

23 December 2022

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Tēnā koe As

Request for Information

Thank you for your Official Information Act 1982 (OIA) request of 17 October 2022, in which you sought information relating to issuing formal warnings. You requested the following information:

- 1. I request the number of "warnings" issued by the police in lieu of taking any other action against an alleged offender (e.g., charging or prosecution) and for which the alleged offender had not admitted to the alleged offence, for the dates
(a) between 1 January 2009 and 1 April 2021, inclusive; and
(b) between 2 April 2021 to the date in which you action my request.*
- 2. Of the number of "warnings" which issued in request (1)(a), the number of the instances in which ALL references to the "warning" were removed from the Police database.*
- 3. Of the number of "warnings" which issued in request (1)(b), the number of the instances in which ALL references to the "warning" were removed from the Police database.*
- 4. Of the number of "warnings" which issued in request (1)(a), the number of instances in which the Police contacted agencies and individuals to make a correction that there was no such warning, as such a warning has been deemed unlawful by the High Court.*
- 5. Of the number of "warnings" which issued in request (1)(b), the number of instances in which the Police contacted agencies and individuals to make a correction that there was no such warning, as such a warning has been deemed unlawful by the High Court.*

I have considered your request and offer the following response.

Background and information

Formal Warnings are a resolution option used by Police as an alternative to prosecuting offenders through the Courts, a process that is recognised as often being time consuming and costly. Common Law allows Police the discretion not to prosecute all identified offenders, because it is not in the public interest to do so. The criminal justice process recognises that not every offender identified by Police requires to be prosecuted for every possible offence.

Formal Warnings replaced Pre-Charge Warnings (PCW) as an alternative resolution option on 1 May 2020.

Effectively, Formal Warnings are used to hold individual(s) to account as offender(s), for minor offending, in situations where there is no 'Public Interest' in proceeding through the formal Court process. The 'Public Interest Test' is set out in the Solicitor General's Prosecution Guidelines. It is based on the premise that there "will be circumstances in which, although the

evidence is sufficient to convict an individual, the offending (and related circumstances) is not serious in nature - and prosecution is not required.”

Further information on prosecution guidelines can be accessed through the link below:
<https://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf>

Formal Warnings are intended to be an effective mechanism for holding an individual to account and deterring them from repeat offending. A Formal Warning is recorded on an individual's Criminal Record history, a process that acknowledges that the offence was appropriately dealt with.

Further information on formal warnings can be accessed through the links below:
<https://www.police.govt.nz/sites/default/files/publications/formal-warnings-130722.pdf>

Number of warnings recorded where the person did not admit responsibility

Police National Intelligence Application (NIA) does not have a specific field to record whether the person identified as an offender admitted responsibility for the offence as required by Formal Warning policy.

The information you have requested is not readily available for data collection and analysis. While the information may be found within the narrative of the recorded offence, retrieving that information would require a manual review of all files. To that effect, question 1 of your request is refused pursuant to section 18(f) of the OIA - as this information cannot be made available without substantial collation and research.

Number of warnings which have been removed

Police is guided by the National Recording Standards which is the overarching recording policy for Police. In general, information should not be deleted or removed from NIA. Deletion of information can occur when:

- Carried out by authorised people and;
- The action of removing that data or record is necessary to ensure that information held by Police is accurate, up to date, complete, relevant and maintained in accordance with Polices' policy.

In addition, information may be amended or removed by appropriately authorised individuals (acting with the approval of the Service Journey & Systems Manager, Service Group) in order to protect identifiable individuals from personal risk or life-threatening situations.

Note: The approach is not intended to prevent the timely deletion of data, records or information entered in error or by accident e.g. removing links between the wrong core objects, replacing incorrect narrative entries or deleting erroneous charges, where those errors occur in the process of creating initial Files, Offences or Occurrence (records).

Where such a removal action occurs, NIA does not usually contain any 'history' (tracked record) of that transaction. Therefore, we are unable to say how many of those transactions have occurred.

Questions 2 and 3 of your request are therefore refused pursuant to section 18(e) of the OIA - as the information requested does not exist.

Number of instances Police made contact with agencies and individuals regarding an incorrect formal warning recording

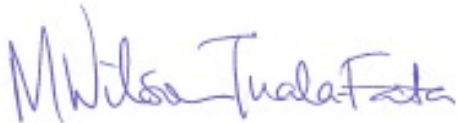
If and when a situation arises where contact is required with individuals and agencies regarding an incorrect issue of a Formal Warning, Police will use various ways to make contact as appropriate for that particular situation. This can be done by sending a word document attachment, within the body of an email, or through other means.

This information is not necessarily stored and/or attached to the relevant case, therefore a manual review would be required to determine the number of records where this has occurred while acknowledging that not all records will be updated with this information.

Questions 4 and 5 of your request are therefore refused pursuant to section 18(f) as this information cannot be made available without substantial collation and research.

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.

Naku noa, nā,



Mere Wilson Tuala-Fata
Director
Prevention: Innovation & Change
Iwi and Communities