



New Zealand
POLICE
Nga Pirihimana O Aotearoa



23/07/2015

Ross Bell

New Zealand Drug Foundation

4th Floor, 256 Wakefield Street

Wellington

Dear Mr Bell.

REQUEST FOR OFFICIAL INFORMATION REF:00/2113/18

This letter is a response to your inquiry to Police under the Official Information Act 1982 dated 26/5/2015. This response has been divided into three parts which correspond to your questions.

1. You have asked New Zealand Police to “...provide details about data and other information sharing processes that Police has with Chinese Police under the “Memorandum of Arrangement of Crime Cooperation (the Crime Cooperation MoA)” and the “Memorandum of Arrangement on Precursor Chemical Control (the Precursor MoA)”

1.1 Both the Crime Cooperation MoA and the Precursor MoA have been included in this response for your reference.

1.2 Also relevant are the Treaty on Mutual Legal Assistance in Criminal Matters (the Treaty), and the Mutual Assistance in Criminal Matters Act 1992 (MACMA).
http://www.legislation.co.nz/regulation/public/2007/0355/latest/DLM1035081.html?search=ts_act%40bill%40regulation%40deemedreg_mutual+assistance_resel_25_a&p=1

1.3 Treaty requests are made through the New Zealand Central Authority to the Attorney-General, who has delegated this function to the Solicitor-General. So in

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practice requests are made to the Crown Law Office with the Ministry of Foreign Affairs and Trade acting as transmission agent.

1.4 For MoA requests, both documents outline a case-by-case approach to information sharing between Police in New Zealand and China. New Zealand Police does not automatically share information with any Chinese law enforcement agency, and neither do the Chinese in return. To be clear this means there is no blanket or big data sharing arrangement in place, and neither memorandum provides for automated exchange of data sets between New Zealand Police and Chinese Police.

1.5 Information on criminal activities is shared between New Zealand and China through established channels, for example via INTERPOL, the Police liaison officer network, and in certain cases via diplomatic channels. Information is shared in accordance with applicable domestic law”

1.6 For further details on the types of information shared please refer to Crime Cooperation MoA Paragraph II, Section 1 (a – f), and the Precursor MoA Paragraph III, Paragraph IV (section 1) and Paragraph V (section 1).

2. You have asked whether “... *New Zealand Police has any policies or practices under these MOAs relating to offences that might result in the use of the death penalty?*”

2.1 In practice Acts of Parliament, International Treaties and Memoranda are all considerations for Police when cooperating with Chinese authorities. Both memoranda provide clauses for both parties to consider the impact of their cooperation in relation to penalties being applied, and protections. For example please see:

2.1.1 The Crime Cooperation MoA:

- a) Paragraph III, Section 3 (b and d): requests for cooperation must specify the applicable penalty for any offences being investigated and the purpose for which the information or other cooperation is being requested.
- b) At Paragraph III, Section 4 of the Crime Cooperation MoA, information received by either party under the MoA may not be used as evidence in a criminal prosecution unless expressly authorised by the sending party or as required by law.
- c) At Paragraph IV, Section 1 (c) of the Crime Cooperation MoA, a request for assistance may be refused if the assistance sought would be more appropriately provided pursuant to the Treaty.

2.1.2 The Precursor MoA:

- a) In Paragraphs 4.2, 4.3 and 4.4 of the Precursor MoA, information received under the MoA is not to be disclosed without written consent from the party which provided it; information obtained under the MoA is only to be used for the purpose for which it was provided; and information

may be used as evidence in legal proceedings but only where there is prior written consent.

- b) At paragraph 5.5 of the Precursor MoA, where evidence is required for criminal litigation, this should be sought in accordance with the Treaty.

2.2 In the case that information garnered via a memorandum were to be used as evidence in court proceedings, expressed authorisation or written consent would be needed. In such an instance, Police would treat each request on its merits. But usually where the matter is serious it will become a matter of formal request which must utilise the Mutual Assistance in Criminal Matters Act (MACMA) 1992 and New Zealand's treaty with China on Mutual Legal Assistance in Criminal Matters.

2.3 NZ Police conducts its efforts consistently with the principles of New Zealand law. The result is that neither New Zealand nor China can provide evidence which would be unlawful, and neither side can use it in court without the express permission of the other. Accordingly, if permission is sought in a death penalty case, then dealings in that case would be referred to the Treaty or MACMA so that assurances may be sought and given in accordance with section 27 (2) (ca) of MACMA.

- 3. You have asked, *"How many arrests within China and New Zealand have been made because of cooperation under the MOAs, and for what offences? Have any convictions led to people facing the death penalty in China?"*

With regards to this question, may I answer in two parts: 3(a) *If information received by New Zealand from China under one of the MoAs has resulted in an arrest within New Zealand for a domestic prosecution (and vice versa); and 3(b) If information received by China from New Zealand under one of the MoAs has resulted in a conviction within China for which the death penalty has been imposed. Given the death the penalty is not available in New Zealand then there is no need to answer this question from the other perspective*

3.1 With respect to 3(a), when a person is arrested on a charge, the evidence supporting that arrest will come from a variety of sources, for example, search and seizure within New Zealand, DNA, fingerprints, interviews and other information provided to Police, and in some cases information provided by another country may form part of the investigation. New Zealand Police do not collate or hold information on cooperation with China leading to convictions, so therefore I am unable to provide you an answer. Police do collect data on some aspects of pathways to prosecution and resolution; for example, fingerprint hits and DNA matches, but not in other areas such as admissions and confessions, or witness testimony; accordingly there is no direct data available. New Zealand Police do not hold information about arrests occurring in China.

3.2 With respect to 3(b), even though we do not hold data from China on prosecutions, as long as evidence is provided to China in accordance with MACMA or the Mutual Legal Assistance Treaty, no information provided under either of the memoranda should result in a conviction for which the death penalty could be imposed. New Zealand Police is not

aware of any circumstance where a death penalty has been applied to a cooperation case arising from MoA cooperation.

4. If you are not satisfied with my response to your request you are entitled to complain to the Ombudsman.

Yours Sincerely,



Alexander Burns,

International Strategy and Planning Advisor,

New Zealand Police