

Reference: IR-01-22-979

17 March 2022

Scott
fyi-request-18208-bf4eda1d@requests.fyi.org.nz

Dear Scott

Request for information

Thank you for your Official Information Act 1982 (OIA) request dated 17 January 2022, in which you asked for the following information:

- *I would like to make a request for copies of two documents relating to the NZSIS-Police operational relationship. They are:*
 1. *The NZSIS-Police Joint Operating Strategy*
 2. *The NZSIS-Police Information Sharing Protocol*

Firstly, I apologise for the delay in responding to your request. This delay was caused by the need to consult with other Government agencies before a decision on release could be made. This took a little longer than anticipated.

Please find enclosed copies of the two documents you sought.

You have the right to ask the Ombudsman to review my decision if you are not satisfied with the response to your request. Information about how to make a complaint is available here: <https://www.ombudsman.parliament.nz/what-ombudsman-can-help/complaints-about-government-agencies/how-make-complaint>.

Yours sincerely



Acting Director - National Security CT
New Zealand Police

Police National Headquarters

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Joint Operating Strategy

Who we are

New Zealand Police
New Zealand Security Intelligence Service
Government Communications Security Bureau

Why we're here

- Public safety
- Community support and reassurance
- National security
- Enhancing international relations and economic wellbeing

Our priorities

- Strategic and operational alignment
- Response to the Royal Commission of Inquiry and recommendations
- Engaging with communities
- Effective stewardship of our national security functions
- Information management

We are

Prevention Focused

We focus on protecting our communities from harm

Connected and Cohesive

There are strong and effective connections between our agencies, and we work effectively together

Trusted

We build and maintain the confidence of our communities and partners

Capable and Agile

We continually improved the delivery of our functions

What we do



Detect

We identify potential threats through effective community relationships and intelligence collection



Understand

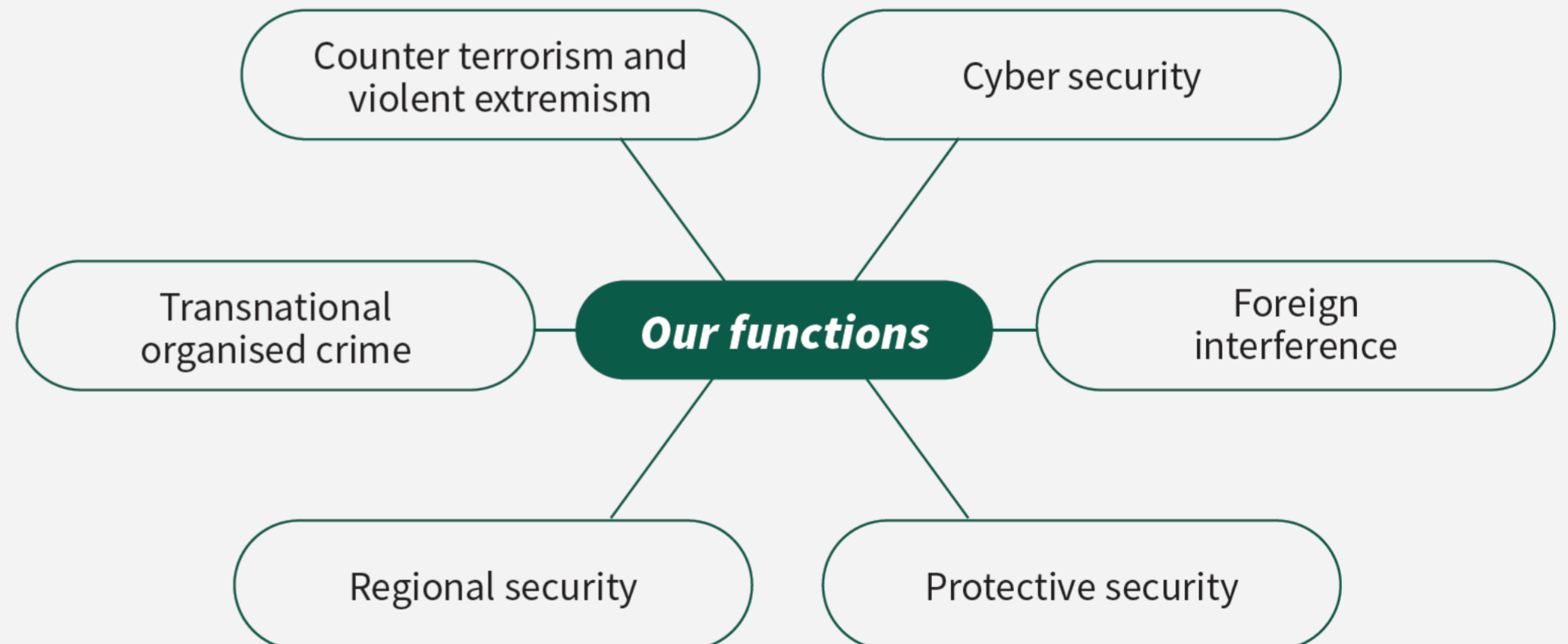
We work together to understand threats to New Zealanders and our national security



