



NEW ZEALAND
POLICE
Ngā Pirihimana o Aotearoa

24 October 2018

Ref: IR-01-18-11628

John
fyi-request-8662-e6727@requests.fyi.org.nz

Dear John

I refer to your request dated 12 September 2018 where you sought the following information pursuant to the Official Information Act 1982:

- 1. Police manual chapters or any other information regarding Section 48 of the Children Young Persons and their Families Act 1989 (now the Oranga Tamariki Act 1989)*
- 2. Police manual chapters or any other information regarding persons using obscene/inappropriate language in public (Summary Offences Act 1981)*
- 3. Police manual chapters or any other information regarding how on-duty police cannot be "offended" if sworn at by people in public.*

1. There is guidance in Police Instructions which include the Police Manual, about the application of Section 48 of the Oranga Tamariki Act 1989. This relates to using section 48 for drunk or intoxicated young people. I have copied this and attached it as Appendix A. Section 48 can also be used in other cases where the young person is not drunk or intoxicated.

2. There is guidance in Police Instructions about language offences. A copy is attached as Appendix B.

3. There is no guidance or information about how on-duty Police cannot be offended if sworn at by people in public. Therefore this part of your request is refused under s18(g) of the Official Information Act 1982 in that the information is not held.

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.

If you have any queries pertaining to this request please do not hesitate to contact me.

Yours faithfully

Eric Tibbott
National Manager: Prevention
National Prevention Centre
Police National Headquarters

Police National Headquarters

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Appendix A

Other child and young person welfare issues

Care and protection issues

Refer to the [Child protection investigation policy and procedures](#) for information about Police responsibilities for the care and protection of children and young persons and the investigation of reports of concern.

Options under Oranga Tamariki Act Act 1989

This table outlines your options under the Oranga Tamariki Act 1989 for dealing with drunk or intoxicated children and young persons.

Situation	Appropriate action	Legislation
Child or young person is unaccompanied and found drunk but is able to give their home address or communicate to the degree that you can deliver them home or to OT.	Take them home if they consent and their address can be ascertained. If not, deliver them to OT via the on call social worker.	s48 OT Act 1989

Appendix B

Language offences as highlighted in Police Instructions

This section contains the following topics:

- Definitions
- Addressing indecent or obscene words
- Addressing threatening, alarming, insulting or offensive words
- Using indecent or obscene words
- Using threatening or insulting words
- Procedures in respect of language offences

Definitions

This table outlines the key definitions of terms relevant to language offences.

Term	Definition
Addressing	Directing the language at a specific person or persons; usually accompanied by acts or gestures.
Alarming words	Words that disturb, frighten or agitate; for example, shouting 'fire' in a crowded theatre.
Indecent words	Words that an average person finds seriously repugnant or distasteful.
Insulting words	Words with a meaning or double meaning that refer offensively to a person's character, upbringing or way of life.
Obscene words	Words used to refer to sexual acts or organs in a manner and in circumstances that make such references offensive to the community's standards of propriety - <i>Police v Drummond</i> [1973] 2 NZLR 263 (CA).
Offensive words	Words intended to outrage or hurt the feelings of the person to whom they are directed.
Reckless	Reckless use of language is more than careless; it is knowing the consequences of using certain words, and using them anyway.
Threatening words	Words that convey an intention to harm a person, or that person's family, property or the like.

Addressing indecent or obscene words

Under section 4 (1)(c)(ii) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within hearing of, a public place,
- addressed indecent or obscene words to any person.

In determining whether words are indecent or obscene, the court must consider the circumstances pertaining at the material time, including whether the suspect had reasonable grounds for believing the hearer would not be offended - section 4 (3) of the Summary Offences Act 1981 refers.

Powers

You can arrest under section 39 (1) of the Summary Offences Act 1981.

Addressing threatening, alarming, insulting or offensive words

Under section 4 (1)(b) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in any public place
- addressed words to a person
- intending to threaten, alarm, insult or offend.

If the intent cannot be inferred from the words used, and if the suspect does not admit intent, a charge under section 4 (1)(c)(i) may be more appropriate.

Powers

You can arrest under section 39 (1) of the Summary Offences Act 1981.

Using indecent or obscene words

Under section 4 (2) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within hearing of, a public place
- used indecent or obscene words.

It is a defence if the suspect had reasonable grounds for believing their words would not be overheard - section 4 (4) of the Summary Offences Act 1981 refers.

Powers

You can arrest under section 39 (1) of the Summary Offences Act 1981.

Using threatening or insulting words

Under section 4 (1)(c)(i) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within hearing of, a public place
- used threatening or insulting words
- and was reckless about whether anyone was alarmed or insulted by them.

The words need not be addressed to any particular individual. The prosecution must prove, however, that the suspect used them deliberately and took an unjustified risk that someone would be offended - *Purves v Inglis* (1915) 34 NZLR 1051.

Powers

You can arrest under section 39 (1) of the Summary Offences Act 1981.

Procedures in respect of language offences

When dealing with a language offence, follow these steps.

StepAction

- 1 Identify yourself and ask the suspect to stop using the language in question.

If. .

then. . .

the suspect complies with your request

no further action may be necessary

decide whether to warn, arrest or report for issue of a summons.
Consider:

the suspect does not comply

- whether the ingredients of the offence are met
- whether anyone other than you heard the language
- the suspect's behaviour and demeanour
- if the conduct is likely to be repeated

- 2

arrest and:

[Rights_caution.pdf](#) 87.86 KB

the above considerations are met

- **Caution** (*see PDF above*) the suspect according to the [Chief Justice's practice notes on Police questioning](#)
- tell the suspect their rights under the New Zealand Bill of Rights Act 1990
- in conjunction with the Custody Supervisor, consider **pre-charge warning** if relevant criteria are met

you decide to report for summons

inform the suspect of this.

- 3 Obtain full details of the offence, the victim, the suspect and any witnesses, and verify.
- 4 Prepare the prosecution file and file the charging document.