IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA110/2025
[2026] NZCA 15

BETWEEN	ALLAN MAGNUS YORSTON Appellant
AND	ATTORNEY-GENERAL Respondent

Hearing: 29 September 2025

Court: Collins, Cull and Osborne JJ

Counsel: Appellant in person
D L Harris for Respondent

Judgment: 10 February 2026 at 9.30 am

JUDGMENT OF THE COURT

A The appeal is dismissed.

B We make no order for costs.

REASONS OF THE COURT

(Given by Cull J)

[1] Mr Yorston made an application by way of judicial review to correct errors in the Ministry of Justice's criminal records, namely his convictions history report (CHR) and his criminal and traffic history report. The High Court declined Mr Yorston's application for judicial review because the errors in the dates of Mr Yorston's convictions in his CHR had been identified and fixed.[1] The proceedings were

[1] *Yorston v Attorney-General* [2025] NZHC 38 [judgment under appeal] at [2] and [30].

therefore moot. In any event, the Court held that it did not have jurisdiction to consider Mr Yorston's claim because it was an exercise of a "wholly administrative" and "essentially mechanical" power, which is not reviewable.[2]

[2] Mr Yorston appeals the High Court's decision.

Background

[3] The relevant background facts describing Mr Yorston's CHR and criminal and traffic history report were helpfully summarised by Radich J which we adopt:[3]

> [5] The Ministry of Justice produces a document known as a [CHR] upon request. The report is a computer-generated compilation of information about an individual's convictions and the sentences imposed. It is created from information recorded in the case management system used by the courts at the time a request is made. The report contains seven columns:
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> (a) the CRI number for a particular proceeding;
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> (b) the court in which a conviction was entered;
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> (c) the court record number (CRN);
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> (d) the conviction date;
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> (e) a description of the charge for which a conviction was entered;
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> (f) the sentence date;
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> (g) a sentence description.
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> [6] In November 2023, Mr Yorston requested his [CHR] from the Ministry. The report that was produced showed, for each of the convictions it covered, the conviction and sentence dates to be the same. In fact, in each case, the dates on which Mr Yorston's convictions were entered were earlier than the dates on which sentences were imposed for those convictions.
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> [7] The Ministry accepts that the dates of Mr Yorston's convictions were not the same as the dates on which he was sentenced and that, therefore, the report produced is inaccurate. The Ministry has identified a software issue which, in the reports produced for Mr Yorston, has essentially conflated the conviction date with the sentence date. When a conviction is entered, but before sentencing, the conviction date in the system was recorded correctly. But, after sentencing, both dates in the report are shown as the date on which the sentence was imposed.

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2 At [28] and [30].

3 Footnotes omitted.

> [8] The software issue has affected, also, a related report called a "criminal and traffic history" report. Unlike a [CHR]—which is produced through the Ministry in response to a request made of it—the criminal and traffic history report is produced by courts directly through their case management system. Criminal and traffic history reports do not record separate conviction and sentence dates. Instead, in the case of each offence, the criminal and traffic history report has a single column headed "result date".
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> [9] At the 14 November hearing, Mr Yorston handed up a criminal and traffic history report that had been produced through the Court's case management system on 27 March 2007. It was produced after the conviction was entered but before the sentencing for the offending in question. The "result date" shown in that document at that point and time was the conviction date—19 March 2007. However, when on 15 August 2007, Mr Yorston was sentenced, the "result date" in subsequent versions of that report changed to 15 August 2007.
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> [10] The underlying software issue identified by the Ministry has been described as complex and technical. The Ministry is, as I understand it, considering the issue. However, in order to address Mr Yorston's concerns in the meantime, the Ministry has amended his [CHR].
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> [11] On 11 November 2024, the Ministry wrote to Mr Yorston, and provided him with an amended [CHR]. The report excluded the "conviction date" column altogether. The letter explained the software error and said that the attached report was now an accurate record of his criminal history.

