental council etc)?*

HDC endeavours to use careful wording in our correspondence to make the scope of the referral clear.

You may seek a review of this decision from the Office of the Ombudsman or the Privacy Commissioner.

Nāku iti noa, nā



Juliette Manning
Senior Legal Advisor