

WELLINGTON

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PROTECTING NEW ZEALAND'S BORDER

22 February 2021

Ref: OIA 21-020



Dear 

Request for Official Information

On 2 February 2021, the Ministry of Business, Innovation and Employment (MBIE) partially transferred your request (below) made under the Official Information Act 1982 (the Act) to the New Zealand Customs Service (Customs) as the request is more closely aligned with the functions of Customs:

"Please provide any information, procedures, or documentation relating to the below for people liable to arrest and detention under the Immigration Act who claimed asylum at New Zealand's border between 2015-2020.

- *any use of strip-searching at the airport by Customs or Immigration officials."*

In response, I can advise that Customs has interpreted your reference to strip searches to mean one of, or a combination of, the following three categories of personal searches, which are conducted under sections 210 and 211 of the Customs and Excise Act 2018:

- a rub down search
- partial strip search
- full strip search.

Personal searches of travellers, including asylum seekers, by Customs, are conducted where the personal search is necessary to mitigate the traveller's risk to the border.

Personal searches are conducted pursuant to sections 210 and 211 of the Customs and Excise Act 2018, where Customs has reasonable cause to either suspect or believe under section 210 or 211 respectively, that the traveller has hidden on or about their person unlawfully imported goods, evidence relating to unlawfully imported goods, or evidence of any contravention of the Customs and Excise Act 2018. All travellers arriving into New Zealand are subject to the same risk assessment processes.

In the scope of your request for information, please find attached a document containing extracts of Customs' personal search procedures titled '*Extracts from Ops Pro 038*'.

Customs has procedures in place for processing the entry into New Zealand of recognised refugees, under the Immigration New Zealand refugee quota, and spontaneous refugees. In the scope of your request for information, please find attached a document containing extracts of Customs' entry procedures for both recognised and spontaneous refugees titled '*Extracts from Ops Pro 030*'.

While Customs does not specifically collect statistics in relation to the number of persons seeking asylum at the New Zealand border, I can advise that five asylum seekers have been subject to a personal search by Customs between 2015 and 2020.

Please find below a table containing the breakdown by year of the number of personal searches conducted on asylum seekers between 2015 and 2020. While the data extracted from the Customs system is correct as at 9 February 2021, please note that it may be updated or amended at any time in future.

Breakdown 2015 – 2020: Number of personal searches conducted on asylum seekers

Year	Number of Asylum Seekers Subject to a Personal Search
2015	0
2016	2
2017	1
2018	1
2019	1
2020	0

You have the right, by way of complaint to the Office of the Ombudsman under section 28(3) of the Act, to seek an investigation and review of this response. Information about how to make a complaint is available online at: www.ombudsman.parliament.nz, or you can phone 0800 802 602.

If you have any queries about this response, in the first instance please contact Prasheeta Ram-Taki, Acting Communications and Media Manager, on 029 357 0310 or by email at Prasheeta.Ram-Taki@customs.govt.nz.

Please note that Customs proactively releases responses to Official Information Act requests. As such, we may publish this response on our website. Your name and contact details will be removed.

Yours sincerely


Kathryn MacIver
Group Manager, Policy and Strategy

Released under the Official Information Act 1982

Extracts from Operational Procedure 038: Searching of People

POLICY STATEMENT

3. Personal searches are highly intrusive, and, on occasion, highly invasive procedures that impact on the dignity and privacy of the individual concerned. Given the highly intrusive personal nature of these searches, they must be undertaken with reasonableness, sensitivity, respect and politeness, but with firmness if required.
4. Customs' personal searches must be conducted lawfully, and undertaken strictly in accordance with:
 - the relevant sections of the Customs and Excise Act 2018 (also refer to [Powers under the Customs and Excise Act](#))
 - the [New Zealand Bill of Rights Act 1990](#), which provides that everyone has the right to be secure against unreasonable search, and requires that searches be no more intrusive than necessary in the particular circumstances (also refer to [Rights under the New Zealand Bill of Rights Act 1990](#))
 - the [Search and Surveillance Act 2012](#), which provides guidance on the conduct of search of persons, including that this type of search must be conducted with decency, sensitivity and in a manner that allows the person being searched a degree of privacy and dignity that is consistent with achieving the purpose of search (also refer to [Other Powers](#)).

PROCEDURES

8. The Customs and Excise Act 2018 gives Customs officers the power to detain and search persons. The use of this power has limitations, so any officer involved in a personal search must be aware of both the specific power and the limitations of the search.
9. All officers must therefore be trained and be deemed competent prior to undertaking any personal searches.

CATEGORIES OF PERSONAL SEARCHES

10. Note: [sections 30](#) and [33](#) of the Customs and Excise Act 2018 requires passengers to make their accompanying baggage and any other goods in their possession or under their control available to a Customs officer for examination. This enables officers to require passengers to make available anything in their possession as part of a baggage search. This may be useful before proceeding with further searches that require reasonable cause.

