

Is your police history private?

When can an employer access a job applicant's criminal or credit history?

Generally, an employer can ask an applicant for personal information that is relevant to the job and necessary for them to know about.

That means in some circumstances an employer can ask about the applicant's criminal past.

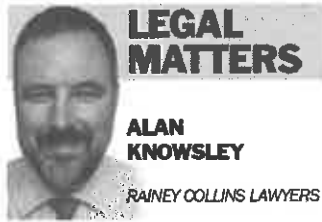
Often, it's necessary to know about the applicant's criminal past. More so if the nature of the role means the employee will be in a position of responsibility, or dealing with vulnerable people.

In fact, in some cases employers have to check this information.

An employer should not ask about police diversions, or about anything covered by the Criminal Records (Clean Slate) Act, unless a specific exception applies. In most cases, if the applicant is asked about either of these things, they do not need to supply that information.

Nor do the police.

Diversion information is not relevant to a person's ability to do a good job. Likewise, neither is any conviction concealed under the Criminal Records (Clean Slate)



LEGAL MATTERS

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Act. The act applies only if certain criteria are met.

The person must not have had convictions within the last seven years. They must have never been sentenced to a custodial sentence (including imprisonment, corrective training, or borstal).

The act does not apply if the person has been ordered by a court to be detained in hospital because of a mental condition.

It will not apply to "specified" offences, including sexual offending against children, young people, or the impaired.

The person must never have been indefinitely disqualified from driving. They must also have paid any fines, reparation, or costs ordered by the court in full.

As can be imagined, the qualifications mean that generally, if the act applies, the person's criminal offending is less serious.

This allows for second chances – the person's criminal history should be no bar to further employment.

In some rare cases, or with certain jobs, a conviction concealed under the Criminal Records (Clean Slate) Act can be revealed. That is provided for within the legislation.

For example, if the person is applying for a specific job. Included in this category are jobs involving national security, jobs with police or corrections, and jobs of particular community responsibility (such as judge, justice of the peace, community magistrate, foster parents, or positions involving care and protection of children and young people).

Some employers will also be able to ask for police vetting.

Police vetting is different to a full criminal history check. Some people may be vetted by police for certain reasons, despite not having a criminal history.

Only approved organisations, registered with the police Vetting Service, can apply for Police vetting.

Approved organisations must still ask and obtain the applicant's permission through a request and consent form, before a police vet can be carried out.

Traditionally, organisations that provide care for children, the elderly and vul-

nerable people can register for police vetting services.

In some cases, an employer can ask for access to an applicant's credit history.

In general, that is only permissible if the applicant consents (in writing is best). The purpose of any check is for pre-employment, and the proposed employment is in a position involving significant financial risk.

Significant financial risk means more than simple cash handling. In one case, a retailer was caught out by the Privacy Commission for asking for a credit check for a teller position.

Simple cash handling did not meet the "significant financial risk" threshold. However, if a position deals with money, accounts and financial administration, a credit check may be appropriate.

If a credit check is necessary, but the applicant refuses to consent to one, then an employer would be wise to read the signs and reject the job applicant.

To seek a credit check without the applicant's consent may breach the Privacy Act and the credit reporting privacy code.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733484. If you have a legal inquiry you would like discussed in this column, email aknowsley@raineycollins.co.nz.

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