



20 April 2019

Zane Collins
FYI

Dear Mr Collins

I refer to your request of 5 March 2018 asking

under what legal framework / Acts / Legislation or of the Police Manual or the Manual of the Best Practice of the police, Any chapters which does explain the 'Caution letter procedures and standards and definition' which is similar to the pre-warning charges manuals which you have sent me recently and were not relevant to my request. So any manuals / chapters in your manuals explaining about the 'Caution letters' such as;

- *What are the caution letters*
- *Benefits of Caution letters*
- *What are the benefits of the caution letters*
- *Under what act or law a police officer is entitled to issue a caution letter*
- *Whether the caution letter and information to be entered in the NIA and what are the procedures of entering the information in the NIA.*

Similar to what have been mentioned in the Pre-Charge warnings Manual explaining the mechanism and the standard operation procedures of the 'Caution Letters'

Police can provide the following information related to "caution letters". However, I would first like to suggest that, if you have knowledge of a specific instance where you believe that Police have acted inappropriately or incorrectly in issuing a "caution letter", you have the option of making a complaint to the Independent Police Conduct Authority so that the specific incident can be investigated.

A search of the Police Manual for references to "cautions", indicates that the word is often used interchangeably with the word "warnings". The following references to cautions, where the word appears to be used in a context relevant to your request, have been identified. Please note that there is no instruction as to whether the caution is a verbal or written caution.

The name of the chapter and the relevant excerpt are as follows:

1. From the Arrest and Detention chapter:

You have a lawful power to arrest in many situations but the power is discretionary and you must always carefully consider your decision. You should not arrest if:

- the person can be brought before the court by way of a summons

- a warning, caution, counselling or referral to another agency in line with the Prevention First focus would be a better resolution to the situation being dealt with.

You should not arrest a person if:

- they can be brought before the court by way of a summons (written notice to a person that court action has been started against them and that they are required to appear and answer the complaint or respond in writing to the complaint). If the offence is not punishable by imprisonment and there are no or insufficient aggravating factors, summons is more likely to be the better way of commencing prosecution
- a warning, caution, counselling or referral to another agency in line with the Prevention First focus would be a better resolution to the situation being dealt with

2. From the Police Investigations of Complaints and Notifiable Incidents chapter:

False complaint

A complainant should not be warned of the consequences of making a false complaint unless reasonable grounds exist for believing that the complaint is false and it is appropriate that a warning is given. Where a warning or caution is given, the reasons for doing so must be clearly endorsed on the complaint file.

3. From the Trespass chapter:

Obligation to give name and address - section 9

An occupier or constable may require any person found trespassing to give his name and address, and the number of their firearms licence under the Arms Act 1983 if the person is in possession of a firearm.

If the trespasser fails or refuses to give the constable this information, the constable may caution the person for failure or refusal to supply the required particulars and if the person continues to fail or refuse to provide the information, may arrest without warrant.

4. From the Adult Sexual Assault Investigation (ASAI) Policy and Procedures

Police statistics for fabricated claims

Follow these steps to record fabricated complaints for statistical purposes (as per the National Recording Standard).

1 Record all complaints using the appropriate offence code from the details of the allegation. If, as a result of the investigation, you have credible evidence that no offence occurred, do not change the offence code, but give it a result code of "no offence disclosed".

2 If it is discovered that a fabricated complaint is made, record an offence of 'Making a false complaint', whether or not Police decide to take any action against the person making the false complaint. This offence should only be recorded where there is an admission of fabrication or strong independent evidence that proves fabrication.

3 Give a result code on this offence (Making a false complaint) related to the action taken by police on the fabricated complaint, as follows:

- "arrested"
- "cautioned"
- "not arrested nor cautioned, but proceeded against by some other means".

4 Information should be placed into NIA as an outline of the nature of the fabricated complaint and the way the matter was resolved. This should not be done in the form of an alert. The NIA entry can only be undertaken with authority of a Detective Senior Sergeant (tier 4 ASA trained and accredited), or higher, who must also approve the content.

5. From Police Prosecution Service - Statement of Policy and Practice

Is prosecution in the public interest?

After determining that there is sufficient evidence to support a prosecution, the prosecutor should then consider whether the public interest requires the prosecution to proceed. It is not the rule that all offences for which there is sufficient evidence must be prosecuted - prosecutors must exercise their discretion as to whether a prosecution is in the public interest. This principle was most notably expressed in 1951 by the United Kingdom Attorney-General, Sir Hartley Shawcross QC MP, who stated in relation to prosecutorial discretion:

It has never been the rule in this country that suspected criminal offences must automatically be the subject of prosecution.

Prosecutors should balance all factors relevant to the individual case when making their decision. While these factors can be infinitely variable, the primary consideration is the seriousness of the offence - generally, the more serious the charge the more likely a prosecution. Other factors which may also be considered (not an exhaustive list) are:

Type Considerations

About the offender

- the offender's youth, age, physical or mental health
- whether the offender was in a position of authority or trust
- whether the offender was a ringleader/organiser of the offence
- the difference between the actual or mental ages of the offender and the victim (where the offender took advantage of this)
- the offender's relevant previous convictions, diversions or cautions
- whether the offender committed the offence whilst on bail/probation/parole/subject to a suspended sentence/subject to an order to keep the peace or other Court order
- the likelihood of the offender continuing or repeating the offence

There is one reference to "cautions" in paragraph 5.8.4 of the Solicitor-General's Prosecution Guidelines which is publically available at the following link:

<http://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/prosecution-guidelines-2013.pdf>

I have tried to provide relevant references with the knowledge that these may not meet your requirements as I believe that what you seem to be seeking does not exist in the way you requested.

To the extent your request covers other information it is refused pursuant to s18(g) of the Official Information Act 1982 in that it is not held.

You have the right to complain to the Ombudsman about my response.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Teresa McMahon', written in a cursive style.

Teresa McMahon
Police National Headquarters