



New Zealand
POLICE
Nga Pirihimana O Aotearoa

(A) ①
23 AUG 1999

August 19, 1999

The Privacy Commissioner
P O Box 466
Auckland

*Police, for clearance
on the basis of a
etc. B.*

Dear Sir,

In consultation with our Privacy Officer, Dr Jack, and other police personnel, I have been researching the introduction of what we have been referring to as a 'Police Clearance Certificate'.

As you are no doubt aware there has been an increasing demand from society at large, for some form of 'police clearance' to enable an applicant to demonstrate to a potential employer, their good character by way of a 'clean' criminal record. Other requests for this service have been from individuals applying for a visa, or a particular licence, be it driving, liquor, Security Guard etc.

The attached proposal of the draft system we have come up with, has been circulated to police districts for comment. This has met with a very positive response.

I would like to invite you to consider the proposal as set out hereunder and would welcome your feedback and opinion.

Yours sincerely

L J Shanks
Inspector: Project Officer
Office of the Commissioner: Police National H.Q.

Safer Communities Together

OFFICE OF THE COMMISSIONER

180 Molesworth Street, Wellington, New Zealand, PO Box 3017.

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11 June 1999 (date of 1st distribution)

SUBJECT: 'POLICE CLEARANCE CERTIFICATE'

INTRODUCTION

It is intended to change the Police vetting system, which has been in place now for some years.

As the changes will involve some action in districts, this paper has been prepared to set out the proposal and changes, and invite your comment specifically on the format and logistics.

An earlier report on the same subject was sent out to all 30 vetting officers in districts and stations around the country for their views in early April this year. I am grateful to the 14 members who replied, and whose input has contributed to the development of this project.

I would be obliged if the proposal as it now stands, could be considered in your district, by your vetting officers, and others who might have a view on this.

PROPOSAL

1. That the New Zealand Police introduce a document, commonly referred to as a *'Police Clearance Certificate'*, available upon application either by an individual, or a third party, with the consent of the individual in respect of whom the document is produced.
2. This document to testify the result of a check on the name (and other details) appearing therein, in relation to criminal convictions.

3. A fee becomes payable at the point of application (generally at a Police Station), unless the applicant is an organisation which meets a certain criteria.

BACKGROUND

1. In so far as the Police are concerned, under current legislation, an individual can demand 'as of right', upon application, a printout of 'official information' held about him or her, in the Law Enforcement System (LES – previously called the Wanganui Computer Centre (WCC)). No charge is made for this, as an individual has the legislative right to check to ensure that information held about them is correct. In the normal course of events these applications are processed by the Department for Courts, but on occasions - generally in an emergency situation - the Police will supply the information sought (this is done from the Vetting and Validation section at the Office of the Commissioner Service Centre).
2. At present the Police undertake vetting checks on individuals for various agencies. A charge for this service is made essentially only on the Department for Courts and the Land Transport Safety Authority (LTSA). This accounts for about 10 – 12% of the total. For the remainder, no fee is charged.
3. There has been an increasing demand for some form of 'Clearance Certificate' from various quarters of the community over recent years. In large measure the request for this service has originated from members of the public, who seek a 'police clearance' to demonstrate to a potential employer their status as a reputable person. Internationally this type of certificate is available in many overseas jurisdictions. Australia has recently agreed in principle to introduce a similar certificate.
4. This subject has been previously considered by police here, but never brought to fruition. As the call for this service grows, so too does the number of vetting requests per annum, indicating a need to consider changes to the present system. In 1992 the total number of checks conducted was 153,153. By 30 June 1998, this figure had risen to 206,912. This year's figure will be even higher and changes to the system are both timely and necessary.

OUTLINE OF POLICE VETTING SYSTEM

Pre-Privacy Act 1993

General Instructions V 16 – V20, and Annex 1, Parts 1 & 2, which are still in existence, set out the guidelines for police vetting. These instructions allow for the police to release

'criminal histories and other particulars concerning the character of a person ... to persons outside the Police Department' (in certain circumstances).

These circumstances are listed as:

- (a) *On a specific authorisation made by the Commissioner, or Deputy Commissioner; or*
- (b) *Where authorised by other General Instructions; or*
- (c) *To those bodies listed in Annex 1, Parts 1 & 2, on written application to O/C Intelligence and Criminal History Section, Police National Headquarters.*

Part 2 of Annex 1, sets out a schedule of Government Departments and other organisations approved for Police vetting, where the subjects consent is **not** required. These include:

- Security Intelligence Service
- Chairman of the Securities Commission
- Marine Department
- Overseas Law Enforcement Agencies, plus a number of others.

Part 1 of Annex 1, also sets out a schedule of Government Departments and other organisations which have been approved for vetting, but where the subjects consent **is** required.

A large number of organisations are then listed, which include:

- Airways Corporation of New Zealand
- Auckland City Council
- Barnardos New Zealand
- D.A.R.E. Foundation
- Foreign Embassies and Visa sections, High Commissions and Consulates or Consular representatives
- New Zealand Fire Service
- The New Zealand Society for the Intellectually Handicapped Inc
- Youth Organisations:
 - Scouts Association
 - Red Cross Society
 - Young Mariners of New Zealand Inc

Alongside each of the approved organisations, is listed the reason (or type of application or position sought) for which the vetting has been approved. These include Air Traffic Controllers, Parking Wardens, Caregivers, Staff, Facilitators, Volunteers and Youth Leaders, to name but a few.

The legislative authority for this procedure was provided by section 27 (5) of the Wanganui Computer Centre Act 1976.

Since the General Instruction was first written, many other applications from different organisations have been received, seeking to be included on this schedule. After some form of scrutiny they were advised the outcome and, if successful, added to the list. Many organisations were refused admission to the list, and others were in recent times told that the police were simply not accepting any more applications from organisations wishing to become 'approved'. The sheer pressure imposed on the vetting staff brought about this response.

If an individual member of the community wished to find out personal information held about them on the Wanganui Computer, he/she was required to write to the Wanganui Computer Centre Privacy Commissioner.

