

8 May 2026

**Official information request regarding prosecution decisions and evidential sufficiency**  
**Our Ref: OIA-2526179**

1. We refer to your official information request dated 11 April 2026 for the following:

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**3. EVIDENTIAL SUFFICIENCY**

Please provide:

- (a) Any policies, guidelines, or frameworks used to determine evidential sufficiency prior to prosecution;
- (b) Any guidance relating to the requirement to establish intent where applicable;
- (c) Any documents outlining thresholds for continuing or discontinuing prosecutions.

**4. PROSECUTION DECISION-MAKING**

Please provide:

- (a) Documents outlining how decisions are made to initiate or continue prosecutions;
- (b) Any internal review processes where evidential sufficiency is questioned;
- (c) Any audits or assessments of prosecution decision-making.

**5. OVERSIGHT AND ACCOUNTABILITY**

Please provide:

- (a) Any internal or external reviews of prosecution practices;
- (b) Any findings relating to procedural fairness or evidential standards;
- (c) Any recommendations or changes implemented as a result of such reviews.

**6. PUBLIC INTEREST**

Please provide:

- (a) Any policies outlining how public interest is assessed in prosecution decisions;
- (b) Any cost-benefit or proportionality considerations applied.

...

## Contextual information and our understanding of your request

2. The Solicitor-General maintains general oversight of the conduct of public prosecutions in New Zealand. However, they are not required to supervise the conduct of any particular public prosecution and are not responsible for the conduct of any public prosecution.<sup>1</sup> Instead, public prosecutions in New Zealand are conducted by public prosecuting agencies<sup>2</sup> or Crown Solicitors—private lawyers appointed by the Governor-General—depending on the nature and seriousness of the alleged offending.
3. Whether to initiate or continue a prosecution is a decision for the relevant prosecuting agency or Crown Solicitor. The prosecutor’s role is to make decisions based on the evidence and information available to them.
4. When considering a prosecution, a prosecutor should apply the Test for Prosecution as specified in the Solicitor-General’s Prosecution Guidelines (**the Guidelines**). The Guidelines are available online at [Prosecution Guidelines » Crown Law](#). The two parts of the test—the evidential test and the public interest test— both need to be met before initiating a prosecution. Furthermore, a prosecutor should keep a prosecution under review throughout the life of a case and discontinue the prosecution if the Test for Prosecution is no longer met.
5. We note the Guidelines are not, and cannot be, an instruction manual on how every prosecutorial decision must be made or what the outcome should be. They set general expectations for all prosecutors and identify the internal guidance prosecuting agencies should have in place to support robust prosecution decision making processes.<sup>3</sup>
6. It is unclear from your request whether you are seeking information relating to criminal prosecutions by Crown Solicitors, Police or another prosecuting agency. For the sake of completeness, we have interpreted your request as relating to all public prosecutions, and we respond to your request accordingly.

## Response to your request

*Any policies, guidelines, or frameworks used to determine evidential sufficiency prior to prosecution*

7. The Guidelines, specifically the [Decisions to prosecute | Te whakataua ki te aru](#) guideline, contain detailed assistance on applying the evidential test. The Guidelines are publicly available; therefore, this part of your request is refused under section 18(d) of the Official Information Act 1982 (**the Act**).
8. As a matter of courtesy, we note that all public prosecuting agencies have been required by Cabinet, since 1 July 2013, to have a publicly available prosecution policy which sets out, among other things, the process for making prosecution decisions (including establishing

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<sup>1</sup> Criminal Procedure Act 2011, section 185.

<sup>2</sup> There are over 40 different government and public agencies with legal powers to prosecute offences in New Zealand. These include central government departments, Crown entities, specialized regulators, and the New Zealand Police.

<sup>3</sup> See *Principal guideline* at [1].

evidential sufficiency).<sup>4</sup> You may wish to access these policies through the individual agencies' websites or by contacting them directly.

