



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



# **Policy for Information Gathering for Regulatory Compliance, Law Enforcement and Protective Security Functions**

April 2019  
Version 1.0

## 1. Ministry of Business Innovation and Employment (MBIE) Principles Relevant to this Policy

This Information Gathering Policy aligns with MBIE's guiding principles of: ensuring a healthy, safe and secure environment; being a good employer; and acting within the law.

## 2. Purpose

MBIE must maintain public trust and confidence when gathering information to give effect to its responsibilities to protect people, information and places, to ensure regulatory compliance and to detect and prevent criminal offending.

The purpose of this policy is to ensure that appropriate guidance and processes are in place to:

- inform decisions regarding information gathering activities including new information gathering activities and changes to information gathering activities; and
- ensure that any information gathering activity that is carried out by, or on behalf of, MBIE is lawful, ethical, effective and conducted in a manner that maintains the public's trust and confidence in MBIE.

Considered and robust information gathering activities will enable MBIE to perform its regulatory compliance, law enforcement and protective security functions safely and confidently, to improve wellbeing and deliver the best results for New Zealand.

## 3. Scope

This policy applies to all staff, contractors and service providers, employed or engaged on any basis by MBIE, whether they are casual, temporary or permanent, whether full time or part time and whether they are located in New Zealand or in any other country.

This policy applies to:

- information that MBIE gathers for its law enforcement, regulatory compliance, and protective security functions; and
- information gathering activities to consider whether to take, and to take, any action or decision regarding penalties, sanctions, offences or prosecution under any legislation or regulation that MBIE administers or is responsible for. This includes taking action where a regulated party does *not* do something (e.g. does not comply with a permit, license, condition or visa).

The policy does not apply to information gathering activities for service delivery purposes, for example, information gathering prior to the grant of an application or right. Examples of activities to which this policy does not apply include information gathering to assess a visa application prior to grant, or information gathering for the purpose of registering of a company.

## 4. Definition of terms

**Information** both personal and non-personal information, and includes any information, fact, opinion or intelligence that does or could assist MBIE to fulfil or improve its regulatory compliance, law enforcement, or protective security functions – either alone or with another agency.

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<b>Gathering activity</b>	includes obtaining, whether actively or passively, by the following means and from the following sources: the Internet (websites, Google searches, social media); phone calls; interviews (voluntary and compulsory); tip-offs; written requests or emails; databases; search and production powers (e.g. search warrants, statutory notices, certificates); searches and inspections of people, places and goods (e.g. site visits, observations); requests to other agencies or entities (e.g. NZ government agencies, private sector companies, overseas governments and agencies) including on the basis of the exceptions in the Privacy Act; joint inter-agency operations; information feeds (APP information); direct system access (e.g. internal MBIE systems); internal intelligence products; analytics, trend information; memorandums of understanding; technical and scientific devices (GPS devices, biometric information collection, technical measurement devices); public registers and archives; and private records and archives (e.g. employer records).
<b>Law enforcement</b>	means identifying, investigating and/or prosecuting breaches of legislation, including identifying and prosecuting criminal offending.
<b>Regulatory compliance</b>	means ensuring that regulated parties comply with the laws, regulations, codes, and rules that MBIE sets and/or is responsible for, as informed by MBIE's regulatory compliance strategies, and may include MBIE seeking arrears, penalties or other sanctions.
<b>Protective security</b>	means MBIE's responsibility to protect its people, information and places.

## 5. Need help?

Advice and guidance on information gathering activities is available from various sources within MBIE, including your team or wider group. If you are unsure about whether an information gathering activity is legal and/or within the scope of what is appropriate for a state sector agency, utilise the following resources:

- Advice and guidance regarding compliance with legal information gathering requirements, recent court decisions, how to maintain professional distance with third parties, and concerns relating to unlawful information gathering is available from the Legal Team. Please see [Legal Services](#) on The Link and/or contact: [wgtlegal@mbie.govt.nz](mailto:wgtlegal@mbie.govt.nz)
- Advice and guidance on protective security is available from the Protective Security team. Please see the [Protective Security Policy](#) and/or contact: [prosec@mbie.govt.nz](mailto:prosec@mbie.govt.nz)
- Advice and guidance on wellbeing, health and safety is available from the Wellbeing, Health and Safety team. Please see the [Health, Safety and Wellbeing Policy](#) and/or contact: [safetyandwellbeing@mbie.govt.nz](mailto:safetyandwellbeing@mbie.govt.nz).