[4] The Judge recorded that the errors in Mr Yorston's CHR had been addressed by the time of the High Court hearing.[4] Mr Yorston says errors remain.

[5] Despite the correction of error, Mr Yorston contended in the High Court that his CHR had been "maliciously falsified" for the "sole purpose of misleading individuals or entities when forming and making decisions or judgements". Mr Yorston alleges that this "falsified" information was used in an affidavit sworn by Inspector Pullen in the context of an unrelated proceeding in the District Court regarding his partner's firearms licence application. Radich J referred to and ruled upon this matter in a separate judgment declining Mr Yorston's interlocutory application for an injunction as part of his substantive judicial review claim.[5]

[6] Although Mr Yorston's appeal is from the substantive High Court judgment, where the errors in his CHR had been identified and fixed, Mr Yorston addressed us

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4 Judgment under appeal, above n 1, at [4].
5 *Yorston v Attorney-General* [2024] NZHC 2005.

on the background to his claim that an erroneous criminal record in his name, containing 19 convictions had been previously accessed and relied on to his detriment.

The erroneous 19 convictions

[7] Mr Yorston claims that there are other records containing 19 convictions, "hidden out of view, within permanent court records and in police files." While conceding that they are not necessarily relevant to this appeal, Mr Yorston claims that such a record was formally produced on at least three occasions. He says the record contained 19 convictions, nine of which were quashed by the Court of Appeal on 7 August 2008 and two which were withdrawn at trial.[6]

[8] Mr Yorston explained that over the past 18 years, he has signed many waivers allowing prospective employers to obtain police criminal record checks and could not understand why his contract tenders for his business were constantly rejected.

[9] The matter came to a head when Inspector Pullen accessed Mr Yorston's criminal record in 2023, identified the 19 drug-related convictions and provided an affidavit to the District Court, opposing Mr Yorston's partner's appeal from her unsuccessful firearms licence application. This led Mr Yorston to make his claim that his criminal record been maliciously falsified to mislead potential decision makers or employers to his disadvantage.

[10] Mr Yorston submits that the 19 convictions were wrongly inserted into his criminal record, and that these inaccuracies raised Mr Yorston's concern that the reports were "unsafe and questionable". He emphasised to us that his original request was to the Ministry of Justice, including its agencies, to correct their misleading records and provide him with details of who had access to them and for what purpose. As Mr Yorston pleads in his amended statement of claim, his applications to the Ministry of Justice and to the Privacy Commissioner to investigate and resolve this matter have been unsuccessful.

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6 *R v Yorston* [2008] NZCA 285.

[11] Before the hearing of the substantive judicial review proceeding on 18 July 2024, Mr Yorston filed in the High Court a without notice interim injunction application to stay the District Court appeal by his partner against the refusal to issue her a firearms licence. During the hearing of the substantive judicial review proceeding, the injunction application was also addressed. Radich J advised the parties that he would not be granting the interim injunction and issued reasons for his decision separately from the substantive decision under appeal.[7]

[12] The Judge viewed Mr Yorston's application as an application to stay the District Court proceeding. He held that the High Court could not intervene in a proceeding between different parties in the District Court. An application to stay the District Court proceeding is governed by r 15.1(3) of the District Court Rules 2014 and could be made by Mr Yorston's partner. The Judge acknowledged that Mr Yorston took issue with the evidence given by Inspector Pullen in his affidavit filed in the District Court proceeding but explained that the High Court had no ability to intervene in that evidence and there was no basis upon which Mr Yorston's application could be granted.[8]

[13] In addition to the 2023 District Court proceeding, Mr Yorston claims that the erroneous record containing the nine quashed convictions had been produced on at least two other occasions. The first time was at a family group conference concerning the custody of Mr Yorston's children in mid-2011, where Mr Yorston's conviction history, including the 19 convictions, was produced. Mr Yorston also referred to a report, completed by Crown counsel appointed to conduct a review, in which his 19 convictions were referred to. However, in his oral submissions to the Court, Mr Yorston focussed on the family group conference in mid-2011 and the evidence given by Inspector Pullen in the 2023 District Court proceeding.

