



Criminal disclosure, Continued...

Version : 14.0

Withholding information

Deciding whether to withhold or disclose

All "relevant" information in the hands of the prosecution should be made available to the defence subject **only** to exceptions needed to avoid prejudice to the wider public interest.

Once information or exhibits have been confirmed as relevant, determine whether they should be withheld. Police staff must consider the spirit of the CDA and the efficiency aims it was designed to deliver in making this determination.

If there are concerns about disclosing the information that outweigh the benefit of releasing it, consider whether the evidence or information is permitted to be withheld.

Grounds for withholding information

This table outlines the general situations in which information to which the defendant would otherwise be entitled may be withheld. Every document must be considered and if relevant, disclosed unless a reason for withholding applies. For example, in some situations POL 258s may be withheld, in others they need to be disclosed. It depends on the content of the POL 258 in question.

Police may withhold/refuse to disclose information when...	Examples of Police material	CDA section
<p>at the time a disclosure obligation would arise or at the time a request for disclosure is made, the prosecutor:</p> <ul style="list-style-type: none"> • is not in possession or control of that information; or • does not hold the information in recorded form. <p>Note: Prosecutors are not required to record information or to obtain information for sole purpose of disclosure.</p>	The information is not usually recorded and genuinely does not exist.	s15
disclosure of the information is likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences.	Operational orders, operational plans for surveillance, AOS call outs, covert operations or other information that discloses a similar type of content. Materials or aspects of materials that refer to police informants including who they are and any contact details or other personal information.	s16(1)(a)
disclosure of the information is likely to endanger the safety of any person.	Threat of violence to any person accompanied with the ability to deliver on that threat. (Note: Using this section in the disclosure index as a reason for withholding information may exacerbate the threat. Seek advice from legal advisor before using this	s16(1)(b)

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	section).	
the information is material prepared by or for the prosecutor to assist the conduct of the hearing or trial.	Purely administrative 258 reports that do not include any undisclosed information relevant to the case. (Note: 258s are not withholdable as of right).	16(1)(c)(i)
the information is a communication dealing with matters relating to the conduct of the prosecution and is between: <ul style="list-style-type: none"> the prosecutor and another person employed by the same person or agency that employs the prosecutor, or the prosecutor and any adviser to the prosecutor. 	Purely administrative communications (emails, faxes and other memos) between prosecutors and any other Police staff member or legal or technical advisor – that do not include any undisclosed information relevant to the case.	s16(1)(c)(ii)
it is analytical or evaluative material prepared, in connection with an investigation that led to the defendant being charged, by a person employed by a person or agency for another person employed by that person or agency or for the prosecutor.	Charts, analyses and schedules.	s16(1)(c)(iii)
the information is subject to sections 108 and 109 of the Evidence Act 2006 (which relates to information about undercover police officers).	Materials or aspects of materials that reference undercover police officers who have a Commissioner's Certificate attesting to their duty and protecting their identity and are likely to give evidence.	s16(1)(d)
the information is subject to a pre-trial witness anonymity order under s110 Evidence Act 2006 or a witness anonymity order under s 112 Evidence Act 2006.	Witness anonymity orders.	s16(1)(e)
the information is subject to s16 Victims Rights Act 2002 (which relates to information about witnesses' addresses).	Any materials or aspects of those materials that list a victim's address or contact details – except where the information is contained in a charge and it is necessary to disclose the information in order to ensure that the defendant is fully and fairly informed of the nature of the charge.	s16(1)(f)
disclosure of the information would be likely to prejudice: <ul style="list-style-type: none"> the security or defence of New Zealand or the international relations of the Government of New Zealand; or the entrusting of information to the 	Information from Interpol or other jurisdictions used for an investigation. Information sourced through diplomatic channels.	s16(1)(g)

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<p>Government of New Zealand on a basis of confidence by the government of any other country, or</p> <ul style="list-style-type: none"> any agency of such a government or any international organisation. 		
<p>disclosure of the information would be likely to facilitate the commission of another offence.</p>	<p>This includes information that might detail the existence of a person or property with a propensity to being victimised (e.g. security/access codes to a secure residence or computer system).</p>	<p>s16(1)(h)</p>
<p>disclosure of the information would constitute contempt of Court or contempt of the House of Representatives.</p>	<p>Name suppression orders or any information already the subject of a restriction as to disclosure imposed by a court or House of Representatives, or a briefing paper or departmental report to a select committee that has yet to report back to the House on the matter.</p>	<p>s16(1)(i)</p>
<p>the information could be withheld under any privilege applicable under the rules of evidence.</p>	<p>Information generated as part of a doctor-patient or solicitor-client relationship.</p>	<p>s16(1)(j)</p>
<p>disclosure of the information would be contrary to the provisions of any other enactment.</p>	<p>When another Act prohibits the disclosure of information such as in the Protected Disclosures Act (Whistleblowers Act) or Tax Administration Act 1994.</p>	<p>s16(1)(k)</p>
<p>the information is publicly available and it is reasonably practicable for the defendant to obtain the information from another source.</p>	<p>Information already released in the media or on a website.</p>	<p>s16(1)(l)</p>
<p>the information has previously been made available to the defendant.</p>	<p>Information already provided under an Official Information Act or Privacy Act request or through previous disclosure of materials, or the document has been provided to the defendant by another agency (e.g. Ministry of Justice)</p>	<p>s16(1)(m)</p>
<p>the information does not exist or cannot be found.</p>	<p>The information has been genuinely misplaced or is not recorded and therefore does not exist.</p>	<p>s16(1)(n)</p>
<p>the information:</p> <ul style="list-style-type: none"> reflects on the credibility of a witness who is not to be called by the prosecutor to give evidence but who may be called by the defendant to give evidence; and is not for any other reason relevant. 	<p>Information that challenges the credibility of a defence alibi witness.</p>	<p>s16(1)(o)</p>

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<p>the information identifies, or may lead to the identification of, the address of the place where a witness or informant lives, e.g. their:</p> <ul style="list-style-type: none"> • postal, residential or email address • fax or phone number. <p>The information may be disclosed to the defendant only with the consent of the witness or informant or with the leave of the Court.</p>	<p>This justifies partially withholding information and is likely to affect:</p> <ul style="list-style-type: none"> • summaries of facts • 258 reports • witness statements, or • any other document listing details of witnesses and informants. <p>Mask or black out the witness/informant details and disclose the rest.</p>	<p>s17</p>
<p>disclosing the information would:</p> <ul style="list-style-type: none"> • disclose a trade secret; or • be likely to unreasonably prejudice the commercial position of the person who supplied, or who is the subject of, the information. 	<p>Manufacturer's technical manuals e.g. workings of a secret device or process not covered by patent. Costings or charging information.</p>	<p>s18</p>

Part documents may still need to be disclosed

Police can only withhold the specific information listed in the reasons for withholding. Where that does not include a full document, the part of the document which is disclosable should be disclosed ([s16\(2\)](#)).

When withholding reasons no longer apply

Where previously withheld information no-longer fits within a withholding reason (thereby becoming disclosable) disclose it as part of Police's ongoing disclosure obligation ([s16\(3\)](#)).

Selecting withholding reasons

It is important to be specific when selecting withholding reasons. The information should fit clearly within a withholding reason rather than have the 'potential to fit' and only the information that fits the reason should be withheld. Listing a large number of withholding reasons could appear insincere and potentially create more work later if Police are asked to justify their withholding reasons.