Post-Privacy Act 1993

With the introduction of the Privacy Act in 1993, the Wanganui Computer Centre Act was repealed, and replaced the onus of providing personal information to an individual, on the user department that holds the information, and not on the WCC Privacy Commissioner. In other words on the Department for Courts for:

- Criminal conviction history in New Zealand Courts
- Custody and supervision details
- Fines enforcement, and
- Court case monitoring details.

The LTSA for:

- Driver licence details
- Driver traffic conviction histories, and
- Motor vehicle registration/owner details

The Police Department for:

- Firearms licence details
- Document locator details
- Overseas convictions, and
- Identity information.

Another important feature of the Privacy Act so far as vetting is concerned, is that it is no longer an offence to produce a printout showing Wanganui Computer information.

Previously a list of convictions had to be re-typed onto a plain sheet of paper before forwarding to the applicant.

There is also no longer any clear legislative basis on which to ground the police vetting procedures as set out in GI V16 onwards.

Summary of present vetting system

- Applications for a vetting check are received at the Vetting and Validation section, Office of the Commissioner Service Centre.
- These originate from an organisation which has been 'approved for vetting'.
- The form sets out the name and other particulars of the individual in respect of whom the check is requested, as well as signed authorisation from that person for the check to be conducted.
- A criminal history check is made in the LES, and the agency notified the result.
- A check is also made in the National Intelligence System (NIS) and if anything is located, a 'judgement call' is made as to whether it is relevant to the request, or not. If it is, the organisation is advised by telephone that *'the Police do not recommend this person'*. As an example, if the vetting request concerns a Scout Leader application, then anything adverse would be deemed relevant, whereas an application for a visa to enter another country would not be.

OUTLINE OF PROPOSED 'POLICE CLEARANCE CERTIFICATE' SYSTEM

1. Application forms for a Clearance Certificate to be available at all Police Stations in New Zealand.
2. An individual, or organisation on behalf of and with the signed consent of the individual, must complete the form in its entirety giving full name, address, date and place of birth, and other particulars requested.
3. Subject to the exception listed on page 7, a fee becomes due at this time, payable by either delivery or posting to any branch of the Westpac Bank. There will be provision on the application form for a tear-off deposit slip, similar to the new application form for a Firearms Licence. **This eliminates the need for any cash handling by police staff.**
4. Upon deposit, the bank will suitably stamp the application form as confirmation of the payment made and the form returned to the applicant.

5. The form can then be accepted at a Police Station upon evidence of the applicant's identity (eg. Passport, new driving licence, new 10-year firearms licence, all of which have the owner's photograph affixed).
6. Both thumbprints to be taken by the attending Police member (there will be provision on the application form for this).
7. The application form will then be posted to the Office of the Commissioner, Fingerprint section, where the thumbprints will be subject to an AFIS check.
8. From here it will be forwarded to Vetting and Validation section for computer checks to determine whether the applicant has any criminal convictions.
9. A '*Police Clearance Certificate*' will then be generated in the name of the applicant, advising whether the applicant has a criminal record, and if so, supplying details.
10. This will then be posted to the applicant who can use it for whatever purpose they wish.

COST

As mentioned above it is proposed that a charge be made for a vetting check and issue of a certificate (subject to the exception set out below). The cost of this has still to be determined, but as an indication, a fee of \$25 plus GST, is currently levied on the LTSA. This however, is only for a conviction check on the LES, and does not result in the publication of a certificate, merely a reply indicating either no convictions, or supplying a printout of any convictions.

With the new system, extra work is involved in fingerprint taking and checking, and the production and authenticating of the certificate. Because of these value-added extras, the cost is likely to be at least in the range of \$35-\$60. As a comparison, the Australian Police Forces' decided on a fee of \$A120 to obtain a 'National Police Certificate'. This of course requires computer checks in the seven States or Territories, whereas ours is a very centralised process.

EXCEPTION

While a charge can be justified in all instances for which a certificate is issued, it has been proposed that no fee be charged to an organisation which meets certain criteria. This criteria has been proposed as similar to, or a variation of:

(an organisation)... 'That can demonstrate that a vetting check on the prospective employee/caregiver/volunteer/youth leader, or other position of care, responsibility or trust, is in the direct interests of crime prevention or public safety, with respect to the protection of children, the elderly or other vulnerable member of society'.

This is essentially a continuation of the present system but by the wording of the determination, would render many of the organisations which are currently 'approved', subject to the payment of the fee (eg. which seek checks for the purpose of employing Parking Wardens, applicants for Visas, Real Estate Agents etc).

Those organisations which it is anticipated would meet this criteria, would include Caregiver groups such as the New Zealand Society for the Intellectually Handicapped Inc., Barnardo's New Zealand, and the New Zealand Crippled Children's Society.

Likewise Youth Organisations such as the Scouts Association, Girl Guides and the Red Cross Society would be exempt from any payment.

RELEASE OF INFORMATION

It is intended to release no more than details of convictions to individuals, and organisations which do not meet the above criteria.

In respect of organisations that do meet the criteria, a check will also be made in NIS, and if information relevant to the application is recorded, then a summary of that will be conveyed to the organisation by separate letter.

At the present time, other than convictions, information per se is not released. But where there is something detrimental known, the Police advise the organisation by telephone that, "*while there are no criminal convictions recorded, the Police are reluctant to recommend this person*".

This is not satisfactory, as the organisation is not given any information to allow it to make 'an informed decision', but is in effect asked to 'read between the lines'.

In recording his decision in a 1998 complaint to the Police Complaints Authority, Judge Borrin stated, specifically in reference to information **other than** convictions:

'...in my view it must be implicit in any vetting carried out by Police that it was incumbent on them to release the minimum amount of information necessary, to allow the (organisation) to make an informed decision, provided that information was not misleading or taken out of context'.

The wording of the authority on the application form forthcoming from organisations that meet the criteria therefore will be extended to allow for the disclosure by the Police of '*any relevant information held by the Police*'. This will allow the release of information obtained from NIS.

A 'judgement call' will then be made by police, as to whether it is relevant to the application or not, and if so, whether its release is likely to prejudice a police investigation, or generally have an adverse effect on the cause of policing or justice. It is anticipated that in certain cases there will be consultation with district Intelligence Officers and others, who could advise on the prejudicial nature of the information.