11. The searching of persons includes a number of categories as follows:

preliminary search by non-invasive search techniques, such as a detector dog or imaging equipment ([section 210](#)). This process must involve little or no physical contact with the person being searched and does not require a threshold of either suspicion or belief to be established before the search may be commenced

further searches, which require reasonable cause ([section 210](#) and [section 211](#)) to either suspect or believe to be established before the search may commenced are the following types of **personal searches**:

- rub-down (otherwise known as frisk or pat-down) search - where the searcher runs or pats their hands over the body of the detainee, whether outside or inside of the clothing of that person, but not against the bare skin
- partial strip search – where only a portion of the detainee’s clothes are removed
- full strip search– a full examination where all the clothes of the detainee are removed.

ESTABLISHING REASONABLE CAUSE

27. Before a personal search is conducted under [section 210\(3\)](#) or [211](#) the appropriate reasonable cause **must first be established**. There are two types of reasonable cause - *reasonable cause to suspect* and *reasonable cause to believe*.
28. Reasonable cause to suspect is a lower standard than reasonable cause to believe. It is a set of facts or circumstances that, when viewed objectively, would lead an officer to conclude that it is more likely than not that the thing suspected is so. An officer should be able to cite the specific facts and circumstances that gave rise to the reasonable suspicion.
29. Reasonable cause to believe is a set of facts or circumstances that, when viewed objectively, would cause an officer to conclude it is highly likely that the thing believed is so. An officer should be able to cite the specific facts and circumstances that lead to the belief and be able to cite any tangible evidence in support of their belief.
30. The [Notice of Detention for a Personal Search](#) form outlines the level of reasonable cause required.
31. A notice of detention is not required if searching a person under [section 210\(3\)](#) of the Customs and Excise Act 2018. A written report of the search, the circumstances in which it was conducted, and the matter that gave rise to the reasonable cause to suspect must be given to the Chief Executive as soon as practicable after the search.

Extracts from Operational Procedure 030: Recognised (Quota) and Spontaneous Refugees (Refugee Status Claimants)

LEGAL FRAMEWORK – DEFINITION OF REFUGEE

1. Refugee entry is the response to New Zealand's international convention obligations (including affiliation to the United Nations High Commission for Refugees (UNHCR) and [Convention Relating to the Status of Refugees](#) (the "Convention") under which New Zealand is focussed on the facilitation of recognised refugee settlement and integration.
2. Article 1 of the Convention defines a refugee as:
"...the term refugee shall apply to any person who...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, owing to such fear is unwilling to avail himself of the protection of that country,...or, owing to such fear, is unwilling to return to it..."
3. As a result New Zealand has an obligation to perform the requirements of this Convention in good faith. Full compliance with the following procedures will provide an audit trail of the action taken and ensure the integrity of Customs' processes and the officers involved.

REFUGEE CATEGORIES

11. This procedure outlines the operation process for processing refugee categories.
12. From a Customs perspective, the main categories that are dealt with under this procedure are:
 - Recognised refugees (Quota Refugees); and
 - Spontaneous refugees (Refugee Status Claimants).

PROCEDURES

6. The assessment of refugee status (of all categories of refugee) is the responsibility of Immigration New Zealand (INZ) as it administers and enforces the refugee legal framework at the border. INZ undertakes an assessment of all migrant refugees including risk, identity and settlement factors.
7. As a result Customs' role is limited to that of border control only. It is not Customs role to determine whether or not a migrant refugee meets the appropriate immigration criteria to be or to claim refugee status (quota refugee or spontaneous claimant) – this is INZ's role.
8. Customs role is to apply standard Customs procedure to identify border security risk and enforce Customs goods assessment processes in the facilitation of that entry. That is Customs' only purpose when dealing with a recognised refugee or refugee status claimant (spontaneous claimant or quota refugee) at border entry.

9. Under no circumstances should an officer ask a passenger whether they are claiming refugee status. The passenger must identify themselves as a refugee claimant.

CUSTOMS RISK ASSESSMENT

27. After initial assessment has been completed by INZ the passenger will be referred to Customs for a risk assessment.
28. Spontaneous refugees commonly arrive into New Zealand with either no documentation or false documentation. It is for this reason that Customs complete a baggage search on all items carried by the passenger as per OPS PRO 065 - Accompanied baggage search and question the passenger in order to assess their risk to the border. On completion of the Customs risk assessment the passenger must be referred back to INZ.
29. INZ will advise the outcome of their assessment of the passenger. Customs are to enter the passenger's details and immigration status into CusMod as per the direction from INZ.

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