

16 January 2017

Ref: 17/22

Simon

fyi-request-5177-86d5d35a@requests.fyi.org.nz

Dear Simon

I refer to your Official Information Act request dated 2 January 2017, in which you requested more information about the way we investigate crimes that relate to Trademe online auctions.

You requested a copy of the agreement between Trademe and New Zealand Police. This has been attached for your reference.

You also asked about the circumstances in which Police might request information from Trademe about an online auction, and any other policies that might affect the investigation of stolen goods being sold on Trademe.

There are no specific policies or procedures in place that guide Police practice on these matters - whether related to the market value of the goods or otherwise - other than what is contained in the Letter of Agreement.

Police staff must take a number of factors into consideration when investigating any matter and establishing how to proceed, including:

- the seriousness of offence(s)
- the potential to prevent further offending
- any further risk to the victim(s)
- evidence available
- the likelihood of an offender being apprehended
- public interest.



National Criminal Investigations Group

Police National Headquarters
180 Molesworth Street, PO Box 3017, Wellington 6140
Phone +64 4 474 9499

If you are not satisfied with the response to your request, you have the right to refer the matter to the Office of the Ombudsman.

Yours sincerely

Melina Curtis
Acting Manager Programme Planning & Support
National Criminal Investigations Group



Trade Me Limited - Letter of Agreement

Letter of Agreement between the New Zealand Police and Trade Me Limited

Introduction

1. This letter of agreement (LOA) confirms the relationship between the New Zealand Police (Police) and Trade Me Group Limited (Trade Me¹).

2. Since signing their original Memorandum of Understanding in October 2005 and subsequent LOA in June 2010 and June 2012 and August 2014, the parties have benefited from a close working relationship which has already seen great results in the area of prevention in addition to numerous successes in the investigation and prosecution of crimes.

3. The parties wish to continue the formal nature of their relationship to ensure the responsible and legal exchange of data between the parties to achieve the following outcomes:

3.1 Promoting the safe and legal use of digital technology in New Zealand.

3.2 Keeping New Zealanders safe through the prevention, detection, investigation, prosecution and punishment of offences in connection with Trade Me use and where necessary, when the offences occur off Trade Me, but have an impact on the Trade Me member community.

3.3 Maintaining the highest standards of privacy protection for Trade Me member data.

The Parties agree:

4. The Chief Executive of Trade Me and the Commissioner of Police (or their representative(s)) will meet formally at least once a year to:

4.1. discuss the strategic direction, priorities and plans of both parties;

4.2. evaluate the performance of this LOA and any initiatives or strategies formulated under it;

4.3. make recommendations to amend this LOA as appropriate to reflect the evolving nature of the relationship between the parties and for the continuation, amendment or termination of any initiatives or strategies the parties may be jointly engaged in;

4.4. as appropriate, discuss any public communication strategies necessitated by the relationship between the parties;

4.5. address any other issues arising from or in connection with the relationship.

5. The parties agree to inform each other, at an early stage, of any policy development that either party is undertaking that will have particular relevance to the interests of the other party. The parties will endeavour to provide the other party adequate time to comment.

¹ The Trade Me Group includes the websites www.trademe.co.nz, www.findsomeone.co.nz, www.holidayhouses.co.nz, www.travelbug.co.nz, www.safetrader.co.nz and www.treatme.co.nz.

