

02 OCT 2018



Thank you for your email of 22 August 2018 requesting under the Official Information Act (the Act) the following information:

- 1. how many people have been caught sub-letting out any room/s in a Housing New Zealand house every year since 2008? Please include a yearly breakdown*
- 2. how many people have attempted sub-letting out any room/s in a Housing New Zealand house every year since 2008? Please include a yearly breakdown*
- 3. of those caught sub-letting, what have been the sanctions every year since 2008? Please include a yearly breakdown*
- 4. on what platforms have tenants been caught advertising for sub-letting? (Trade Me, Air Bnb etc.) Please include a yearly breakdown since 2008*
- 5. has there been any change of policy relating to sub-letting of rooms since 2008?*

On 14 September 2018, Housing New Zealand notified you that we had extended the time available to respond by 20 working days with effect from 19 September 2018, the original due date. The extension was made in accordance with section 15A(1)(b) of the Act to enable consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.

Housing New Zealand's agreements with tenants does not permit the subletting of its properties. However, tenants may have boarders. An explanation on the difference between subletting and boarding is provided below.

### **Subletting**

Subletting is usually where the residential tenant moves out of the house they are renting and gives someone else the exclusive right to occupy the property for any period of time for consideration (payment). The tenancy of the original tenant who moves out continues which means that they remain responsible to the landlord, but they also become the landlord of the person(s) who move into the house. There is a general obligation to inform the landlord and have the landlord's consent, which is not to be unreasonably withheld.

Housing New Zealand's role as a housing provider is regulated by the Housing Restructuring and Tenancy Matters Act 1992 (HRTMA). The statute makes it plain that Housing New Zealand housing must only be provided to people whose housing need and priority have been assessed by the social housing agency, the Ministry of Social Development (MSD). Housing New Zealand cannot rent out its properties to the general public.

Subletting is not against the law and may be included in a tenancy agreement unless there is a provision that expressly prohibits the tenant from subletting. To meet legal requirements Housing New Zealand has to prohibit subletting situations.

Housing New Zealand does not allow subletting because in subletting it is the tenant who makes the decision to whom and on what terms a property is to be sublet, rather than Housing New Zealand in cooperation with MSD. It would also be inappropriate for a Housing New Zealand tenant receiving a taxpayer-funded income-related rent subsidy to be able to profit from the transaction by subletting the property at a higher rent rate, like market rent, than they are themselves paying.

Housing New Zealand adheres to the following Acts:

- Residential Tenancies Act (RTA) 1986  
Section 44 - [www.legislation.govt.nz/act/public/1986/0120/52.0/DLM95097.html](http://www.legislation.govt.nz/act/public/1986/0120/52.0/DLM95097.html)
- Housing Restructuring and Tenancy Matters Act 1992  
Section 70(2) - [www.legislation.govt.nz/act/public/1992/0076/73.0/DLM6089237.html](http://www.legislation.govt.nz/act/public/1992/0076/73.0/DLM6089237.html)  
Section 71 - [www.legislation.govt.nz/act/public/1992/0076/73.0/DLM6089238.html](http://www.legislation.govt.nz/act/public/1992/0076/73.0/DLM6089238.html)  
Section 101(b) - [www.legislation.govt.nz/act/public/1992/0076/73.0/DLM6090022.html](http://www.legislation.govt.nz/act/public/1992/0076/73.0/DLM6090022.html).

### **Boarding**

Boarding situations are common in Housing New Zealand tenancies, as they are in New Zealand homes generally, and Housing New Zealand has no legal basis for prohibiting them unless the section of the Tenancy Agreement prohibiting overcrowding is triggered by a breach. There is no distinction between adult relatives of the registered tenant who pay board from unrelated people who enter into a commercial boarding arrangement. There is no limitation on the number of boarders permitted in a tenancy, provided overcrowding does not occur.

All of Housing New Zealand tenants have an obligation to notify MSD of a change in circumstances, which could be the arrival of a new household member/person or the inclusion of 'income' – in this scenario, board money.

The boarding situation arises where a Housing New Zealand tenant remains living in the Housing New Zealand property and accepts payment from adult/s to use a bedroom(s) in the property while sharing the use of other household amenities such as bathroom(s), kitchen, laundry and living areas as agreed. Accepting board payments does not constitute subletting.

Having a flatmate living at the property is not seen as subletting because a flatmate shares the rented property and the facilities with the tenant. Flatmates are not covered by the RTA which only covers tenants and landlords. Further information is available on the Tenancy Services website [www.tenancy.govt.nz/starting-a-tenancy/flatting/#id\\_134152-flatmate](http://www.tenancy.govt.nz/starting-a-tenancy/flatting/#id_134152-flatmate).

I now respond to your questions in the order presented.

**1. How many people have been caught sub-letting out any room/s in a Housing New Zealand house every year since 2008? Please include a yearly breakdown**

As outlined above accepting board payments for letting out any room(s) is not subletting.

