

21 November 2016

Mr Michael Rescue  
fyi-request-4880-3ed79b9a@requests.fyi.org.nz

Dear Mr Rescue

Thank you for your email of 2 November 2016 asking for a review of Mr Maurice Lawlor's decision of 9 June 2016 to withhold some information requested under the Official Information Act 1982 (OIA). You requested the following:

*It states in clause 162B of the Student Loan Scheme Amendment Bill (No 3) that on an application in writing by the Commissioner a district court judge or registrar may issue a warrant for the arrest of a person (the liable person) ie a student loan defaulter and that one of the conditions that must be met is that the authorities must be satisfied that the individual is about to leave or attempt to leave New Zealand. How is this condition satisfied, eg - the details on their arrival card including departure date?*

To clarify a warrant for the arrest of a person under section 162B of the Student Loan Scheme Act 2011 (SLSA) may be issued "if the Judge or Registrar (as the case may be) is satisfied that the person has committed the offence in section 162A and is about to leave or attempt to leave New Zealand." Therefore, a Commissioner's application for an arrest warrant needs to satisfy the Judge or Registrar of the above criteria and the evidence provided is done so on a case by case basis.

After reviewing the information requested it is my view that Mr Lawlor's decision to refuse to release the information is correct. The information is withheld in accordance with section 18(c)(i) of the OIA, as the disclosure of the information would be contrary to section 81 of the Tax Administration Act 1994 (TAA).

It is also our view that section 52(3) of the OIA also applies in this situation. Section 81 of the TAA is an Act of Parliament that imposes a prohibition, or restriction, in relation to the availability of official information and regulates the manner in which official information may be obtained or made available.

### **Section 81 of the TAA**

Under section 81 of the TAA, every Inland Revenue officer must maintain, and must assist in maintaining, the secrecy of all matters relating to the legislation described in subsection 81(1C) of the TAA. The information that you have requested is about the application of section 162B of the SLSA, which is one of the Inland Revenue Acts described in subsection 81(1C) of the TAA. Therefore, information relating to the application of section 162B of the SLSA must be kept secret unless there is an exception that allows disclosure.

There are two key exceptions to the general secrecy requirement that allow Inland Revenue to disclose information. The first is contained in section 81(1) of the TAA. This allows information to be released in order to carry into effect the legislation described in subsection 81(1C). In our view, the release of the requested information is not required in order to carry into effect the stated Acts.

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The second is contained in section 81(1B) of the TAA. This is a discretionary provision that allows Inland Revenue to disclose information when the communication:

- a) is for executing or performing a duty of the Commissioner or supporting the execution or performance of such a duty; and
- b) it is reasonable, having regard to five specific factors contained in section 81(1B)(b) of the TAA.

In order to exercise the discretion contained in section 81(1B), we must be satisfied that the proposed disclosure or communication will comply with the two statutory tests. The first test to be satisfied is that the release of the information or communication is for the purpose of executing or performing a duty of the Commissioner, or for the purpose of supporting the execution or performance of such a duty. We consider this means that the communication will be authorised for instance when it assists an Inland Revenue employee to perform the duties and functions described in section 81(8)(b) of the TAA.

There must be a nexus between the communication and the Commissioner's duties. We do not consider whether or not the release provides a benefit to the recipient. Our standard practice statement *SPS 11/07 Application of Discretion in Section 81(1B) of the Tax Administration Act 1994 - The Secrecy Provisions* provides guidance when considering if information should be released under section 81(1B) of the TAA. SPS 11/07 is available on our website [www.ird.govt.nz](http://www.ird.govt.nz) in the *Technical tax area*.

The discretion under section 81(1B) extends to anything done to support the carrying out of the Commissioner's duty. This allows disclosure when there is no direct execution or performance of a duty by the Commissioner, but the disclosure supports the Commissioner's execution or performance of a duty. For instance, supporting work being conducted by third parties to research aspects of the tax system may in some cases warrant the disclosure of otherwise tax secret information. In such cases we need to be satisfied that the disclosure will support the Commissioner's duty to improve, research or reform the tax system.

When considering your request it is our view that the disclosure of the information is not to for the purpose of executing or performing a duty of the Commissioner. While disclosure may assist you, there is no clear link that it would support the execution or performance of a duty of the Commissioner. Therefore it is our view that the information cannot be released under section 81(1B) of the TAA.

As your request did not meet the first test it was not necessary to consider if it was reasonable to disclose information, having regard to five specific factors contained in section 81(1B)(b) of the TAA. As both tests need to be met for disclosure to be made under section 81(1B) of the TAA it was not necessary to consider the second test.

As I have refused to provide you with the requested information, you have the right to make a complaint to the Ombudsman, seeking an investigation and review of the decision. The contact information for the Office of the Ombudsman is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

Thank you for writing. I trust that my comments have clarified Inland Revenue's position.

Yours sincerely



Tony Donoghue  
Manager, Commissioner's correspondence