



Part 9 - Production orders

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Summary

Purpose

This chapter provides information about production orders including:

- the effect of the orders and how they relate to other powers
- who may apply
- whose authorisation is required before applying
- the conditions to be met before applications can be made and orders issued or made
- the procedures for making applications
- the form and content of orders
- what can be done with documents seized under a production order
- requirements for reporting and document retention.

Definitions

This table details the meanings of terms used in this chapter.

Term	Meaning
Call associated data	Call associated data has the same meaning as in section 3(1) of the Telecommunication (Interception Capability) Act 2004.
Document	Document includes call associated data and the content of telecommunications in respect of which, at the time an application is made under section 71 for a production order against a network operator, the network operator has storage capability for, and stores in the normal course of its business, that data and content.

Related information

See also:

- [Offences relating to orders](#) in Part 1: Search introduction
- Part 10 - [Examination orders](#)



About production orders

What are production orders?

Production orders are orders made under section [74](#) of the Search and Surveillance Act 2012 requiring a person or organisation (such as a business) to produce documents to enforcement agencies as evidential material of a specified offence.

Production orders are issued by issuing officers. (These are the same people as for search warrants).

Production order versus search warrant

You have the choice whether a standard search warrant or production order should be sought for use in any given case. While compliance costs are incurred by a business issued with a production order, these costs are offset against the avoidance of the disruption that would otherwise occur by physical entry and search of the premises under a search warrant. Very often production order powers will be less intrusive and involve less cost, than using search warrants as an alternative.

Duration of production order

A production order is in force for the period specified in the order (not exceeding 30 days after the date on which the order is made).
([s76](#)).



Applying for a production order

Who may apply?

Any constable may apply to an issuing officer for a production order. (See further information about [making applications](#) in this chapter).

Approval to apply

You must seek prior approval from your [district approver](#) (word document, 69 KB) before making an application involving call associated data information. (New Zealand Police has agreed protocols with Telcos for obtaining call data information. See [Telecom inquiries](#) and the [Vodafone Protocol](#) in the Police Manual).

If your application relates to a news media organisation, you must:

- obtain approval from a Police Executive member in the case of PNHQ or a district commander for a district matter, and
- follow the guidance on [Search warrants involving media organisations](#) in "Carrying out search powers with or without a warrant".

In all other cases, obtain written authority to make an application for a production order from a constable of or above the position level of sergeant where practicable.

Requests from other agencies for Police to apply

Other agencies with investigative functions but without enforcement powers may request Police to obtain and execute a production order on their behalf. In these cases, follow the procedures in the [Search warrants chapter](#) > Applying for search warrants > Requests from other agencies for Police to make application.

Grounds for applying for a production order

You may apply for a production order if you have reasonable grounds to:

- **suspect** that an offence has been, is being, or will be committed (it must be an offence for which you could apply for a search warrant), and
- **believe** that the documents sought by the proposed order:
 - constitute evidential material in respect of the offence, and
 - are in the possession or under the control of the person against whom the order is sought, or will come into their possession, or under their control while the order is in force.

([s72](#))

How to apply

You must apply for a production order in writing along with a personal appearance before, or oral communication with, the issuing officer unless it is impracticable to do so in the circumstances. In this situation you may apply to:

- make an application [orally](#), e.g. by telephone or personal appearance, **or**
- have your application considered [without a personal appearance or oral communication](#).

([ss73](#)) & [100](#))

All applications for production orders **must** be made using prescribed forms available in Police Forms > Search and Surveillance > Production Orders.

Oral applications for a production order

An issuing officer may allow an application for a production order to be made orally (e.g. by telephone or by personal appearance) and excuse the applicant from putting all or part of the application in writing if satisfied that:



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- requiring a written application would result in a delay that would compromise the effectiveness of the search, **and**
- the question of whether the order should be issued can be properly determined on the basis of an oral communication or personal appearance, **and**
- all required information is supplied to them (orally, or partly orally and partly in writing).

(s100)

If an oral application is allowed:

- the issuing officer must record the grounds for the application as soon as practicable
- the applicant must complete:
 - the application form capturing the information conveyed to the issuing officer as soon as practicable and in any event within 24 hours, and
 - the order.

(s100)

Applications without personal appearance or oral communication

An issuing officer may allow an application for a production order without a personal appearance or oral communication if satisfied that:

- the question of whether the order should be issued can be properly determined on the basis of the applicant's written communication, and
- the information required for the application has been supplied to the issuing officer, and
- there is no need to ask any questions of, or seek any further information from, the applicant.

(ss73 & 100)

Information required in production order applications

Applications for a production order must include:

- the applicant's name
- the provision authorising the making of an application for a search warrant in respect of the suspected offence
- a description of the offence that it is suspected has been, is being or will be committed
- the facts relied on to show reasonable grounds to suspect an offence has been, is being or will be committed
- a description of the documents for which production is sought
- the facts relied on to show reasonable grounds to believe the documents sought are in the possession or under the control of the person against whom the order is sought
- whether the person should be required to produce those documents that are in their possession or under their control when the order is made:
 - on one occasion only, or
 - on an ongoing basis (i.e. at the time the order is made **and** which come into their possession or under their control at any time while the order is in force).

