

OC200601

24 July 2020

Te Kaitukutono
fyi-request-13172-2c756fee@requests.fyi.org.nz

Dear Te Kaitukutono

I refer to your request dated 28 June 2020, pursuant to the Official Information Act 1982, seeking:

"Whereas, there are legislative Acts that are subordinate to other legislative Acts; please confirm whether or not the Land Transport Act 1988 is subordinate to the Imperial Laws Application Act 1988 and its provisions".

While the Ministry of Transport has not previously considered the specific question you have raised, the following documents fall within the scope of your information request and are enclosed:

- OIA request dated 16 June 2018 (together with attachment to that request) and response.

Information has been withheld, pursuant to section 9(2)(a) of the Official Information Act 1982, to protect the privacy of natural persons. I do not consider that, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

The Ministry publishes our Official Information Act responses and the information contained in our reply to you will be published on the Ministry website. Before publishing we will remove any personal or identifiable information.

You have the right under section 28(3) of the Official Information Act to make a complaint to the Ombudsman about the decision to withhold information, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsmen
P O Box 10-152
WELLINGTON

Yours sincerely


Brendan Booth
Chief Legal Adviser

From: [REDACTED]
Sent: Monday, 20 August 2018 12:13 PM
To: [REDACTED]
Subject: Reply from Hon James Shaw, Acting Associate Minister of Transport.
Categories: w/ Minister

Tēnā koe [REDACTED]

Withheld under section 9(2)(a) of the Official Information Act 1983

On behalf of Hon James Shaw, Acting Associate Minister of Transport, please find below a reply to your email of 16 June 2018.

Tēnā koe [REDACTED]

Thank you for your email of 16 June 2018 to Hon Julie Anne Genter, Associate Minister of Transport, regarding constitutional rights and New Zealand driver licensing laws. Your email has been referred to me for reply as the matters you raise fall within my portfolio responsibilities as Acting Associate Minister of Transport. Please accept my apologies for the delay in replying.

I do not see any inconsistency between New Zealand's driver licensing regime, established by the Land Transport Act 1998, and New Zealand's constitutional framework.

As the attachment you provided notes, the Imperial Laws Application Act 1988 incorporates parts of specific Imperial enactments into New Zealand law. However, this legislation, and common law more broadly, can be overridden by subsequent parliamentary statutes.

The right to freedom of movement that you reference is also enshrined in the New Zealand Bill of Rights Act 1990. However, Section 5 of that Act says that the rights and freedoms contained in the Bill of Rights Act may be subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. I am confident that, to the extent that driver licensing limits freedom of movement, it can be demonstrably justified due to the importance of licensing in promoting road safety.

Thank you again for taking the time to write.

