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OIA-2025-5368

22nd May 2025

[redacted]
[redacted]@nzme.co.nz

Dear [redacted]

I refer to your email of 28 April 2025 requesting, under the Official Information Act 1982 (OIA), the following information:

Can I please request information regarding how many cases since January 2023 has the Director of Military Proceedings opted not to prosecute?

Please provide details for each of those cases - including what happened with the charges i.e which jurisdiction they were dealt with in (summary trial / civil) and the outcome.

I would like any notes or reasons from the DMP related to why the various cases were not prosecuted - i.e their rationale.

In respect of charges referred to the Director of Military Prosecutions (DMP) under the Armed Forces Discipline Act 1971¹, the DMP may decide whether an accused is to be committed for trial in the Court Martial (s 101F(a)). The DMP may also stay proceedings either permanently or for a specified period (s 101H). A stay can be regarded as a decision not to prosecute. As noted in the response to you of 1 August 2024, the DMP granted a stay in one proceeding in 2023. Following a trial in the Court Martial where the military members failed to reach a decision, a stay was granted on the basis that the complainant did not wish to proceed again. The DMP has not stayed a proceeding since this matter.

Also in the response to you of 1 August 2024, you were advised that if a disciplinary officer refers a charge to the DMP, the DMP may also decide to refer it back to the disciplinary officer with a direction that the charge is to continue at summary trial (s 117ZH(1)(a)) or be dismissed (s 117ZH(1)(b)). A direction that a disciplinary officer dismiss a charge could also be regarded as a decision not to prosecute. In 2025, the DMP was referred a matter by a disciplinary officer after it was determined that the matter was too complex for it to be dealt with at summary trial. The DMP determined that it could be appropriately dealt with at summary trial. There were three accused. In respect of one accused, the DMP directed the disciplinary officer to dismiss the charge of behaving in a disgraceful and indecent manner and to hear the charge of common assault. That trial has been heard, the accused pleaded guilty and was sentenced. The other two accused are due to have their summary trials heard on 27 May 2025.

¹ <https://legislation.govt.nz/act/public/1971/0053/latest/DLM401063.html>

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review this response to your request. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that responses to official information requests are proactively released where possible. This response to your request will be published shortly on the NZDF website, with your personal information removed.

Yours sincerely

GA Motley

Brigadier

Chief of Staff HQNZDF