

19 April 2017

David Johnston
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Dear Mr Johnston

Official Information Request 1982

I refer to your Official Information Act 1982 request of 17 March 2017 in which you asked for:

- *The New Zealand Police employee drug policy*
- *The number of employee drug tests administered*
- *The number of disciplinary actions taken, per year, for the years 2011-2016; and:*
- *If available, the count of disciplinary action type, and count of offence type (kind of drug etc.)*

Police did not have a drug (and alcohol) testing policy in the years 2011-2016. Please find attached a copy of the Commissioner's circular on drug and alcohol testing following a Police shooting, which was released in early March. The names of some police staff have been redacted pursuant to section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

Yours sincerely



Marty Fox
National Manager: Wellness and Safety

Testing Police employees for alcohol and illegal drugs after a Police shooting

To: All Police employees

Dated: 10 March 2017

Introduction

Police is committed to ensuring our employees are safe and feel safe in carrying out their duties. If an employee feels they have a problem with alcohol or drugs, they are encouraged to seek confidential support and assistance through our Employee Assistance Programme (0800 327 669).

Employees also have a duty to take reasonable care for their own and others' safety. Too frequently Police officers are placed in situations where they are required to use firearms. Any such incident is always fast-paced, dynamic and requires sound judgement. It is therefore critical that any employee who is affected by alcohol or illegal drugs absences themselves from the workplace.

In accordance with [Our Values](#) and [Our Code](#) Police require Police employees to:

- not use illegal drugs
- not report for duty when affected by alcohol or illegal drugs
- not consume alcohol while on duty, unless it has been authorised by the District Commander or National Manager
- notify their manager of their taking of, or failure to take, any prescribed medication that may adversely affect their safety or the safety of others at work.

Purpose of this circular

This Commissioner's circular establishes new alcohol and illegal drug testing requirements for Police employees after involvement in a Police shooting, pending the development of the full drug and alcohol testing policy.

This circular outlines:

- [who will be tested and in what circumstances](#)
- [how tests are undertaken](#)
- the consequences of [failure or refusal to undertake a test](#)
- the Police approach to [positive test results](#)
- what [information will be given](#) to the employee
- Privacy and limitations on the use of the employee's information.

Key terms defined

This table outlines the meaning of key terms used in this circular

Police shooting	The discharge of a firearm by a Police employee in the execution of his or her duty that causes or may have caused death or serious injury, including incidents where shot/s have been fired at a person and could have caused serious injury or death.
Illegal drug	Includes all 'controlled drugs' as defined in section 2 of the Misuse of Drugs Act 1975
Service provider	For the purposes of this circular only, this is The Drug Detection Agency who can be contacted on 0508 DRUGTEST (0508 3784 8378)

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Who will be tested and in what circumstances?

The District Commander of the District in which a Police shooting occurs shall be responsible for ensuring that any employee who is believed to have discharged a firearm during the incident is requested to undergo a drug and/or alcohol testing procedure.

A Police shooting is a critical incident. The scope and definition of "critical incident" will be refined with the development of the full drug and alcohol testing policy, and will be subject to further consultation and agreement with the Service Organisations, before any changes are made.

How tests are undertaken

As soon as is reasonably practicable after a Police shooting, and following the management of immediate safety and welfare considerations, the employee or employees who have fired shots that have caused injury or death, or could have caused injury or death, to any person, shall be tested for drugs and alcohol, in accordance with the following process:

- 1 The District Commander or their delegate, shall contact the service provider and make arrangements for testing, either on site or at an agreed location, e.g. Police station, the service provider's premises.
- 2 Where possible, the breath alcohol test should be conducted within 2 hours. If the service provider is not able to attend within that timeframe, Police may administer a passive breath test (sniffer test) in the first instance. If the employee registers the presence of alcohol, an evidential breath screening test can then be taken at the discretion of the District Commander in accordance with standard Police breath test procedures. A positive test will exceed 150 mcg/ltr of breath.
- 3 Where the service provider is able to attend, the employee/s will be required to provide a sample of their breath and urine in accordance with AS/NZS 3547-1997 and AS/NZS 4308-2008 carried out by a certified tester.
- 4 The urine sample will be sent to the accredited lab for analysis by the service provider. A positive result will be in line with the above standard.
- 5 The result of the test will be sent to the National Manager Wellness and Safety who will then notify the tested employee as soon as practicable.