In summary then:

- An individual applying for a '*Police Clearance Certificate*' in respect of him/herself, will receive a certificate attesting as to convictions.
- Likewise an organisation applying for a certificate in respect of, and with the signed authority of, an individual, will also receive a certificate attesting as to convictions only. For both of these a fee will be charged.
- An organisation which meets the criteria is exempt from payment, and in addition will be advised by separate letter of anything 'relevant to the application' discovered as a result of a NIS check.

ACTIVE CHARGES

If in undertaking an LES check it is discovered that the individual has charges still to be determined, then no Certificate will be issued until there has been an outcome. A notation on the application form will make this clear.

CERTIFICATE - TITLE

Throughout this document I have referred to the term '*Police Clearance Certificate*'. However this is something of a misnomer, in as much as if the individual actually has got convictions, then the certificate will show this, and so it is not in fact a police *clearance* as such.

Consideration has been given to other titles, and opinions are invited on those set out below. Conversely your staff may consider a different title from these, as more appropriate.

'*Police Certificate*' could be a more acceptable term, but perhaps somewhat bland. However, as there is no other document in existence in New Zealand, which carries this title, then perhaps it is suitable.

'*Police Certificate of Convictions*' implies that the person, in respect of whom it is issued, actually *has got* convictions, when it is likely that in the vast majority of cases, the certificate will demonstrate *no* convictions.

Two other possibilities, which incorporate the term 'Police' in the title, were considered. '*Certified Police Check*' and '*Police Records Check*', are similar in nature and might adequately describe the document.

As the final document is likely to feature a 'New Zealand Police' heading, then either; '*Criminal Law Information check*', or '*Law Enforcement Information check*, or '*Law Enforcement Information Certificate*', might better convey the meaning and intent of the document. All of these terms allude to the fact that it is not just Police convictions which have been checked, but also convictions resulting from criminal charges laid by 'other agencies', such as Immigration or the Serious Fraud Office.

CERTIFICATE – OTHER FEATURES

- The Certificate will state that it does not purport to be a character reference.
- It will state that it is valid as at the date of issue (which will be shown).
- It will bear an authentication stamp, with the signature of an 'authorised officer' in the Vetting and Validation section.
- Some form of watermarking will be inherent which will reduce the possibility of forgery.
- As a further security measure each page will be numbered (ie. 1 of 3, 2 of 3 etc)

DISTRICT INVOLVEMENT

At this stage it is anticipated that the only district involvement in this vetting process, will be:

- At the time of application when thumbprint's need to be taken, identification verified, and payment (where applicable) confirmed, and
- Possibly consultation with Vetting and Validation section staff to confirm facts and 'release-ability'.

Files will no longer routinely be sent to districts for 'local inquiries'.

IMPLEMENTATION

Following receipt of feedback from districts, it is then intended to:

- Consult with the; Privacy Commissioner, the Ombudsman, the Police Complaints Authority and the Council for Civil Liberties.
- Prepare a Business Plan for PEC.
- Rewrite the relevant General Instructions.
- Promote internal and external publicity.

No timeframes have yet been set for the introduction of this system.

FEEDBACK

I would be obliged if early consideration could be given this proposal, and welcome any constructive criticism or opinion.

L J Shanks
Inspector: Project Officer.
Operations Support: Office of the Commissioner



- 7 SEP 1999

6 September 1999

Mr Blair Stewart
Assistant Commissioner
Office of the Privacy Commissioner
P O Box 466
Auckland

Dear Mr Stewart,

PROPOSED 'POLICE CLEARANCE CERTIFICATE' SCHEME

Thank for your letter of 1 September last, in which you advise that the Privacy Commissioner will be unlikely to provide a formal response to the proposal before November.

As you point out, no time frames have been set for the introduction of this proposal. I believe this is very healthy, as it is imperative that all views and aspects are considered. Our Privacy Officer, Dr Andrew Jack, first proposed this scheme in 1993, but for various reasons, was not progressed beyond a broad proposal.

Because of the nature of the proposal and the likely impact it will have in many quarters, any comment from the Privacy Commissioner is of paramount importance. I would therefore be very happy to await his considered opinion and comments.

Yours sincerely

L J Shanks
Inspector: Project Officer
Office of the Commissioner: Police National Headquarters.

Safer Communities Together

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RECEIVED
15 FEB 2000

February 14, 2000

Mr. Blair Stewart
Assistant Commissioner
Office of the Privacy Commissioner
P O Box 466
Auckland

Dear Mr. Stewart

PROPOSED 'POLICE CLEARANCE CERTIFICATE' SCHEME

Further to our telephone conversation the week of January 10, I enclose a Discussion Paper outlining the options for changes to the present Police vetting system.

Due to the nature of the proposal and its likely impact in many areas, I invite the considered comment of your Office before the paper is released more widely.

In addition, Inspector Joe Green, Dr. Andrew Jack and I are able to fly to Auckland for the day to discuss these matters more fully if it would be of value. We are available for any day from March 13 to March 16 at your convenience.

Your response to the proposed meeting and the return of your initial feedback by 1 March would be appreciated. Please advise me if this will cause any difficulties.

Yours faithfully

Jane Marshall-McCaskey
Project Officer
Office of the Commissioner

Safer Communities Together

OFFICE OF THE COMMISSIONER

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PROPOSED 'POLICE CLEARANCE' CERTIFICATE DISCUSSION PAPER

This document has been prepared as a discussion document only. No decisions have yet been made in respect of this proposal. The purpose of this discussion paper is to provide some background on the current situation, encourage discussion of the primary options and invite feedback. Comments are welcome and contact details are provided at the end of the document.

BACKGROUND

There has been an increasing demand for some form of 'Police Clearance' certificate from various quarters of the community over recent years. With the repeal of the offence provisions in the Wanganui Computer Centre Act 1976, a range of individuals and organisations have started to demand their 'personal information' printouts for a variety of situations. Thus the printouts have come into common use as de facto 'Police Clearances'. The request for this service has predominantly originated from either members of the public who seek a 'Police Clearance' to demonstrate to a potential employer their status as a reputable person, or from organisations with workers of a voluntary nature. Internationally, this certificate is common in many countries.

