

13 July 2022

S.I.

fyi-request-19749-bd49ee07@requests.fyi.org.nz

Dear S

I refer to your Official Information Act 1982 (OIA) request by email of 25 June 2022, in which you ask for:

"In order to legally invoke a warrantless search, arrest etc, police must have 'reasonable grounds to suspect' or 'reasonable grounds to believe', depending on the specific legislation they are relying on.

I would like to request all instructions, guidelines, policy manual chapters, training documents, legal opinions and any other resources that have been made available to Police relating to:

'reasonable grounds'

'reasonably believes'

'has good cause to suspect'

'reasonable grounds to suspect'

'reasonable grounds to believe'

'probable grounds'

and any other related variation used to justify the Police actions of arresting/searching/investigations in their duties."

In response to your request for instructions, guidelines, policy manual chapters and training documents, I provide the following information:

- Excerpt from the Police Manual 'Arrest and Detention' (3 pages)
- Excerpt from the Police Manual 'Warrantless powers to search places, vehicles and things' (4 pages)
- Excerpt from the Detective Training Programme module 'Search and Surveillance Act' (2 pages)

In response to your request for Police legal opinions, this information is refused pursuant to section 9(2)(h) of the OIA, in that the information is protected by legal professional privilege.

Police National Headquarters

180 Molesworth Street. PO Box 3017, Wellington 6140, New Zealand.
Telephone: 04 474 9499. Fax: 04 498 7400. www.police.govt.nz

If you are not satisfied with my response to your request, you have the right to refer the matter to the Ombudsman.



Craig Scott
Detective Inspector
Police National Headquarters

Arresting without a warrant

Power of arrest without a warrant

No one can arrest a person without a warrant except under the provisions of:

- the Crimes Act 1961, or
- some other legislation expressly giving power to arrest without warrant.
s315(1) Crimes Act 1961.

However, while constables have a power to arrest without a warrant in many situations, less serious resolutions should always be considered when appropriate. (See '[Deciding whether to arrest](#)', in this chapter).

Arrests under the Crimes Act

Constables and anyone they call to their assistance may arrest and take a person into custody without a warrant when they:

- find the person disturbing the **public peace** or committing any offence punishable by imprisonment
- have good cause to suspect the person has committed a **breach of the peace** or an offence punishable by imprisonment (e.g. excess breath/blood-alcohol driving offences specified in Part 6 Land Transport Act 1998).

s315(2) Crimes Act

Arrests under Summary Offences Act

After section 315 Crimes Act, section [39](#) Summary Offences Act 1981 is the most common enactment used by police to arrest without a warrant.

You can arrest a person without a warrant, under section 39 Summary Offences Act 1981, if you:

- have **good cause to suspect** the person has committed an offence against the Summary Offences Act
- except those offences described in sections 18 to 20, 25, and 32 to 38 of the Act, or
- reasonably believe the person has committed an offence against sections 18 to 20, 25, and 32 to 38 **and** fails to give you their name and address when asked or gives particulars you reasonably believe are false.

Arrests under Land Transport Act 1998

In addition to land transport offences where arrests can be made under section [315](#) (2) Crimes Act 1961 (e.g. excess breath/blood alcohol) you may arrest a person without a warrant under some Land Transport Act 1998 provisions. For example:

- section [116](#)(1) -failure to comply with directions given under section 113 (e.g. to provide name and address and other identifying particulars when asked) or section 115 (to prohibit driving)
- section [120](#)(1) - when you suspect the person has committed an offence under sections 58 - 62 of the Act (e.g. driving under the influence of drink/drugs or causing injury or death by carelessly using a

vehicle while under the influence of drink/drugs).

For more information on Land Transport Act offences, see the '[Road Policing](#)' section in the Police Manual, including '[Alcohol and drug impaired driving](#)'.

Other legislation giving power of arrest

Other legislation gives constables the power to arrest without a warrant, for example:

- section 40 Arms Act 1983 when the person is in possession of a firearm, pistol, airgun or restricted weapon and refuses to give or gives false particulars when police ask for their name and address
- section 50 Domestic Violence Act 1995 when the person is suspected of committing a breach of a protection order
- section 310 Immigration Act 2009 for the purpose of the turnaround or deportation of a person.

Many powers to arrest without a warrant are restricted to particular circumstances. Always check the relevant legislation if you are not sure.

Breaching public peace

Breaches of peace occur when these events are taking place or being threatened:

- serious disturbances or other forms of violence
- serious damage to property.

You can arrest someone under section 315(2) Crimes Act who you witness breaching the public peace and the breach is continuing or you think it is likely to be renewed.

However, as there is no specific offence for disturbing or breaching the peace, once you have arrested the person you need to determine what other charges, if any, should be filed against the person.

You must decide about other charges within a reasonable time of the arrest (e.g. one or two hours). Release the person immediately if you decide no charges will be filed.

See the '[Public Order Policing](#)' chapters for more information.

Good cause to suspect

You may have gained good cause to suspect from:

- your own observations
- statements from witnesses
- admissions from the offender
- examining the scene
- forensic evidence.

