



Te Tari Taiwhenua Internal Affairs

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Dear Jess

Official Information Act 1982 (OIA) request OIA 18/19-0369

Thank you for your request under the Official Information Act received by the Department of Internal Affairs (Department) on 2 December 2018.

In a letter sent to you from the Deputy Registrar-General of Births, Deaths and Marriages, the Deputy Registrar-General stated that "the Registrar-General may change the sex on a person's New Zealand birth record to indeterminate if the sex was indeterminate at the time of birth and was incorrectly recorded as female or male. [...] To make a correction of this nature the [Births, Deaths, Marriages, and Relationships Registration Act 1995] Act requires the Registrar-General to make inquiries into whether the person's sex was recorded incorrectly at birth. This requires sufficient evidence to be provided to the Registrar-General establishing that the time the person's birth was registered their sex was incorrectly recorded at birth as female or male rather than indeterminate."

You requested

Could you please specify what is classed as 'sufficient evidence' in this context?

Error of Fact

Any person may request that the Registrar General correct information held on any Birth, Death and Marriage registers under Section 84 of the Births, Deaths, Marriages, and Relationships Registration Act 1995 (Act) should they believe there is an error of fact.

Section 84 of the Act allows the Registrar General to correct a record should he be satisfied that the Department has made a clerical error, or the record has been recorded correctly as per the information provided at the time of registration, but there is sufficient evidence to support that the information was incorrectly provided to the Department.

Sufficient Evidence

To amend a record shown to be registered with incorrect information, the Registrar-General must be in possession of sufficient evidence that clearly supports the claim that incorrect information was provided at the time of registration.

All requests received by the Registrar-General are considered on a case-by-case basis. The level of sufficient evidence is relevant to each request and therefore cannot be standardised.

Where a request is made to amend the sex on your birth record from 'female' to 'indeterminate', the following applies. As 'sex' is provided to the Department on the birth registration (completed by the parents) and the birth notice (provided by the hospital), the Registrar-General must be satisfied that the information provided on both forms was incorrect. Registration of a birth only occurs when the two documents match.

Sufficient evidence in such situations may include, but is not limited to: amended copies of hospital records confirming that the sex was recorded incorrectly at the time of birth, and written evidence from a doctor confirming that a medical examination has been undertaken which supports the amendment of the recorded sex.

Based on communications with you, the Department considers that a change of hospital records and the issuance of a new birth notice, or statement regarding the incorrect information recorded on the original birth notice may be sufficient evidence to support the amendment of your birth record. It is understood that you have been in touch with the Bay of Plenty District Health Board (BOPDHB) and that they have confirmed that your original files have been destroyed and therefore cannot be reviewed. It is noted however that they have provided information on what would be required for them to write a statement supporting your request in lieu of the original files. You may wish to consider discussing this matter further with the BOPDHB in order to obtain a written statement supporting the amendment of your registered sex.

Please note that all evidence must confirm that the error was made at the time of your birth.

Further Information

At this time, the Registrar-General is not satisfied that there is sufficient evidence to support claims that your sex was recorded incorrectly at the time of your birth.

There are further steps you may wish to consider should you disagree with the Registrar-General's assessment of your request.

1. You may contact the Wellington Family Court seeking an order under Section 85 of the Act. Section 85 of the Act allows the Family Court to consider proposed corrections on cases of difficulty or dispute, and rule either in the favour of the requester or the Registrar-General. If the Family Court believes you have sufficient evidence to show that the record is in fact incorrect, they may order the Registrar-General to amend the record.
2. The Births, Deaths, Marriages, and Relationships Registration Bill is currently awaiting its second reading before the House which if passed into law, will allow for a person to make a request to the Department to change their registered sex without the need to obtain a court order. The changes will allow a person to seek to be recorded as 'Male', 'Female', 'Intersex', or 'X (unspecified)'. Please note that

'Indeterminate' is not an option within the Bill. A change of sex marker to 'indeterminate' will still require sufficient evidence that an error has been made, or an appropriate court order.

If you have any further questions regarding birth records or wish to obtain more information on your possible next steps, please do not hesitate to contact Adrian Jarvis, Deputy Registrar-General at adrian.jarvis@dia.govt.nz.

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 or freephone 0800 802 602.

Yours sincerely



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Manager Branch Development and Support
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