[14] In the materials provided to the Court, there is no copy of any CHR or criminal and traffic history report containing the 19 convictions. Mr Yorston confirmed that he did not have a copy of what he believed had been presented at the District Court or at the family group conference. However, annexed to the affidavit from a Ministry of

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7 *Yorston v Attorney-General*, above n 5.
8 At [4]–[8].

Justice Manager, is a letter from Mr Yorston's former lawyer advising that Mr Yorston's criminal and traffic history report contains errors and incorrectly lists convictions that the Court of Appeal had quashed. The lawyer notes that Mr Yorston has repeatedly contacted the Ministry of Justice to have the errors rectified and as at 18 January 2024, this had not occurred. The lawyer sought that the nine quashed convictions listed on Mr Yorston's criminal and traffic history report and CHR be removed without delay.

[15] Furthering his concern, Mr Yorston received an email from an Auckland District Court Registry officer in response to a request he made in October 2023 "to access the dates of [his] convictions and sentences both in 2006 and 2007." The email set out the results of two of his previous jury trials and sentences but not of a third. This was noted in the substantive decision of Radich J.[9]

[16] Mr Yorston suspects the convictions from the third proceeding may have been added after the Registry officer's reply. However, the Crown has confirmed that these convictions were entered into the permanent record at the relevant time and have not been altered but that Mr Yorston's request was misunderstood.

Decision under appeal

[17] In his claim for judicial review, Mr Yorston sought the following relief:

> An order for the Ministry of Justice to correct their records, supply the entry date of the falsified information and convictions. Further to disclose any access that has been allowed to this false information. So, the plaintiff can ascertain all associated impacts.

[18] As the Judge described, the CHR is a computer-generated compilation of convictions taken from data recorded in the case management system used by the courts. It transpires that the errors in Mr Yorston's CHR were caused by the dates in the "conviction date" column updating automatically to the sentencing date. This was found to be a software issue and was not caused by the actions of any persons.[10]

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9 Judgment under appeal, above n 1, at [15]. The email contained details of the two proceedings in 2006 and 2007 but omitted the third proceeding in 2008.

10 At [23].

[19] The Judge was satisfied that the issues underlying the proceeding had been addressed and a "sound practical outcome" reached.[11] He was advised that an amended CHR had been prepared for Mr Yorston, and that a tailor-made report would be produced in the event that any further CHRs are sought in the future.[12]

[20] However, as noted, Mr Yorston did not see that as concluding his claim. He asserted that the conviction dates had been deliberately and maliciously altered by one or more Ministry of Justice employees.[13]

[21] Despite noting that a practical outcome had been reached, the Judge ultimately concluded that the Court did not have jurisdiction to determine the claim, as there had been no statutory decision or exercise of power in the production of the CHR. CHRs draw on information in the case management system used by the courts, which the Ministry of Justice and its employees cannot alter.[14] The court record can only be altered by the application of r 7.1 of the Criminal Procedure Rules 2012, where a judicial officer or Registrar may correct an entry, if satisfied it was "erroneous in any respect",[15] but the original entry must remain on the record.[16] In any event, as the Judge notes, this proceeding concerns a document produced by the Ministry, which is not the permanent original record.[17]

[22] The Judge went on to note that the Ministry produced the CHR using its statutory power under s 172 and sch 4 of the Privacy Act 2020 to access court records for the purpose of responding to Mr Yorston's request for a CHR. There was no suggestion that the Ministry has exercised that power unlawfully.[18] Further, under s 31 of the Privacy Act, the information privacy principles (IPPs) in s 22 do not confer on any person any right that is enforceable in a court of law.[19]

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11 At [24].
12 At [23].
13 At [3].
14 At [25]–[26].
15 Criminal Procedure Rules 2012, r 7.1(6).
16 Rule 7.1(8).
17 Judgment under appeal, above n 1, at [27].
18 At [27].
19 At [29]. This is with the exception of information privacy principle 6, which states that an individual is entitled to receive from an agency upon request, confirmation of whether the agency holds any personal information about them and request access to their personal information.

