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GOVERNMENT
COMMUNICATIONS
SECURITY BUREAU
TE TIRA TIAKI

Policy Statement – PS -135

File: qA42645

Incidentally Obtained Information

Purpose

1. The Intelligence and Security Act 2017 (the ISA) allows for the disclosure of information (that would otherwise be destroyed) to specified public agencies if it would assist those agencies to prevent, identify or respond to serious crimes or threats to life or security.
2. The purpose of this policy is to set out how the GCSB will retain and disclose incidentally obtained information, under section 104 of the ISA.

Scope

3. This policy applies to information obtained while performing a function under section 10 or section 11 of the ISA but which is not relevant to either of those functions.
4. The provisions of section 104 may be applied to information that is irrelevant but also to information that is unauthorised and to information that has been inadvertently collected (see definitions section).
5. This policy does not apply to information collected, analysed, or otherwise obtained under section 13 of the ISA. Information collected under this provision is subject to the information management obligations on the agency being assisted.

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6. This policy does not apply to assistance provided under the section 14 function to respond to an imminent threat to life or safety. GCSB legal can provide advice regarding this.
7. This policy applies to all GCSB employees, secondees, contractors and integrees.

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Definitions

Approved party means a party that has been approved by a relevant approval authority (under JPS-006 *Human Rights Risk Management Policy*). Approved parties may receive intelligence without a human rights risk assessment in the situations set out in the JPS.

Inadvertent information means information from the communications  that was not gathered intentionally but was collected as a result of specific tasking or querying of an intended targets' attributed selectors.

Incidentally obtained information is information obtained in the course of performing a section 10 or 11 function that is not relevant to either of those functions. Note that this includes information that may also be unauthorised and inadvertent information.

Irrelevant information means information obtained within the scope of an authorised activity that is not required, or no longer required, for a function of the GCSB.

Serious crime for the purpose of **section 104** is defined in section 47 of the ISA as:

- In relation to New Zealand, any offence punishable by 2 or more years' imprisonment; and
- In relation to any other country, an offence, if it occurred in New Zealand, would be punishable by 2 or more years' imprisonment.

(It should be noted that this is a different threshold from the definition of serious crime for the purpose of section 58 of the ISA, which is 3 years).

Unauthorised information means information unintentionally obtained that is outside the scope of an authorisation or authorised activity.

Policy

9. The ISA requires the destruction of unauthorised information and irrelevant information under sections 102 and 103.

10. However, under section 104 of the ISA, this information may be retained and disclosed to the New Zealand Police, the New Zealand Defence Force (NZDF) or another public agency in New Zealand or overseas, if the Director-General is satisfied it may assist in:
 - a. Preventing or detecting serious crime in New Zealand or any other country;
 - b. Preventing or responding to threats to life of any person in New Zealand or any other country;
 - c. Identifying, preventing or responding to threats or potential threats to the security or defence of New Zealand or any other country; or
 - d. Preventing the death of any person who is outside the territorial jurisdiction of any country.

11. JPS-006 *Human Rights Risk Management Policy* must be followed when sharing information with any overseas public authority. This means for any public authority that is not an approved party, a Human Rights Risk Assessment and Human Rights Risk Approval will need to be completed.

Process for Reporting and Dissemination

12. If any person identifies irrelevant information that they consider may meet the criteria to be retained and shared as "incidentally obtained information", they should consult their direct manager and make the following assessment:
 - a. Are there reasonable grounds to believe the information may assist with any of the situations in section 104 of the ISA (set out in paragraph 10 above); and
 - b. Could the information be shared under any section 10 or 11 function; and
 - c. Does the information require very urgent dissemination?

13. The outcome of the assessment should be recorded s 6(a)

14. If it is considered that the information could meet the criteria to be "incidentally obtained information", the manager should:
 - a. Alert their Director and discuss the situation with them if required; and
 - b. Alert the Manager Compliance and Policy through the Compliance email inbox and discuss with Compliance if required; and
 - c. Seek legal advice on the assessment, including whether the information may be shared under a GCSB function and whether it meets any criteria in section 104 (3), or advice on any other matter.

