

Request by Land Transport Safety Authority to Police for details of ‘diversion’ of applicant seeking driver identification card

Legislation	Official Information Act 1982, s 6(c)
Agency	New Zealand Police
Ombudsman	Anand Satyanand
Case number(s)	W40692
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Request by Land Transport Safety Authority to Police for details of ‘diversion’ of applicant for a driver identification card—request declined—disclosure would undermine purposes of ‘diversion scheme’—maintenance of the law

The Director of Land Transport Safety has responsibility under the Transport Services Licensing Act 1989 for the issue of driver identification cards which entitle persons to drive certain transport service vehicles, including taxis. A driver identification card may be refused if the Director is not satisfied that the applicant is a ‘fit and proper person to drive’ the vehicle in question.

For the purpose of a particular application, the Land Transport Safety Authority (LTSA) requested the Police to supply details of alleged criminal conduct in respect of which the applicant had undergone ‘diversion’. The diversion scheme is a procedure whereby a person who admits criminal conduct agrees to undertake certain actions in return for which the person is not prosecuted. The procedure is commonly used for first-time and minor offenders.

The fact that a person has undergone diversion does not constitute a criminal conviction. It is emphasised to the person that successful completion of the diversion process will result in the avoidance of the consequences of a conviction upon their record, and enable the matter to be dealt with confidentially without further comeback.

The LTSA became aware that an applicant for a driver’s identification card had undergone diversion. The person declined his consent for the Police to release information about his

diversion to LTSA, and the point was made on his behalf that the Police had stressed to him that completion of the diversion process would be an end to the matter.

The Police declined to provide the requested information to LTSA in reliance upon section 6(c) of the OIA, namely for the reason that the making available of the information would be likely to prejudice the maintenance of the law. The Police argued that the diversion scheme provided a valuable process which avoided persons being brought unnecessarily before a criminal court and constituted an incentive not to re-offend. The Police submitted that if details of diversion were released in circumstances such as the present, then the prime purpose of offering diversion to a person would be fundamentally undermined.

Conversely, LTSA argued that release of the information would contribute to the maintenance of the law by enabling the Director to more efficiently undertake his responsibilities under the Transport Services Licensing Act.

The diversion scheme is a valuable process which encourages rehabilitation and avoids persons being brought before criminal courts. In the circumstances, breach of the confidentiality promised to the applicant as part of the diversion agreed by him would prejudice the maintenance of the law within the meaning of section 6(c). Accordingly, the Police were entitled to withhold the information at issue.

Section 6 provides conclusive grounds for withholding official information. For this reason, the argument by LTSA that disclosure of the information would contribute positively to the maintenance of the law was not relevant. Once the Police had established that section 6(c) applied, that was an end to the matter. The Act did not provide for competing interests to be balanced in the manner suggested by LTSA.

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