**Information Gathering Policy**

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| Next Review Date: | April 2020 |
| Endorsed by: | DCE April 2019 |
| Approved by: | ELT April 2019 |
| Owner: | DCE Corporate Services / Chief Information Security Officer |

**Purpose**

It is imperative that the Department has, and maintains, public trust and confidence when involved in gathering information so that it can fulfil its obligations to protect our people, information, and places and to detect and prevent criminal offending.

The purpose of this policy is to provide high-level guidance about the general principles and governance approach that guide all of the Department’s information gathering activities. It should be read in-conjunction with the Department’s Privacy and Transparency Commitment and more detailed guidance relating to specific information gathering activities.

This policy covers:

* What information gathering is and the types of information gathering activities we undertake
* The high-level principles that guide all of our information gathering activities
* The governance arrangements and roles we have in place to ensure our information gathering activities are lawful and comply with the State Services Commission’s model standards for information gathering.

This policy aligns with the Department’s values and guiding principles of:

* Rangatira – Leadership; Manaaki – Respect; Wairua – Spirituality; Kaitiaki – Guardianship; and Whānāu – Relationships
* complying with the law and legislation
* ensuring a healthy, safe and secure environment
* being a good employer and
* acting in the Spirit of Service.

**Scope**

This Policy applies to all staff (permanent, fixed-term or casual) and all secondees, consultants, contractors, service providers and volunteers employed or engaged by the Department. For the purposes of the rest of this policy, the term ‘staff’ refers to all of those people.

**Definitions**

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| **Information** | Information can be personal or non-personal and includes facts, opinions, intelligence, or other types of information such as (but not limited to):* written information (notes, reports)
* visual information (photographs, videos)
* technical information (GPS location data)
 |
| **Gathering activity** | Obtaining information from external sources, or from internal sources where that information was initially gathered for an unrelated purpose. This includes obtaining information from the following sources:* The internet (websites, search engines, social media platforms) – open source or otherwise
* Tip-offs
* Public registers and archives
* Members of the public (by any means)
* Other agencies (including NZ government agencies, private sector agencies, overseas governments and agencies)
* Inspections of places or goods (eg, probation home visits)
* Interviews (compulsory or voluntary)
* Court proceedings
* Databases
* Biometric collection
* Technical or scientific devices (eg, electronic monitoring and alcohol bracelets)
* Third party contractors
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| **Protective security** | Means the Department’s responsibility to protect our people, information and places. |
| **Law enforcement** | The Department’s law enforcement functions refer to the responsibilities the Department has to detect and prevent criminal offending. |

**Key Principles**

The Department gathers information from internal and external sources for a wide range of purposes to deliver our goal of changing lives and keeping communities safe. This includes information necessary to deliver services and support and fulfil our various responsibilities to the people in our care, our staff and wider community. This does not include the use of external consultants to undertake information gathering that would be unlawful or unethical for the Department to undertake.

What information we gather and how we gather it is governed by the Department’s legislative responsibilities (see *Relevant Legislation* below and *Appendix 1*) and relevant public sector standards, including the State Services Commission model standards for information gathering.

These responsibilities and standards have informed the following high-level principles that need to guide any information gathering activities we conduct.

***Information Gathering Principles***

These principles are intended to help decide whether any information gathering activity is:

* Lawful (can the information be gathered?); and
* Appropriate for the Department to undertake (should the information be gathered?)

The information gathering activity must be:

1. *Lawful*

The activity must comply with relevant legislation or legal authority. For example:

* Corrections-specific legislation (*see Appendix 1: Information Gathering Powers under Corrections-Specific Legislation)*
* Privacy Act 1993
* New Zealand Bill of Rights Act 1990
* Search and Surveillance Act 2012
* Relevant court decisions

Consideration should be given to whether the most appropriate authority or legislative tool is being used to gather the information

1. *Reasonable*

Information gathering activity must be reasonable, even if it is legally permissible, both in terms of what information is being gathered and how it is gathered.

1. *Necessary*

There must be a clear purpose for collecting the information linked to a Corrections function (including front line and corporate/support/policy functions). Only information that is necessary in relation to that purpose must be gathered.

1. *Proportionate*

Only the minimum amount of information proportionate to the purpose of the proposed activity must be collected.

1. *Transparent*

Information gathering activity must be well documented and monitored. Consideration should also be given to whether the general public, or other stakeholders, would have realistic expectations that this information gathering activity would be undertaken.

1. *Accountable*

There must be clear governance, oversight and responsibility for the activity.