Nāku noa, nā

Hon James Shaw
Acting Associate Minister of Transport

Ngā mihi

Withheld under section 9(2)(a) of the Official Information Act 1983

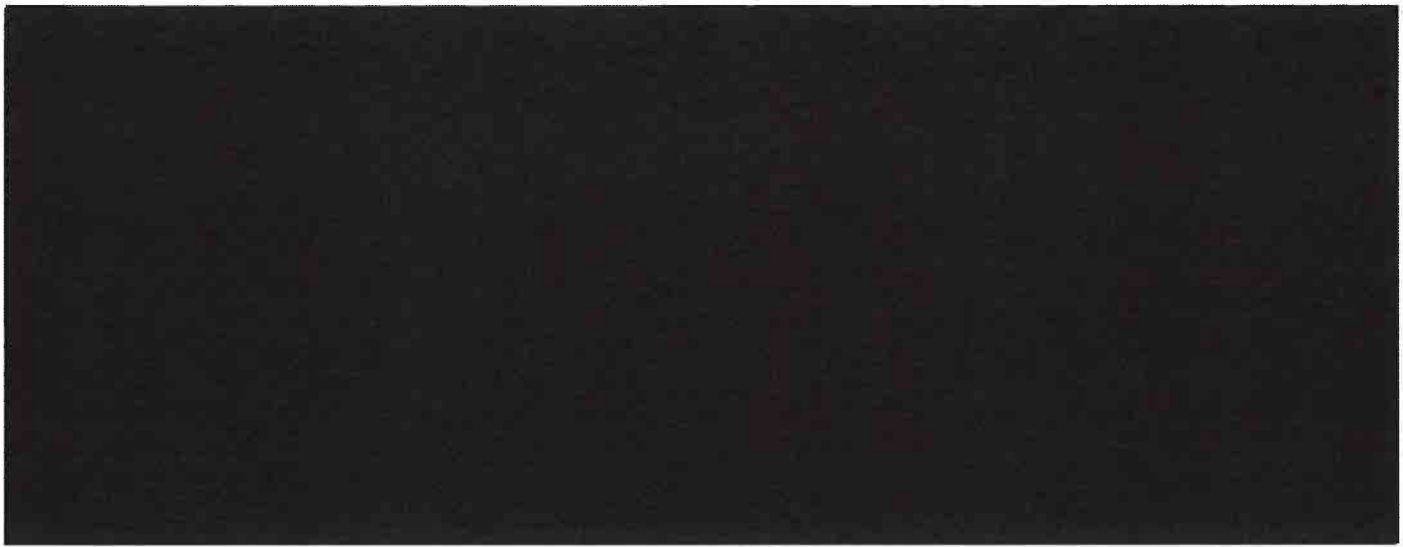


[REDACTED] Private Secretary - Administration

Office of Hon James Shaw

Minister for Climate Change | Minister of Statistics | Associate Minister of Finance | Acting Associate Minister of Transport | Acting Associate Minister of Health

Bowen House, Parliament Buildings, 80 Lambton Quay | Private Bag 18041 | Wellington 6160
| New Zealand



-----Original Message-----

From: [REDACTED]
Sent: Friday, 6 July 2018 2:03 PM
To: [REDACTED]
Subject: FW: Constitutional rights (natural rights)

Dear [REDACTED]

Withheld under section 9(2)(a) of the Official Information Act 1983

On behalf of Hon Julie Anne Genter, Associate Minister of Transport, thank you for your email of 16 June 2018. Please accept my apologies for the delay in replying.

Your email will be placed in front of Minister Genter for her consideration. Due to the current volume of Minister Genter's correspondence please expect a reply in due course.

Kind regards

[REDACTED]

Private Secretary - Administration | Office of Hon Julie Anne Genter | Associate Minister of Transport Level 6.C Bowen House | Parliament Buildings | Wellington | New Zealand

-----Original Message-----

From: [REDACTED]
Sent: Saturday, 16 June 2018 8:18 PM
To: Hon Julie Anne Genter <JulieAnne.Genter@parliament.govt.nz>
Subject: Constitutional rights (natural rights)

Withheld under section 9(2)(a) of the Official Information Act 1983

Hi Julie Anne,

Please find attached a PDF which shows how the natural right of liberty is part of the law of NZ. Do you have any comment on the inconsistency between the liberty of the Imperial Laws Application Act in relation to the NZ driver licencing laws?

Regards, [REDACTED]

Withheld under section 9(2)(a) of the Official Information Act 1983

Liberty at Common Law

Persons

An early edition of Black's dictionary of law describes a person as someone considered within a social context, i.e. without the consideration of rights and duties that are not bestowed or imposed by society, i.e. persons do not have the common law right of liberty or any other natural right.

person:

A man considered according to the rank he holds in society, with all the rights to which the place he holds entitles him, and the duties which it imposes. 1 Bouv. Inst. no. 137. A human being considered as capable of having rights and or being charged with duties, while a "thing" is the object over which rights may be exercised.

Black's 2nd (1910)

Liberty

Liberty at common law was indirectly recognized by a constitutional enactment of Parliament:

Application of Imperial enactments and Imperial subordinate legislation as part of laws of New Zealand

The Imperial enactments listed in Schedule 1, and the Imperial subordinate legislation listed in Schedule 2, are hereby declared to be part of the laws of New Zealand.

Imperial Laws Application Act 1988 Section 3(1)^[1]

In the schedule of constitutional enactments the term "person" is used to refer to social standing. Liberty of freemen is referred to within the Magna Carta.

Constitutional enactments

(1275) 3 Edw 1, c 1—(Statutes of Westminster the First): so much of that Act as is stated in the words "'The King willeth and commandeth ... that common right be done to all, as well poor as rich, without respect of persons.'" [being the English translation of part of the authentic text of that Act as it appears in the edition called Statutes of the Realm].

(1297) 25 Edw 1 (Magna Carta), c 29.

Imperial Laws Application Act 1988 Schedule 1^[2]

Chapter 29 of the Magna Carta recognizes the liberties of freemen, not persons.

Protection of Freemen

No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.

Magna Carta chapter 29^[3]

Blackstone explains how liberty is not a right that is bestowed by society:

Of the Nature of Laws in General

Those rights then which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture.

Blackstone's Commentaries^[4]

Blackstone also explains how personal liberty is consistent with the right of ordinary use of public roads by the public. Here a person is the possession of an individual, and not the individual himself or herself.

Of the Absolute Rights of Individuals

Next to personal security, the law of England regards, asserts, and preserves the personal liberty of individuals. This personal liberty consists in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law.

Blackstone's Commentaries^[5]

References

- 1 <http://www.legislation.govt.nz/act/public/1988/0112/latest/DLM135084.html>
- 2 <http://www.legislation.govt.nz/act/public/1988/0112/latest/DLM135091.html>
- 3 <https://blogs.loc.gov/law/2015/01/new-zealand-constitutional-law-global-legal-collection-highlights/>
- 4 <https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-002/>
- 5 <https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-101/>