



11 October 2023

Attention: Josef Strauss

By email only: fyi-request-24119-273c0680@requests.fyi.org.nz

Dear Mr Strauss

Official information request
Our Ref: OIA353/1

1. I refer to your official information request dated 12 September 2023 for:
 - ... a breakdown of costs awards in cases defended by Crown Law in 2021 and 2022.
 - In particular, the number of cases in each period where costs were awarded in favour of Crown Law; and
 - the number of cases in each period where costs were awarded against Crown Law;
 - If possible, the total \$ amount of costs for both the above requests;
 - If possible, the budget Crown Law has to defend claims in court; and the budget to pay for costs orders against it.
2. We wrote to you on 15 September 2023 seeking clarification of your request. Our letter explained the lack of clarity of your request as follows:

“Your request refers initially to “cases defended by Crown Law“. This could be interpreted in a broad sense to refer to Crown Law’s usual role of providing representation in the courts for the government. In these circumstances, where costs awards are made, they are usually awarded for or against the relevant ministry of department named as a party to the claim.

However, your request then narrows to specify information about “cases in each period where costs were awarded *in favour of Crown Law*” and “cases in each period where costs were awarded *against Crown Law*” and the budget Crown Law has to manage any such costs. This suggests that you are only seeking numerical and financial information on any costs awarded against or in favour of Crown Law, in any cases where Crown Law has been named as a party.”
3. At the date of sending this letter, we have not received a response from you regarding our request.

Our approach

4. As we have not been able to clarify what information you are requesting, we have interpreted your request to be about costs awards in any civil proceedings in which Crown Law is acting.
5. We have also assumed that your reference to “the years 2021 and 2022” refers to the calendar years for 2021 and 2022 and not the financial year period, 1 July to 30 June.

Context

6. To provide you with context in terms of the information you have requested, we have set out the following background information.
7. The Crown Law Office is a governmental department which provides legal advice and representation services to the government in matters affecting executive government. Crown Counsel at Crown Law appear in civil proceedings before the senior courts. Crown Counsel commonly appear on behalf of:
 - 7.1 The Attorney-General or the Solicitor-General where they are named as parties or engaged with proceedings in their capacity as the senior and junior Law Officers for the Crown.¹
 - 7.2 Governmental agencies where they are named as a respondent party or engaged with the proceedings as non-parties.
 - 7.3 The Attorney-General where he is named as a respondent on behalf of a governmental agency (for example the Attorney might be named as the respondent on behalf of the New Zealand Police).
8. We also instruct external counsel (commonly Crown Solicitors or independent barristers) to appear in civil proceedings before the senior courts on behalf of government agencies.
9. Crown Law itself is not usually named as a party in proceedings.
10. We hold trust account information recording the receipt of monies paid to and by Crown Law. This will not be a complete record of relevant costs received or paid for civil proceedings in the period you have specified. This may be for several reasons, including the following:
 - 10.1 Costs may be awarded in favour of our clients but remain unpaid. We do not keep data in relation to these cases.
 - 10.2 Costs awards may be deferred by agreement or default pending appeal. We do not keep data in relation to these cases.
 - 10.3 Costs may be received or paid directly by the agency involved. i.e., the proceedings may have concluded, and Crown Law may not be involved in the transaction of costs.
 - 10.4 When external counsel is assigned, Crown Law will not commonly be

¹ More information about the Law Officers of the Crown can be found at: [Law Officers of the Crown » Crown Law](#).

involved in the management of costs.

11. Your requests relate to costs “awarded”. Our approach has been to count costs paid to or received by Crown Law. This is because it is possible that the parties may have agreed on the costs to be paid without seeking a court award.

Costs awards against or in favour of Crown Law as a named party

12. In the period between 01 January 2021 and 31 December 2022, we have no financial record of any costs being awarded in favour of or against Crown Law as a party named in civil proceedings.
13. There is no specific budget for costs for such an eventuality however it is likely that the risk of an adverse costs award would be identified when the legal proceedings are commenced.

Costs awards against or in favour of the Attorney-General in his Law Officer capacity

14. The following data relates to costs paid by Crown Law between 1 January 2021 and 31 December 2022, for civil proceedings defended on behalf of the Attorney-General, in-which costs were awarded against the Attorney-General acting in his Law Officer capacity. These costs were paid out of an appropriation for work in relation to the Law Officers and are therefore recorded separately.

Number of cases	Total amount
2	\$66,113.86

15. We do not hold any data in relation to civil proceedings defended on behalf of the Attorney-General for the relevant period, in-which costs may have been awarded in favour of the Attorney-General acting in his Law Officer capacity.
16. We do have a record of “costs received by Crown Law” between 1 January 2021 and 31 December 2022. We do not understand any of the monies received to relate to civil proceedings defended on behalf of the Attorney-General, in-which costs were awarded in favour of the Attorney-General acting in his Law Officer capacity.
17. To clarify, we have received costs in the relevant period on behalf of the Attorney-General in civil proceedings concerning the variation of charitable trusts. Such proceedings are not “defended matters” as we are not a named party and appear to assist the Court on behalf of the Attorney-General in his role as the protector of charities. We have not therefore counted the receipt of costs in those proceedings.

Extension of time required for the balance of the request

18. The Official Information Act 1982 requires that we advise you of our decision on your request no later than 20 working days after the day we received your request. We have been able to answer your request in part.

19. Unfortunately, it will not be possible to meet that time limit for the balance of your request in respect of:
- 19.1 cases defended by Crown Law on behalf of governmental agencies, in which costs were awarded in favour of that governmental agency; and
 - 19.2 cases defended by Crown Law on behalf of governmental agencies, in which costs were awarded against that governmental agency.
20. These are the categories of cases described in paragraphs 7.2 and 7.3 above.
21. We need therefore to notify you of an extension of the time to make our decision in the relation to the balance of your request, to **8 November 2023**, an extension of four weeks which factors the Labour weekend holiday.
22. This extension is necessary because the data for monies received or paid in relation to costs awards for or against our clients is not recorded separately. If it exists, it will be recorded in our trust account, along with information relating to all other transactions for the relevant period that have gone through our trust account. It is not therefore straightforward to identify any relevant costs' information.
23. We have been provided with the relevant trust account records but will need to analyse that information to identify and check transactions for any relevant costs' information. This requires us to assess a large quantity of information and meeting the original time limit will unreasonably interfere with our operations.

Proactive release

24. Please note that we may publish this response (with your personal details redacted), and any related documents, on Crown Law's website if we decide proactive release of this information is or may be in the public interest. If you have any concerns about this, please let us know within 10 working days of the date of this letter.
25. You have the right to seek an investigation and review by the Ombudsman of either part of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.
26. If you wish to discuss this decision with us, please feel free to contact the writer on 027 839 3046.

Yours faithfully

Crown Law



Debra Harris
Crown Counsel