[23] The Judge held that populating a CHR through Ministry software is not a statutory power of decision for the purposes of the Judicial Review Procedure Act 2016. Nor is it an exercise of public power "in a more general sense at common law."[20] The Judge found that the decision is "wholly administrative in nature" and "essentially mechanical".[21] Therefore, it was "not readily susceptible to the sort of error that may justify judicial review" and the Court did not have jurisdiction to consider Mr Yorston's claim.[22] In any event, the inaccuracies identified in his CHR had been remedied. The Court declined his application for judicial review accordingly.[23]

Grounds of appeal

[24] Mr Yorston's submissions largely repeat those in the High Court, that his CHR and criminal and traffic history report "has been maliciously falsified, presented, and used in many judgements and determinations". He says he has applied to the Ministry of Justice and the Privacy Commissioner to correct the records, with both agencies refusing to do so. He maintains that his CHR continues to contain false entries.

[25] Mr Yorston submits that every access, alteration and production of his CHR and criminal and traffic history report has been an exercise of a statutory power, and that the High Court Judge was thus wrong when he said "there has been no statutory decision or exercise of power."[24]

Issues

[26] Both Mr Yorston and Crown counsel provided a list of issues for determination on appeal. From those respective lists, the following issues emerge, which can be summarised as follows.

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20 At [28].
21 At [28].
22 At [28] and [30], citing *Greenpeace of New Zealand Inc v Environmental Protection Authority* [2013] NZHC 3482, [2014] NZRMA 112 at [31]–[33] and *AgResearch Ltd v G E Free NZ in Food and the Environment Inc* [2010] NZCA 89, [2014] NZAR 707.
23 Judgment under appeal, above n 1, at [30].
24 Referring to judgment under appeal, above n 1, at [25].

[27] Did the Judge err:

(a) In finding the amended CHR was correct?

(b) In finding the production of the CHR by the Ministry of Justice did not involve a statutory decision or exercise of a statutory power?

(c) By determining the proceedings by referring solely to Mr Yorston's CHR without addressing the alleged errors in his criminal and traffic history report?

(d) In finding that the High Court does not have jurisdiction to consider a complaint regarding the correction of information under the IPPs contained in the Privacy Act 2020?

[28] We deal with each in turn.

Was there error in the factual findings?

[29] It is plain that Mr Yorston's CHR erroneously recorded the dates of his convictions. As the Judge recorded, the Ministry accepted that the dates of Mr Yorston's convictions were not the same as the dates on which he was sentenced and therefore the report was inaccurate. In the CHR, the conviction dates were conflated with the sentence date. By contrast, criminal and traffic history reports do not record separate conviction and sentence dates but contain a single column headed "result date", in addition to a column headed "offence date".[25]

[30] Mr Yorston also contends that the Judge erred in ruling that the appeal is moot, where the criminal and traffic history report, dated 26 June 2023, was also inaccurate. The offence date for two charges of possessing equipment, material or a precursory substance with intent was 1 July 2004, not 1 July 2006 as the criminal and traffic history report states. Mr Yorston claims that the false entries constitute "convictions without trial". We deal with the detail of this claim under the third issue.[26]

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[25] At [7]–[8].
[26] See at [44] below.

[31] Despite Mr Yorston's attempts, he was not able to have his CHR corrected, either by the District Court Registry officer to whom he made his request or the Privacy Commissioner. However, as a result of making his judicial review claim, Mr Yorston's CHR has now been corrected. In the revised CHR, as Radich J records, the "conviction date" column has been excluded altogether.[27]

[32] We agree with the Judge that the judicial review proceedings were moot, as the relief sought had been achieved. Plainly, this does not deal with Mr Yorston's claim about his criminal record with 19 drug-related convictions, produced in the 2023 District Court proceeding by Inspector Pullen, or relied on at the 2011 family group conference. In the absence of sighting the conviction records produced on these occasions, we cannot take this matter further but we record for completeness that the Judge's decision to decline Mr Yorston's interlocutory application for an injunction, relating as it did to the District Court proceeding in which Mr Yorston was not a party, was correct.

