



22 August 2018

Mr Steve Hall
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Dear Mr Hall

Request for Information:

I refer to your email dated Saturday the 13/05/2018 where you requested the following:

"I would like to request the following information regarding the Diversion-Discharge without conviction scheme for first time offenders.

As the Diversion-Discharge without conviction scheme is a one-time only for a first offence, what records remains to show that this has already been applied when arrested for further offences.

How do you ascertain if Diversion-Discharge without conviction has been previously used?

Do you keep fingerprints?

Do you keep DNA samples?

What notes are kept?

Does the offender still have a Police Record Number?

What other information is retained regarding this offence and offender?

*If the offence is suitable for the clean slate act, what happens after this time expires?
What information is retained on this offence and offender?"*

Response:

Question 1: As the Diversion-Discharge without conviction scheme is a one-time only for a first offence, what records remain to show that this has already been applied when arrested for further offending?

Firstly for the purposes of clarification there is no "Diversion-Discharge without conviction scheme" for first time offenders.

However there is **Diversion:**

The Police Prosecution Service administers and operates the Police Adult Diversion Policy.

This policy allows some charged offenders to be dealt with in an 'out of court' way, if the offender completes agreed conditions, the prosecutor can seek to have the charge withdrawn and a conviction will not be recorded.

The term **Discharge without conviction** is a sentencing outcome pursuant to Section 106 of the Sentencing Act 2002. This sentencing regime is entirely administered by judicial officers of the Ministry of Justice (MOJ).

In addition the offer of diversion is not limited solely to first time offenders as the following extract from the Diversion policy explains.....

In some circumstances, it will be appropriate to consider diversion for an offender who has received diversion before, has past convictions or previously appeared in the Youth Court. For example:

- *where the current offending is the result of an underlying problem that is likely to respond to counselling*
- *the direct or indirect consequences of not offering diversion would be out of proportion to the seriousness of the offence*
- *The offender's previous court outcomes (diversion, conviction or Youth Court) are for quite different offences or were a number of years earlier.*

Question 2: How do you ascertain if Diversion-Discharge without conviction has been previously used?

Diversion is a post charge outcome.

Meaning a charging document has been filed in court. All the information relating to the outcome of that charge is retained in the Police National Intelligence application (NIA).

This includes whether or not the charge was diverted.

In addition if the case resulted in a court granting a discharge without conviction this is also recorded and retained.

Question 3: Do you keep fingerprints?

Yes, Section 34 (A) (a) Of the Policing Act 2008 permits the storage of fingerprints in these circumstances.

Question 4: Do you keep DNA samples?

No. Section 60 (1) (e) of the Criminal Investigations (Bodily Samples) Act 1995 provides that if the person is acquitted of the charge the sample is destroyed.

In the case of a person successfully completes Diversion the charge is dismissed which is deemed an acquittal.

Similarly if a person is discharged without conviction pursuant to S106 of the sentencing Act 2002 that is also deemed an acquittal.

Question 5: What notes are kept?

Each event resulting in a charging regime regardless of outcome will have associated notes stored in NIA against a unique identifier.

Question 6: Does the offender still have a Police record Number?

Yes

Question 7: What other information is retained regarding this offence and offender?

As previously answered each event has notes associated with it. The detail and scope of that information is totally dependent on the circumstance of the incident.

Question 8: If the offence is suitable for the clean slate act, what happens after this time expires?

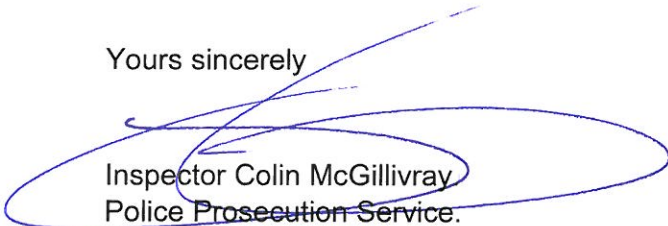
If the offence is dealt with by way of Police Diversion or the courts sentencing outcome is a discharge without conviction, neither will actually result in a conviction therefore the Criminal Records (Clean Slate) Act 2004 has no application.

Question 9: What information is retained on this offence and offender?

Again as previously mentioned the event record and details pertaining to occurrences and outcomes remain within the NIA data base. The information record is totally dependent on the nature and type of incident.

If you are not satisfied with my response to your request you have the right to complain to the Office of the Ombudsman and seek an investigation and review of my decision.

Yours sincerely



Inspector Colin McGillivray
Police Prosecution Service.
PNHQ.