- Advice and guidance on privacy at MBIE, including managing potential and actual privacy events, and privacy impact assessments, is available on the [Privacy Hub](#) and/or from the Privacy Team: [privacyteam@mbie.govt.nz](mailto:privacyteam@mbie.govt.nz)
- Advice and guidance regarding assurance, including when an external review may be appropriate, is available from the Enterprise Risk and Assurance team. Please contact the Risk and Compliance Team: [managingrisk@mbie.govt.nz](mailto:managingrisk@mbie.govt.nz)

## 6. MBIE's information gathering principles

These principles must be taken into account when considering, or undertaking, information gathering for information and activities within the scope of this policy. The principles are intended to assist with deciding both whether an information gathering activity is legally permissible (i.e. can the information be gathered), and whether the activity is appropriate for MBIE to undertake (i.e. should the information be gathered).

### *Lawful*

1. Necessary
  - a. Gather only information that is reasonably necessary for the lawful regulatory compliance, law enforcement and/or protective security function (including to assist another state sector agency).
2. Considered
  - a. MBIE will consider whether an information gathering activity is both legally possible and reasonable.
  - b. MBIE will consider which authority or legislative tool is most appropriate to gather information, including with reference to the Search and Surveillance Act 2012.
3. Proportionate
  - a. Both the type of information and the way it is gathered must be proportionate to the purpose of the activity. This includes taking into account the public interest in the law enforcement, regulatory compliance and/or protective security activity.

### *Ethical and appropriate*

4. Transparent
  - a. MBIE will ensure that its information gathering activities are documented and will maintain a transparency statement.
5. Accountable
  - a. All information gathering is governed by this policy and is supported by a procedure.
  - b. Information gathering policies and procedures are reviewed and approved by a person or group not directly involved in the information gathering or the function that the information gathering relates to.

6. Act with integrity, be respectful and professional
  - a. All MBIE staff involved in information gathering activities will take into account obligations on public sector agencies, including those in the SSC and MBIE Codes of Conduct, by:
    - i. keeping professional distance;
    - ii. disclosing any actual or potential conflict(s) of interest;
    - iii. acting impartially, in accordance with legislative mandate; and
    - iv. raising concerns around potentially illegal information gathering activity in a timely and responsible way.
  - b. MBIE will ensure that actions of MBIE in gathering information maintain the trust of the general public and other stakeholders
  - c. When gathering information, MBIE will take into account:
    - i. the impact of information gathering activity on vulnerable community members (including children) and other relevant considerations including te ao Māori principles;
    - ii. any legally privileged information held by an individual;
    - iii. an individual's reasonable expectation of privacy, including with reference to the physical location that information is gathered; and
    - iv. protections in the Bill of Rights Act 1990, including the right to freedom of expression.

## 7. Policy statements

### *Written procedures are regularly reviewed*

All MBIE information gathering activities within the scope of this policy will be supported by a written procedure. MBIE teams will review their information gathering procedures at regular intervals, or when there are significant changes to the regulatory environment (for example, a decision of a tribunal or court concerning information gathering).

### *Transparency*

MBIE will be transparent about how it gathers information for its law enforcement, regulatory compliance and protective security functions. It will maintain a transparency statement on its website that generally describes these activities and will constructively engage with any feedback or complaint in relation to these activities.

### *Lawful, ethical and proportionate*

All MBIE information gathering activities will be conducted in accordance with the law and be proportionate with regard to the purpose of the activity, including the severity of the potential harm MBIE is aiming to address. In addition, MBIE will consider the appropriateness of a proposed information gathering activity with reference to the [State Services Commission's Standards of Integrity and Conduct](#).

### *Information gathering restrictions*

MBIE (including any contractors or service providers) will not gather information on, or classify as a security threat, an individual or group solely on the basis that they are exercising any of their democratic or civil rights, including their legal right to freedom of expression, association, and peaceful assembly to advocate, protest or dissent. For the avoidance of doubt, MBIE will not gather information on an individual or group solely to manage a risk to MBIE’s reputation.

*Training and guidance*

MBIE will support its staff with training and guidance on making decisions that are lawful, ethical and appropriate when conducting information gathering activities.

*Unlawfully gathered information*

MBIE will promptly raise concerns regarding information that appears to have been gathered unlawfully, unethically or inappropriately. Reporting will first be through internal channels (e.g. the Integrity team concerning staff wrongdoing, or the Privacy team concerning a privacy event), and then, where appropriate, to the New Zealand Police.