[33] However, we do not overlook the substance of Mr Yorston's concerns, given his pursuit to date in attempting to rectify the errors in his CHR and criminal and traffic history report. We address below a possible recourse for Mr Yorston.

Is the production of the CHR justiciable?

[34] We now address the finding of justiciability by the Judge, where he held that "there is no decision that has been made, and no exercise of public power, that is amenable to review."[28]

[35] The basis upon which the Judge reached this decision was that:[29]

> … populating a [CHR] through Ministry software is not a statutory power of decision under the Judicial Review Procedure Act 2016. Nor is it the exercise of public power in a more general sense at common law. It is a decision that is wholly administrative in nature. It is essentially mechanical. As such, [it] is not readily susceptible to the sort of error that may justify judicial error.

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27 Judgment under appeal, above n **Error! Bookmark not defined.**, at [11].
28 At [28].
29 At [28].

[36] The Judge referred to two authorities in support of that proposition. The first was *Greenpeace of New Zealand Inc v Environmental Protection Authority*, where MacKenzie J concluded that the Environmental Protection Authority's decision to accept an allegedly incomplete environmental impact assessment was essentially an administrative act and the Court's power to review such administrative action was limited.[30] The Court held that "[a] decision which is 'wholly administrative in nature' and 'essentially mechanical' is not readily susceptible to the sort of error which may justify judicial review."[31]

[37] The second decision was *AgResearch Ltd v G E Free NZ in Food and the Environment Inc* which concerned a challenge to the Environmental Risk Management Authority's acceptance and registration of an application to import new organisms and to develop and field test them in containment.[32] The Court of Appeal found that the process of accepting and registering the application was "essentially mechanical" and therefore not subject to review because there was no express statutory power to reject the application and the only task of the Authority was to ascertain whether it was properly brought under the scheme, not to assess its merits.[33]

[38] The Crown submits that this Court's finding in *Jones v Accident Compensation Corporation*, reaffirming the finding in *Greenpeace*, has facts analogous to Mr Yorston's case.[34] In that case, Mr Jones alleged that the Accident Compensation Corporation (ACC) had destroyed his file and "got rid of" four months of relevant documentation for assessing his Earnings Related Compensation payments and sought damages.[35] ACC applied to strike out the proceeding and successfully argued that the destruction of files after 10 years was standard procedure and done as a matter of course, rather than amounting to a reviewable statutory power of decision. The Court noted that:[36]

> [41] In any event, it is trite law that judicial review only applies to the exercise, failure to exercise, or the proposed, or purported, exercise of a

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30 *Greenpeace of New Zealand Inc v Environmental Protection Authority*, above n 22, at [29] and [31]–[33], citing *AgResearch Ltd v G E Free NZ in Food and the Environment Inc*, above n 22.
31 *Greenpeace of New Zealand Inc v Environmental Protection Authority*, above n 22, at [33].
32 *AgResearch Ltd v G E Free NZ in Food and the Environment Inc*, above n 22, at [1].
33 At [59]–[61].
34 *Jones v Accident Compensation Corporation* [2025] NZHC 534.
35 At [1], [6] and [8].
36 Footnote omitted.

> statutory power. Decisions that are wholly administrative in nature are not readily susceptible to the sort of error which may justify judicial review – an error of law must be identified. The destruction of the files was an administrative act from which no error of law emanates, considering this was done in accordance with standard practice at the time.

[39] We have reservations about the Crown's position that the production of CHRs is an administrative act only and is not justiciable. CHRs are generated by computer systems, which have been adopted, managed and operated under the administration of the Ministry of Justice. The case management system from which data is obtained for both CHRs and criminal and traffic history reports are used daily by the police, courts and judges alike, particularly for the purposes of sentencing. The case management system is under the management of the Ministry of Justice.