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6. The Head of Trust & Safety will be responsible for Trade Me's relationship with Police and will appoint staff members to be the primary points of contact for communication with Police on a day-to-day basis.
7. The Manager, High-tech Crime Group will be the initial point of contact for operational situations where Trade Me needs to refer a complaint to Police or where Trade Me needs to assist its members in making a complaint to Police.
8. Police will use the most appropriate internal Police communication channels to inform Police staff about the existence of this LOA and the obligations on the parties contained within it. Police will ensure that this information remains current so that frontline Police staff have the opportunity to stay in touch with any developments in the relationship between the parties.
9. Concerns about any matters, including operational or policy matters, will be raised through appropriate internal channels in the first instance, rather than through the media.
10. If either party is considering providing information or comment to the media on a matter which comes within the other party's responsibility or in which that other party has an interest, and in particular where it is anticipated the other party will be specifically mentioned, the parties agree to make best endeavours to consult the other party before making such comment.
11. In the first instance, the parties will attempt to resolve any issues, disputes or differences at the earliest opportunity at a local level.
12. Matters that remain unresolved will be referred to the Manager, Police High-tech Crime Group and the Head of Trust & Safety for resolution. If agreement cannot be reached within 28 days of this referral, the matter will be referred, in writing, to the Head of Platform Operations Trade Me and the Police National Manager: Criminal Investigations (or their representatives).
13. The parties agree that from time to time they may develop agreements or protocols relating to specific procedures and activities between them. With the approval of the Head of Trust & Safety and the Manager, High-tech Crime Group, these will be appended to this LOA as schedules.
14. Nothing in this LOA is intended to create legal relations between the parties and neither party will be liable for actions of the other.
15. This LOA is subject to Cabinet directives and any enactment.
16. This LOA supersedes any preceding LOAs or Memorandums of Understanding between the parties and commences on the date it is signed below.
17. This LOA will be reviewed no later than 2 years from the date of signature below.

Signed on this 27th day of October 2016.

Jon MacDonald
Chief Executive of Trade Me Group Limited

Detective Superintendent Tim Anderson
Police National Crime Manager



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Schedule 1 - Investigation response to Trade Me related offences

1. The Parties agree that:

- 1.1. The final decision in respect of the disposition of investigations referred to the Police by Trade Me rests with the Police; and
- 1.2. That any investigation undertaken by either party must comply with the rules of fairness and professional standards expected by any court in the criminal jurisdiction.

2. Role of Trade Me

2.1. In cases where Trade Me reports offending directly to Police, Trade Me will provide the Police (where possible or applicable) with the following detail or documentation with every criminal complaint referral:

2.1.1. Trade Me generated complaint form which includes the name of the relevant contact, including the investigator's contact details and a brief outline of the complaint, with the objective of being consistent with the content required of a Police investigation file.

2.1.2. Where appropriate, an investigation report, data extract from the Trade Me system, and any other relevant information to support a complaint.

2.1.3. An indication of possible charges.

2.2. In cases where it is more appropriate for the victim of alleged offending on Trade Me to report that offending to Police, Trade Me will provide a referral letter to the victim. That referral letter will contain the information referred to in 2.1.1 above.

2.3. Where a matter is referred to the Courts for trial, Trade Me will provide a statement (as may be required) for any Trade Me staff members who may be required to give evidence.

3. Role of Police High-tech Crime Group

3.1. The Police High-tech Crime Group will:

3.1.1. As necessary, work with Trade Me to develop suitable formats and templates of documentation required by Trade Me to support a complaint.

3.1.2. Maintain and share a list of staff at District level to act as liaison between the District, Trade Me and Police High-tech Crime Group.

3.1.3. Together with Trade Me co-ordinate the delivery of training and information to these District liaison officers.

3.2 Trade Me and Police staff in the relevant Police District will liaise directly with one another on all criminal investigations. If necessary, the Head of Trade Me Trust & Safety and Manager, Police High-tech Crime Group will contact each other to resolve any ongoing issues that may arise from time to time.

4. Role of Police District Liaison Staff

4.1. Staff receiving complaint files originating from Trade Me will:

4.1.1. Undertake to arrange investigation of the complaint whenever practicable and convey the final decision of warning, diversion, prosecution or other disposition to the



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victim, NC3, and Trade Me nominated contact within a reasonable timeframe, but less than one month of the disposition of the enquiry.

4.1.2. Advise the victim and Trade Me nominated contact of the reasons for any delay finalising the enquiry, beyond three months.

