

MPI Organisational Policy
*Information Gathering
and Public Trust*

Ministry for Primary Industries
Manatū Ahu Matua



Owner: Director,
Business Tech & Info
Services

Published: select date

Information Gathering and Public Trust

DRAFT



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OVERVIEW

Purpose

MPI has multiple and complex information gathering functions, and we need to ensure that we use our authority to gather information in a way that is lawful and supports public trust. Being vigilant about how we exercise the significant responsibilities and powers entrusted to us by New Zealanders is fundamental to the integrity of the public service, and to our ability to protect and grow New Zealand.

This policy provides guidance for staff on making good decisions about information collection, to help ensure MPI's information gathering activities are lawful and uphold public trust in MPI. This policy is supported by the MPI Organisational Procedure for *Information Gathering and Public Trust*, which includes guidance on verification and validation of information, dealing with illegally obtained information, working with other government agencies to gather information, and the use of external security consultants.

This guidance in this policy supports MPI's compliance with the [State Services Commission's Model Standards on information gathering and public trust](#), ensuring MPI policies, procedures and practices for information gathering are robust and compliant with those Model Standards.

All MPI information gathering for regulatory compliance, law enforcement or protective security functions will be carried out in accordance with this policy. All MPI contracts relating to information gathering activities covered by this policy must contain obligations that reflect this policy, and a copy of this policy must be provided to all staff and third parties acting on MPI's behalf to gather information for regulatory compliance, law enforcement or protective security functions.

This policy will be reviewed two years from publication (or earlier if significant changes are required).

Background

In December 2018, the State Services Commissioner published [Model Standards on information gathering and public trust](#).

These and other Model Standards on what it means to act in the spirit of public service are published using the Commissioner's powers in section 57(4) of the State Sector Act 1988 to set minimum standards of integrity and conduct for the public service. These particular Model Standards on information gathering (the Model Standards) were published as a result of the [SSC's inquiry into the use of external security consultants](#) (report released 18 December 2018). The inquiry uncovered failings across the public service, including breaches of the State Services code of conduct, and the State Services Commissioner introduced these new standards to strengthen transparency and consistency across all government agencies.

The State Services Commissioner's expectations are that government agencies will be fully compliant with the Model Standards, and this policy sets out the Director-General's expectations of all MPI staff, contractors and delegates when collecting information for regulatory compliance, law enforcement and protective security purposes.



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SCOPE

Who this policy applies to

This policy applies to all staff, contractors and service providers, employed or engaged on any basis by MPI, whether they are casual, temporary or permanent, whether full time or part time and whether they are located in New Zealand or in any other country, and to any delegations being exercised by MPI staff on behalf of other state sector organisations.

What this policy does NOT cover

This policy does not apply to information collected solely for the purpose of delivering functions and services to New Zealanders and businesses. These are out-of-scope, and examples include work on the Organism Ranking System, Culex sitiens eradication, TSE surveillance, and the myrtle rust programme. Also excluded is the collection of administrative information (including personal information) in the course of conducting MPI's business or delivering services, and information collected to support internal investigations.)

What this policy covers

This policy applies to all information, and all information gathering activities, where that information is collected to give effect to MPI's responsibilities for any of the following:

- to ensure regulatory compliance;
- to detect and deter offending (law enforcement); and
- to protect people, information and places (protective security functions);

This policy also applies where information is collected for reasons that include regulatory compliance, law enforcement and/or protective security, as well as to deliver functions and services to New Zealanders and businesses.

Examples of information gathering activities undertaken to give effect to the responsibilities MPI has to ensure regulatory compliance and/or to detect and deter offending include exercising warrantless powers under MPI Acts (including, for example, but not limited to the Fisheries Act 1996, Forests Act 1949, Animal Products Act 1999, Animal Welfare Act 1999, National Animal Identification and Tracing Act 2012, Biosecurity Act 1993), collecting information resulting in a notice of direction, improvement notice, or compliance order issued by MPI, interviewing witnesses, receiving reports from industry that result in food recall, receiving complaints from the public about animal welfare, and collecting information for regulatory compliance registrations/returns (e.g. information that is later stored in MPI databases such as Piritahi, FishServe, NAIT, ISAC).

Examples of information gathering activities undertaken to give effect to the responsibilities MPI has to protect people, information and places include information gathering and information sharing for risk assessments prior to visiting a premise (whether for a voluntary visit or under a warrantless power or under a search warrant).



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The information this policy applies to

MPI collects, gathers and receives) information in a variety of ways, using different mechanisms such as statutory powers or by voluntary provisions, or by purchasing it. This policy applies to all information regardless of how it is obtained, including unsolicited information that is provided to MPI.

“Information” has a similarly broad meaning, including data and other types of information intended to be used as evidence in litigation, and information that is confidential (for example, intelligence). This policy applies to all types of information obtained in any of these ways.

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POLICY

This policy sets the principles for information gathering by all MPI staff and representatives.

All MPI information gathering for regulatory compliance, law enforcement or protective security functions will be carried out in accordance with this policy, and reflected in all information gathering policy, procedure and guidance documents for those activities.

Information gathering restrictions

MPI (including any contractors or service providers) will not:

- Classify a person or group of people as a security threat, or use that as justification for gathering information, solely because they lawfully exercise their democratic rights (including their right to freedom of expression, association, and peaceful assembly to advocate, protest or dissent).
- Gather information about people or groups for the sole purpose of managing reputational risk to MPI.

MPI's information gathering principles

When gathering information for regulatory compliance, law enforcement and protective security functions, we will ensure:

1. Our actions are lawful.
2. We have a clear purpose.
3. The method is appropriate.
4. We are transparent and accountable.
5. We act with integrity, respect and professionalism.
6. We are trained on how to gather information in accordance with the law and these principles.

These principles are intended to guide good decision-making about whether an information gathering activity is permitted by the law, and whether the activity is appropriate. To put it another way, not just answering the question "Can we?" but also answering the question "Should we?" when deciding whether or not to collect information, and how to do that.

These principles must be:

- taken into account when deciding whether and how to gather information for regulatory compliance, law enforcement and protective security purposes; and
- reflected in all other policy and procedure documents for information gathering activities for regulatory compliance, law enforcement and protective security purposes.

You can find guidance on applying the principles in the MPI Organisational Procedure *Information Gathering and Public Trust*.



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Principle 1: Lawful

When gathering information, we will ensure:

- Our actions comply with the relevant MPI legislation, and with the Privacy Act 1993, the New Zealand Bill of Rights Act 1990, the Search and Surveillance Act 2012 and relevant court decisions. We will pay particular attention to the protection against unreasonable search and seizure in the New Zealand Bill of Rights Act and to the Search and Surveillance Act.
- We gather only the information that is reasonably necessary for the regulatory compliance, law enforcement and/or protective security function for which it is required.
- We manage legal privilege and other confidentiality protections and statutory restrictions that apply to the information being gathered.

Breaches by MPI of the rights of New Zealanders and others, such as those affirmed by the New Zealand Bill of Rights Act 1990, are likely to be examined internally and scrutinised externally by Ministers, the courts and the media. We must ensure we use our authority to gather information in a way that is lawful and supports public trust.

Principle 2: Clear Purpose

There must be a clear purpose and need for the information gathering. The rationale for undertaking the information gathering activity must be documented, and legal advice sought where required.

Policies will be in place to cover the range of information gathering activities MPI undertakes for regulatory compliance, law enforcement and protective security functions so staff are well supported and governance is effective.

Principle 3: Appropriate

The method used to collect the information is appropriate to the particular circumstances, fair and not unreasonably intrusive (it must be proportionate to the rights involved).

Legal advice must be sought where MPI is considering using a new or novel method of information gathering.

Principle 4: Transparent & Accountable

MPI will be transparent about its information gathering activities, and will inform people about the rights they have in relation to the information gathered by MPI. We will do this by:

- Generally describing MPI's information gathering activities in the MPI Privacy & Transparency Statement published on the MPI website (including information on how to contact MPI).
- Providing this information to people at the time of gathering information (unless good reasons or a statutory exception apply, such as maintaining the integrity of an investigation or to protect the health and safety of any person). We will include information about any review or complaint channels available within MPI or externally.



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Where complaints arise in relation to MPI's information gathering activities for regulatory compliance, law enforcement and protective security functions, MPI will:

- engage constructively with the complainant and any regulator or oversight agency involved (for example, the Office of the Privacy Commissioner or the Ombudsman) and
- update policies and procedures where appropriate.

Being transparent and accountable also means all MPI information gathering for regulatory compliance, law enforcement and protective security purposes is supported by a written procedure document.

Principle 5: Acting with integrity, respect and professionalism

When gathering information for regulatory compliance, law enforcement or protective security purposes, including accepting unsolicited information, we will:

- act in accordance with the [MPI Code of Conduct](#) and the [code of conduct for the State Services](#);
- respect the rights people have, including in relation to privacy and freedom from unreasonable search and seizure;
- maintain professional distance;
- follow guidance issued by the Government Chief Data Steward, Privacy Commissioner or Ombudsman, and court decisions;
- disclose actual or potential conflicts of interest;
- act impartially, in accordance with MPI's legislative mandate; and
- raise concerns around potentially illegal information gathering activity in a timely and responsible way.

All MPI contracts relating to information gathering activities covered by this policy must contain obligations that reflect this policy. This includes where MPI employs or contracts someone and it is likely they will be engaged in information gathering for those activities.

Principle 6: Training

All MPI training on information gathering for regulatory compliance, law enforcement and protective security functions will support staff to comply with this policy, to make lawful and appropriate decisions on information gathering activities.



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ORGANISATIONAL PROCEDURE DOCUMENT

The policy owner is authorised to issue procedures and guidelines to support this policy.

The following documents have been published:

- MPI Organisational Procedure for *Information Gathering and Public Trust*.

BREACHES OF POLICY

A breach of this policy does not necessarily render MPI's actions unlawful or mean evidence will not be admissible.

However, non-compliance with this policy does have several consequences, including potential reputational harm for MPI, financial loss (including damages claims), challenges to the admissibility of evidence in proceedings, and consequences for breach of employment and contract obligations.

Non-compliance relating to MPI employees or contractors will be managed in accordance with processes for breach of the MPI Code of Conduct.

Where breaches of the policy have the potential to impact the admissibility of information as evidence, you will need to consider the test in section 30 of the Evidence Act 2006.

Seek advice from your manager or Director, or from Human Resources, Security & Privacy or Legal Services if you have concerns.



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KEY ACCOUNTABILITIES

| Role | Responsibilities |
|--|---|
| <i>Oversight, Governance and procedure document ownership</i> | |
| Chief Executive | <ul style="list-style-type: none"> • Overarching accountability for MPI's compliance with the Model Standards, and the lawfulness and appropriateness of MPI's information gathering activities and decisions. • Approval of this policy document. |
| Directors | <ul style="list-style-type: none"> • Embedding of this policy document and associated procedures into their business group, including developing and maintaining systems to allow timely and effective monitoring and evaluation of compliance. • Policies and Procedures in their functional areas. • Monitoring compliance with the policies, and to regularly review these with a view to improving systems. • Reporting upward of policy breaches, revisions and system improvements. |
| Director, Business Technology and Information Services | <ul style="list-style-type: none"> • Ownership of the MPI organisational policy <i>Information Gathering and Public Trust</i>. • Ensuring the policy remains fit for purpose. • Ensuring the policy meets the expectations of the State Services Commission's model standards <i>Information gathering and public trust</i> alongside the relevant legislation and regulations. • Ensuring a two-yearly review is conducted of this procedure document. |
| Risk & Assurance Committee | <ul style="list-style-type: none"> • Advice on the appropriateness of MPI's code of conduct; • Monitoring whether officers responsible for MPI legislation and regulations do so professionally and legally. • Monitoring MPI activities on code of conduct and integrity matters. • Reviewing and monitoring policies, practices and activities that MPI uses to prevent, detect and respond to fraud, theft and corruption. |



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| | <ul style="list-style-type: none"> • Advising the Director-General on the adequacy of integrity management within MPI. |
| Senior Leadership Team | <ul style="list-style-type: none"> • Operational oversight |
| Inspector-General for Regulatory Systems | <ul style="list-style-type: none"> • Taking a systems approach to improving the quality of MPI's regulatory practice. |
| Internal Audit | <ul style="list-style-type: none"> • Reviewing the effectiveness and efficiency of policies and processes and how these translate into practice in specific cases on the ground. • Recommending improvements in any of these areas. |
| Internal Audit | <ul style="list-style-type: none"> • Reviewing governance, accountabilities, policies and processes, and recommending improvements to them. • Gathering compliance information about the performance of the MPI Organisational Policy <i>Information Gathering and Public Trust</i>. |
| Managing non-compliance | |
| Professional Standards Unit | <ul style="list-style-type: none"> • Developing a programme of awareness building and promulgation to all staff, of integrity and conduct standards. • Managing incidents of serious wrong-doing and recommending ways for the business to strengthen systems to prevent incidents occurring again in the future. • Educational and advisory role relating to matters of integrity. |
| Human Resources | <ul style="list-style-type: none"> • Managing breaches of this policy document in accordance with MPI's Code of Conduct. |
| Audit, Risk & Evaluation | <ul style="list-style-type: none"> • Assisting business units with assurance activities in relation to information gathering activities, including when to seek external review of information gathering activities, processes and/or policies. |
| Advice and support functions | |
| Procurement team | <ul style="list-style-type: none"> • Providing support for ensuring suppliers and contractors are engaged on terms to ensure compliance with this procedure document. |
| Legal Services Directorate | <ul style="list-style-type: none"> • Providing advice regarding information gathering under this policy and the supporting procedure document, including |



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| | legal questions relating to information gathering activity. |
| Security & Privacy Directorate | <ul style="list-style-type: none"> • Providing advice and guidance on protective security issues, including in relation to the Government Protective Security Requirements. Provide general privacy advice; support and advice regarding Privacy Act access and correction requests. • Providing advice and guidance on privacy impact assessments • Providing training on information security and privacy. |
| Learning & Development | <ul style="list-style-type: none"> • Providing quality assurance, guidance and assistance on developing training. |
| Comply with the policy document | |
| All MPI Staff, contractors, suppliers and service providers | <ul style="list-style-type: none"> • Conducting information gathering activities lawfully and appropriately in accordance with their legislative mandate, this procedure document and related MPI policies and procedures. • Considering discretionary activities in accordance with the principles in this procedure document. • Promptly raising concerns regarding any information gathering activity that appears unlawful or inappropriate. |



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FURTHER GUIDANCE and INFORMATION

If you are unsure about whether an information gathering activity is legal and/or within the scope of what is appropriate for MPI, guidance is available from the advice and support functions listed above, and from the following sources:

- Your manager or Director.
- State Services Commissioner [Standards of Integrity and Conduct](#) (also referred to as the SSC Code of Conduct).
- [State Services Commission's Model Standards on information gathering and public trust](#).
- MPI's [Code of Conduct](#), including MPI's Conflict of Interest policy (under development).
- [Solicitor-General's Prosecution Guidelines](#).
- MPI's [Prosecution & Infringements Policy](#) and [MPI Prosecution Procedures and Guidelines](#).
- MPI [Data and Information Management Principles](#).
- MPI's Standard Operating Policy *Threats to MPI Staff* (under development).
- MPI's Policy on the Use of Social Media as a source of information collection
- Assistance on obtaining information from the New Zealand Police is available through the National Operations Centre.
- Advice and guidance on protective security is available from the Security & Privacy Directorate.
- Advice and guidance on employing external contractors or entering into service agreements is available from Human Resources and Procurement.
- Advice and guidance on wellbeing, health and safety is available from Human Resources, and via Kotahi. *Activate self-service* contains the reporting link for all health & safety incidents.
- Advice and guidance on privacy, including managing potential and actual privacy events, and privacy impact assessments, is available from the OIA team and from the Security & Privacy Directorate.



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Document Information

| Date | Version | Author | Comments |
|------------|---------|--|--|
| 26/04/2019 | 1.0 | Kahla Parkash, Principal Legal Adviser | Initial draft |
| 21/05/2019 | 2.0 | Kahla Parkash, Principal Adviser | Version prior to removing all procedure document content. |
| 21/05/2019 | 3.0 | Kahla Parkash, Principal Adviser | Document split into two (policy and procedure). Procedure content removed. |
| 13/06/2019 | 4.0 | Kahla Parkash, Principal Adviser | Version for consultation with MPI Organisational Policy Committee. |
| 25/06/2019 | 4.1 | Kahla Parkash, Principal Adviser | Incorporates feedback from consultation. |
| 26/06/2019 | 4.4 | Kahla Parkash, Principal Adviser | Version for sending to Director-General. |
| 27/06/2019 | 4.5 | Kahla Parkash, Principal Adviser | Updating business unit names where confirmed; incorporating changes from Learning & Development. |