(s71(2))

Using hearsay evidence

Hearsay evidence can be used to outline the grounds on which the application is made, if it is highly reliable. Indicate its reliability by stating:

- the informant's credibility
- the informant's reliability and whether they have given reliable information in the past. An appropriate way to say this is: "In the past, Informant A has supplied Police with information that has proved to be reliable."
- whether the information has been confirmed by other means.



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If further information about an informant is required

Follow these steps relating to informant information if you are required to supply further information concerning the grounds on which the order is sought.

Step	Action
1	Do not name a confidential informant in the application or include any information that could lead to their identification.
2	Explain to the issuing officer that you do not want the identity of the informant revealed.
3	While an issuing officer may require you to supply further information concerning the grounds on which the order is sought, they must not , in any circumstances, require you to disclose the name, address, or other identifying detail of an informant unless , and only to the extent, that such information is necessary for them to assess: <ul style="list-style-type: none">• the credibility of the informant, and/or• whether there is a proper basis for issuing the order.
4	Note current Police guidance on providing sufficient information to judges issuing warrants about informants is contained in Law Notes issued in respect of R v Williams [2007] NZCA 52 (see Law Notes - 30 May 2007) and R v Dunedin District Court, so the warrant issuer can assess reliability.
5	Be prepared to withdraw any production order application if the issuing officer demands details that identify the informant.

Which issuing officers should you approach?

Always check the current list of authorised issuing officers in your district as they will change from time to time.

It is recommended that an issuing officer from a District or High Court is selected depending on where resultant proceedings are likely to be heard. If outside court hours or no court is available, take the application to another issuing officer.



Issuing production orders

Who issues production orders?

An issuing officer (as for search warrants) may make a production order against a person if satisfied on application that the [grounds for making a production order](#) are met.

(s74)

Form and content of production orders

A production order must be in the prescribed form and require the person against whom it is made (**person A**):

- to give the applicant, or a person identified in the order, any documents described in the order that are in their possession or under their control at the time the order is made or at any time while the order is in force, **and**
- if any of those documents are not, or are no longer, in the possession or under the control of person A, to disclose, to the best of their knowledge or belief, the documents' location to the applicant or person identified in the order.

The production order **must** set out:

- the name of person A
- the grounds on which the order is made
- the documents required to be given
- whether the documents must be produced on one occasion only, or on an ongoing basis for the duration of the entire order
- the time by which, and the way in which, the documents must be produced.

The production order may describe the documents required to be given by reference to a class or category of document.

Note: If the production order is made against a body corporate or an unincorporated body, the order may specify an individual (by name or by reference to a position held in the body) who is to comply with the order as the body's representative.

(s75)



Executing production orders

Execution without being in possession of the order

If it is not possible or practicable to have the production order in your possession when executing the order you may execute instead:

- a facsimile or a printout of an electronically generated copy of the order
- a copy made by the person to whom the order is directed, at the direction of the issuing officer and endorsed to that effect.

(ss [77](#) and [105](#))

Documents produced under production order

If any document is produced in compliance with an order, you may do one or more of the following:

- retain the original document if it is relevant to the investigation. In this situation you must, as soon as practicable, give a copy to the person who produced it
- take copies of the document, or of extracts from it
- if necessary, require the person producing the document to reproduce, or to assist any person nominated by the Commissioner or their delegate to reproduce, in usable form, any information recorded or stored in the document.

(ss [78](#) & [79](#))

Custody of produced things

See Part 12: [Procedures applying to seized and produced things](#) chapter for information about:

- the custody of produced things
- obtaining access to or the release of produced things
- when ownership is disputed
- return and disposal of produced things.

Responding to an assertion of privilege

See [Privilege relating to production and examination orders](#) in Part 13: Privilege and immunities under the Act.

When are orders invalid?

A production order is invalid if:

- having regard to the information in the application, the grounds for lawful issue of the order were not satisfied at the time of issue
- the order contains a defect, irregularity, omission, or want of form that is likely to mislead anyone executing or affected by the order as to its purpose or scope.

If an order is invalid, neither section [204](#) of the Summary Proceedings Act 1957 nor section [379](#) of the Criminal Procedure Act 2011 applies to that order.

(s [107](#))



Document retention and reporting

Retention of documents

When a production order is issued, **the applicant:**

must retain...	until the later of the following...
whether in electronic form or otherwise: <ul style="list-style-type: none">• the order• a copy of the application (if made in written form)• copies all documents tendered in support of the application	<ul style="list-style-type: none">• the date of completion of any proceedings in which the validity of the order may be in issue, or• the date of destruction or transfer of the order and other documents under the Public Records Act 2005 or any other enactment or rule of law.

(ss73(2)(d) & [101](#))

Reporting of production orders

There are no reporting requirements for production orders.