Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR’s Refworld website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the Knowledge and Information Management Unit.

IRQ105794.E

Iraq: Requirements and procedures to obtain a police report in Kurdistan, both within the country and abroad; information on submitting a police complaint in the Kurdistan Region of Iraq; whether the police produces a written report when a complaint is made in person at a police station (2016-April 2017)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Legislation and Procedures to Submit a Complaint to the Police

A 2009 report from a joint-fact finding mission by the Danish Immigration Service, the Danish Refugee Council and Landinfo [Norway], cites the Governor of Sulaymaniyah [1] as stating that "the police in KRI are Kurdish and not a part of the Iraqi national police. The Kurdish provinces have [their] own Government with a Ministry of Interior that is responsible for the police force" (Danish Immigration Service July 2009, 33). Similarly, a "Civilian Research Paper" [2] written by lieutenant Colonel Dennis P. Chapman of the US Army and entitled Security Forces of the Kurdistan Regional Government indicates that, according to the Iraqi Constitution, the Kurdistan Regional Government (KRG) is responsible for the "establishment and organization of the 'internal security forces for the region such as police, security forces, and guards of the region'" Chapman 26 Feb. 2009, 3).

Articles 43, 47 and 49 of the "Criminal Procedure Code 23 of 1971 of the KRG, as provided on the website of the Global Justice Project: Iraq (GPJI) [3], provides the following:

Article 43

When a crime scene officer, within his area of competence as specified in Article 39, is informed or becomes aware that an offence has been committed in the presence of witnesses, he is required to notify the investigative judge and the Public Prosecutor's Office of the occurrence of the offence, to go immediately to the place where the offence occurred, to take down in writing a statement from the victim of the offence, to orally question the person about the accusation made against him, to impound any weapons and anything that may appear to him to have been used in the commission of the offence, to examine and preserve any material traces of the offence, to establish the status and whereabouts of the persons involved and or [sic] anything else that may assist in investigating the offence, to hear statements by any person who was present or that can obtained [sic] from other persons concerning the facts of the case or the perpetrator of the offence and to cause a written record of all such information to be duly made.

...
1. Any person against whom an offence is committed and any person who learns that an offence has been committed in respect of which proceedings have been instituted without a complaint being submitted, or who learns that a suspicious death has occurred, may inform the investigative judge or the [judicial] investigator or the Public Prosecution or any police station.

2. If the complaint is about offences against the internal or external security of the state, crimes of economic sabotage and other crimes punishable by death, life imprisonment or temporary imprisonment and the informant asks to remain anonymous, and not to be a witness, the judge has to register this with the notification in a special record prepared for this purpose, and conduct the investigation according to the rules, considering the information included in the notification without mentioning the informant’s identity in the investigative paper.

Article 49

A. Any station police officer receiving information that a felony or misdemeanor has been committed shall immediately record the informant's statement in writing and require the informant to append his signature. He shall then send a report of the matter to the investigative judge or investigator. If the information he has received makes clear that the felony or misdemeanor took place in the presence of witnesses then he shall take the action specified in Article 43.

B. If the information he has received makes it clear that an actual offence has been committed he shall send a summary report of the offence to the investigator or investigative judge. The report shall give the name of the informant, the names of witnesses and the section of the law that applies to the incident.

C. The station officer must in every case enter in the station logbook a summary of the information received concerning an offence and the time at which the information was received. (KRG 1971)

A translation of the "Criminal Procedure Code 23 of 1971 is attached to this Response.

In correspondence with the Research Directorate, a legal counsel from a law firm based in Erbil that provides legal services in areas such as litigation, arbitration, and criminal law, indicated that "the initiation of criminal proceedings ... is submitted to the examining magistrate or the investigator or any official in the police station or any member of the judicial system acting on behalf of the injured party or any person taking his place in law" (Legal Counsel 16 Apr. 2017). However, the same source added that "in the event of a witnessed offence the complaint may be submitted to whichever police officers or their delegates are present," adding that an offence is considered witnessed if it was witnessed whilst being committed or shortly afterwards or if the victim followed the perpetrator afterwards or if shouting crowds followed him afterwards or if the perpetrator was found a short while later carrying the equipment or weapons or goods or documents or other things pointing to the fact that he was a perpetrator or participant in the offence or if traces or signs indicate this at the time (Legal Counsel 16 Apr. 2017).