Justification for arresting without warrant

Constables are justified (i.e. not guilty of an offence and not liable to civil proceedings) in arresting a person

without a warrant when they either:

- have a power to arrest the person under section [315](#) Crimes Act 1961 or some other legislation, and had reasonable and probable grounds for believing the person committed the offence, or
- found the person committing a [breach of the peace](#) or received them into their custody from another person who they believe witnessed a breach of peace.

See sections [31 to 33](#) Crimes Act 1961.

Entry and search to effect arrest

Entry to arrest person unlawfully at large

If you have reasonable grounds to...	you may...
<ul style="list-style-type: none"> - suspect that a person is unlawfully at large, and - believe that the person is in a place or vehicle 	enter the place or vehicle without warrant to search for and arrest the person.

(s7)

When entry to premises required to execute warrant to arrest

‘[Unlawfully at large](#)’ under section [7](#) includes the situation where an arrest warrant is in force for that person. Section [162](#) of the Criminal Procedures Act 2011 (CPA) sets out the procedures that must be followed when a constable executing a warrant issued under the CPA needs to enter onto premises to make the arrest.

It is sufficient to show a copy of the warrant, which can include a copy on a Police mobility device. This requirement applies regardless of whether the occupier is also the subject of the arrest warrant.

The operational practicalities of showing an electronic copy of an arrest warrant rather than providing a physical copy should be considered. For example, a constable may:

- in the particular circumstances, not be comfortable handing their device over to allow the occupier to view a copy of the warrant
- need to stand with the occupier scrolling through their device, enlarging or reducing parts of the warrant as necessary so that the occupier can read it
- need to take time to explain the contents of the warrant to the occupier, if they have difficulty reading or understanding the on-screen text.

Showing an electronic copy of a warrant to arrest on a device will suffice when executing a warrant under section [162](#) of the CPA. However, it remains best practice for Police to have the original warrant or a copy of the warrant in their physical possession, especially if the matter is not urgent, before entering premises.

Note: Section [162](#) of the CPA has more specific requirements than section [7](#) of the Search and Surveillance Act (S&SA) for warrants issued under the CPA. The legal principle is that the specific (section [162](#) CPA) overrides the general (section [7](#) S&SA). This means that where an arrest warrant is issued under the CPA, the constable must follow the specific process set out in section [162](#).

See ‘[Warrants to arrest and 162 of the Criminal Procedure Act - showing an electronic copy to the occupier where entry to premises is required](#)’ for further guidance from Legal Services.

Unlawfully at large defined

"Unlawfully at large" means that the person:

- has an arrest warrant (excluding a fines warrant)
- has escaped from prison or is absent without leave
- has escaped from lawful custody, e.g. Police cells or Police car
- is a special or restricted patient and has escaped or failed to return from leave
- is a care or special care recipient (with an intellectual disability) and has escaped or failed to return from leave
- is a young person who is the subject of a Youth Court "Supervision with residence" order and they are absconding from Oranga Tamariki custody.

(This definition is adapted from the definition in section [3](#) of the Act).

Entry to avoid loss of offender or evidential material

If you have reasonable grounds to...	you may...
<ul style="list-style-type: none"> - suspect that a person has committed an offence punishable by imprisonment and for which they may be arrested without warrant, and - believe that the person is in a place or vehicle, and - believe that if entry is not effected immediately, either or both of the following may occur: <ul style="list-style-type: none"> - the person will leave the place or vehicle to avoid arrest - evidential material relating to the offence for which the person is to be arrested will be destroyed, concealed, altered or damaged 	<ul style="list-style-type: none"> - enter that place or vehicle without warrant, and - search for and arrest the person you suspect has committed the offence. <p>Note: You may not search for evidential material unless an arrest is made and a search incidental to that arrest is undertaken under sections 83-88.</p> <p>See Round v Police [2020] NZHC in relation to admissibility of evidence obtained under section 8 in drink driver matter. The findings confirm Police may only enter a property under section 8 for the purposes to search for and arrest a person.</p>

(s8)

Applying section 8

Section [8](#) only empowers police to search for and arrest a person. That must be the officer's intention at the time of entry.

Section 8 only applies where:

- Police have reasonable grounds to suspect (i.e. think it is likely) that a suspect has committed an imprisonable offence for which they can be arrested without warrant;
- Police have reasonable grounds to believe (i.e. are confident it is the case - merely thinking it possible or likely is not sufficient) the suspect is in the vehicle or property;
- Police have reasonable grounds to believe if entry is not immediately effected either:
 - the person will leave there to avoid arrest; or
 - evidential material relating to the suspected offence will be destroyed, concealed, altered or damaged.

The observed behaviour of the suspect just before entry, but also their prior behaviour may be relevant to assessing whether they will leave to avoid arrest. For example, it will be relevant if the suspect has failed to stop when legally required; are ignoring Police communication; or are known to be actively trying to evade Police.

The effect of outside forces on evidential material, such as the natural dissipation of alcohol in a person's blood stream, may justify the belief that evidential material will be destroyed etc. - the feared harm need not be harm caused by the suspect or another person.