* All information gathering must be governed by a policy and supported by an operational process or procedure, and done in compliance with those requirements
* Information gathering policies and processes/procedures are reviewed and approved by a person or group not directly involved in the information gathering or the function to which the gathering relates.
1. *Integrity*

Staff undertaking information gathering activity must act with integrity including:

* Acting appropriately and impartially in accordance with legislative mandate
* Taking into account any additional obligations when exercising law enforcement powers
* Raise concerns about potentially unlawful or inappropriate information gathering in a timely and responsible way (the Department encourages, and provides a safe environment for, staff to “speak up” and report concerns about illegal and inappropriate activity or behaviour).
1. *Respectful*

In all information gathering activities, staff must act with respect and take into account:

* Any impact on vulnerable community members (including children)
* The operation of the Search and Surveillance Act 2012, and relevant considerations including te ao Māori principles
* Any privileged information held by an individual
* Privacy
* Rights in the Bill of Rights Act 1990, including the right to be secure against unreasonable search and seizure and the right to freedom of expression.

While these principles will guide all information gathering activities across the Department, there is a range of more detailed guidance and direction that informs our information gathering activities in relation to privacy and security (see *Related Polices and Documents* below). This policy should be read in-conjunction with this more specific guidance. More specific guidance may also be developed around these principles as necessary.

***Further Principles and Policy Statements***

*Transparency*

The Department will be transparent about how it gathers information and will publish a Privacy and Transparency Commitment on its website in relation to this. The Department will constructively engage with any feedback or complaints it receives in relation to its information gathering activities.

*Verification of information*

The Department will take reasonable steps to verify information it gathers, taking into account:

* the nature and sensitivity of the information
* the reliability of the source
* the activity used to gather the information
* the availability of other sources or powers to validate the information.

*Restrictions on Information Gathering*

The Department will not gather information on, or classify as a security threat, any individual or group solely on the basis they are exercising any of their democratic or civil rights, including their legal rights to freedom of expression, association, and peaceful assembly to advocate, protest or dissent. The Department will not gather information on an individual or group solely to manage a risk to the Department’s reputation.

*Unlawfully Gathered Information*

The Department will promptly raise concerns about information that appears to have been unlawfully gathered. Reporting will initially be through the Department’s internal channels (such as the Integrity team in relation to staff wrongdoing or the Chief Privacy Officer concerning a privacy event) and then, where appropriate, to the New Zealand Police.

*Use, Retention and Disposal of Information Gathered*

Any information gathered must be used, retained and disposed of appropriately and in accordance with the law and the policies and procedures of the Department, such as the Privacy Policy and the Information Management Recordkeeping Policy.

*Governance*

To ensure we have appropriate oversight, the Department’s Protective Security Committee (the Committee) will provide governance and overview of all our information gathering activities. Through regular reporting, advice and assurance provided to it, the Committee will ensure all activities are compliant with legislative responsibilities and relevant public sector standards. Advice may be sought from the Department’s Legal team and Crown Law when appropriate. The Committee will also consider, review and respond to any complaints or review processes associated with the Department’s information gathering activities.

*Policies and Procedures Supporting Information Gathering will be Regularly Reviewed*

All information gathering activities in the scope of this policy will be supported by a Department policy or procedure. Departmental teams will review their information gathering policies and procedures at regular intervals, or when there are significant changes to the law or regulatory environment (for example new legislation, or a court/tribunal decision, concerning information gathering).

**Related Policies and Documents**

As well as listing relevant external documents, the below refers to Department Corporate Policies that may be particularly relevant to this policy. This is not an exhaustive list and other Department corporate policies, operational policies, procedures and guidelines may also apply depending on the information gathering activity and/or type of information being gathered.

[State Services Standards of Integrity and Conduct](http://www.ssc.govt.nz/code)

[State Services Commission Model Standards for Information Gathering (*SSC Model Standard: Information gathering and public trust)*](http://www.ssc.govt.nz/sites/all/files/SSC%20-%20Model%20Standards%20-%20information%20gathering%20and%20public%20trust_0.pdf)

