

11 May 2020

D J Blair
fyi-request-12144-e25be6d5@requests.fyi.org.nz

Our ref: OIA 81419

Dear D J Blair

Official Information Act request: Licensing

Thank you for your email of 3 February 2020 to the Ministry of Justice (the Ministry) requesting, under the Official Information Act 1982 (OIA), information relating to the authority of licensing. Specifically, you asked:

"Can you please inform me which superior authority requires one to apply for a license to perform certain activities? Licenses are compulsory, mandatory or voluntary? My understanding is these licensed activities are lawful and legal."

On 4 February 2020, Ariana Kauri, Media Adviser, wrote to you seeking to clarify your request. She asked if your request was about the Private Security Personnel Licensing Authority, Alcohol Regulatory & Licencing Authority, the Licensing Authority of Second-hand Dealers and Pawnbrokers or brothel operator certification.

You responded on 11 April 2020 stating that:

"I'm talking about all and every license, are these actions licenses are required for otherwise illegal? Where does the authority stem from to grant such a license?"

As the Ministry sought under section 15 of the OIA to clarify your request within the first seven working days of your initial request, please be advised that your clarified request is a new request for the purposes of the OIA, resetting the due date.

In response to your request, there is no single "superior authority" for licenses. Licenses are compulsory to comply with as the requirement to have one is made legitimate through legislation. However, the requirement of each type of licence can be found in the relevant legislation passed by the House of Representatives and given Royal Assent by the Governor-General.

The Ministry administers several pieces of legislation that outline the requirement for licenses within each Act as well as the consequences for committing an offence by contravening them. Each Act also outlines a framework that provides checks and balances around the issuing of licenses. I outline the provisions of some of them below.

Private Security Personnel and Private Investigators Act 2010

Licenses are discussed in part 2 subpart 1 of this Act. Section 23(1) outlines who is required to have a license whilst 23(2) states: "Every person who contravenes this section commits an offence and is liable on conviction." Sections 24 and 25 detail the different application requirements for individuals versus companies, whilst part 4 gives the framework for disciplinary procedures. The Act is available online at: www.legislation.govt.nz/act/public/2010/0115/latest/whole.html#DLM1594522

Additional information on the Private Security Personnel Licensing Authority (PSPLA), which the Act establishes, can be found on the Ministry website at: www.justice.govt.nz/tribunals/licences-certificates/pspla/about-the-authority and it outlines where the PSPLA derives its powers, responsibilities, and information on the licenses it issues.

The Sale and Supply of Alcohol Act 2012

The Sale and Supply of Alcohol Act 2012 outlines the requirements and specifications of several different types of licenses for the sale of alcohol and the responsibilities of those who hold them. Section 169 establishes the Alcohol Regulatory and Licensing Authority (ARLA), which considers and determines applications made by licensing inspectors and the Police for the variation, suspension, or cancellation of liquor licences and manager's certificates. ARLA also considers and determines appeals against decisions made by district licensing committees and appeals against elements of provisional local alcohol policies developed by local councils. More information about ARLA and its appeal processes can be found at: www.legislation.govt.nz/act/public/2012/0120/latest/DLM3339333.html and on the Ministry website at: www.justice.govt.nz/tribunals/arla

Section 233 of this Act deals with sales of alcohol by people who do not hold licences and the consequences of doing so which are a conviction and either a term of imprisonment of no more than 3 months or a fine of not more than \$40,000.

Real Estate Agents Act 2008

The Real Estate Agents Act 2008 establishes the Real Estate Agents Authority, which administers the licensing regime for agents, branch managers, and salespeople, and the Real Estate Agents Disciplinary Tribunal, which hears and determines disciplinary charges made against licensees that are referred to it by a Complaints Assessment Committee of the Authority.

Part 3 of the Act deals with licensing. Section 141 of the Act states that it is an offence to carry out real estate agency work without a licence. The Act is available online at: www.legislation.govt.nz/act/public/2008/0066/latest/whole.html#DLM1152006

Information about the Authority and Tribunal are available at: www.rea.govt.nz and www.justice.govt.nz/tribunals/real-estate-agents

Secondhand Dealers and Pawnbrokers Act 2004

The Secondhand Dealers and Pawnbrokers Act 2004 establishes the Licensing Authority of Secondhand Dealers and Pawnbrokers. The Authority issues licences and certificates to people working in the secondhand dealer and pawnbroker industries, disciplines licence and certificate holders and keeps the

register of license and certificate holders. There is more information at: www.justice.govt.nz/tribunals/licences-certificates/secondhand-dealers-pawnbrokers

Section 6(1) of this Act makes it a requirement to have a license to be a secondhand dealer, whilst section 6(6) makes it an offence with a fine of \$20,000 to carry on business as a secondhand dealer without a licence.

As the above examples demonstrate, the relevant legislation outlines the requirement for licences as well the offences and penalties for those operating without a licence. Many pieces of legislation will outline a specific penalty for the offences referred to in the Act itself. Access to suitable levels of appeals and decision making surrounding licences can also be seen in the legislation.

If you require further information about a specific licence, I would recommend you contact a lawyer. Legal advice and information maybe available through your local Community Law Centre, which are continuing to operate online or over the phone during the COVID-19 alert levels. There is more information at: www.communitylaw.org.nz

If you require any further information from the Ministry, please contact Jerram Watts, Acting Team Leader, Media and External Relations, by calling (04) 918 8980; or emailing media@justice.govt.nz

If you are not satisfied with my response, you have the right to complain to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by email at info@ombudsman.parliament.nz

Yours sincerely



Caroline Greaney
General Manager, Civil and Constitutional, Policy