*Verification of information*

MBIE will take reasonable steps to verify and/or validate the 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; and the availability of other sources and/or powers to validate the information.

*Culture of continuous improvement*

MBIE will foster a culture of continuous improvement and confident regulatory stewardship by sharing information and working collaboratively with other agencies (internal and external) to increase its effectiveness and efficiency.

*Information gathering governance and assurance framework*

MBIE will maintain an information gathering governance and assurance framework that is regularly reviewed and will include:

- Clear accountability, including clear responsibility, for making decisions regarding gathering information.
- Decisions regarding new or changes to information gathering activity (including gathering information in a new way or using a new method) will be informed by a privacy impact assessment if personal information is being gathered. Where a decision affects only one business unit or branch, approval is required from an appropriate manager, committee or decision-making body, except in cases where the decision-maker has an independent statutory role or there are legislative or security restrictions.
- Evidence-based controls, to enable complete and meaningful assurance.
- Internal assurance and review activities, complemented by external review where appropriate.
- Robust and well-defined governance both at an operational and management level.

## 8. Key Accountabilities and Responsibilities

Role	Responsibilities
<b><i>Oversight, Governance and policy ownership</i></b>	

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Chief Executive	Overarching accountability for all MBIE information gathering activity and decisions. Approval of this policy.
DCE, CGI and DCE, SPP	Policy Sponsors
DCEs	Embedding of this policy and associated procedures into their business group, including developing and maintaining systems to allow timely and effective monitoring and evaluation of compliance
Director Regulatory Systems, Strategic Policy and Programmes	Policy Owner Responsible for: <ul style="list-style-type: none"> <li>• Providing advice to the Senior Leadership Team and Chief Executive on the quality and state of MBIE's governance to support information gathering and how that aligns with other aspects of MBIE's regulatory stewardship.</li> <li>• Ensuring this policy remains fit for purpose and in line with MBIE's guidelines on internal management policies.</li> <li>• Ensuring the policy meets the expectations of the State Services Commission model standards <i>Information gathering and public trust</i> alongside the relevant legislation and regulations.</li> <li>• Ensuring an annual review is conducted of this policy.</li> <li>• Gather compliance information about the performance of this policy.</li> </ul>
Regulatory Governance Board	Overseeing the performance of the overall MBIE governance and assurance regime for MBIE's information gathering activities.
Model Standards Information Gathering Oversight Committee	Provide advice, information and recommendations to the Regulatory Governance Board in relation to MBIE's information gathering activities and compliance with this policy
Operational critical risk management governance committee	Approve decisions for joint inter-agency work that relate to gathering information for a new activity, in a new way or using a new method, and as informed by a privacy impact assessment where required.
<b><i>Managing non-compliance</i></b>	
HR	Manage breaches of this policy in accordance with the Code of Conduct.
Integrity team	Investigate breaches of MBIE's Code of Conduct that have an element of potential fraud, corruption, dishonesty or bribery.
Procurement team	Manage complaints relating to information gathering activities carried out by suppliers on behalf of MBIE that do not comply with this policy.
<b><i>Advice and support functions</i></b>	
Enterprise Risk and Assurance	Assist business units with assurance activities in relation to information gathering activities, including when to seek external review of information gathering activities, processes and/or policies. Responsible for receiving complaints relating to information gathering activity that appears unlawful, and referring these

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	complaints to the Integrity and/or Procurement teams as required
Legal team	Provide advice regarding information gathering under this policy, including legal questions relating to information gathering activity.
Protective Security team	Provide advice regarding protective security issues, including in relation to the Government Protective Security Requirements
Privacy team	Provide general privacy advice; support and advice regarding: Privacy Act access and correction requests; and privacy impact assessments.
<b>Comply with the policy</b>	
All MBIE Staff, contractors, suppliers and service providers	Conduct information gathering activities lawfully, ethically and appropriately in accordance with their legislative mandate, this policy and related team or MBIE procedures. Consider discretionary activities in accordance with the principles in this policy. Promptly raise concerns regarding any information gathering activity that appears unlawful or inappropriate.

## 9. Procedures

MBIE staff (and any contractors and suppliers) that need to undertake information gathering activities will follow their team's written procedures.

MBIE's information gathering principles must be incorporated into decisions relating to new information gathering activities. Relevant decisions include those in relation to new methods of information gathering and new operations utilising existing methods.

