

6 June 2018

Dear [REDACTED]

I am writing to you in response to your request dated 23 April 2018. Your request was made pursuant to the Official Information Act 1982 and contained 20 questions, covering varied firearms-related topics.

My responses to each question are below:

1. *What specifically have Police asked the new Police Minister for in any future law change? Further why have documents relating to this conversation been so heavily redacted? Should this not be a transparent process?*

Police has advised the Minister of Police on the need for amendments to the Arms Act in the Brief to the Incoming Minister. This is publicly available and has been previously released to other requestors. A copy of that document is attached for your information. The reasons for redaction are provided within each redaction. Requestors are always advised of the opportunity to complain to the Ombudsman if they are not satisfied with the response.

2. *Is your team currently involved in writing any part of a proposed amendment to the arms act? Or a new act? If so please provide any related materials.*

New Zealand Police is not currently involved in writing any amendments to the Arms Act, nor is it drafting a new act to replace the Arms Act.

3. *Last week media reported that; "Police are looking to upgrade their surveillance gear to include "advanced facial recognition technology" able to be used through closed-circuit cameras. With a network of CCTV cameras across the country, it would give criminals fewer places to hide. Also in the high-tech system would be suspects, prisoners, firearms licence details, missing people and those on the child sex offender register". Why are shooters included in this list with the very worst criminals?*

The quoted reference is one made by the author of the article not by Police. To clarify, the licence holder photo related to firearms licensing is one of many image categories maintained within Police's Image Management System. Each image category is related to a business/operational purpose and its use is governed by specific rules regarding retention and what, when, where, why, and how it can be used (capture, enrolment, storage, and analysis).

4. *When are the police going to stop asking for more restrictions on law abiding gun owners and start campaigning for tougher sentences, including mandatory prison time, for criminals with guns?*

Police has noted that a number of measures in the Arms Act need to be modernised and brought up to date, this includes the need to revise penalties. Regarding penalties, I refer you to Police comment

on pages 5 and 6 to the Departmental Report to the Inquiry into Issues Relating to the Illegal Possession of Firearms in New Zealand which is publicly available¹.

5. *How is it that several people STILL ON THE GANG LIST have been left with a firearm license? How are they considered 'Fit and proper'?*

Decisions on whether or not to take steps to revoke a licence are made on a case by case basis. The specific reasons each of these people are considered fit and proper are withheld under s9(2)(a) of the Official Information Act 1982.

6. *Police have confirmed that at least three gang members who were given (Or left in possession of) a gun license have committed a gun crime. Were these cases after Police became aware of their criminal associations? What were these crimes?*

I have interpreted the part of your question which mentions "criminal associations" as "*Did these firearms-related offences occur after Police noted the identified offender as a gang member.*"

For two of the three individuals, the alleged offences occurred before Police had noted these people as gang members; third individual was identified as an offender after being noted as a gang member.

The firearms-related offences that these three people were identified as offenders of were:

- Unlawfully Carry/Possess Firearm/Res Weapon/Explosives/Ammunition (Arms Act 1983 Section 45(1))
- Common Assault (Domestic) (Firearm) (Summary Offences Act 1981 Section 9)
- Unlawfully Carry/Possess Firearm/Ammunition/Explosives Public Place (Arms Act 1983 Section 51)
- Intoxicated In Charge Of Firearm/Restricted Weapon (Arms Act 1983 Section 47)

As previously advised, these people were identified as an offender for a firearms-related offence, however, a prosecution may not necessarily have resulted.

7. *Why are NZ Police not more active in correcting the repeated lies of the Police Association?*

The Police Association is an Incorporated Society and a separate entity from New Zealand Police. It is free to express its views just as any other private individual or association is free to express their views. Police's role is to advise the Minister and the Government and to provide the public with quality data and information. It is for this reason that Police is now proactively releasing responses to Official Information Act inquiries relating to the Arms Act. In this way, the public is able to access responses in context and with the required caveats.

8. *What specifically is now being done to ensure that criminals deported from Australia cannot obtain a FAL here? Now that Police have acknowledged that criminals have slipped through, with disastrous results and may again. Due to unreliable information sharing with Australia.*

Police receives information from Australian authorities under an information sharing Arrangement. The Arrangement covers people who are removed from Australia. For these people, New Zealand Police receives information on convictions they received in Australia. This information is used by Police to determine whether the person is fit and proper. The Arrangement does not cover people who voluntarily return to New Zealand without being removed by Australian authorities.

Police is currently looking to develop a policy to seek declaration of any previous convictions from all firearms licence applicants who may have lived in another country for an extended period of time within the previous 10 years. The intention is that this would apply to all applicants.

9. *Why do Police insist that owning firearms for defense is not a legitimate reason for the issue of a license when there is no section of the Arms Act that prohibits the use of arms for self*

¹ https://www.parliament.nz/resource/en-NZ/51SCLO_ADV_00DBSCH_INQ_68642_1_A531476/9d3c52f0d6e4f8c55b7d6c14dcde7ba2770bc4e8

defence? Indeed Justice Thomas Thorpe confirmed that it WAS a legitimate reason in law. Further - Why does a vetting officer ask "What do you think about using a firearm for self-defence?"

