



133 Molesworth Street
PO Box 5013
Wellington 6140
New Zealand
T+64 4 496 2000

14 September 2022

§ 9(2)(a)

By email: § 9(2)(a)
Ref: H2022009285

Tēnā koe § 9(2)(a)

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to Manatū Hauora (Ministry of Health) on 3 August 2022. You requested:

“Please supply all reports and emails that relate to how people were prioritised for compliance action and what the criteria were.”

Manatū Hauora has identified 1 document within scope of your request. This document is itemised in Appendix 1 and released to you in full.

Please be advised that email correspondence relating to referrals and the application of the prioritisation policy are withheld in full under the following sections of the Act:

- section 9(2)(a) to protect the privacy of natural persons; and
- section 9(2)(h) to maintain legal professional privilege.

I trust this information fulfils your request. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauorā website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā


Phil Knipe
Chief Legal Advisor
Government and Executive Services

Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	N/A	Document: Approach to Ministry of Health referrals of information suggesting a breach of the COVID-19 Public Health Response Act 2020 or Orders made under that Act to Police	Released in full.

Approach to Ministry of Health referrals of information suggesting a breach of the COVID-19 Public Health Response Act 2020 or Orders made under that Act to Police.

This policy covers situations where the Ministry of Health (the Ministry) becomes aware of information that suggests that individuals or corporate bodies have breached the COVID-19 Public Health Response Act 2020 (the Act) or Orders made under the Act and the Ministry identifies that Police are the appropriate agency to investigate.

In all cases, the decision on whether to commence an investigate and subsequently prosecute (should the threshold for commencing a prosecution be reached) will remain with Police.

Factors considered when making a referral decision

In making a referral decision, the Ministry will consider and weigh up a number of factors when determining whether to refer the matter to Police for its decision on whether to investigate.

These factors include:

Public health considerations

The overriding consideration is the risk to public health that arises from an alleged breach. If the alleged breach gave or gives rise to a serious risk to public health, then the matter is more likely to be referred to Police. If that risk is realised and results in serious harm, this will be a further aggravating factor.

However, the degree of risk to public health arising from the alleged breach will be balanced against the need to encourage individuals who may have breached an Order or the Act to willingly share information that supports the public health response, for example, disclosing locations visited or contacts. If referral to Police is likely to discourage a person or future offenders from sharing the information necessary to manage a serious public health risk, then the matter is unlikely to be referred to Police.

The nature of the alleged offending

Alleged offending that is deliberate, flagrant, continuing or where there is a history of recurring conduct is more likely to be referred to Police. This includes where the alleged offender has previously been warned or can reasonably be expected to have knowledge that a particular action or inaction may constitute a breach of the Act or Orders.

In addition, alleged offending that appears to be organised or carried out by a group is more likely to be referred to Police.

Strategic considerations

The Ministry may refer alleged offending to Police where the Ministry considers there is a need to generally deter or denounce similar offending.

In addition, a high level of public interest in the alleged offending, for example from the public, media, unions or other organisations, may mean that the alleged breach is more likely to be referred to Police, although this factor will be tempered by the other factors set out above.

The decision-making process

The Chief Legal Advisor is the decision-maker on whether an alleged breach will be referred to Police. In routine situations, and in the absence of actual or anticipated significant public interest,

this decision-making authority will be managed on his behalf by the Enforcement Team – Health Legal. Routine situations will include when the Ministry of Health has been notified of breaches through its channels instead of the AOG reporting line and Police are the appropriate agency to investigate, for example, allegations. Where there is actual or anticipated significant public interest, the relevant Ministry teams will be notified.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982