A charge for this service is made essentially only on the Department for Courts and the Land Transport Safety Authority (LTSA). Vetting requests for which a fee is charged have accounted for 8.5% of all requests for the 1999/2000 year to date. For the remainder, no fee is charged.

This subject has been previously considered by the New Zealand Police, but never brought to fruition. As the community call for this service grows, so too does the number of vetting requests per annum, indicating a need to consider changes to the present system. In 1992 the total number of checks conducted was 153,153. By 30 June 1999, this figure had risen to 242,528. Changes to the system are both timely and necessary.

THE CURRENT SITUATION

Under current legislation, an individual is entitled upon application, to a printout of 'personal information' held about her or himself in the Law Enforcement System (LES – previously called the Wanganui Computer Centre (WCC)). No charge is made for this as an individual has the legislative right to check that the information held about them is correct. Other departments that can supply personal information of this type include the Department of Courts and the LTSA.

Police maintain a list of organisations 'approved for vetting'. An organisation approved for vetting may ask Police to make inquiries into the background of an individual to help the organisation assess the individual's suitability for a job/visa/caregiver situation. These inquiries usually consist of criminal history checks but in some cases more in-depth inquiries are made.

THE NEED FOR CHANGE

This current situation is unsatisfactory because:

- The current list of organisations approved for vetting is inconsistent in the sense that there are many groups not approved despite their reasons for vetting being as valid as those on the approved list. For example, prospective Scout leaders are vetted because of the role they play in relation to children, but private child-care providers are not.
- The printouts being issued are easy to alter and/or forge
- They are being relied on as 'Police Clearances' when they are unrelated to the Police
- The date of issue is not always clearly stated so the currency of the print out cannot be easily ascertained for some information
- Only limited steps are taken to identify the person

Because some printouts are issued by the Department for Courts, many of the problems outlined above are not strictly police problems. Nevertheless the Police are affected for a number of reasons including:

1. The public think of and use Department for Courts printouts as 'Police Clearances'
2. If a member of the public is disadvantaged in some way on account of the shortcomings of the printout, Police may be criticised for forcing people to resort to what can be perceived as an inferior option by not providing a 'Police Clearance' document as is available in most overseas countries
3. Overall the approach to this type of activity clearance is inconsistent in that Police are providing the information in some cases and the Department for Courts is providing it in other situations

RE-EVALUATION

Over recent years a number of considerations have led Police to re-evaluate the existing vetting service:

The Privacy Act came into force in 1993 and led Police to re-evaluate the existing service in light of the new legislation. Although the service does not breach the Act, there are ways of providing the same service more consistently within the general purposes and thrust of the Privacy Act 1993.

Extra agencies constantly approach Police asking to be 'approved for vetting'. One of these is the Community Funding Agency that effectively constitutes an umbrella agency for some 1600 service providers. The organisations employing individuals are increasingly aware of their responsibility for the safety and welfare of people in their care. To meet this growing need, organisations frequently require individuals such as job applicants to provide print outs from

LES obtained under the Privacy Act. These documents are not intended to fill this role and are unsuited for this purpose.

It is clearly in the public interest to prevent crime and in particular protect society's more vulnerable members. Providing an extended vetting service to the wider community, not restricted to a limited number of approved bodies, is consistent with this public interest.

The principle that Police and the community must work together to reduce the incidence of crime is seen as central to the current strategic direction of Police. An improved vetting service is seen as one way in which Police can support community efforts to reduce crime and protect public safety.

These factors suggest that consideration be given to providing an improved vetting service to the community that is consistent with law and the principles of the Privacy Act as suggested by the Privacy Commissioner.

PROPOSED SOLUTION

That the New Zealand Police introduce a document commonly referred to as a 'Police Clearance' certificate. This would be available upon application by an individual, and its regulations would be authorised by statute. This would improve the existing vetting service by removing the concept of an 'organisation approved for vetting' enabling Police to supply information directly to an individual.

This document would testify the result of a check on the name (and other details) appearing therein, in relation to criminal convictions. The certificate would be generated and sent to the individual requesting the information.

Once a certificate is received, the individual can check that the information was accurately recorded and choose whether or not they wish to provide it to, for example, a prospective employer.

No certificate will be issued in the case that an individual has charges pending. This will be stated on the application form, and a standard letter advising of this will be issued if the application reaches the vetting stage. All convictions will be recorded on the certificate. It is proposed that Diversions not be reported on the certificate, and the matter of whether Discharges would be included is still being investigated. We welcome feedback on these issues in particular.

There are two main options surrounding this proposal:

1. Whether a fee is charged; and,
2. What form of proof of identity is used.

It is proposed either that an individual's fingerprints be taken as part of the application process, or that they follow a proof of identity checklist similar to the one used by Firearms License applicants. The details for the proof of identity options are detailed in the following table.

Checklist Option	Fingerprints Option
<ul style="list-style-type: none"> • Standard of identification would remain the same as what is currently applied (minus the interview) for the Firearms applicants • More user-friendly than fingerprint option for both Police and the public • Is a more streamlined process than fingerprints option • More practical and faster 	<ul style="list-style-type: none"> • An effective way to positively identify individual if individual previously arrested • Fingerprints would not be kept on record and the original fingerprints would be returned to the individual for their own records • More expensive with increased cost and resourcing implications

COST

A fee may be charged and would be payable to a nominated bank. Although the Privacy Act 1993 prohibits public sector agencies from charging for access to personal information, people receiving a 'Police Clearance' certificate are getting more than access to personal information. They are getting a certificate designed to meet a range of specific needs with the community. The proposed system would either have to be User-Pays or centrally funded i.e. by Police.

If the individual simply wants to access the information contained therein and does not wish to pay for it, they may still request access in terms of Information Privacy Principle 6 and receive a print out from the Department of Courts. This is quite sufficient to enable the individual to check the accuracy of the information and exercise her or his rights in terms of the Privacy Act 1993. However, if they need a more comprehensive document suitable for functions such as insurance claims and visa applications, a fee may be appropriate. A precedent has already been set for this approach with charges made for Birth and Marriage Certificates, and for certified copies of court records.

