



7 May 2019

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Dear Diane

Official Information Act 1982 request 1819-0619: Policy changes to issue of New Zealand passports

I refer to your request received by the Department of Internal Affairs (Department) on 4 April 2019. This response is provided to you under the Official Information Act 1982 (OIA).

You requested—

1. *By what process did the (DIA) take in deciding that self identification of gender would have any legality in NZ law?*
2. *In the (DIA) 2012 policy review – why was the act not amended to bring legality to that policy change?*
3. *As the Passport Act 1992 has never shown any intention to exclude the court process in favour of a self identifying declaration by the applicant – by what means does it justify its policy change as it cannot be seen as being supported in law.*
4. *It would appear that a number of applicants have already been supplied with passports using the self ID process.*
 - a. *It is asked that the (DIA) confirm that the holder of such a passport with a self identifying statement showing their sex as female – when that has not been confirmed by the court process, that it is a true statement.*
 - b. *That they will not legally by any court - be held accountable for holding a fraudulent document at the border in some other country – should their true anatomical sex be seen as different when viewed by modern whole body scanners that can reveal the anatomy of the human body in very significant detail. For example, showing male genitalia when the passport sex states female. Or naturally that the opposite.*
5. *[C]opies of all relevant communications documentation that have taken place. Both prior to and following the date this department policy saw the need to review its policy and subsequent change, together with any additional documentation as is appropriate in order for a satisfactory explanation to be understood.*

By what process did the (DIA) take in deciding that self identification of gender would have any legality in NZ law?

In 2012, in light of recent international passport policy changes, the Department determined that a review of current operational policy relating to transgender applicants wishing to record a change in gender identity was appropriate.

As part of this review process a representative from the Department attended a number of focus groups hosted by the Human Rights Commission (HRC) and attended by the transgender community. The purpose of the Department's attendance at these meetings was to outline the problems identified with the existing policy, to advise proposed changes and to seek feedback from the community.

Information and an invitation to provide feedback on the policy review were circulated at the focus group meetings and posted on the HRC website.

As the change was to passport operational policy, an amendment to the Passports Act 1992 (Passports Act) was not required. As such, the change was not required to undergo a parliamentary legislative process.

In the (DIA) 2012 policy review – why was the act not amended to bring legality to that policy change?

Please refer to the response above.

As the Passport Act 1992 has never shown any intention to exclude the court process in favour of a self identifying declaration by the applicant – by what means does it justify its policy change as it cannot be seen as being supported in law

Consultation undertaken by the Department with the transgender community as part of the policy review indicated that self-identification was the preferred option for gender displayed in New Zealand passports.

It would appear that a number of applicants have already been supplied with passports using the self ID process

- a) **It is asked that the (DIA) confirm that the holder of such a passport with a self identifying statement showing their sex as female – when that has not been confirmed by the court process, that it is a true statement**

In terms of complying with the Passports Act, passport operational policy and the wishes of the passport applicant, this statement would be true.

- b) **That they will not legally by any court - be held accountable for holding a fraudulent document at the border in some other country – should their true anatomical sex be seen as different when viewed by modern whole body scanners that can reveal the anatomy of the human body in very significant detail. For example, showing male genitalia when the passport sex states female. Or naturally that the opposite**

Any passport issued in accordance with the Passports Act is deemed to be a genuine document, unless the passport has been obtained fraudulently or the details in the passport have been altered.

New Zealand passport holders who choose to self-identify their gender should make an informed decision to travel using a New Zealand passport that reflects their decision.

The Department's Passport Office is able to validate a document as genuine and operates a 24-hour overseas help-line to assist New Zealand passport holders should any issues occur.

[C]opies of all relevant communications documentation that have taken place. Both prior to and following the date this department policy saw the need to review its policy and subsequent change, together with any additional documentation as is appropriate in order for a satisfactory explanation to be understood

The following documents are attached to this response in order to aid in understanding what changes were made and the process followed/communicated via website changes:

1. Passport operational policy on gender identity prior to the 2012 review
2. UK Passport Office policy review
3. Australian Passport Office policy review
4. Change of gender presentation. Certain information has been withheld under section 9(2)(a) of the Act on the grounds that the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons
5. Extract from IA status report to Minister for week ending 15 June 2012. Some information has been withheld as being outside the scope of your request. Certain information has also been withheld under section 9(2)(a) of the Act on the grounds that the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons
6. Request for feedback on proposed policy change posted on HRC website
7. Feedback emails to the Passport Office. Certain information has been withheld under section 9(2)(a) of the Act on the grounds that the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons
8. New (2012) policy on gender identity
9. Change in gender identity – website information (2012)
10. FAQs Changing sex-gender details.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Yours sincerely



Briget Ridden
Manager Branch Development and Support
Service Delivery and Operations