When assessing whether a firearms licence applicant is a fit and proper person to possess firearms, it is appropriate to understand why the applicant wants a firearms licence and what they intend to use firearms for, and also to consider the applicant's attitude towards firearms. As part of this line of enquiry, the Police vetting guide contains this prompt: *"Tell me your responsibilities when using firearms: such as on private land, in self-defence?"*

In New Zealand, a generalised fear is not a justification for keeping a firearm readily available for self-defence, so this will be a relevant consideration if the applicant's reason for wanting to have a firearms licence and possess firearms is in order to routinely carry a firearm for self-defence. Police recognise that citizens are justified in using force in self-defence in certain situations. The force that is justified will depend on the circumstances of the particular case. Every person is criminally responsible for any excessive use of force against another person. To justify the discharge of a firearm at another person, the user must hold an honest belief that they or someone else is at an imminent threat of death or grievous bodily harm at the time of the event.

You have made reference to the *Review of Firearms Control in New Zealand Report of an Independent Inquiry* presented in 1997 by T. M. Thorp to the Minister of Police. I note that the report states:

"In my view there is no sound argument for the recognition of a general right to obtain and possess arms for self-defence, and clear argument against the desirability of doing so."

10. *How do Police think that it is appropriate to follow up a burglary, where firearms have been stolen, with only a phone call and not a physical visit/investigation? If they attend at all.*

This appears to be a follow up to a previous OIA response (ref 16/7782/115). The original question asked how long Police took to attend the most recent 100 cases where a firearm had been reported as stolen. As advised in that response, it is Police policy to attend all dwelling burglaries within 48 hours as police consider dwelling burglaries to be a priority. However, not all of the most recent 100 reports of stolen firearms were dwelling burglaries - the reports of stolen firearms that were not attended by Police were theft from a car, theft from retail premises, and other theft. The instances where a phone call was made instead of an in person attendance were related to theft from retail premises and theft from a car.

Therefore, in keeping with Police's policy of attending all dwelling burglaries within 48 hours, all reported dwelling burglaries, irrespective of what has been stolen, would not be followed up by a phone call only, unless requested by the victim.

11. *Does the NZ Police recognise the Bill of Rights 1688 as part of NZ law? Specifically the section that relates to arms?*

New Zealand Police recognises New Zealand law, including imperial enactments which have been declared to be part of the laws of New Zealand under the Imperial Laws Application Act 1988.

I also refer you to my answer to question 9 above, with regard to use of firearms in self-defence in New Zealand.

12. *What is stopping the proposed secure storage requirements for firearms license holders becoming de facto law instead of guidelines? FCAF keep saying that won't happen but don't say how or why it won't.*

All firearms licences are subject to conditions requiring safe and secure storage of firearms (regulations 19 and 28 of the Arms Regulations 1992). The document on which Police were recently consulting is being created to assist firearms licence and endorsement applicants by providing guidance on how the security conditions might be met and to facilitate national consistency. It provides recommendations which provide a good standard of security, but does not exclude other

methods which the applicant can demonstrate to Police that they are of a similar or higher standard. Police-issued security guidance is not a new concept - it was previously contained in different documents such as the POL67N. The new document consolidates and updates earlier guidance through a process of consultation in accordance with good administrative practice.

The updated version of the new security document that was published on the Police website² for a final round of consultation on 18 April 2018 endeavours to meet the above objectives as well as reflecting, where appropriate, the feedback from the public (including firearms licence holders) and the Firearms Community Advisory Forum. Fit and proper licensed firearms owners will want to keep their firearms secure and keep up to date with recommendations in this area.

13. What are you actively doing to repair the relationship between police and licence holders - as per the instruction to do so from the minister of police. Please provide the specific plan to achieve this.

The Firearms Community Advisory Forum (FCAF) is the primary reference group to Police on matters pertaining to the Arms Act. Regular meetings are held with this group and the minutes are published on the Police web site.

In addition,

- I have met with many of the FCAF members individually during the first few months of my tenure in this role
- I have met with you [REDACTED] twice during 2017
- In September 2017, I attended the Pistol New Zealand AGM
- In October 2017, I attended the Mountain Safety Council AGM, and have also met with the Sporting Shooters Association in Whangarei, and with a firearms dealer in Rotorua
- In December 2017, I attended the Council of Licenced Firearms Owners executive group forum
- In February 2018, I attended and presented at the Otago University (Wellington) health symposium discussing firearms-related matters
- In April 2018, I attended and presented at an antique collectors forum in Auckland

I personally contribute to OIA request responses, of which a significant number are from you. I periodically meet with the president of Pistol New Zealand and have recently renewed a Letter of Agreement.

I, together with other staff in the Arms Act Service Delivery Group and in Policy and Partnerships groups of New Zealand Police, invite direct communication if there are matters of concern. We respond to direct calls and regular emails from community members.

I have adopted an open communication process and ensured that information is placed on the Police website.