The Legal Counsel further stated that a person reporting a crime or infraction to the police station "signs on the statement made ... before the police officer and the investigator at the ... police station" and that "this is done each time a new statement is made" (Legal Counsel 16 Apr. 2017). In further correspondence with the Research Directorate, the same source added that a police officer who receives information regarding a felony, misdemeanour, or infraction, must record the informant’s statement in writing (Legal Counsel 22 Apr. 2017). After recording the statement, the officer sends a report to the examining magistrate, and, if the information indicates an actual offence was committed , a summary report of the offence is also sent to the investigator or examining magistrate (Legal Counsel 22 Apr. 2017). According to the same source, in "every case," the police officer must include a summary in the station logbook (Legal Counsel 22 Apr. 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Police Records of Reported Crimes and Infractions

The information in the following paragraph was provided by the Legal Counsel:
The police station to which the investigation is assigned "keeps records of all reports or complaints about a crime or infraction made to it." "Usually, police records are disposed of 7 years from the date of the issuance of [the] final and approved judgment," meaning that if the "investigation court" decides not to pursue a case, the case record will be disposed of seven years after this decision at which time a disposal report is made. When someone is convicted, a disposal report is made seven years after the date of the final judgment. In this case, the investigation's papers and the records are disposed of, but the final judgment is kept "forever". If the investigation procedures require the claimant or the accused to be present at court, they are notified verbally, or in writing with a "judicial notification letter" that contains the date, time and "competent" court before which they must report (Legal Counsel 16 Apr. 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Requirements and Procedures to Obtain a Police Record

The Criminal Procedure Code 23 of 1971 provides the following:

Article 57

A. An accused person, a plaintiff, a civil plaintiff, a person responsible in civil law for the actions of the accused and their representatives may attend the investigation while it is in progress. The judge or the [judicial] investigator may prohibit their attending if the matter in hand so requires, for reasons that he shall enter in the record, with the proviso that they shall be granted access to the investigation as soon as the need to prohibit their attendance ceases and that they shall not have the right to speak unless permitted to do so and that if permission is withheld a note to that effect shall he [sic] entered in the record of the investigation.

B. Any person who makes a request may receive a copy of the papers unless the investigative judge considers that to provide them would affect the course of confidentiality of the investigation. (KRG 1971)

The Legal Counsel indicated that "[a]n accused person, a plaintiff, a civil plaintiff, a person responsible in civil law for the actions of the accused and their legal representatives" may make a request to receive a copy of the reported crime or infraction papers, "unless the magistrate considers that providing them would affect the course or confidentiality of the investigation" (Legal Counsel 16 Apr. 2017). In further correspondence, the same source added that

the claimant, the informant, the accused or their attorneys or legal representatives have the right to be given a copy of the statement or any other official document inserted in the case file provided that a written request is submitted to the investigating magistrate in advance for approval (Legal Counsel 22 Apr. 2017).

However, it was further noted that under KRG's Access to Information Law No. 11 of 2013, any person "whether juridical or natural" has the "right" to obtain copies of documents kept by the government, "unless [they are] prohibited according to the law" (Legal Counsel 16 Apr. 2017). The legal consultant explained that prohibited information is

1. those pertaining to the Region's national security, defense and military;
2. information [the disclosure of which] may affect negotiations of the Region with others;
3. information [the disclosure of which] may affect the proceedings of investigations and tribunals;
4. information [the disclosure of which] may affect lawful competition or intellectual property;
5. personal information and files, medical reports, banking accounts [and/or] any other personal information that requires the person's consent in advance
6. any other information prohibited by any other law in the Region. (Legal Counsel 16 Apr. 2017)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the Legal Counsel, the KRG Access to Information Law No. 11 of 2013 "does not provide any limitation on requests submitted from abroad" (Legal Counsel 16 Apr. 2017). Additional information on Access to Information Law No. 11 of 2013 could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.
The Legal Counsel added that the requirement for requesting access to police records from abroad is to have a local national lawyer with a Power of Attorney including the name of the claimant or the accused, the name of the police station, the court or magistrate handling the investigation or which has the records, and the purpose of the request. (Legal Counsel 16 Apr. 2017)

Further and corroborating information on accessing police records from abroad could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] Sulaymaniyah is one of the three Governorates that make up the Kurdistan Region of Iraq (Danish Immigration Service July 2009, 4).

[2] A Civilian Research Project is described as "a student academic research paper," written in partial fulfilment of the requirements of the United States Army War College Fellowship Program (Chapman 26 Feb. 2009).

[3] The GJPI provides an amended and annotated translation of the law (KRG 1971, 1). The GJPI is housed in the University of Utah, SJ Quinney College of Law, and is funded by a grant from the US Department of State (KRG 1971, 3).

References


Legal Consultant, Erbil. 22 April 2017. Correspondence with the Research Directorate.

Legal Consultant, Erbil. 16 April 2017. Correspondence with the Research Directorate.

Additional Sources Consulted

Oral sources: Iraq – Consulate in Ottawa; Lawyer in Erbil; Legal Consultant in Sulimaniyah; Kurdistan Regional Government Police.

Internet sites, including: Al-Monitor; Amnesty International; Danish Refugee Council; GlobalSecurity.org; Interpol; Iraq – Ministry of the Interior; Kurdistan Regional Government – Directorate of Residency, Ministry of the Interior; OpenDemocracy; Transparency International; United Nations – Refworld; US – Department of State.

Attachment


Tips on how to use this search engine.