Addressing Fraud, Corruption, Dishonesty and other Criminal Activity Policy

Code of Conduct Policy

Conflicts of Interest Policy

Drug and Alcohol Policy

Information Management Recordkeeping Policy

IT Acceptable Use Policy

IT Security Policy

Privacy Policy

Open Source and Media Information Policy

Personnel Security Policy

Physical Security Policy

Preventing Bullying, Harassment and/or Discrimination Policy

Protected Disclosure – Serious Wrongdoing (Whistleblowing) Policy

Recruitment Policy

Social Media Policy

**Key Accountabilities and Responsibilities**

| **Person/Party** | **Responsibilities** |
| --- | --- |
| **Chief** **Executive** | * Responsible for the Department meeting its obligations under this policy
* Leads and promotes the Department’s commitment to lawful, reasonable, ethical and transparent information gathering
 |
| **Executive Leadership Team (ELT)** | * Approves this policy and any subsequent major amendments
* Leads and promotes the Department’s commitment to lawful, reasonable, ethical and transparent information gathering
 |
| **Deputy Chief Executives, National Commissioner and Regional Commissioners** | * Lead and promote the Department’s commitment to lawful, reasonable, ethical and transparent information gathering
* Embedding this policy in their business groups
* Ensuring their groups are aware of and comply with this policy
 |
| **Policy Owner and Tier 2 Manager***(DCE Corporate Services who is also Chief Information Security Officer)*  | * Ensures the policy is working effectively through regular monitoring and reporting of compliance to the policy
* Ensures the policy meets the requirements of the *SSC Model Standard: Information gathering and public trust*
* Ensures the production and maintenance of any supporting procedures required
* Promotes awareness of this policy
* Reviews this policy in accordance with the next stated review date and recommends and endorses amendments required to the Policy:
	+ Endorses any subsequent major amendments to this policy for ELT approval
	+ Endorses any subsequent minor amendments to this policy for Third Tier Leadership Group approval
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| **Third Tier Leadership Group** | * Reviews and endorses this policy, and any associated procedures, for ELT approval and/or recommends changes to the policy
* Endorsing any subsequent major amendments to this policy for ELT approval
* Final Approval of any subsequent minor amendments to this policy

See Corporate Policy Framework for definitions of “major” and “minor” amendments |
| **Protective** **Security** **Committee (PSC)** | * Governance and overview of the Department’s information gathering activities, including implementation of the *SSC Model Standard: Information gathering and public trust*
* Review and oversight of the Department’s compliance with *SSC Model Standard: Information gathering and public trust*
* Oversee and ensure information gathering activities are compliant with legislative responsibilities and relevant public sector standards (through regular reporting, advice and assurance provided to the Committee)
* Consider, review and respond to any complaints or review processes associated the Department’s information gathering activities
 |
| **Chief Privacy Officer** | * Provides general privacy advice and specific advice regarding Privacy Act access and correction requests
* Provides support and advice on privacy impact assessments
 |
| **Legal Team** | * Provides advice and support on legal questions relating to the Department’s information gathering activity (including on any relevant legislation and court or tribunal decisions).
 |
| **Human Resources** | * Manage breaches of this policy in accordance with the Code of Conduct
 |
| **Integrity Team** | * Investigate breaches of the Code of Conduct and/or this policy that potentially involve fraud, corruption, dishonesty or other criminal activity
 |
| **Managers** | * Ensure their staff are aware of the policy and act in accordance with it
* Ensure their staff are given appropriate information and training about this policy and provide support where appropriate
 |
| **Staff** **(permanent, fixed-term, and casual), secondees, consultants, contractors, and volunteers** | * Ensure they are familiar with this policy and any obligations they have under it
* Comply with this Policy
* Promptly raise concerns with their manager about any Department information gathering activity that appears unlawful and/or not complying with this policy
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| **Performance Analytics Team** | * Reports to PSC on complaints relating to information gathering
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**Training and Communication**

The policy will be communicated to staff via news stories on Tātou (the Department’s Intranet) and other appropriate channels such as Staff Updates and Frontline News. Managers are encouraged to discuss this policy with team members.

The policy will be made available to all staff by being posted on the Corporate Policy page on Tātou.

Regular reminders (at least annually) on the policy, and its application, will be posted on Tātou or provided through other news channels.

The Department will support its staff (including relevant contractors, consultants and service providers) with training and guidance on the legal and ethical scope of its information gathering as necessary. Training should be provided to relevant staff on induction and on an ongoing basis. Learning and training material should also be made available on Tātou.

**Monitoring and Assurance**

This policy will be monitored by the Policy Owner for effectiveness and compliance.

*Measures of Success*

Processes will be established to measure the success and effectiveness of the policy. The policy will be effective if:

* There are no breaches of the policy or if there are breaches, they are dealt with in a timely and appropriate manner
* There are references to, or other evidence of appropriate consideration of, the Department’s information gathering principles in decisions relating to information gathering
* There is evidence of compliance with the State Service Commission’s model standards *Information gathering and public trust*
* Information gathering activities are conducted and recorded in a manner allowing them to be reviewed, audited and have assurance tasks completed on them
* Departmental teams that regularly conduct information gathering within the scope of this policy have well defined governance arrangements and decision-making accountabilities established.