*Any guidance relating to the requirement to establish intent where applicable*

9. Most<sup>5</sup> criminal offences have a mental element—including intention, knowledge, recklessness or negligence. The mental element is something the prosecution must prove beyond a reasonable doubt. It is therefore something that needs to be considered by the prosecutor in deciding whether the evidential part of the Test for Prosecution is met.
10. Other than the guidance on the application of the evidential test in the *Decisions to prosecute / Te whakataua ki te aru* guideline, Crown Law does not have any formal guidance on the requirement to establish intent. As such, this aspect of your request is refused under section 18(e) of the Act on the basis the information requested does not exist.

*Any documents outlining thresholds for continuing or discontinuing prosecutions*

11. As noted above, the Guidelines require a prosecutor to keep a prosecution under review throughout the life of a case and discontinue the prosecution if the Test for Prosecution is no longer met. A prosecution may be discontinued by applying to the Court to withdraw or dismiss the charge(s),<sup>6</sup> or by asking the Solicitor-General to stay the proceeding.<sup>7</sup> A guideline on *Stays of proceedings* is contained in the Guidelines, and individual prosecuting agencies' prosecution policies may also provide further guidance on discontinuing prosecutions. The Guidelines and prosecution policies of agencies are publicly available; therefore, this part of your request is refused under section 18(d) of the Act.
12. For completeness, we note a guideline on withdrawing and dismissing charges will be added to the Guidelines. That guideline has been drafted but, until finalised, remains legally privileged. We do not consider the public interest requires the disclosure of the draft guideline before it is finalised and included in the Guidelines. This part of your request is therefore refused under sections 9(2)(h) and 18(a) of the Act.

*Documents outlining how decisions are made to initiate or continue prosecutions*

13. Crown Law does not itself conduct prosecutions. Decisions to initiate or continue prosecutions fall to the relevant prosecutor within the prosecuting agency or Crown Solicitor's office. Save for what is set out in the Guidelines regarding initiating and continuing prosecutions, Crown Law does not hold any other documents outlining how decisions are made to initiate or continue prosecutions. We therefore refuse this part of your request under section 18(e) of the Act.
14. To the extent prosecution policies of individual prosecuting agencies outline how decisions are made to initiate or continue prosecutions, that information is publicly available and we formally refuse this part of your request under section 18(d) of the Act.

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<sup>4</sup> See the *Prosecution policies* guideline.

<sup>5</sup> Some offences, called "strict liability offences", do not.

<sup>6</sup> Criminal Procedure Act 2011, sections 146–147.

<sup>7</sup> Criminal Procedure Act 2011, section 176; *Stays of proceedings* guideline.

*Any internal review processes where evidential sufficiency is questioned*

15. Crown Law does not routinely review prosecutors' decisions on evidential sufficiency. Accordingly, this part of your request is formally refused under section 18(e) of the Act.
16. For completeness, we note that Crown Law facilitates a service whereby Crown prosecutors may seek review of a proposed approach to a prosecution (including whether the evidential test is met). Any information held by us in this regard, including verbal or written communications between Crown Law and Crown Solicitors/Crown prosecutors, is held pursuant to the Solicitor-General's Law Officer role, which the Ombudsman has held to be outside the scope of the Act (Case Noc. W44280). In any event, if such information was within scope of the Act, we would have refused your request under section 9(2)(h) of the Act on the basis that it is subject to legal professional privilege, and the necessity to maintain that privilege outweighs any public interest in its release.

*Any audits or assessments of prosecution decision-making*

17. Crown Law does not, as a matter of course, conduct audits or assessments of prosecutors' decision-making. Accordingly, this part of your request is formally refused under section 18(e) of the Act on the basis the information requested does not exist.
18. Without prejudice to our response in paragraph 17, we note Crown Law recently launched the Crown Solicitor File Review Pilot. The purpose of this pilot is to test whether reviews of individual prosecution files is an effective and proportionate method for identifying practice standards (which may include a post resolution assessment of prosecution decision making) and internal oversight across the Crown Solicitor network, including the resource implications for both Crown Law and Crown Solicitors. Any information held by us in this regard, including verbal or written communications between Crown Law and Crown Solicitors/Crown prosecutors, is held pursuant to the Solicitor-General's Law Officer role, which is outside the scope of the Act. In any event, if such information was within scope of the Act, we would have refused your request under section 9(2)(h) of the Act on the basis that it is subject to legal professional privilege, and the necessity to maintain that privilege outweighs any public interest in its release.