15. If it is determined that the Director-General's permission should be sought to share the information under section 104, then the manager is then responsible for:
- a. Organising a briefing note to the Director-General (or delegate where there is one); and
 - b. Drafting the report containing the information for dissemination; and
 - c. Preparing a Human Rights Risk Assessment if the release is intended for any foreign non-approved parties, as per JPS-006 *Human Rights Risk Management Policy*; and

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Approval by Director-General

16. The final decision on the release of the information rests with the Director-General (or their delegate if a delegation has been made). Legal services must be consulted prior to any release of the information.
17. The Director-General may approve the release of the information to the New Zealand Police, the NZDF and/or any public authority whether in New Zealand or overseas with responsibility for performing one of the functions in section 104 (3), subject to the requirements of JPS-006 *Human Rights Risk Management Policy*.
18. The report to the Director-General recommending the release under section 104 should include:
- a. Which activity in section 104 (3) the intelligence will provide assistance on and how it will do so; and
 - b. The public agency recommended to receive the intelligence (New Zealand Police, NZDF, or any other New Zealand or foreign public agency); and
 - c. For any foreign public agency, either:
 - i. Confirmation that they are an approved party under JPS-006 *Human Rights Risk Management Policy*; or
 - ii. The Human Rights Risk Assessment and recommendation for granting any Human Rights Risk Approval. (Note that for Risk Category 1 and Category 2 the risk approval authority is the Minister).
 - d. Any limits on dissemination; and
 - e. The draft report.

Reporting

19. Once the release is approved by the Director-General, the report may be disseminated.

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- 20. The report must be in a format that is formally trackable and auditable. Reports from incidentally obtained information released under section 104 must have a unique serial number.
- 21. Reporting must make it clear that the material is incidentally obtained and must identify the relevant purpose under subsection 104 (3) that the material is being disclosed for.

Very Urgent Situations

- 22. In some circumstances, information may need to be communicated immediately because there is an imminent threat to life or imminent serious event. The primary consideration in this situation is whether the information would lose its value if not communicated immediately.
- 23. Approval for a very urgent release may only be made by the Director-General, or anyone acting as the Director-General (if a delegation is in place). Legal services must be consulted prior to any release of the information.
- 24. Once approved for release, information that will assist New Zealand Police, NZDF or any other New Zealand public authority, or any Approved Party, may be communicated s 6(a) [redacted] by phone or email to be followed up with a formal report as soon as practicable.
- 25. For any foreign public authority that is not an Approved Party, a Human Rights Risk Assessment must still be completed prior to the release s 6(a) [redacted] and the necessary approval sought for the Human Rights Risk Approval. See Appendix 1 in JPS-006 *Human Rights Risk Management Policy*.

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Obligation to Destroy

- 28. If section 104 applies, the information shared remains irrelevant to GCSB and is subject to destruction obligations, once shared. A copy of the report itself may be kept, but the information may not be used by GCSB for any other purpose (and should not need to be, given that it is irrelevant).

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Related Information and Policies

The following policies are related to this policy:

- PS-216 *Incidental Intelligence* (under the GCSB Act 2003)
- PS-134 *Collected Data Retention and Destruction Policy* (under the ISA)
- JPS-006 *Human Rights Risk Management Policy*

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Approval

Approved by:	Director-General, GCSB		
Approval date:	16/7/18		
Effective date:	<i>[Handwritten signature]</i>		
Policy Owner:	Director, Strategy, Governance and Performance		
Current incumbent:	Bridget White		
Policy Administrator:	Manager Compliance and Policy		
Current incumbent:	s 6(a)	Contact number:	s 6(a)

Minor Amendments

Date	Summary of changes	Approval Authority	Signature

Document Review History

Date	Comment

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