

30 November 2016

Mr Michael Rescue  
fyi-request-4878-cffeaa5a@requests.fyi.org.nz

Dear Mr Rescue

Thank you for your request made under the Official Information Act 1982, received by Inland Revenue on 2 November 2016. Your request to the Ministry of Justice has been transferred to Inland Revenue for reply.

You have asked that Inland Revenue elaborate on a previous request, particularly:

*It states in clause 162B of the Student Loan Scheme Amendment Bill (No 3) that on an application in writing by the Commissioner a district court judge or registrar may issue a warrant for the arrest of a person (the liable person) if the Judge or Registrar(as the case may be) is satisfied that the person has committed the offence in section 162A: (having been notified by the Commissioner that he or she is in default, knowingly fails, or refuses, by the due date specified in the notification to make reasonable efforts to pay the amount in default or to make arrangements with the Inland Revenue Department to pay the amount in default). How is this condition satisfied in regards to the defaulter knowingly failing or refusing to make reasonable efforts to pay the amount in default? How can commissioner be certain that the defaulter has been contacted and been notified of the status of their student loan? Does a letter posted to an assumed address constitute satisfaction that the person has knowingly committed the offence?*

- 1)** *Based on the above information are you therefore stating that if an individual does not fit into the three criteria classifications outlined that an arrest warrant cannot legally be issued under clause 162B? If an arrest warrant is issued, is the arresting party required to prove in court that this criteria has been met for clause 162B?*
- 2)** *You state that "Contact can include, but is not limited to" in the above three scenarios –*

*Can you please list all other circumstances where this condition is satisfied for clause 162B that you did not include in the original response, the criteria that satisfy contact and knowingly failing to make payment for clause 162B must be exhaustive and include all possible scenarios used to determine contact based on the below clause 162B:.*

*(having been notified by the Commissioner that he or she is in default, knowingly fails, or refuses, by the due date specified in the notification to make reasonable efforts to pay the amount in default or to make arrangements with the Inland Revenue Department to pay the amount in default)*

**3)** *Of the three publicised arrests this year for student loan default, which of the criteria did each of these arrest fit into in order to satisfy clause 162B (how was contact and refusal to pay satisfied in each of these three situations):*

- a) Specifically – how was the criteria of knowingly failing or refusing by the due date specified in the notifications to make a reasonable effort to pay the amount in default met in each of the three individual situations for clause 162B?*
- b) When were these notifications sent to these individuals in order to meet clause 162B, were the individuals notified when already in New Zealand, and when already travelling or prior to visiting New Zealand?*
- c) Did all three individuals reported in the media appear in court and if so when appearing in court were the criteria used to satisfy the knowingly refusal to pay clause outlined by the arresting party?*

In respect to the request transferred from the Ministry of Justice you asked:

*There have been three arrests in 2016 regarding the non payment in default of student loan debt when the three debtors in question attempted to leave New Zealand.*

*I would like to please receive the following information;*

- 4)** *Court name and court date for the court appearances of each of the three arrests outlined above.*

I have answered your questions in turn.

### **Question one**

Inland Revenue must be satisfied that the borrower has been notified of their default by having had contact with the borrower. A letter posted to an assumed address is not considered as having had contact with the borrower. Contact can include, but is not limited to:

- a written reply from the borrower acknowledging the debt
- a written affidavit of service on the borrower by the process server
- a recorded phone call/s with the borrower.

If Inland Revenue is not satisfied that the borrower has been sufficiently notified of their default then an arrest warrant would not be sought.

Inland Revenue is required to provide supporting documentation to satisfy the judge issuing an arrest warrant that the person has committed an offense.

### **Questions two, three and four**

I am withholding the information requested for questions two, three, and four under section 18(c) (i) of the Official Information Act. This is because making the information available would be contrary to the provisions of a specified enactment, namely the secrecy obligations in section 81 of the Tax Administration Act 1994 (TAA).

Section 81(1) of the TAA requires all Inland Revenue officers to maintain, and assist in maintaining, the secrecy of all matters relating to the Inland Revenue Acts, except for the purpose of carrying into effect that legislation, or if an exception to secrecy applies under section 81(1B).

There are two general exceptions within section 81(1B). The first allows Inland Revenue to release information to carry into effect the legislation that we administer and the second allows for the release of information for the purpose of performing a duty of the Commissioner, or for the purpose of supporting the performance of such a duty. In the latter case, releasing the information must be considered reasonable in regard to several factors, including the need to protect the integrity of the tax system.

It is my view that releasing this information would have a negative impact on the integrity of the tax system as it relates to customer specific information.

To release this information would illustrate Inland Revenue's processes for dealing with arrest warrants. Such information could potentially benefit future defaulters who attempt to leave New Zealand.

### **Right of Review**

You have the right to ask the Ombudsman to investigate and review my decision. The Office of the Ombudsman can be contacted at PO Box 10152, Wellington 6143

Alternatively, you may have the decision reviewed by an Inland Revenue review officer. Choosing the internal right of review does not preclude you from subsequently seeking a review by the Ombudsman should you be dissatisfied with the department's internal review. If an internal review is sought, please write to the Commissioner of Inland Revenue, PO Box 2198, Wellington 6140, setting out the details of your complaint.

Thank you for your request. I trust that the information provided is of assistance to you.

Yours sincerely



Maurice Lawlor  
**Business Owner**