

12 November 2020

[REDACTED]
[REDACTED]

Dear [REDACTED]

Your Request under the Official Information Act 1982 (OIA)

1. We refer to your request of 14 October 2020 for the below information:
 - 1.1. All FMA policies, documents, emails and letters containing information relating to how the FMA prioritises prosecutions.
 - 1.2. All FMA policies, documents, emails and letters containing information relating to the FMA not pursuing cases because a positive outcome for the FMA was not guaranteed.
 - 1.3. The number for cases assessed by the FMA over the past three years.
 - 1.4. The number of investigations launched by the FMA over the past three years.
 - 1.5. The number of investigations that resulted in the FMA laying charges over the past three years.
 - 1.6. The number of successful FMA prosecutions over the past three years.

Please find our response below.

2. **All FMA policies, documents, emails and letters containing information relating to how the FMA prioritises prosecutions.**
 - 2.1. The FMA prioritises its enforcement work and the manner in which it responds to misconduct in accordance with its enforcement policy, Strategic Risk Outlook, Regulatory Response Guidelines, Model Litigant Policy and the Solicitor-General's prosecution guidelines. These documents, together with an explanation of the FMA's enforcement approach, are available on the FMA's website: <https://www.fma.govt.nz/about-us/how-we-regulate/enforcement/>.
 - 2.2. We also note that criminal prosecutions are just one tool that the FMA has to respond to misconduct. In accordance with your request we have provided information focused on criminal prosecutions only. This of course does not reflect the full range of responses the FMA has taken to misconduct in the market over this period which range from criminal prosecutions, civil proceedings, and many non-litigation regulatory responses. Indeed, criminal prosecution is not available as an option in many circumstances.
3. **All FMA policies, documents, emails and letters containing information relating to the FMA not pursuing cases because a positive outcome for the FMA was not guaranteed.**
 - 3.1. The Solicitor-General's prosecution guidelines provide core prosecution values that underpin prosecution principles and practices applicable to all agencies that undertake prosecutions in New Zealand.
 - 3.2. The Guidelines set out a test for prosecution that applies to any criminal prosecutions. This is a two stage test:

3.2.1. The evidence which can be adduced in Court is sufficient to provide *a reasonable prospect of conviction*; and

3.2.2. Prosecution is required in the public interest.

3.3. A copy of the Guidelines is available here:

<https://www.crownlaw.govt.nz/publications/prosecution-guidelines/>.

4. In addition, the FMA has a statutory responsibility to review the law and practices related to providing financial products and services. This may require us to test the boundaries of the law for the overall benefit of all market participants. Accordingly, we may take 'grey area' cases (where the outcome is uncertain) in order to provide clarity to the market.
5. In addition to the above guidelines and principles of general application, we hold documents containing information relevant to your requests 1.1 and 1.2 relating to particular cases, ie considering and making recommendations on prioritisation, and/or likelihood or impact of a positive outcome of a case and the regulatory outcomes, and whether it should be pursued. We withhold this information for a number of reasons:
 - 5.1. That to release the information held in relation to cases that remain open would prejudice the maintenance of the law, including the investigation of offences and right to a fair trial. Additionally, to release information held in relation to cases either open or closed, can highlight the FMA's investigative practises, and approach to prioritisation, in a manner that can prejudice the maintenance of the law more broadly in relation to the prevention, investigation and detection of other offences. Accordingly this information is withheld pursuant to s 6(c) of the OIA.
 - 5.2. Additionally some of the information contained in these documents is confidential personal information relating to particular individuals. This information is additionally withheld pursuant to s 9(2)(a) of the OIA to protect the privacy of those individuals.
 - 5.3. Some of the information contained in these documents was provided to the FMA under an obligation of confidence or could have been compelled to have been provided, for example information provided by persons in relation to which we were making inquiries. This information is additionally withheld pursuant to s 9(2)(ba) of the OIA because to release this information would negatively impact the continuing supply of similar information to the FMA in the future. This type of information is critical to the ongoing regulatory role of the FMA, and to prejudice its supply would negatively impact our regulatory effectiveness.
 - 5.4. Some of information contained in these documents expresses opinions of FMA staff and it is appropriate to withhold this information to maintain the effective conduct of FMA by supporting an environment where frank opinions on matters such as success prospects can be shared. This information is additionally withheld pursuant to s 9(2)(g) of the OIA.
 - 5.5. Some of the information contained in these documents is legally privileged and so is additionally withheld pursuant to s 9(2)(h) of the OIA to maintain the legal professional privilege of that information.
6. In relation to the information withheld pursuant to section 9 grounds of the OIA explained above, we do not believe there is an overriding public interest in release of that information which would outweigh these considerations.