4.1.3 Where a suspect cannot be located and it is otherwise appropriate, enter the details of the suspect in the 'persons of interest' subsystem.

4.1.4. Provide assistance and be the contact person for local staff in relation to Trade Me enquiries.

5. Understanding

5.1. Should the Police fail to acknowledge a complaint or respond to correspondence in a timely manner from the nominated contact at Trade Me, Trade Me should follow the process set out at clauses 11 and 12 of the Letter of Agreement.

5.2. Police may return any referral to the Trade Me nominated contact if it is considered that:

5.2.1. The required standard of proof has not been met; and/or

5.2.2. The Trade Me nominated contact has failed to comply with the guiding principles of the LOA.

Signed on this 27th day of October 2016.

Signed for and behalf of Trade Me

Jon MacDonald
Chief Executive of Trade Me Group Limited

Signed for and on behalf of the New Zealand Police

Detective Superintendent Tim Anderson
Police National Crime Manager



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Schedule 2 - Protocol regarding the disclosure of information between Trade Me and the NZ Police

1. Sharing Information

1.1. When requesting or disclosing information the parties will balance the need to achieve the desired outcomes as set out in the Letter of Agreement (LOA) with the need to protect the rights of individuals and their rights to privacy. In particular both parties recognise the need for action to be consistent with the Privacy Act 1993.

1.2. The parties agree that only sufficient information to achieve the respective agency's purpose will be requested or disclosed by one party to the other party.

1.3. The parties are primarily responsible for ensuring that the intent of this LOA is followed by their employees.

1.4. The Police will make a request for personal information only if it is not possible to obtain the information directly from the individual concerned, either because it is not reasonably practicable to do so; or collection from the individual concerned would prejudice the purpose of the collection of such information; or collection of the information from the individual concerned would prejudice the maintenance of the law.

1.5. Where any personal information is released Trade Me to the Police under this agreement or under the Privacy Act or pursuant to a production order, the Police guarantee that the information and source of information will be protected, to the best of the Police's ability.

2. Process

2.1. To assist Police maintain the law and/or prevent, detect, investigate, prosecute and punish offences Trade Me will release information to Police, upon request, where Trade Me is satisfied on, reasonable grounds, that release is necessary, lawful and is compliant with Trade Me's privacy and confidentiality obligations to its members, except as provided in paragraph 2.3 and 24 of this schedule.

2.2 When requesting information from Trade Me, Police will:

2.2.1. Provides clear details of the information requested and the purpose for requesting the information and confirmation of the requesting officer's identity.

2.2.2 Make the request in writing unless agreed otherwise, using the Trade Me Information Request form.

2.2.3 Refrain from making verbal requests unless under urgency, where the time taken in managing a written request would cause a delay that would prejudice the maintenance of the law or would cause imminent risk to the personal safety of members of the public.

2.2.4 Follow up any verbal requests with a written request as soon as practicable after the verbal request has been made.

2.3. Trade Me may refuse to process a request if it does not meet the requirements set out in paragraph 2.1 or is not made in the format described in paragraph 2.2.

2.4. If Trade Me considers there may be grounds for withholding information requested by Police, those grounds will be communicated to Police as quickly as possible. The Police opinion on the refusal will be requested and considered prior to any final decision

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on disclosure. However, Police accept that Trade Me has the overarching right to request that Police obtain a production order for any information requested.

2.5. Where a production order is necessary to facilitate the disclosure of information, the information request form shall be accompanied by a properly issued and signed production order.

2.6. Trade Me will accept that a scanned copy of a production order addressed to Trade Me will be sufficient to consider the order executed.

2.7. Parties agree to respond to requests for information as soon as is practicable.

Signed on this 27th day of October 2016

Signed for and behalf of Trade Me

Jon MacDonald
CEO of Trade Me Limited

Signed for and on behalf of the New Zealand Police

Detective Superintendent Tim Anderson
Police National Crime Manager