

ANSWERS

The following scenarios are based on the material contained in the Guide. Using only the information given in the scenarios, answer the questions.

Do not read anything into the scenarios that is not explicitly stated.

In each case give the reasons for your answers. Yes or No answers alone are not sufficient.

1. The investigators have just completed their investigation of an automobile theft and have brought a prisoner to you to be fingerprinted and photographed. The information will be laid later. You walk him over to the fingerprint stand and at this point the prisoner states that he has no intention of allowing you to take his fingerprints. Can you rely on S.2(2) of the *Identification of Criminals Act* to force him to comply?

NO. The use of force section does not apply unless the subject meets all of the criteria set out in S.2 (1). In this case the information has not yet been sworn to so by definition he is not yet 'charged'

2. You found fingerprints at a crime scene. A short time later a subject is brought to you to be fingerprinted and photographed. The information will be laid in the morning on day shift. You take the person over to the fingerprint stand and, without any conversation, the subject permits you to take finger and palm prints. Later comparison determines that the crime scene impressions were made by this prisoner.

Could the procedure you followed when fingerprinting the prisoner have the potential for causing any difficulties at trial?

YES. Because the issue of consent was not explained and the subject was not told that he had the option of refusal and because he therefore did not verbally agree to submit to fingerprinting the consent to the act was not informed. This could result in the inked fingerprints being excluded at trial which, in turn, could prevent evidence of the comparison from being introduced.

3. An arrest was made in a serious case in your community. A reporter from the local newspaper took photographs of the subject as he was taken from the police station for transportation to the central lock-up. A short time later the reporter tells you that her camera had malfunctioned and that she did not get the photographs. She then asks for copies of the police photographs to go with the news story.

Would you be justified, under S.3 of the Identification of Criminals Act, in giving her copies of the photographs you took?

NO. At this point the object of the reporter is only to illustrate her news story. This cannot be construed as "...affording information to officers and others engaged in the execution or administration of the law." (S.3)

4. A short time later the subject of Q.5 escapes from custody. The reporter again asks for a photograph.
What would your response now be?

YES. Now the justification would be there in that the published photograph could assist persons "...engaged in the execution or administration of the law." (S.3)

- 5 While you are fingerprinting a prisoner he becomes uncooperative and in the ensuing struggle his finger is dislocated. You later hear from his lawyer who tells you that his client will be bringing suit against you and the police service for excessive use of force.

Under what circumstances will you be protected by the provisions of Section 3 of the *Identification of Criminals Act*?

Providing that the conditions imposed by S.2 are met (lawful custody, charged with or convicted of and indictable offence...etc.) AND that you did not deliberately intend to injure the subject (you will have to testify to that effect) THEN you would be covered by S.2 (2) and S.3.

6. On occasion a subject will refuse to continue after you have obtained one set of fingerprints.
- (a) Assuming that the criteria of s.2(1) have been met, would you be legally justified in using force under s.2(2) of the *Identification of Criminals Act* to compel the subject to allow you to take the several sets that you require?

YES. The Act does not specify how many sets may be taken. In actual practice, once you have one good set it is probably not worth the effort in trying to use force to obtain others. They will be unlikely to be of good quality in any case in those circumstances.

- (b) Since you have one satisfactory set of fingerprints, what other actions could you take to satisfy your requirement for several sets?

Make photocopies.

7. The investigators are questioning a juvenile about the theft of an automobile that you have already examined and on which you found fingerprints. You are asked to take a set of fingerprints from the juvenile and make the comparison.

What would you want to know about the stage of the investigation before you complied with the request?

Has the young person been charged (information laid and sworn to)? If so, you are authorised to take fingerprints under the Act. If not you may take fingerprints on consent provided that you fully explain the right of refusal and obtain an answer which makes it obvious that the youth understands and waives the right of refusal.

8. Several months ago you lawfully fingerprinted a first time offender for a minor theft charge. Today you received a letter from his lawyer stating that the charge had been withdrawn and demanding the destruction of all of the documentation associated with that charge. The investigators have told you that they believe the youth is involved with a gang responsible for a large number of break and enters in your city.

Do you have the authority to refuse the request to destroy the fingerprints, photographs and description sheets?

YES. The Act is mute on the destruction of records in this case, S.4 deals only with those offences that have been designated as contraventions under the Contraventions Act. Although there is no record attached to the file the fingerprints could be very valuable as an investigative tool for comparison in other offences.