Release of criminal history information is consistent with the partnership approach to crime prevention, but is not a core police function. If the service is to continue to be provided by Police, budget offset is required to avoid resources being diverted from core police functions. Police could charge a fee to recoup resource costs that would otherwise result in reduced funds for, and capacity to provide, core police activities if the service is to continue to be provided.

The cost of a vetting check and issue of a certificate still has to be determined, but as an indication, a fee of \$25 + G.S.T. is currently levied on the LTSA. This is only for a conviction check on LES and a reply indicating convictions (specified)/no convictions and does not allow for the publication of a certificate. With the new system, differing amounts of extra work would also be involved in either of the two proposed systems for identifying the individual.

In accordance with other certificates of personal information that are issued, it would be proposed that there were no exemptions for hardship. Other avenues available for funding would include such things as WINZ hardship grants.

CHARGE EXEMPTION

It has been proposed that no fee would be charged to an individual who meets certain criteria. This criteria has been proposed as similar to:

(an individual)... 'That can demonstrate that a vetting check is related to a voluntary function (i.e. unpaid work for a registered charity or incorporated society), and is in the direct interests of crime prevention or public safety, with respect to the protection of children/older people or other vulnerable members of society.' In this situation, the charge will be waived (on presentation of evidence from the organisation concerned).

This is essentially a continuation of the present system but by the change in wording would render many of the organisations which are currently "approved" on the G.I.s list subject to the payment of the fee (e.g. seeking checks for paid employment reasons, applicants for Visas etc.). Those organisations anticipated to meet the exemption criteria include caregiver groups such as Barnado's New Zealand, and voluntary organisations such as the Girl Guides.

PROPOSED CERTIFICATE CONTENT

- Individual's identification
- Specific purpose for which the information is sought possibly utilising a categorical approach i.e. visa/employment/voluntary
- Individual's address
- The scope of the search carried out
- Detail of criminal history
- A seal of authority to authenticate the document. This would also be initialed by an authorised officer in the Vetting and Validation section
- A disclaimer stating that the information is only valid as at the date of issue
- A reminder that if any of the information on the certificate is wrong, the person can request that it be corrected.
- A statement that the certificate does not purport to be a character reference
- A general Police disclaimer
- Some form of watermarking will be inherent to reduce the possibility of forgery
- Each page numbered for security (i.e. 1 of 3, 2 of 3 etc).
- Name of individual at top of each page

LEGAL IMPLICATIONS

Law changes will be required in the creation of a formal 'Police Certificate'. This would include an amendment to the Privacy Act if a fee is to be charged, and either a:

1. Prohibition on additional and irrelevant private information (supplied by Police and outside of certificate) being used in employment/voluntary organisational context; or an,
2. Amendment made to the Human Rights Act making it illegal to discriminate against potential employees/workers for irrelevant, outdated convictions.

The second option would ensure employers as the best-informed party could make an informed decision about the relevancy of any convictions. This is potentially more embarrassing for the individual, but would ensure the Police did not have to judge the relevancy of information for a particular position. All information would be going back to the individual, thus, applicants could ascertain the accuracy of their information, giving them more control over their own information.

CERTIFICATE TITLE

While this proposal is anecdotally known as the 'Police Clearance' certificate, it is somewhat misleading as a applicant may not actually be cleared if they have convictions, thus an appropriate title needs to be decided upon.

Other titles that have been considered include 'Police Certificate', 'Police Certificate of Convictions' (although this has the same type of problem as option 1), 'Certified Police Check', 'Police Records Check', 'Criminal Law Information Check' and finally 'Law Enforcement Information Check'. We particularly welcome feedback on this aspect.

CONTACT DETAILS

Please forward your comments to:

Jane Marshall-McCaskey
Office of the Commissioner
180 Molesworth Street
PO Box 3017
Wellington

Meeting Note

Meeting with Police on Police Clearance Certificate held on 15 March 2000

Present: Andrew Jack, Joe Green, Jane Marshall-McCaskey; Bruce Slane, Blair Stewart, [redacted] [OPC officials]

Bruce asked about present procedures if eg Barnardos applied for criminal conviction information. Dr Jack said that a list of approved organisations from the Wanganui Computer Policy Committee days could submit a letter that a person had applied and consented to providing this information. That list had been growing - as long as they were an incorporated society involved in giving care. Otherwise organisations would have to go to the Department for Courts. It is just a copy of the print-out except where the request is under a statutory scheme, when just a yes or no is given as to whether someone has a conviction. If there is no information about convictions, an organisation gets a letter back saying that there are no convictions, they get nothing. Police have been grappling about what to do with the intelligence system, as all sorts of information is on it, some of which is rubbish. Based on this Police could say there are no convictions but we would have, for example, some concerns about this person having unsupervised access to children. This would not be written down. The person doing the hiring would not know why.

Police consider it should be the individual making the request and getting the document, but don't think the level of consent is great. Concern was expressed about coerced access. Police also said that they were concerned about sending information to third parties before the individual sees it (mistakes can happen). They also want a more secure document.

Blair asked why this proposal was been talked about as alternative to vetting, expressing concern that the certificate would go to a local eg Scouts committee, whereas now the information only goes to national level. Andrew Jack considered that Police could not refuse these applications. Blair disagreed, saying it was discretionary.

Dr Jack pointed out that demand from insurance companies was enormous. Also with outsourcing, for example with DSW, vetting was done on an ad hoc basis. 270,000 applications are received a year, growing by 40% annually, for two-thirds of which the individual had no convictions. Blair considered that it was OK for approved organisations for which there is a case to expand the scheme, but not for commercial organisations such as employers. Blair said that the vetting system was a good system as currently. A certificate was not needed as Police were dealing directly with the organisation. It only became an issue when giving out the certificate to the community.