*Compliance Management*

Compliance management tools and processes will be used to help ensure compliance with this policy and related procedures, minimise the risk of breaches and identify trends and risks so they can be managed appropriately. These tools and processes may include:

* Any guidance and processes developed to help staff comply with this policy will be made available on Tātou and provided directly to relevant staff as appropriate
* Providing reminders and information to staff about this policy and their obligations
* Tools such as checklists, fact-sheets and training modules as appropriate to help inform staff and managers of their obligations
* Monitoring of compliance with required processes as set out in this policy or related procedures
* “Spot checks” of information gathering activities and/or the records of such activities
* Assessment of complaints received in relation to information gathering and consideration of any learnings and actions that should be developed
* When breaches occur, they are appropriately managed and reported, and follow up action plans are developed and implemented to help prevent similar future breaches. This may involve targeted communications and training to specific staff and/or general awareness raising communications and messages to staff in general.

*Compliance Reporting*

Regular reporting, advice and assurance in relation to information gathering activities will be provided to the Protective Security Committee by the Policy Owner, as well as to ELT as required.

Teams and functions with information gathering responsibilities may also be required to provide information to the Policy Owner, the Protective Security Committee or ELT as required.

Compliance information regarding the performance of this policy will be provided by the Policy Owner to the National Manager Audit Integrity and Risk on a quarterly basis.

**Related Legislation and Regulations**

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| --- | --- |
| Corrections Act 2004 Corrections Regulations 2005 | Contains provisions relating to collecting information in respect of prisoners, offenders, defendants and prison visitors |
| Parole Act 2002 | Contains provisions relating to gathering information about or from offenders subject to various release conditions, and provisions relating to Departmental information gathering for preparing parole reports and recommendations |
| Sentencing Act 2002 | Contains provisions relating to gathering and using information about or from offenders subject to various sentences or conditions |
| Public Safety (Public Protection Orders) Act 2014 | Contains provisions relating to gathering information from persons subject to Public Protection Orders (PPO) and from other persons wishing to enter PPO residences |
| Bail Act 2000 | Contains provisions concerning gathering of information obtained from electronic monitoring of a defendant on bail and gathering information from victims and others when assessing bail applications |
| Privacy Act 1993 | The personal information that Department staff handle about offenders, staff, contractors, visitors, and others is governed by the principles of the Privacy Act. Section 6 sets out the Information Privacy Principles |
| Health information Privacy Code 1994 | Contains rules for the approach to the management of health information which Corrections holds on offenders, staff, contractors or visitors.  |
| New Zealand Bill of Rights Act 1990 | Protects the civil and political rights of all New Zealanders. This includes the rights to freedom of expression (s 14), peaceful assembly and association (ss 16-17) as well as the right to be secure against unreasonable search and seizure (s 21). |
| Search and Surveillance Act 2012 | Contains provisions controlling how government agencies search people or property or use surveillance devices for the purpose of investigating crime |

**Complaints and Other Feedback Processes**

The Department has specific channels available for receiving complaints, or other feedback, which may be about, or involve, information gathering. The appropriate channel will depend on the type of complaint / feedback and who is making it. Complaints may be made by a range of people including prisoners, offenders, the general public and staff and contractors.

See the Department’s Privacy and Transparency Commitment for further details about complaints processes involving information gathering (including how to make a complaint).

**Where to Get Help**

If you need help and advice about information gathering activities (for example, if you’re unsure whether an information gathering activity is lawful or appropriate) you can contact the following people or teams within Corrections:

* *Your Manager –* your manager may have prior experience in this area and be able to answer your questions directly. If not, they may be able to direct you to the right people to ask.
* *Legal Team* – provides advice and support on legal questions relating to the Department’s information gathering activity (including on any relevant legislation and court or tribunal decisions). They can be contacted at [Getting assistance from Legal Services](http://tatou.corrections.govt.nz/pmg/department_wide/legal/using-legal-services2/using-legal-services)
* *Departmental Security Officer* – provides advice and guidance on protective security.
* *Chief Privacy Officer* – provides advice and guidance on privacy matters including privacy issues associated with information gathering activities and conducting privacy impact assessments.

**Useful Websites**

The following websites contain information and resources which may be useful when considering engaging, or engaging, in information gathering activities. They should be checked regularly as they are often updated.

The Legal Team may also be able to provide advice and information about relevant guidance from external sources.

[Office of the Privacy Commissioner](https://www.privacy.org.nz/)

[Office of the Ombudsman](http://www.ombudsman.parliament.nz/)

[Government Chief Privacy Officer](https://www.ict.govt.nz/governance-and-leadership/the-gcio-team/government-chief-privacy-officer/Government)

[Government Chief Data Steward](https://www.digital.govt.nz/digital-government/leadership-and-governance/government-chief-data-steward-gcds/)