

24 November 2014

Joshua Grainger

By email: fyi-request-2141-fe0c5e01@requests.fyi.org.nz

Dear Mr Grainger

Request for Official Information
Our Ref: OIA353/1

1. I refer to your email of 28 October 2014 requesting the following information under the Official Information Act 1982 (OIA):
 - 1.1 The number of stays issued under s 176 of the Criminal Procedure Act 2011 or s 378 of the Crimes Act 1961 in the last ten years, with details of the date of the stay and charges stayed.
2. The Chief Ombudsman has ruled that the Solicitor-General, when performing law officer functions, falls outside the scope and jurisdiction of the Official Information Act (Case No W44280). In determining whether or not to stay a proceeding, the Solicitor-General is acting in a law officer role and is thus not subject to the Official Information Act 1982.
3. In any event, we do not keep records of the number of stays issued nor the other information you have requested. The Ministry of Justice may keep these records as a stay issued by the Solicitor-General is filed with the Court in which the relevant proceeding is being conducted.
4. As a matter of courtesy, I have provided some information below which I hope will be of assistance.
5. Stays of proceedings are actually quite common. There are several possible reasons for issuing a stay:
 - 5.1 Where the offender has been convicted in respect of some charges but the jury was unable to agree on others: There are occasionally cases where the remaining charges are less serious and convictions in respect of them, if obtained at a retrial, would make no difference to the sentence imposed.
 - 5.2 Where the charges have been the subject of more than one trial already: We occasionally stay proceedings following multiple trials if it is considered there is no public interest in pursuing another trial.

- 5.3 Where the defendant has died. A stay of proceedings is the usual method of bringing the prosecution to an end in those circumstances.
- 5.4 Where any person, including the defendant, has asked the Solicitor-General to stay a proceeding (for whatever reason they think appropriate).
6. Stays are rarely reported in the media, who will generally only report on the second category and only if the case was high profile (eg a homicide).
7. I have obtained information about the number of files we have opened in respect of requests for stays since January 2004. I must emphasise this will not be a complete list as occasionally we issue a stay of proceedings in respect of matters we are already dealing with – for example if we are dealing with an appeal against a pre-trial decision and the defendant dies while we have the file. We would likely issue a stay without receiving a request.
8. Our records indicate we have received more than 200 requests for stays in the past ten years. I cannot tell how many of these requests were granted but many of them will have been. Nor am I able to provide any information about the charges that were stayed or the reason for the stay.
9. You have the right to complain to the Ombudsman, under s 28 of the OIA, about our decision on your request for information.

Yours sincerely
Crown Law

A handwritten signature in cursive script, appearing to read 'Charlotte', enclosed in a hand-drawn oval. A long, thin horizontal line extends from the right side of the oval across the page.

Charlotte Brook
Crown Counsel