Because of the warrant preference rule, if it is practicable for Police to obtain a warrant, they must not exercise a warrantless power, even if the requirements for such a search/entry are made out.

If immediate entry is not required because the person is unlikely to leave the address to avoid arrest, but there are reasonable grounds to believe immediate entry is required to prevent the loss of evidential material relating to the offence for which the person is to be arrested, as part of the assessment Police should consider whether:

- the oral application process (section [100](#)) which may enable a warrant to be obtained without a written application, including over the phone, would enable a warrant to be obtained without compromising the entry/search; and/or
- the ability to secure a scene while a warrant is obtained (section [117](#)), thereby preserving evidential material, would enable a warrant to be obtained without compromising the search:
 - factors such as whether it is realistic and practical to place a security guard at a scene given resourcing/ time of day/ court availability will be relevant when determining whether this is a viable option.

Also consider whether it is practicable to seek an arrest warrant (sections [34](#) and [34A](#) of the Criminal Procedure Act refer).

If it is not practicable to obtain an arrest warrant or search warrant (if applicable for evidential material), section [8](#) enables Police to enter a property or vehicle to arrest the person. Having entered the address it may be possible to also seize evidential material relating to the offence where items are in plain view (section [123](#)); or following arrest to search the arrested person and seize evidential material (section [88](#)); or to search for evidential material that there are reasonable grounds to believe will be destroyed, concealed, altered, or damaged, if entry is delayed (sections [83](#) and [84](#)).

See law note, '[Applying section of the Search and Surveillance Act 2012](#)' for further information about:

- warrantless entry to avoid loss of offender or evidential material
- at the time of entry, the intention must be to effect an arrest of the person
- the belief of suspicion required for the exercise of the power
- relationship with drink driving (EBA) offences.

Case law

See the following case law relevant to section [8](#):

- *Round v R* [2020] NZCA 557 for the Court of Appeal's emphasis that "intention to arrest the suspect is central to the power"
- *Harris v Police* HC Wellington AP18/97, 12 March 1997 in relation to the officer's intention to arrest the person involved in an assault was not negated by the fact that Police spoke to other party-goers to identify the person before arresting them
- for determining the objective standards of reasonable suspicion and the higher standard of reasonable belief:
 - *Wild v Police* [2017] NZHC 1344
 - *Police v Orupe* [2016] NZDC 3984
 - *Hawkes v R* [2015] NZCA 49
 - *R v Sione Malafiu Falala* [2013] NZHC 1686.

Definitions and discussion

Reasonable Grounds to Suspect (RGTS)

Reasonable grounds to suspect (**RGTS**) means having a sound basis for suspecting that a situation or circumstance exists.

Example:

You enter a house or vehicle because you suspect an offence has been, is being, or is about to be committed there.

Reasonable Grounds to Believe (RGTB)

Reasonable Grounds to Believe (**RGTB**) means having a sound basis for believing that a situation or circumstance exists.

Example:

You enter and search a house or vehicle, or search a person because you **believe** that a search will find the evidential material you are looking for.

Reasonable Grounds

When you have formed a belief or suspicion you must be able to clearly describe your reasons – your reasonable grounds – for holding the belief or suspicion.

You must:

- record your reasonable grounds for using a search power in your notebook. This is your decision log.

Be aware that you may be required to:

- report on your decision to use a power and your grounds for using it
- justify your use of a power in court or in other formal proceedings.

Example: RGTS and RGTB

One morning you receive information from a very reliable source that John has just purchased some methamphetamine. Your source tells you that John has now left his home to visit a house in town where he may attempt to sell the methamphetamine.

To undertake a warrantless search of a person for a controlled drug (Search and Surveillance Act section 22) you must:

- have **RGTS** that an offence against the Misuse of Drugs Act 1975 has been, or is being or is about to be committed, in respect of that controlled drug or precursor substance and
- have **RGTB** that a person is in possession of a controlled drug or precursor substance

In this example, you may search John as you have RGTS that he has committed an offence and RGTB that if you search him you will find the drugs.

Lawful and reasonable

Under the Search and Surveillance Act a **lawful** search is a search that is conducted:

- with a search warrant, or
- under a warrantless search power, or
- with the person's consent

Under the Search and Surveillance Act a **reasonable** search is a search that:

- complies with section 21 of the New Zealand Bill of Rights Act and considers factors such as
 - the nature of the search
 - how intrusive the search is
 - where and when the search takes place.
-

Practicable in the circumstances

Before considering any search, you must think about whether applying for a search warrant is practicable in the circumstances.

If it is at all practicable to do so then **you should apply** for a search warrant even if a warrantless power is available.

A decision that applying for a search warrant is not practicable must be based on RGTB that it is not practicable to apply for a search warrant in the circumstances.

When you are thinking about what is practicable consider questions such as:

- is there time to gain approval and apply for a search warrant
- can the scene be secured (under section 117)
- are reasonable resources (including number of staff) available to minimise risk and ensure safety
- is the evidential material at risk
- location of the search and who may be present

Remember to record this in your decision log.