7. **The number of cases assessed by the FMA over the past three years.**

7.1. We provide below the number of cases opened by the FMA classified as a 'misconduct cases' for each of the past three FMA financial years, and the year to date. 'Misconduct cases' are any case opened in our records where the information provided or obtained alleges possible conduct in New Zealand's financial markets which could cause harm and is to be assessed to determine appropriate action.

Time Period	Number of cases
1 July 2017 – 30 June 2018	744
1 July 2018 – 30 June 2019	915
1 July 2019 – 30 June 2020	934
1 July 2020 to date	311

8. **The number of investigations launched by the FMA over the past three years.**

8.1. We provide below the number of instances where investigations were opened by the FMA's Evidence and Investigations Team. Investigations are opened by this Team where it has been determined that there are reasonable grounds to suspect a breach of any financial markets legislation and the case may require specialist investigative input or is potentially significant and complex or the suspected misconduct looks to be egregious. The FMA has a range of regulatory tools it can use to encourage regulatory compliance and good conduct. The nature of the suspected misconduct in these cases is such that there's a higher likelihood a decision to litigate would be appropriate if appropriate evidence was established.

Time Period	Number of investigations commenced
1 July 2017 – 30 June 2018	2
1 July 2018 – 30 June 2019	3
1 July 2019 – 30 June 2020	14
1 July 2020 to date	4

9. **The number of investigations that resulted in the FMA laying charges over the past three years.**

9.1. We provide below the investigations that resulted in FMA filing charges over the past three years so far to date. Additionally we have included earlier charges where these resulted in cases that were ongoing during that period for which you requested information.

Jeffrey Honey and Hamish Sansom (charges filed March 2017)

Garry Patterson (charges filed 16 March 2017)

Robert South and Murray Provan (charges filed 9 June 2017)

Steven Robertson (PTT) (charges filed in October 2017)

Stephen Talbot (charges filed October 2017)

Pegasus Markets Limited and Michael Reps (charges filed 27 February 2018)

Morgan De Vere Corporate Finance Limited and Rene Moorby (charges filed 11 April 2019)

Rodney McCall also known as Rodney Crichton (Morgan Cooper) (charges filed 29 May 2019)

Rowan Kearns (Forestlands) (charges filed in July and September 2020)

10. The number of successful FMA prosecutions over the past three years.

10.1. We provide below the successful FMA prosecutions achieved during the past three years.

Jeffrey Honey (guilty pleas entered April 2017, sentenced June 2017)

Anthony Wilson (guilty pleas entered 17 May 2017, sentenced 13 July 2017)

Garry Patterson (guilty pleas entered 16 March 2018, sentenced 5 July 2018)

Robert South and Murray Provan (convictions 18 December 2018, sentenced 22 February 2019)

Morgan Devere Corporate Finance Limited and Rene Moorby (convictions May 2019, sentenced 6 June 2019)

Paul Bublitz & Bruce McKay (convictions entered by High Court February 2019, those convictions were appealed, Court of Appeal decision upholding some convictions 16 August 2019)

Steven Robertson (convictions 19 August 2019, sentenced 30 October 2019)

Rodney McCall also known as Rodney Crichton (guilty pleas 11 June 2020, awaiting sentencing)

Pegasus Markets Limited and Michael Reps (convictions 11 September 2020, awaiting sentencing)

11. If you have any questions in relation to this OIA response please do contact me.

12. We also note you have the right to complain to the Ombudsman and seek investigation and review of the FMA's decision under s 28 of the OIA. Information about how to make a complaint is available at www.ombudsman.parliament.nz or phone 0800 802 602.

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