Blair was not opposed to the certificate, but not as an alternative to vetting. It was problematic from a privacy perspective if the certificate simply records all convictions. Certificates of different kinds which would meet the wider needs of various agencies, with relevant convictions only, were needed. Dr Jack responded that he didn't think there was time to develop a tailored response. Also there was the problem that certificates might be applied for for different reasons at different times. Blair considered that there would be

about five types of certificates. Police queried what would be relevant convictions. Blair outlined a proposal where the individual would be entitled to the full certificate plus could have a time limit of five or ten years, the spent convictions regime talked about by the Minister. Andrew Jack replied that from the Police point of view the only problem was cost as they didn't have the technology to do that and there would have to be a clear statutory table of what information on convictions could be given. At present Police just want to cater to the demand.

Bruce said the problem now is that everyone is asking for conviction information for every job, however small. He said it would be better if Police provided the information to some sort of assessment bureau which decided what information was relevant. Andrew Jack considered that decisions as to relevance should be made by those in the best position to know, which would be the employer. The Human Rights Act could be extended to make it an offence to discriminate on irrelevant convictions.

Discussion ensued about transferring requests to the Department for Courts which is the holder agency for conviction records. Police pointed out that the Police had developed a system to deal with urgent requests 24 hours a day, which Courts did not have. [redacted] pointed out that Courts can also do the cut-off date, for example if asking for convictions for the last ten years. Dr Jack pointed out that Courts can also do section 19 discharges etc.

[OPC official]

Blair indicated he preferred that the certificate went to the individual. He didn't see the certificate helped much if the technology did not improve. Regarding fingerprints, the demand for this has been driven by overseas, to ascertain not using other names. Dr Jack said this was excessive and intrusive and that Police preferred the points system used for firearm licences. Police said that for organisations they expected them to take responsibility for identifying the person.

Police summed up that we think the current vetting system is good, the certificate is on top of this, and also to add to the approved organisations scheme. Police wanted this in writing. Police also pointed out that the previous week they had decided on a name for the proposal: "Law Enforcement Information Check".

WP



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For : **INSPECTOR JOE GREEN**
Of : **OFFICE OF THE COMMISSIONER,**
POLICE NATIONAL HEADQUARTERS
Fax number : **04-499 1065**
Destination : **WELLINGTON**
From : **BLAIR STEWART**
Date: : **24 MARCH 2000**
No. of pages : **5**

The following information is of a private and confidential nature intended only for the above-named person(s). If, for any reason you should receive this fax in error or do not receive the stated number of pages, please telephone this office immediately.

PROPOSED "POLICE CLEARANCE CERTIFICATE" SCHEME

I refer to Ms Marshall-McCaskey's letter of 14 February 2000 and to our meeting on 15 March.

I offered, at your request, to try to put some comments in writing by the end of this week (i.e. today). I trust that these may be of assistance although other priorities have prevented me from commenting on all the issues in detail. Nonetheless, you will have obtained a fair indication of the Commissioner's views, in some detail, from our meeting. If any aspect requires clarification please feel free to get in touch.

This office sees some significant problems with the clearance certificate proposal from the perspective of individual privacy. The proposal for a tamper-proof certificate of criminal convictions (or the lack of convictions), referred to as a "Police clearance certificate" (although the title is misleading and I understand is not intended to be adopted), inter-relates with many other matters. These include the existing Police practice of vetting, the possibility of enhanced vetting practice, the rights of individuals to seek information about themselves, any processes for disclosing conviction information to authorised third parties (e.g. in visa issuance), and the desire of some third parties to have access to criminal history information for their own purposes. The matter also inter-relates with privacy problems which the Commissioner has described as "coerced access" (sometimes referred to as "enforced subject access") and "coerced disclosure". Those issues are discussed in detail in the Commissioner's report *Necessary and Desirable: Privacy Act 1993 Review*. Administrative considerations include the fact that the same information can be accessed by both

Police and the Department for Courts, the cost of processing requests or applications for vetting, whether a charge may be made for information that is requested, the safeguards necessary to ensure that information is only received by the individual concerned, etc. Issues of collection by employers etc of excessive personal information (e.g. old convictions unrelated to the employer's purposes) and the inability of the older technology to provide printouts of segmented data (e.g. convictions in the last 10 years) together with the absence of a spent convictions regime (and the renewed interest in considering of adopting such a regime) also bear on the privacy and rehabilitation issues. The existence of these various issues makes an attempt to introduce a Police clearance certificate in isolation quite problematic. On the other hand, were a number of these to be tackled in a co-ordinated fashion it might well be possible for privacy issues to be adequately addressed with a suitable scheme of clearance certificates forming part of a new way of handling conviction information.

The following notes, not in any particular order, touch upon some of the issues from the perspective of this office.

1. A system of clearance certificates, or disclosure of criminal history printouts to third parties, is no substitute for a good vetting scheme. Vetting scheme sees information disseminated in a very carefully controlled manner to third parties. Any replacement by a certificate process would be clearly detrimental from a privacy perspective. For instance, existing vetting sees convictions shared only with national bodies which securely store conviction information, centrally handled by a small number of disinterested and professional staff, in which the actual conviction information is not shared with local branches. A certificate scheme would see similar information widely disseminated at local level amongst branches and committees which are not necessarily properly set up to securely hold the information and use it only as relevant. There would be plenty of opportunity for privacy problems and unnecessary embarrassment which is not called for to protect necessary public interests.

2. Given that both the Department for Courts and the Police are faced with requests for access to criminal history information, any significant change in practice for one department has implications for the other. Some of those issues go beyond matters that this office is interested in (e.g. resourcing implications). However, there are Privacy Act issues to consider. For instance, some of the requests are access requests by the individual concerned to see what information is held about them. I understand that such requests might be received by either agency centrally or at district offices. Section 39 of the Privacy Act provides for the transfer of requests. In accordance with that section it might be possible for one department to transfer information privacy requests to the other. In the event that any change in current practice is anticipated in terms of routine transfer of requests, it would be helpful to keep this office informed since we get a number of enquiries asking how to make such a request and to whom it should be directed.

