

30 April 2018

Emailed to: fyi-request-7554-cd0f2ce0@requests.fyi.org.nz

Dear Miss Forest

Response to Official Information Act request : Take no action vs Actionable complaints (Our Ref: OPC/2835)

We refer to your Official Information Act request of 3 April 2018. Your request referred to information from the financial year 2017. The Privacy Commissioner's financial year ends 30 June and the answers given in response to your request are from the period 1 July 2016 to 30 June 2017. Using our financial year also facilitates you comparing information published in our annual reports for that and previous years.

1) How many complaints were actioned (as opposite of 2) during the FY2017

We take action on all matters identified as complaints. In the last financial year, 726 complaints were received and investigated and we closed 844 complaints matters.

2) How many complaints did you take No action, like under the section 77 of the Privacy Act 1993 during the FY2017.

We have interpreted your request to refer to the grounds on which the Commissioner may exercise his discretion to decide to take no action, or as the case may require, no further action, on a complaint either during or after an investigation. These grounds are very limited and are set out in section 71 of the Privacy Act 1993 (a copy of section 71 is enclosed for you).

During the last financial year, the Commissioner determined, under section 71, that no further action should be taken on 348 complaints. Of these 348 cases, 200 were mediated or settled. Other reasons for a decision to take no further action on a complaint included:

- (a) the complainant did not wish the case to be continued; or
- (b) further action was inappropriate or unnecessary in the circumstances; or
- (c) there was, in all the circumstances, an adequate alternative remedy.

3) Can you group numbers by for 2) per paragraph of s.77 or reason of taking no action?

We refuse this part of your request under s18 (f) of the OIA as the information requested can't be made available without substantial collation or research. This includes because complaints were closed on more than one ground, for example, the complainant did not

wish a matter to proceed because the matter had been settled. We can however confirm that the top three reasons for a decision to take no further action on a complaint were:

- (a) further action was unnecessary or undesirable in the circumstances;
- (b) the complainant did not wish the matter to be continued; and
- (c) there was an adequate alternative remedy or right of appeal that it was reasonable for the complainant to exercise.

You have the right to ask the Ombudsman to investigate and review my decision on your request.

Yours sincerely



Gary Bulog
General Manager

Encl. s71

Privacy Act 1993

71 Commissioner may decide to take no action on complaint

- (1) The Commissioner may in his or her discretion decide to take no action or, as the case may require, no further action, on any complaint if, in the Commissioner's opinion,—
- (a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or
 - (b) the subject matter of the complaint is trivial; or
 - (c) the complaint is frivolous or vexatious or is not made in good faith; or
 - (d) the individual alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or
 - (e) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or
 - (f) where —
 - (i) the complaint relates to a matter in respect of which a code of practice issued under section 46 is in force; and
 - (ii) the code of practice makes provision for a complaints procedure,—

the complainant has failed to pursue, or to pursue fully, an avenue of redress available under that complaints procedure that it would be reasonable for the complainant to pursue; or
 - (g) there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the individual alleged to be aggrieved to exercise.
- (2) Notwithstanding anything in subsection (1), the Commissioner may in his or her discretion decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the Commissioner that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.
- (3) In any case where the Commissioner decides to take no action, or no further action, on a complaint, the Commissioner shall inform the complainant of that decision and the reasons for it.

Compare: 1975 No 9 s 17; 1977 No 49 s 35; 1981 No 127 s 3