Prevent

We mitigate threats through collaboration, prevention, and investigation

Released under the Official Information Act



New Zealand
Security Intelligence
Service
Te Pa Whakamarumarū

Information Sharing Protocol

between

New Zealand Security Intelligence Service

and

New Zealand Police

Released under the Official Information Act 1982

Aims

1. To establish principles for sharing of information between New Zealand Police (Police) and the New Zealand Security Intelligence Service (NZSIS) for the purposes of co-locating staff in a shared office in Auckland.

Interpretation

2. In this Protocol:
- a. Party means either the NZSIS or Police, and together Parties;
 - b. Commissioner means the Commissioner of the New Zealand Police appointed under the Policing Act 2008;
 - c. Director-General means the Director-General of Security as defined in the Intelligence and Security Act 2017 (ISA);
 - d. MOU means the Memorandum of Understanding signed between the Parties on 20 November 2013 or any other Memorandum of Understanding that replaces this document.

Principles governing the sharing of information

3. This Protocol encourages the proactive sharing of relevant information between the Parties, within the constraints required to protect the security of that information and the respective legislative mandates of the Parties.

4. The Parties agree that the following principles shall guide decision making on the sharing of information:

- a. Public safety and the protection of New Zealand's national security are principal objectives;
- b. On-going operational effectiveness of the Parties must be maintained;
- c. The collection or provision of intelligence will only occur as necessary for the performance of a Party's statutory function and will be proportionate to its purpose; and
- d. The Parties must act in accordance with New Zealand law and all human rights obligations recognized by New Zealand law.

5. In particular the Parties acknowledge that all endeavours will be made to prevent the disclosure of information that would:

- a. Identify current or former NZSIS officers or current or former Police Undercover officers;
- b. Reveal sensitive NZSIS or Police resources or methodology;
- c. Reveal sensitive locations, including NZSIS offices outside of publicly declared locations or any other operational location identified by either the NZSIS or Police;
- d. Reveal or confirm a foreign liaison relationship;
- e. Compromise the identity or safety of any human source.

6. The Parties acknowledge that there are specific legislative requirements that govern the sharing of information. It is a function of the NZSIS to collect and analyse intelligence in accordance with the New Zealand Government's priorities and to provide any such intelligence to any person (or public authority) authorised by the Minister,¹ which includes NZP.² In addition, it is a function of the NZSIS to co-operate and provide advice and assistance to NZP for the purpose of facilitating the performance of NZP's functions, duties or powers.³ Likewise NZP may co-operate with any other agency to perform some of its functions.⁴

7. Any provision of intelligence must be done in accordance with New Zealand law and all human rights obligations recognised under New Zealand law.⁵ The Parties will ensure all intelligence sharing is consistent with the ISA, Privacy Act 1993, and Official Information Act 1982.

8. It is also acknowledged that the NZSIS has certain obligations that relate to the material collected as part of the exercise of its warrant powers, including obligations to destroy certain material. Such information cannot be shared.

Use of Intelligence

9. Unless otherwise indicated, NZSIS information is shared for intelligence purposes only.

10. It is acknowledged that in limited circumstances NZSIS may obtain and share with NZP incidentally obtained information that is not relevant to intelligence purposes but may assist in preventing or detecting serious crime, preventing or detecting threats to life of any person, identifying preventing or responding to threats or potential threats to the security or defence of New Zealand or any other country and/or may assist in preventing the death of any person who is outside the territorial jurisdiction of any country.⁶ The sharing of information in these circumstances will be specifically identified as such.