I am therefore declining your request for a yearly breakdown since 2008 of how many people have been caught sub-letting out any room/s under section 18(g)(i) of the Act, *namely that the information requested is not held by the department or Minister of the Crown or organisation and the person dealing with the request has no grounds for believing that the information is either held by another department or Minister of the Crown or organisation, or by a local authority.*

**2. How many people have attempted sub-letting out any room/s in a Housing New Zealand house every year since 2008? Please include a yearly breakdown**

As outlined above accepting board payments for letting out any rooms is not subletting.

I am therefore declining your request for a yearly breakdown since 2008 on how many people have attempted sub-letting out any room/s under section 18(g)(i) of the Act, *namely that the information requested is not held by the department or Minister of the Crown or organisation and the person dealing with the request has no grounds for believing that the information is either held by another department or Minister of the Crown or organisation, or by a local authority.*

**3. Of those caught sub-letting, what have been the sanctions every year since 2008? Please include a yearly breakdown**

Subletting of Housing New Zealand properties is not permitted as it deprives others in need of a home and may result in eligible applicants having reduced access to social housing. It can also lead to damage, anti-social behaviour, and squatting. Almost all Housing New Zealand tenants pay a below market rent for their home which should not be transferred to another person, nor should the tenant benefit from receiving a full market rent (while paying a below market rent to housing New Zealand) if they sublet. If there is any evidence of subletting it will be referred to MSD for further investigation.

Where subletting occurs Housing New Zealand's first action is to issue a section 56 *Notice to Remedy* requiring the tenant to return to the property. Housing New Zealand then schedules a follow-up inspection to ensure that the tenant has returned, and to understand from the tenant why they sublet or tried to pass on their tenancy. Subletting may be resolved by transferring the tenant to a Housing New Zealand property better meeting the tenant's needs, or if a transfer is not appropriate by a tenant voluntarily quitting the tenancy with the giving of notice.

This action is consistent with Housing New Zealand's collaboration with MSD to reduce homelessness by trying first to sustain tenancies, rather than end them.

In cases where the tenant is not able to be engaged with, or where an agreed resolution is not possible, Housing New Zealand applies to the Tenancy Tribunal for a Possession Order ending the tenancy under section 56 RTA on the grounds of failure to remedy a notified breach.

Housing New Zealand does not centrally record sanctions for subletting. This information would be held on individual files and to locate any attempt to sublet would necessitate a manual search of all the individual files, of both former and current tenants to obtain the number involved. This task would be substantive and greatly impact on the ability of Housing New Zealand to carry out its core functions and therefore the greater public interest in the effective and efficient administration of the public service would not be served.

I am therefore declining your request for what have been the sanctions every year since 2008 for the subletting of homes under section 18(f) of the Act *namely that the information requested cannot be made available without substantial collation and research.*

**4. On what platforms have tenants been caught advertising for sub-letting? (Trade Me, Air Bnb etc.) Please include a yearly breakdown since 2008**

It is rare that the tenant advertises the tenancy and enters into a landlord-tenant type relationship with a stranger just for commercial gain. Often the sub-tenant is a family member and the subletting situation is really an attempt by the tenant to pass on the tenancy without the knowledge and consent of Housing New Zealand.

Subletting a Housing New Zealand rental property is not permitted and this would include any instances such as Airbnb or TradeMe and these instances are extremely rare. There have been a handful of known cases and these are listed below:

- in 2012 there were two known cases. One tenant advertised on a website called Holiday Homes for a short-term rental and in the same year another tenant advertised on Gumtree for a long-term rental
- in 2015 there were two known cases. One tenant sublet their home via Facebook while living elsewhere and in the same year another tenant sublet rooms while living elsewhere
- in 2017, there was one case of a tenant subletting the property to a friend while living overseas
- in 2018, there have been two cases, both involving Airbnb.

Generally this occurs where the tenant is unaware of the difference between boarders and subletting. Housing New Zealand works with our tenants to help them understand what is the right course of action and the matters can be resolved with a meeting.

Housing New Zealand does not centrally record advertising for subletting. This information would be held on individual files and to locate any attempt to sublet would necessitate a manual search of all the individual files, of both former and current tenants to obtain the number involved. This task would be substantive and greatly impact on the ability of Housing New Zealand to carry out its core functions and therefore the greater public interest in the effective and efficient administration of the public service would not be served.

I am therefore declining your request for a yearly breakdown since 2008 of any other tenants who may have advertised for the subletting of their home under section 18(f) of the Act *namely that the information requested cannot be made available without substantial collation and research.*

**5. Has there been any change of policy relating to sub-letting of rooms since 2008?**

No there has been no change relating to letting of rooms. The letting out of rooms is not subletting.

You have the right under section 28(3) 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](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Yours sincerely



Rachel Kelly  
**Manager Government Relations**