## 10. Related policies and documents

The following documents and policies are to be read in conjunction with this policy and are available on the MBIE intranet or the internet. This is not an exhaustive list and other policies and documents may apply depending on the type of information gathering activity and/or type of information being gathered:

- MBIE Code of Conduct
- State Services Commission *Standards of Integrity and Conduct*
- State Services Commission model standards *Information gathering and public trust*
- MBIE External Security Consultants and Contractors Procurement Policy
- MBIE Health, Safety and Wellbeing Policy
- MBIE Joint Agency Investigation guidelines (in development)
- MBIE Legal Services Policy
- MBIE Records Management Policy
- MBIE Privacy Policy
- MBIE Protective Security Policy
- Solicitor-General's Prosecution Guidelines
- MBIE Prosecution Policy
- Information Gathering Governance and Assurance Framework (in development)
- MBIE Procedures for MBIE staff using social media for verification and investigation purposes to support regulatory, compliance and enforcement work
- MBIE Open Source Information Gathering procedure (in development)

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- MBIE Conflicts of Interest Policy

## 11. Relevant legislation and regulations

MBIE is responsible for administering many pieces of legislation, a number of which contain a mandate to gather information.

The following legislation is related to this policy:

- Privacy Act 1993, in particular the information privacy principles (section 6).
- Search and Surveillance Act 2012, in particular Parts 3 and 4
- Bill of Rights Act 1990, in particular sections 14-17 and 21.
- Health & Safety at Work Act 2015

This is not an exhaustive list and other legislation or regulations will apply to particular MBIE business units' information gathering activities. Offshore staff should take into account local legislation and regulatory requirements, and seek advice from local advisers where appropriate. Legislation that MBIE administers may contain specific provisions and powers relating to information gathering, for example:

- Building Act 2004 (e.g. section 204)
- Companies Act 1993
- Crown Minerals Act 1991
- Employment Relations Act 2000
- Holidays Act 2003
- Immigration Act 2009 (e.g. section 275)
- Insolvency Act 2006 (e.g. section 143(1)(b) and 171)
- Outer Space and High-altitude Activities Act 2017
- Plumbers, Gasfitters, and Drainlayers Act 2006
- Radio Communications Act 1989
- Residential Tenancies Act 1986
- Weights and Measures Act 1987

## 12. Measures of success

MBIE will measure the success of this policy when it identifies an increase in information gathering maturity.

Evidence of success will include:

- References to this policy in MBIE procedures governing information gathering activities.
- References to MBIE's information gathering principles in decisions relating to information gathering.
- Full compliance with the State Services Commission's model standards Information gathering and public trust.
- Reference to this policy in contracts with third party suppliers and in operations with other agencies.
- References to and consideration of this policy in associated risk register entries and mitigating controls.

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- Operational information gathering procedures being conducted in a manner which means that they can be reviewed, audited, and have assurance tasks completed on them.
- Each MBIE team that conducts information gathering within the scope of this policy has well-defined governance arrangements and decision making accountabilities across their regulatory compliance and enforcement functions.

### 13. Consultation processes in developing or reviewing this policy

Consultation has been and will be undertaken with appropriate stakeholders during the creation of or review this policy.

### 14. Compliance Management

Any guidance and processes developed to assist staff comply with this policy will be made available on The Link. These tools will help to ensure compliance with this policy and any related mandatory procedures, as well as identifying trends and risks so that they can be managed appropriately.

Compliance activities will include:

- Internal monitoring of compliance with any required processes, procedures and/or guidelines (including team-specific processes, procedures and guidelines);
- MBIE-wide assurance activities; and
- External advice where appropriate (including with reference to the Governance and Assurance framework)

Compliance information regarding the performance of this policy will be provided to Risk and Compliance on a quarterly basis.

Breaches of this policy will be managed in accordance with processes for breach of the MBIE Code of Conduct

General reporting on the operation of this policy will be provided to RGB.

### 15. Review

This policy will be reviewed within 6 months to ensure that it is fit for purpose.

The review will take into account legal, technological and environmental changes, including changes in legislation, governmental priorities, information regarding the public's expectations of state sector agencies, and the wider regulatory landscape in which MBIE operates.

### 16. Training and Communication

This policy will be available to all MBIE Staff by being published on MBIE's intranet page.

Role and/or function-specific training should be provided by business units to staff, contractors and service providers on the application of this policy and its incorporation into their procedures for specific information gathering activities. This training should be both at induction and on an ongoing basis.

A copy of this policy should be provided to all staff and third parties acting on MBIE's behalf who actively undertake, or have responsibility for, information gathering activities for regulatory compliance, law enforcement or protective security functions.