[40] We consider that the production of CHRs is the result of the exercise of the executive powers of Government and must be amenable to review. We note in *New Zealand King Salmon Company Ltd v Marlborough District Council*, the High Court considered that the *AgResearch* and *Greenpeace* decisions did not exclude amenability to judicial review because that would be "tantamount to raising a jurisdictional bar to judicial review when, in principle, all exercises of public power are reviewable."[37] We agree.

[41] The approach in *New Zealand King Salmon Company Ltd* is instructive:[38]

> [37] … A central aspect of the constitutional responsibility which the courts of higher jurisdiction have for upholding the rule of law is to ensure public officials act in accordance with the powers conferred on them.[39] Where important principles of public administration are engaged, for example in ensuring consistency of treatment and avoiding material error in decision-making, the courts' supervisory jurisdiction is more obviously engaged.[40]
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> [38] In the context of a challenge to "mechanistic" decisions, such as the decision at issue in this case, *the relevant question concerns the limits of review rather than whether the power is reviewable at all*.

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37 *New Zealand King Salmon Company v Marlborough District Council* [2018] NZHC 1357, [2018] NZAR 1176 at [37], citing *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62, [2016] 1 NZLR 1056 at [1].

38 *New Zealand King Salmon Company Ltd v Marlborough District Council*, above n 37 (emphasis added).

39 *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 at [3].

40 *Ririnui v Landcorp Farming Ltd*, above n 37, at [89]–[93].

[42] The exercise of the statutory power to retrieve Mr Yorston's criminal record under s 172 and sch 4 of the Privacy Act allows the Ministry to access the case management system to produce a CHR. We agree with the Crown that there is nothing unlawful in the way in which the Ministry has accessed the case management system. However, it is the Ministry which operates, manages and oversees the case management system that produced both a CHR and a criminal and traffic history report with inaccuracies. It seems to us that the Ministry overseeing the operation has ultimate responsibility for its accuracy and the exercise of its statutory power must be subject to review.

[43] We agree that the relevant question, as Clark J said in *New Zealand King Salmon Company Ltd*, is the limits of review, rather than whether the power is reviewable at all.[41] This however, is not an issue to be determined on this appeal.

[44] We note that Mr Yorston's application for judicial review ultimately led to the errors being identified and fixed and we take the matter no further on this appeal.

Should the alleged errors in the criminal and traffic history report be rectified?

[45] Mr Yorston seeks that both his CHR and criminal and traffic history report are corrected. He submits there is one date error in the criminal and traffic history report, which inaccurately recorded the offence date for two drug-related convictions as occurring on 1 July 2006, instead of 1 July 2004.[42]

[46] In an affidavit filed for the High Court proceedings, Mr Ettles, the Service Manager for the District Court at Auckland, reviewed Mr Yorston's criminal and traffic history report dated 26 June 2023. He confirmed that the offence date for the two convictions was incorrect and attributable to an error in the case management system. He corrected that error, with the result that if a new criminal and traffic history report was produced for Mr Yorston, it would record the correct offence dates for the two convictions.

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41 *New Zealand King Salmon Company Ltd v Marlborough District Council*, above n 37, at [38].
42 See above at [30].

[47] We accept the Crown submission that Mr Yorston's acknowledgement that he faced trial for all five charges does not support his ground of appeal that the two subject charges constitute "convictions without trial". There has been administrative error in the production of the report, rather than deliberate falsification by Ministry officers of his criminal record.

[48] The more pressing issue arising from the facts on this appeal, is why two separate reports from the same case management system, operated by the Ministry, contained several errors. Criminal and traffic history reports are relied on by the sentencing courts on a daily basis and it is concerning to find that both this report, and the CHR produced at the request of Mr Yorston, contained inaccurate information.

[49] Ms Harris, for the Attorney-General, quite properly advised the Court that she was not in a position to assist. This had not been the focus of the appeal and the matter had not been raised or addressed in submissions. Clearly, we can take the matter no further in the context of this appeal.