3. There are two alternatives tests in s.39(b) for transfer of requests. Reliance on s.39(b)(i) would only be available if the request related to information that is "not held" by the agency. Although it is possible to debate the meaning of "held" in this circumstance it is far more promising to examine the question in terms of

s.39(b)(ii). This provides for the transfer where it is believed that the information to which the request relates is "more closely connected with the functions or activities of another agency". My tentative view, for the purposes of discussion, is that the record of convictions could be said to be most closely related with the functions of the Department for Courts. That Department, after all, services the courts and maintains the definitive record of verdicts. This tentative view seems consistent with the approach taken in Part XI of the Privacy Act, and in the Fifth Schedule, which shows the Department for Courts as being the "holder agency" in respect of details of hearings (which includes convictions) with the Police being the "accessing agency" to those records.

4. While one might see convictions records as being more closely connected to the Department for Courts' functions than the Police's, one would also see the practice of vetting for public interest reasons as being consistent with a Police function of protection of the public. It seems to me that vetting as it is currently operated, does not benefit from the creation of a clearance certificate. With vetting, the Police deal directly with the national office of an organisation and there is no intermediate opportunity for tampering with printouts.

5. There are significant privacy problems with the practice that has grown up since 1993 of the Police and Department for Courts acting upon signed authorisations from individuals to disclose records to third parties. The growth of this practice has not originated from Government policy nor was it intended by Parliament in its repeal of the Wanganui Computer Centre Act 1976 or the enactment of the Privacy Act. In my opinion, the departments should respond to personal access requests in accordance with s.45 of the Privacy Act by suitably verifying that the request is indeed by the individual concerned and by disclosing the record to that individual and to no-one else (the sole exception being to a person nominated by the individual who is *clearly* the individual's agent – the primary example being a lawyer acting for a person charged with an offence). This would require both departments to stop routinely sending conviction information to third parties who are clearly not the individual's agents. The pretence of employers, insurance companies or private investigators being described as an individual's agent on a written form is simply that, a pretence. Those agencies are not in any real sense the individual's agent: they do not act at the individual's direction, they are not constrained to act in the individual's interests, they are seeking information for their own purposes. One might just as easily characterise the individual as the agent of the employer, insurance company etc. The existence of a written authorisation does not convert a request for disclosure (an information privacy principle 11 matter within the discretion of the Police) into an information privacy request (a principle 6 matter concerning an individual's rights). It will continue to be appropriate to disclose with suitable authorisation to official bodies such as foreign governments (say, on visa applications) and New Zealand statutory bodies in appropriate cases within the discretion of the Police (consistent with principle 11 – not principle 6).

6. To act on what I have just said, would mean that the practice would be returned to what it was in 1993 and the following year or two. The pressure from third parties for such information may nonetheless be responded to through returning the conviction printouts directly to the individual concerned and expansion of vetting

activity justified in the public interest. This diminishes the serious problem of coerced authorised disclosure but may in some cases convert it to one of coerced access. At the end of the day, a solution to the coerced access problem is not within the hands of the Police. However, handling it this way gives the individual an opportunity to check the accuracy of the information. The Police also obtain legal protection under s.116 of the Act unlike disclosures to third parties.

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- 7. New demands for vetting were discussed at our meeting. It seems preferable from a privacy perspective that be a well designed and controlled expansion in vetting activity, where the public interest warrants it, than uncontrolled authorised disclosures to third parties or coerced access to clearance certificates. I understand that there would be some new challenges in extending existing vetting practice to the wider range of organisations that now seek assistance, but with some ingenuity coverage of at least some categories ought to be possible. We discussed, for instance, autonomous bodies which are members of certain national federations, where it might be possible to deal with the national federation in the same way that you presently deal with the national office of regional organisations.
- 8. It would be possible for a carefully designed clearance certificate scheme to fit within an information handling system appropriately respectful of privacy. Such a scheme might include the enactment of a spent convictions regime whereby old irrelevant convictions are disregarded. If there were such a scheme, the circulation of certificates with only unspent convictions would be less problematic from a privacy and rehabilitation perspective. What I would wish to see is a certificate scheme which segments information into categories which are relevant to particular users. For instance, there might be one kind of certificate for staff working with vulnerable people (e.g. encompassing crimes against the person, sexual offences etc), another for those working in financial institutions (e.g. convictions demonstrating a breach of trust, theft etc), commercial drivers (road traffic offences – something already available through LTSA I understand from our meeting), etc. I anticipate that probably four or five such certificates encompass most reasonable demand for details. There would also be a “full” certificate which would be available, say, for visa applications where a foreign government will not accept a partial certificate. However, the idea would be that employers, for instance, would not normally be entitled to insist on a full certificate and it might be the subject of complaint of breach of information privacy principle 1 if there were to ask for such a certificate when it is not warranted by the nature of the employment.
- 9. I imagine that any comprehensive and effective change in current practice, such as that outlined in the previous paragraph, would probably need legislative backing to be effective. Otherwise, agencies might get around the scheme by, say, coercing individuals to seek access to source information (i.e. a Wanganui printout) rather than utilising the certificate regime. Incidentally, I anticipate a charge being made for certificates. Only the individual seeking access to the information would be entitled to have that free of charge and that would be delivered in a non-certificate form.

I trust that these comments may be helpful. They were prepared in haste to meet your deadline and therefore may contain errors. There was insufficient time to discuss the details of the fax with the Commissioner and the opinions therefore remain my own.

Yours sincerely,



Blair Stewart
Assistant Commissioner

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file

11 AUG 2000

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FAX COVER SHEET

To: The Privacy Commissioner	From: Inspector Joe Green Manager: Licensing and Vetting
Fax: 09 302 2305	Fax: 04 499 1065
Phone:	Phone: 04 474 8851
Date: 11/08/2000	Pages: 5 (including cover sheet)
Subject: Police vetting services	

 Urgent For Review Please Comment Please Reply Please RecycleMessage

My sincere apologies in the delay in forwarding the attached to you, especially in light of recent media comment.

In light of the project re vetting services the Police Executive Committee approved the attached policy on 23 May 2000. We are in the process of discussing the role of the Department for Court and are waiting to hear back from them. We will then implement a process that will see vetting carried out by police, and the release of criminal histories for purposes other than that outlined in para 1.1 of the PEC policy released by Courts.

