

26 NOV 2014

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Tēnā koe Mr Baker

### **Official Information Act 1982 request**

Thank you for your email received on 29 October 2014 requesting information under the Official Information Act 1982 about the clean slate regime.

#### *Criminal Records (Clean Slate) Act 2004*

The Criminal Records (Clean Slate) Act 2004 (referred to as the Clean Slate Act) is designed to allow individuals with less serious convictions, who have been conviction-free for a seven years and who have not been sentenced to imprisonment, to put their past behind them. They are deemed to have no criminal record for the purposes of any question asked of them about their criminal record, and their criminal record will be concealed by government departments and law enforcement agencies.

Effectively, that means an eligible individual may answer a question asked of them about their criminal record by stating that they have no criminal record. Furthermore, if a criminal record check is requested, it will not show any convictions. To be eligible for a "clean slate", a person must have:

- no convictions within the last seven years
- never been sentenced to a custodial sentence (e.g. imprisonment, corrective training, borstal)
- never been ordered by a Court during a criminal case to be detained in a hospital due to his/her mental condition instead of being sentenced
- not been convicted of a "specified offence" (e.g. sexual offending against children and young people or the mentally impaired)
- paid in full any fine, reparation or costs ordered by the Court in a criminal case and
- never been indefinitely disqualified from driving.

A person meeting the above criteria does not have to apply for a "clean slate". The scheme is automatically applied by the Ministry of Justice when an application is made for a copy of an individual's criminal record. There is no central register or list of the people meeting the criteria at any one time.

A person "loses" eligibility if they are convicted of a further offence. Assuming they continue to meet other eligibility criteria, they will need to wait a further seven years before being eligible under the regime again. If the person applied for a new criminal record check within those seven years, the record would not only show the person's most recent conviction, but also those convictions that had been previously concealed.

There are some exceptions when individuals' convictions will continue to be disclosed. They are set out in section 19 of the Clean Slate Act. For instance, an eligible person must disclose their conviction(s) if they apply for a position involving the care and protection of a child or young person (for example, a foster parent or a caregiver of children or young people). Additionally, an eligible individual's conviction(s) may be disclosed to allow a law enforcement agency to prevent, detect, investigate or prosecute a crime. There are also employment exceptions, including for judges, positions involving national security, police employees and prison or probation officers.

In June this year, Parliament passed the Vulnerable Children Act 2014 which will make further changes to the clean slate regime. Section 31 of the Vulnerable Children Act prevents individuals with convictions for specified offences from working in the core children's workforce. This section states that the Clean Slate Act cannot be used to conceal a conviction for a specified offence when a safety check is taking place within the core children's workforce. Specified offences are listed in Schedule 2 of the Vulnerable Children Act. The changes will come into force on a date or dates to be appointed by the Governor-General by Order in Council.

New Zealand's law cannot bind another country, so the clean slate regime does not apply to any questions about criminal convictions asked by another country for the purposes of granting visas etc. Even if a person would be eligible for a clean slate in New Zealand, they must disclose their convictions if asked by the country they are intending to visit.

#### *Copies of criminal records*

The Ministry of Justice's Criminal Records Unit processes requests from members of the public for a copy of their criminal record under the Privacy Act 1993. Third parties can request a copy of an individual's criminal record, but only with the individual's consent. The Unit processes more than 450,000 requests every year. There is more information about this process on our website here: <http://www.justice.govt.nz/services/criminal-records/about-the-criminal-records-clean-slate-act-2004>

Responses to these requests are compiled from the New Zealand Court's Case Management System (CMS), which holds judicial information that is not subject to the Official Information Act. The Ministry can access the CMS in order to process a request for a criminal record. When it does so it applies the clean slate criteria.

The Ministry's criminal record service is not a vetting service. The Police run a separate vetting service and information about it is on their website here: <http://www.police.govt.nz/advice/businesses-and-organisations/police-vetting/what-police-vetting>

#### *Response to your questions*

You have asked for the number of convictions hidden by the Clean Slate Act, a breakdown of the number of each conviction hidden by the Clean Slate Act and the number of people that currently (or as at a recent practical date) have convictions hidden by the Clean Slate Act.

We are unable to state how many convictions are hidden by the Clean Slate Act. As I mentioned earlier, this information can only be compiled from the CMS, which contains judicial information that is not subject to the Official Information Act.

However, we are able to provide statistics generated from the information we hold in relation to the Ministry's criminal record function.

The table below provides, for each year, the number of people who requested a copy of their criminal history and received a response that they have none due to their entitlement to withhold details of their convictions(s) under the Clean Slate Act. The numbers have been provided from 29 November 2004, when the Clean Slate Act came into force, until 24 June 2014 (which is the most recent available data). A person is counted once in the first year they made a request, regardless of how many subsequent requests they have made and whether they have since become ineligible.

**Table 1: Number of people who requested a copy of their criminal record and received a response that they have no convictions due to the Criminal Records (Clean Slate) Act 2004**

Eligible year	Number of people
2004*	615
2005	11,507
2006	11,600
2007	11,803
2008	12,695
2009	12,225
2010	12,867
2011	13,540
2012	11,423
2013	11,235
2014#	5,998

\*From 29 November 2004

#Until 24 June 2014

We are also unable provide a breakdown of the number of each convictions hidden by the Clean Slate Act. This information can only be compiled from the CMS, which contains judicial information not subject to the Official Information Act.

However, we are again able to provide statistics generated from the information we hold in relation to the criminal records that have been requested and have offences withheld due to the Clean Slate Act. From that we have calculated the 10 most common crimes hidden by those who have applied for a Ministry of Justice criminal record. The crimes are outlined in order from most to least common. They are:

- i. exceed the prescribed content of alcohol or other substance limit (driving)
- ii. dangerous or negligent operation (driving) of a vehicle
- iii. obtain a benefit by deception
- iv. possess illicit drugs (cannabis)
- v. drive while licence is disqualified or suspended
- vi. property damage other than by fire or explosion
- vii. liquor and tobacco offences (entirely "minor found in a bar," which ceased to be an offence in 1990)
- viii. theft from retail premises
- ix. exceed legal speed limit
- x. common assault

Due to the manual collation of this information, the data is not able to be further broken down into the number of all convictions hidden by the Clean Slate Act without substantial collation. This part of your request is declined under section 18(f) of the Official Information Act.

I trust this information is of some assistance and meets your needs. However, if you are not satisfied with these responses, you have the right, under section 28(3) of the Official Information Act to seek an investigation and review by an Ombudsman of my decision to withhold some of the information you have requested.

Yours sincerely

Heoi anō, nā

A handwritten signature in black ink, appearing to read 'Tony Fisher', with a stylized, cursive script.

Tony Fisher  
**General Manager, District Courts**

Ref: 51025