Does the High Court have jurisdiction to correct information under the Privacy Act 2020?

[50] The answer to the above question is essentially "no". Under the Privacy Act, IPP 7 provides that where an agency holds personal information, the individual concerned has a right to request correction of it.[43] The agency must, on request or on its own initiative, take reasonable steps in the circumstances, to ensure, having regard to the purposes for which the information may be used, that the information is accurate, up to date, complete, and not misleading.[44] Upon an IPP 7 request, the agency will either grant the request or refuse to grant the request.[45]

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43 Privacy Act 2020, s 22 information privacy principle 7(1).
44 Section 22 information privacy principle 7(2).
45 Section 63(1).

[51] When an agency has decided not to grant a correction request, s 63(1)(b)(ii) of the Privacy Act requires that the agency notify the requestor that it will not correct the personal information. Section 63(3) provides that such a notice must inform the requestor of:

(a) the reason for the agency's refusal to correct the information;

(b) the requestor's entitlement to provide a statement of the correction sought and to request that it be attached to the information (if the requestor has not done so already); and

(c) the requestor's right to make a complaint to the Privacy Commissioner in respect of the agency's refusal to correct the information.

[52] A decision to refuse a request under IPP 7 amounts to an interference with the privacy of the individual under s 69 if the refusal is without a proper basis.[46] Additionally, any breach of an IPP that causes damage, loss or humiliation amounts to an interference.[47]

[53] If someone suspects that there has been an interference, the person can make a complaint to the Commissioner.[48] If the Commissioner decides to investigate and determines that there is substance to the complaint, they must use best endeavours to secure a settlement of the complaint and, if appropriate, a satisfactory assurance from the agency that there will not be a repetition of the action that gave rise to the complaint.[49] If the complaint has not been resolved, the Commissioner can make an access direction (which is not helpful here), refer the complaint to the Director of Human Rights Proceedings, or take any other action the Commissioner considers appropriate.[50] If the matter is referred to the Director, the Director will then decide

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46 Section 69(3)(b).
47 Section 69(2)(b).
48 Sections 70–72.
49 Sections 73(e), 83(1), 91(2)(a) and 91(3). Alternatively, at any time after receiving a complaint and without commencing an investigation, the Commissioner may decide to use best endeavours to secure a settlement of the complaint and if appropriate, secure a satisfactory assurance from the agency whose action is the subject of the complaint that there will not be a repetition of the action that gave rise to the complaint, or of any similar kind of action: ss 77(1) and 91(3).
50 Section 91(5).

whether to commence proceedings in the Human Rights Review Tribunal (HRRT).[51] There are also many occasions where an aggrieved individual can commence proceedings in the HRRT themselves.[52]

[54] If there remain errors, as Mr Yorston asserts in relation to his CHR and criminal and traffic history report, the failure to correct these errors may also be a breach of IPP 8:

> An agency that holds personal information must not use or disclose that information without taking any steps that are, in the circumstances, reasonable to ensure that the information is accurate, up to date, complete, relevant, and not misleading.

[55] In the event that Mr Yorston made a request under IPP 7, and ultimately was dissatisfied with the decision of the HRRT, an appeal to the High Court is available, but only on a point of law.[53] This is distinct from judicially reviewing a decision which was made *based* on the incorrect records. Any action claiming deliberate or malicious action on the part of a Crown agency required the issue of separate civil proceedings.

Conclusion

[56] This appeal was from the substantive decision of Radich J, who held that the proceedings were moot, as the correction to the CHR had been made. We agree that this was a correct outcome. The date error in Mr Yorston's criminal and traffic history report was also corrected by the time of the substantive judicial review hearing. This appeal is therefore moot.

Costs

[57] We make no order for costs. This appeal has raised significant issues for further future consideration. In the circumstances, costs lie where they fall.

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51 Section 97.
52 Section 98.
53 Human Rights Act 1993, s 123.

Result

[58] The appeal is dismissed.

[59] We make no order for costs.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent