

Introduction to disclosure of information

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Executive summary

Key points to note:

- A response to a request for personal or official information is mandatory, even if no information is disclosed.
- You must carefully consider what Act applies to each request for information. If the information is:
 - about the person making the request, the Privacy Act applies
 - for non-personal (official) information or information about someone other than the person requesting it, the Official Information Act applies.
- Proactively disclosing personal information must be in accordance with the Privacy Act.
- You must consider the application of the Criminal Records (Clean Slate) Act 2004 when responding to third party requests for criminal records.
- Once a person has been charged, the prosecution is obliged to disclose its case to the defence in accordance with the [Criminal Disclosure Act 2008](#).

Overview of chapter and personal obligations

About the 'Privacy and official information' chapter

The '[Privacy and official information](#)' chapter consists of these parts:

- [Information Privacy Principles \(IPPs\)](#)
- [Introduction to disclosure of information](#)
- [Disclosure under the Privacy Act 1993](#)
- [Disclosure under the Official Information Act 1982 \(OIA\)](#)
- [Applying the Criminal Records \(Clean Slate\) Act 2004](#)
- [Community disclosure of offender details](#)
- [Privacy Breach Management](#)

Related information

For information on:

- disclosing information to the defence before trials, see the [Criminal disclosure](#) Police Manual chapter
- dealing with the media and responding to media requests for information see the [media-related](#) Police Manual chapters.

Other guidance is available on the [Office of the Ombudsman's](#) and the [Office of the Privacy Commissioner's](#) websites.

Purpose of this part

This introductory part of the 'Privacy and official information' chapter:

- provides guidance on deciding whether to disclose information either in response to a request for official or personal information (**reactive disclosure**), or in the absence of a request (**proactive disclosure**)
- outlines key statutes impacting on the disclosure of information by Police
- explains the relationship between the [Privacy Act 1993](#), the [Official Information Act 1982](#) and other relevant statutes, and how to work out [which Act applies](#) in the circumstances
- explains your [responsibility to respond](#) to requests for information and to disclose personal information only in accordance with legislation.

Once you have determined which Act applies in the circumstances, refer to the relevant parts of the 'Privacy and official information' chapter listed above for more detail of the law you must consider before disclosing information under that Act and the procedures to be followed when responding to requests.

Your responsibility to respond to requests and disclose information in accordance with legislation

A response to a request for personal or official information is mandatory, even if no information is disclosed.

Proactively disclosing personal information must be in accordance with the Privacy Act.

Improper disclosure of personal information, or failure to respond to requests at all or in accordance with the legislative requirements, may:

- lead to a complaint being made to the Privacy Commissioner or the Office of the Ombudsman
- result in a costly settlement or Privacy Act proceedings being brought before the Human Rights Review Tribunal, where a finding that Police has interfered with an individual's privacy can result in substantial damages being awarded against Police
- result in an Ombudsman's recommendation which Police has a public duty to observe and which will be referred to the Minister of Police.

Who to contact for further information or advice

If, after reading the detailed parts of the 'Privacy and official information' chapter, you need further information or advice,

contact:

- your District O/C File Management Centre, or
- PNHQ Executive & Ministerial Services (email [Ministerial Services](#)), or
- [District or PNHQ Legal advisers](#)

Which Act applies to disclosure of information?

Legislation governing disclosure

Your decision on whether to disclose information, what to disclose and when, may be governed by:

- [Privacy Act 1993](#)
- [Official Information Act 1982](#)
- [Criminal Records \(Clean Slate\) Act 2004](#)
- [Criminal Disclosure Act 2008](#)
- [Policing Act 2008](#) (information sharing to assist corresponding overseas agencies), or
- [other legislative provisions](#) that require or allow disclosure.

How to work out which Act applies

Use this table as a guide to determining what Act applies to disclosure of information. .

Situation	Consideration	Applicable statute
Request for personal information has been made	<p>When a person requests personal information held by Police, the first question to ask is: "Is the request for information about the person making the request?" If it is, privacy principle 6 of the Privacy Act applies.</p> <p>See 'Requests from individuals seeking information about themselves' in 'Disclosure under the Privacy Act 1993'</p>	Privacy Act 1993

Situation	Consideration	Applicable statute
Proactively disclosing personal information (where no request has been made)	<p>In the absence of a request, privacy principle 11 of the Privacy Act applies. This prohibits agencies from disclosing personal information to third parties, but also lists circumstances in which exceptions to the prohibition apply.</p> <p>See 'Proactive disclosure of personal information' by Police in 'Disclosure under the Privacy Act 1993'.</p> <p>In addition, the prohibition contained in principle 11 is overridden by certain provisions in other statutes that enable government departments to require disclosure. See Requests from government departments or agencies.</p> <p>The application of principle 11 may also be altered by the operation of an Approved Information Sharing Agreement (AISA) under Part 9A of the Privacy Act. See 'Information sharing agreements' in 'Disclosure under the Privacy Act 1993'.</p> <p>The Policing Act 2008 provides for the disclosure of personal information to assist overseas law enforcement agencies in accordance with an international disclosure instrument or Commissioner's directions.</p> <div data-bbox="724 1167 1310 1211" style="border: 1px solid black; padding: 2px;">  Delegation for information sharing under s95 Policing Act.pdf 138.85 KB </div> <p>Some information may be prohibited from disclosure by other statutes. See Statutory provisions restricting disclosure of information.</p>	Privacy Act 1993
Request for non-personal (official) or third party information has been made	If the request is for non-personal (official) information or information about someone other than the person requesting it, the Official Information Act applies. See 'Requests for official information' in ' Disclosure under the Official Information Act 1982 (OIA) '.	Official Information Act 1982
If the request for information about a third party is for a criminal record, notings, or photographs of convicted offenders, the Criminal Records (Clean Slate) Act 2004 may prohibit releasing that information. See ' Applying the Criminal Records (Clean Slate) Act 2004 '.	Criminal Records (Clean Slate) Act 2004	

Situation	Consideration	Applicable statute
Disclosing personal information during criminal proceedings	<p>Determine whether Police's obligations to disclose its case to the defence apply, whether or not a request is made. See the Criminal disclosure chapter.</p> <p>Any request for information made by a defendant under the Privacy Act or the Official Information Act in the course of criminal proceedings may and should be refused on the basis that the request could be sought under the Criminal Disclosure Act.</p> <p>(s29(1)(ia) Privacy Act and s18(da) Official Information Act)</p>	Criminal Disclosure Act 2008
Request for information made under a specific provision in another Act or a Court order	Determine whether Police is obliged to provide the information requested, overriding the Privacy Act or the Official Information Act. (Seek advice as necessary).	See Other relevant Acts or provide information in accordance with a Court order.

Official Information Act overrides the Privacy Act

Section 7(1) & (2) of the Privacy Act states that nothing in principles 6 or 11 overrides the provisions in any other statute that requires or authorises the disclosure of information, or prohibits, restricts or regulates it. Therefore, the Official Information Act (OIA) overrides the Privacy Act.

Other Acts override the Privacy Act

Provisions in other statutes that require or authorise Police to disclose information override [privacy principles](#) 6 and 11. These provisions often exist to enable government departments to obtain information to carry out their statutory functions.

Criminal disclosure

Once a person has been charged, the prosecution is obliged to disclose its case to the defence in accordance with the [Criminal Disclosure Act 2008](#).

Refer to the [Criminal disclosure](#) chapter for detailed information about criminal disclosure and the key duties and responsibilities for Police staff.

Other relevant Acts requiring or authorising disclosure, or prohibiting or restricting disclosure

Statutory powers to require or authorise disclosure of information

Some government departments have a specific statutory power to require you to provide the information sought. These powers override the general prohibitions in the Privacy Act from disclosing personal information and include:

- [s17](#) Tax Administration Act 1994
- [s64](#) Immigration Act 1987 (power to require production of certain information)
- [s161](#) Customs and Excise Act 1996 (power to access documents for investigation)
- [s11](#) Social Security Act 1964 (power to obtain information regarding benefits)
- [s78A](#) Education Act 1989 (authorised person may enter school and remove documents)

- [s30G](#) Land Transport Act (NZTA may require information for fit and proper person assessment)
- [s5](#) Serious Fraud Office Act 1990 (power to require of documents in certain circumstances)
- [s201](#) Fisheries Act 1996 (power to require production of documents)
- [s66](#) Children, Young Persons, and Their Families Act 1989 (government departments can be compelled to disclose information for determining if a child or young person is in need of care and protection)
- [s62](#) Health and Disability Commissioner Act 1994 (the HDC can compel a person to give information relating to any matter under the HDC's investigation).

Statutory provisions restricting disclosure of information

Some statutory provisions contain specific grounds for withholding information including:

- [s200-205](#) Criminal Procedure Act (suppression of identity or evidence)
- [s438](#) Children, Young Persons, and Their Families Act 1989 (prohibition on publication of Youth Court proceedings, including names)
- [s16](#) Victims' Rights Act 2002 (restriction on disclosing victim's precise address)
- [s23](#) Victims' Rights Act 2002 (prohibition on providing copy of victim impact statement to offender to keep)
- [s179](#) Search and Surveillance Act 2012 (offence to disclose information acquired thorough search or surveillance)
- [s46](#) Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (suspicious activity reports not to be disclosed).

Requests from government departments or agencies

Introduction

This section covers what you should consider when you receive a request for information from a government department or agency.

Is there a specific statutory power to require the information?

If the person asking for information works for a government department, they may have a [specific statutory power](#) requiring you to provide the information.

If there is no specific statutory power requiring the information to be provided, consider the request in the same way as you consider other third party requests under the Official Information Act. See 'When to withhold information in response to OIA requests' in 'Disclosure under the Official Information Act 1982 (OIA)'.

Is the request for criminal records?

Partner agencies such as Internal Affairs, the Fire Service, Fisheries, ACC and MSD wanting information about criminal records should be referred to the Ministry of Justice as the holder of court information (just as any requests for criminal records from the public should be transferred to the Ministry of Justice).

In certain circumstances, it may be appropriate for Police to disclose the criminal record (e.g. as part of a broader request). Before disclosing an individual's criminal record or information about it, you must consider the [Criminal Records \(Clean Slate\) Act 2004](#) and whether the agency requesting the information is a law enforcement agency as defined in section 4 of the Act. For further information on the clean slate scheme, see '[Applying the Criminal Records \(Clean Slate\) Act 2004](#)'.

Name suppression

Do not disclose information subject to name suppression (including Youth Court proceedings) without obtaining legal advice.

Charging for providing the information

Do not charge a government department for information provided under the Official Information Act.

Recordkeeping

Create a hard copy or electronic file as you would for any other request. Use the Information Request database for logging all stages of an information request until completed.

Requests for information held on NIA or Police-related systems

Introduction

This section:

- explains the types of information held on Police systems, and on Ministry of Justice and New Zealand Transport Agency systems which Police access through NIA under [Schedule 5](#) of the Privacy Act
- outlines who is responsible for responding to requests for that information.

What is held on NIA

Police are responsible for responding to requests for any information held on NIA such as:

- identity information
- firearms licence details
- charge history
- prisoner photographs
- family violence records
- overseas convictions (where held)
- occurrences

The Police Infringement Bureau holds Police infringement records.

Responding to requests for NIA information

Requests for information held on NIA must be treated in the same way as any other request. They should be assigned for response to the Police District where the requester resides or where all or most of the files are held. The response should be prepared by the employee most closely associated with the individual concerned, or by the FMC staff. (See '[Disclosure under the Privacy Act 1993](#)', or '[Disclosure under the Official Information Act 1982](#)')

What is held on the Ministry of Justice system

The Ministry of Justice information systems hold the details of:

- New Zealand criminal history information, including formal conviction records
- fines collection
- case management

People who inquire about this type of information should be referred to the nearest District Court or to the Ministry of Justice - <http://www.justice.govt.nz/criminal-records/get-your-own> or <http://www.justice.govt.nz/criminal-records/get-someone-elses>. Requests to Police should be transferred to:

Criminal Records Unit
Ministry of Justice
SX10161
Wellington

What is held on the New Zealand Transport Agency system

The New Zealand Transport Agency information systems hold the details of:

- driver licences
- motor vehicle registration
- demerit points

People who inquire about this type of information should be referred to or requests to Police transferred to:

Driver Licensing
Transport Registry Centre

New Zealand Transport Agency

Private Bag 11777

Manawatu Mail Centre

Palmerston North 4442

Phone: 0800 108 809 (motor vehicle registrations) or 0800 822 422 (driver licensing)

Fax: 64 6 953 6203

Traffic crash reports (TRC)

A "traffic accident report" is defined in section 211 Land Transport Act 1998 as " ... a written report prepared by an enforcement officer who is a Police employee that relates to an investigation of a traffic accident". The report is now entitled "traffic crash report".

Any person is entitled to seek a copy of a traffic crash report. However, as with any other material, the reports may be withheld or edited as the Privacy Act and Official Information Act allow.

Fees for traffic crash reports

A fee of \$55 is chargeable for a TCR. Police practice is not to charge individuals for a copy of the report if they were involved in the traffic crash, but the fee is charged for the supply of the report to insurance companies.

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