Request to undertake test

Any employee who is requested to perform a test subsequent to a Police shooting is expected to cooperate and provide a sample for testing, where the service provider is available to take the sample.

A requirement to undergo the testing undertaken by the service provider is a lawful and reasonable instruction in light of the Police shooting. Refusal or failure to comply may therefore be deemed to amount to a failure to follow a lawful and reasonable instruction, and to constitute serious misconduct under the [Code of Conduct](#), depending on the employee's explanation.

The National Employee Relations Manager must be advised whenever an employee refuses or fails to comply with a request to undertake a test with the service provider. Depending upon the employee's explanation, the National Employee Relations Manager may initiate an employment investigation (see more information in the [Disciplinary process guidelines](#)).

Test results

Whenever a drug or alcohol test is carried out, the District Commander, or their delegate, is responsible for notifying the National Manager Wellness and Safety. The

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service provider will communicate directly with the National Manager Wellness and Safety regarding the results from testing.

All test results will be notified to the tested employee by the National Manager Wellness and Safety as soon as practicable. If a positive result is obtained the employee will be given an opportunity to respond to the result and to seek retesting of the sample (within 5 working days of being notified of the test result) if they wish.

In all cases, Police will take steps to address an employee's rehabilitation and/or welfare needs. However, if an employee is identified as being impaired in the performance of their duties through the use of alcohol or illegal drugs, this may be deemed serious misconduct under the [Code of Conduct](#). [Disciplinary procedures](#) may apply which may result in the employee being issued with a warning or dismissed from their employment.

Information to be given to the employee

Whenever an employee is required to undertake a test they will be provided with the following information:

- that the procedure requires their consent, but failure or refusal to undertake the test with the service provider may have consequences for their employment, unless a reasonable explanation is provided
- what is involved in the testing procedure and who will undertake it
- what is being tested for
- test results, including consequences of a positive result
- how information will be managed and used, including privacy considerations
- that they can seek advice prior to undertaking the test as long as it does not cause undue delay.

Privacy and use of information

All information about an employee's drug and alcohol testing must be handled sensitively and limited to only those who need to know for the purposes of testing, rehabilitation and any employment processes that may follow. Information regarding the employee's test results will be retained on their Police medical file held at PNHQ.

An employee will be assigned an alpha code and, this code, and not the employee's name or QID, will be used on any forms or documentation relating to the drug and alcohol sample and testing.

Drug and alcohol testing is for health and safety in employment purposes. Personal information, including test results, that is obtained from this process may be used for the purposes of addressing the employee's rehabilitation and welfare needs, and where it is determined in accordance with this circular that there is a potential breach of the Code of Conduct, for the purposes of an employment investigation and disciplinary process.

The information is subject to disclosure to the IPCA (Independent Police Conduct Authority) where it is requested by the IPCA in accordance with section 21 of the Independent Police Conduct Authority Act 1988.

The information will not be used or disclosed for any other purpose, except as required by law. This includes, but is not limited to, criminal investigation as a part of any criminal proceedings. Any request for disclosure of information from a drug or alcohol test, for purposes other than an employment investigation, shall be referred to the Chief Legal Adviser.

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Further information

- [Code of Conduct](#)
- [Disciplinary policy](#) and associated [guidelines](#)
- [Rehabilitation policy and procedures](#)
- [Off duty interventions](#)
- [Host responsibility-Police canteens and social functions](#)

Should any District Commander or their delegate have any questions about the application of this circular they may contact:

- 9(2)(a) [REDACTED]
- 9(2)(a) [REDACTED]
- 9(2)(a) [REDACTED]

Process Flowchart

See the [flowchart](#) below for the process for testing Police employees for drugs and alcohol after a Police shooting.

Mike Bush
Commissioner of Police

Expiry date: 10 August 2018 or upon implementation of the full Police drug and alcohol policy.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Testing Police employees for alcohol and illegal drugs after a Police shooting, continued...

Flowchart