*Any internal or external reviews of prosecution practices*

19. Crown Law conducts periodic reviews of Crown Solicitor warrants and prosecuting agencies on behalf of the Solicitor-General. Information gathered and held in this regard is pursuant to the Solicitor-General's Law Officer functions. Accordingly, this aspect of your request is formally refused on the basis the Act does not apply to the information sought.
20. As a courtesy, we note there have been several reviews published on Crown Law's website.<sup>8</sup> You may access that information here:

20.1 [Media & Other Statements » Crown Law](#)

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<sup>8</sup> These include the outcome of the Solicitor-General's review of the Palmerston North Crown Solicitor, outcome of the Solicitor-General's review of the Hamilton Crown Solicitor, and the assessment of the prosecution function of a number of prosecuting agencies.

## 20.2 [Reports » Crown Law](#)

### *Any findings relating to procedural fairness or evidential standards*

21. Reviews undertaken by Crown Law on behalf of the Solicitor-General do not specifically consider individual prosecution decisions, including procedural fairness or evidential standards. In any event, to the extent such information may be held, it is held pursuant to the Solicitor-General's Law Officer functions.
22. Save for the information publicly available on Crown Law's website at the links provided at paragraphs 20.1 and 20.2 above, this part of your request is refused on the basis the Act does not apply to the information sought.
23. As a courtesy, we note that the courts are frequently asked to adjudicate on questions of procedural fairness and evidence. [Judicial Decisions Online](#) provides a searchable database of judgments and decisions from the District Court, High Court, Court of Appeal, and Supreme Court. Decisions are published unless they are subject to suppression (automatic or judge-ordered) or relate to bail applications or bail appeals.<sup>9</sup>

### *Any recommendations or changes implemented as a result of such reviews*

24. Crown Solicitors' and prosecuting agencies' post-review reports often contain recommendations, and while subsequent reviews may anecdotally reflect changes that have been implemented since the last review, Crown Law does not keep a record of the changes specifically implemented by prosecuting agencies or Crown Solicitors. This information can be sought directly from prosecuting agencies.
25. Save for the information publicly available on Crown Law's website at the links provided at paragraphs 20.1 and 20.2 above, any information regarding changes made following a review is held pursuant to the Solicitor-General's Law Officer function. Therefore, this part of your request is refused on the basis the Act does not apply to the information sought.

### *Any policies outlining how public interest is assessed in prosecution decisions and any cost-benefit or proportionality considerations applied*

26. As noted above, when considering commencing a prosecution, a prosecutor is required to apply the Test for Prosecution, which includes the public interest test.
27. The Guidelines, specifically the *Decisions to prosecute / Te whakataua ki te aru* guideline, contain detailed guidance on applying the public interest test including considering the likely cost of a prosecution. The Guidelines are publicly available; therefore, this part of your request is refused under section 18(d) of the Act.
28. As noted above at paragraph 8, individual prosecuting agencies may have additional relevant information in their respective prosecution policies. You may wish to access those policies through the individual agencies' websites or by contacting them directly.

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<sup>9</sup> <https://www.courtsofnz.govt.nz/going-to-court/media/finding-out-about-a-case>.

**Proactive release**

29. 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.

**You right to seek an investigation and review**

30. You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.
31. If you wish to discuss this decision with us, please feel free to contact [OIA@crownlaw.govt.nz](mailto:OIA@crownlaw.govt.nz) or [publicprosecutionunit@crownlaw.govt.nz](mailto:publicprosecutionunit@crownlaw.govt.nz).

Nāku noa, nā

C  


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