This policy has already been notified to the public, albeit in a limited way. The Institute for Child Protection Studies has released the publication 'Safe not Sorry' – a handbook for selecting suitable people to work with children. Pages 16 and 17 outline the revised police policy. This is an excellent publication and I recommend that you obtain a copy for reference in this area (Phone 07 846 6577).

For your information.

WARNING!

THIS FACSIMILE MESSAGE CONTAINS INFORMATION THAT IS CONFIDENTIAL AND MAY BE SUBJECT TO THE PROVISIONS OF SECTION 81A OF THE POLICE ACT 1958, WHICH CREATES AN OFFENCE TO HAVE UNLAWFUL POSSESSION OF POLICE DOCUMENTS. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU MUST NOT PERUSE, USE OR PASS OR COPY THIS MESSAGE. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE TELEPHONE US (COLLECT) AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU



PEC OPERATIONS SUBCOMMITTEE

REFERENCE:**TOPIC:** Vetting services and the release of criminal histories**SPONSOR:** National Operations Manager**PRESENTER:** Manager: Licensing and Vetting Service Centre

23 May 2000

1 Proposal

- 1.1 That the PEC Operations Subcommittee approve the provision of vetting services to those organisations whose core function is the provision of care to other people, accepting that this is aligned with the Police core business of public safety with specific reference to the more vulnerable members of society, specifically the young, older people and those with special needs.
- 1.2 That the PEC Operations Subcommittee approve the referral of requests for criminal history from organisations other than those who meet the above criteria and from individuals to the Department for Courts whose records these are.
- 1.3 That the PEC Operations Subcommittee note that this does not affect the provision of vetting services and criminal history records to organisations to which Police are required to release this information by statute. These include the Justice Department and the Children, Young Persons and their Families Service and requests from diplomatic posts concerning visa requests.

2 Background

- 2.1 Under the provisions of the Wanganui Computer Act information from the Wanganui computer, now known as LES could only be released to 'approved organisations'.
- 2.2 The list of approved organisations was established and added to by the Wanganui Computer Privacy Commissioner.

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- 2.3 The basis for accepting organisations as 'approved' is not entirely clear. Indications are that organisations were generally approved on the basis they provided care to young people, older people and those with special needs.
- 2.4 Organisations that did not meet these criteria were also 'approved'. It would appear that the basis for this approval was that Police had established a section to release this information. In this sense Police have taken on a role by default rather than by design.
- 2.5 With the enactment of the Privacy Act 1993 the Wanganui Computer Act was repealed.
- 2.6 The Privacy Act 1993 identifies criminal histories as being 'Court records' to which Police have 'access'.
- 2.7 Police have continued to respond to requests for the release of this information under the provisions of the repealed Act, with only a limited number being requests from individuals under the Privacy Act 1993.
- 2.8 Organisations have been added to the list of 'approved organisations' with a focus on the care-giving role they might have. A significant number of such organisations have however been declined and referred to the Department for Courts.
- 2.9 As a result the Department for Courts have also undertaken a number of vetting checks that properly should have been conducted by Police.
- 2.10 The requests for vetting services and the release of criminal histories by the Licensing and Vetting Service Centre have expanded considerably from 146 000 requests for the 1994/95 year to 242 000 requests for the 1998/99 year.
- 2.11 There is a clear distinction between 'vetting' and the 'release of criminal history'. Vetting includes the added value of a check on intelligence held by Police.
- 2.12 The combination of these factors indicate it is timely to review the Police role in the release of information.
- 3 Consultation**
- 3.1 Consultation has been carried out with District Commanders, the Privacy Commissioner, the Council for Civil Liberties and the Department for Courts.
- 3.2 The Privacy Commissioner has reinforced the Police vetting role, at the same time indicating that the release of criminal histories, and the way this is done is not properly a Police function.

- 3.3 The Department for Courts agree that criminal histories are Court records as defined by the Privacy Act 1993 and that as such they should properly be released by the Department for Courts.

4 Financial implications

- 4.1 The implementation of a process whereby Police will focus on vetting while the Department for Courts will release criminal histories will require a consultative process and the preparation of informational material for the public and organisations with which each respective organisation works. No significant increased costs are involved. These costs will be met from within the existing Licensing and Vetting Service Centre budget. The 2000/2001 budget has been prepared on the basis that this policy will be approved.
- 4.2 The Department for Courts has indicated that this process will have financial implications to them in terms of their capability to deal with the increase in applications for criminal history.
- 4.3 Whilst Police will initially be devolving approximately 100 000 requests for the release of criminal histories this will be offset by an increase in vetting requests originating from the Department for Courts and from other organisations.
- 4.4 No reduction in Licensing and Vetting staffing levels is possible as a result of this policy.

5 Legislative implications

- 5.1 There are no identified legislative implications.

6 Maori and the Treaty of Waitangi

- 6.1 There are no implications in terms of Maori and the Treaty of Waitangi

7 Relationship to key result areas

- 7.1 This policy will realign Police activity with the specific aim of increased public safety and the protection of victims and potential victims.

8 Public relations – media implications

- 8.1 A joint Police/Department for Courts strategy will communicate this policy to the public.

8.2 A communication plan will be completed on the approval of this policy.

9 Conclusion

9.1 This paper seeks to realign the functions and roles of the Police and the Department for Courts in terms of vetting and the release of criminal histories, the repeal of the Wanganui Computer Act and the enactment of the Privacy Act 1993.

10 Recommendations

That the PEC Operations Subcommittee:

- 10.1 Approve the provision of vetting services to those organisations whose core function is the provision of care to other people, accepting that this is aligned with the Police core business of public safety with specific reference to the more vulnerable members of society, specifically the young, older people and those with special needs.
- 10.2 Approve the referral of requests for criminal history from organisations and individuals other than those who meet the above criteria to the Department for Courts whose records these are.
- 10.3 Note that this does not affect the provision of vetting services and criminal history records to organisations to which Police are required to release this information by statute, including the Justice Department, the Children, Young Persons and their Families Service and requests from diplomatic posts concerning visa requests.