Additionally, New Zealand Police has consulted publicly on the firearms security policy and has invited FCAF members' advice on

- the re-draft of the Arms Code
- content of the online learning module
- content of the firearms safety programme practical component
- content of the firearms safety programme theory component

Police is keen to ensure that information is widely available to firearms licence holders and to that end, data and information released under OIAs will be made available to the general public on Police's website.

² <http://www.police.govt.nz/advice/firearms-and-safety/news-and-updates>

Going forward, in addition to working closely with FCAF, it is my intention to remain connected to the firearms community meeting any interested group and individuals when time permits.

14. *The last time Police transitioned to an unreasonable new system of controls they lost 25,000 shooters. Losing control of both them and their firearms. If the new security standards punish many shooters unnecessarily and to no benefit then what is to stop a similar number choosing to leave your system of control?*

Please refer to the answer for question 12.

15. *Can the Police please provide data from any countries of their choosing that demonstrate where a firearms register has solved significant numbers of crimes? Also where such long arm registers have directly prevented a criminal from using a gun?*

Police provided an analysis of Australian and Canadian gun law in the *Departmental Report for the Law and Order Committee on the Inquiry into Issues Relating to the Illegal Possession of Firearms in New Zealand, Public Submissions*, in September 2016. The Report is publicly available³.

The applicable sections are:

- Appendix 4: Response to Select Committee Questions, Question 4: Analysis of Australian Registration System – successes and failures
- Appendix 5: Canada's Registration of Firearms

No further work in this area has been completed as the analysis for this report took significant time and resource to collate.

16. *Given that your own Police statistics prove that FAL holders are not a problem why do you continue to pursue endless restrictions against our interests? Yet ignore criminals in the conversation. Essentially ignoring 99% of the problem – literally – as you seek a solution to it.*

The framework of the Arms Act is structured around four high level strategies:

- promoting acceptance of responsibility for exercising the privilege of ownership and safe use of a firearm
- reducing the availability of firearms to high-risk users
- restricting high-risk uses
- restricting high-risk firearms

All these strategies must be implemented together to achieve the intent of the Arms Act, which is to reduce the risk of harm through the "safe use and control" of firearms.

17. *When (date) will arms officers receive training to provide consistency in administering the Arms Act in accordance with that law?*

Police are currently considering Arms Act administration change options. To the extent that resources are available, future changes will involve increased training for all staff who will be involved in the administration of the Act. Any significant changes would most likely commence in early 2019.

Recent training to firearms licensing staff and arms officers included sessions delivered in April and June 2017 and an all firearms staff conference in August 2017.

18. *What is the total cost of legal fees for court cases relating to challenges from shooters over the last five years? By year.*

The number of appeals and number of appeals where Police were successful are not recorded centrally by Police. In order to answer these questions, for appeals where the Police Prosecution Service have appeared would require an extensive review of all current Police Prosecution Service

³ https://www.parliament.nz/resource/en-NZ/51SCLO_ADV_00DBSCH_INQ_68642_1_A531476/9d3c52f0d6e4f8c55b7d6c14dcde7ba2770bc4e8

files and those of the preceding five years. These files may be either in electronic or hard copy format, or both. Other appeals may have been dealt with by one of the many Crown Solicitors offices around the country.

In addition, the Police Prosecution Service Crown expenditure budget does not have a project code for Arms Act appeals and does not have the searchable functionality to obtain this level of detail.

This request is refused under section 18(f) of the Official Information Act, as the information cannot be made available without substantial collation or research. In deciding whether to refuse this part of your request, I have considered whether fixing a charge or extending the time limit (or both) would enable the request to be granted and concluded that it would not.

19. Why do Police continue to act Ultra Vires - when they know it is unacceptable to do so? Why is nobody ever punished for doing so? What message does that send to other Police involved in management of the act?

Police administers the Arms Act in accordance with its provisions. In circumstances where the Act has not provided for some particular circumstances, New Zealand Police, like any agency required to administer an Act, must act in accordance with the intent of the Act.

20. Why is the Mail Order system not administered in accordance with S43a of the Arms Act? If you argue this point please provide specific authorization for Police actions.

In accordance with section 43A of the Arms Act, the Police form requires:

- Vendor's and purchaser's details
- A description of the firearm or ammunition being purchased (including the serial number, if there is one)
- The purchaser's signature
- A space for the Police employee considering that mail order form to endorse and sign it to confirm that the employee has inspected the purchaser's firearms licence and is satisfied that the purchaser is a fit and proper person to purchase that firearm or ammunition described

In order to reduce the opportunity for fraud and give vendors a greater level of reassurance (objectives which I am sure both Police and licensed firearms owners and dealers would agree on), Police have provided a standardised and recognisable form for use and adopted the practice of sending the approval direct to the vendor.

I trust you are satisfied with my response to your request. If not, you have a right under section 28(3) of the Official Information Act 1982 to ask the Office of the Ombudsman to seek an investigation and review of my decision.

For your information, Police has developed a process for proactive release of information, so the response to your request may be publicly released on the New Zealand Police website.

Yours sincerely



Mike McIlraith
Acting Superintendent
Arms Act Service Delivery Group