¹ The Minister Responsible for the NZSIS

² Section 10, ISA

³ Section 13, ISA

⁴ Section 10, Policing Act 2008

⁵ Section 10, ISA, s 8(d), Policing Act 2008.

⁶ Section 104, ISA

11. The Parties acknowledge that the NZSIS does not typically collect information as evidence. Accordingly, NZSIS information will often not be available for prosecution or for use in part of a criminal investigation even where it may be of evidentiary value.

12. Where classified information is made available by the NZSIS as part of a Police investigation, NZSIS may agree to the sharing of the information to specified Police investigative staff, however, only appropriately cleared staff that need to know may be made aware of the origin and detail of the classified material. Police staff who do not have knowledge of the classified material cannot therefore compromise the source of the information in court (or elsewhere).

Use of Intelligence in Proceedings

13. Where the Parties have agreed to the use of NZSIS information in proceedings the following principles shall be followed:

- a. Police must acknowledge the existence of classified material but not the content, nor origin of the material unless directed to by the courts;
- b. Where any disclosure under 11 (a) would prejudice the provisions of clause 5 (a) - (e) the proceedings shall be stopped;
- c. When giving sworn testimony witnesses must answer truthfully, but may decline to answer questions in accordance with legal principles, (including those relevant to the protection of national security);
- d. Police or NZSIS staff giving evidence in proceedings will be properly prepared to protect classified material as provided for by New Zealand law.

Provision of information by NZP

14. NZP may share information with NZSIS upon the request of NZSIS,⁷ while assisting with the exercise of an NZSIS warrant or very urgent authorisation,⁸ on its own initiative,⁹ and at any other time in accordance with their functions.

Storage and handling of information provided by a Party

15. Information shared between the Parties shall be stored and handled in accordance with any written instructions/caveats accompanying the information. Where the information is classified, it shall be stored and handled in accordance with the Protective Security Requirements.

⁷ Section 121, ISA.

⁸ Section 51, ISA.

⁹ Section 122, ISA.

16. Information shared between the Parties shall be stored and handled in accordance with any written instructions/caveats accompanying the information. Where the information is classified, it shall be stored and handled in accordance with the Protective Security Requirements.

17. In particular, the Parties agree:

- a. Information is shared formally via electronic communications to ensure appropriate distribution, record keeping and accountability regarding the passage of information.
- b. To ensure appropriate security measures, including IT systems, are in place to protect any information provided by the other Party from unauthorised access or disclosure;
- c. To restrict any person from accessing information provided by the other Party unless that person is authorised to do so, has a need to know and holds an appropriate security clearance;
- d. That personnel from the Party accessing information provided by the other Party shall not record, disclose or communicate such information except in the performance of official duties and only to those with a need to know and an appropriate security clearance;
- e. The information must not be disseminated further without the prior consent, recorded in writing, of the supplying Party; and
- f. Any information will be returned to the supplying Party or destroyed on request;
- g. To ensure that a system of audit exists to enable identification of all those persons who have had access to information provided to it by the other Party.

Disclosure

18. If a Party becomes aware that information shared under this Protocol may be required for production or disclosure (for reasons including but not limited to a duty of disclosure or a request for information under the Privacy Act 1993 or Official Information Act 1982), that Party shall immediately notify the Party that provided the information. Disclosure or acknowledgement of the existence of that information must not occur without the written authorisation from the source Party.

Direct Access

19. The ISA provides that the NZSIS may have direct access to certain information held by NZP.¹⁰ This access must be done in accordance with a direct access agreement. NZSIS must not directly access NZP information until a direct access agreement is finalised in accordance with the ISA.

Variation, Termination & Dispute Resolution

20. Variation, termination and dispute resolution shall be in accordance with the terms of the MOU.

Review

21. This Protocol shall be reviewed at intervals of not less than three years.

General

22. This Protocol will be effective when signed by both parties. A record copy will be maintained by both signatories.

23. Nothing in this Protocol shall be construed in such a way as to affect the relationship between the Police and the NZSIS in any other activity.

24. This Protocol does not apply to the sharing of information for the purposes of NZSIS's vetting and security clearance functions.

Released under the Official Information Act 1982

¹⁰ Section 125, ISA.