



Privacy (Information Sharing Agreement Between Inland Revenue, New Zealand Police, New Zealand Customs Service, and Serious Fraud Office) Order 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 10th day of August 2020

Present:

Her Excellency the Governor-General in Council

This order is made under sections 96J to 96L of the Privacy Act 1993 and section 18E of the Tax Administration Act 1994—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Revenue made in accordance with section 96N of the Privacy Act 1993.

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Order

1 Title

This order is the Privacy (Information Sharing Agreement Between Inland Revenue, New Zealand Police, New Zealand Customs Service, and Serious Fraud Office) Order 2020.

2 Commencement

This order comes into force on 1 October 2020.

3 Interpretation

- (1) In this order, unless the context otherwise requires,—

Act means the Privacy Act 1993

agreement means the information sharing agreement approved under clause 4

assets, in relation to an individual,—

- (a) means any real or personal property or interest in real or personal property that is or was held by the individual; and
- (b) includes any cash, within the meaning of section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, in bank accounts, accounts in financial institutions, shareholdings, and beneficial interests in trust held by the individual

associate, in relation to an individual (A), means an individual (B) with whom A is or was connected in an activity, an enterprise, or a business that is the subject of an investigation or a prosecution relating to a serious crime

domestic relationship means a current or previous relationship between an individual (A) and another individual (B) who is or was—

- (a) A's spouse or partner; or
- (b) a family member of A; or
- (c) another individual who ordinarily shares a household with A

employment information, in relation to an individual, includes—

- (a) information about the individual's current or previous engagement in a contract of service or a contract for service; and
- (b) information about the parties to that contract and the terms of the contract; and
- (c) any other personal information that is relevant to the engagement

financial relationship includes the following:

- (a) an individual's current or previous business or financial—
 - (i) relationship with another individual or an organisation or entity; or
 - (ii) interest in, or other linkage to, an organisation or entity:
- (b) the connection between an individual and—
 - (i) a company of which that individual is or was either a director or a shareholder, or both:
 - (ii) a trust of which that individual is or was any 1 or more of the following:
 - (A) a beneficiary:
 - (B) a trustee:
 - (C) a settlor:
 - (iii) a partnership in which that individual is or was a partner:

- (iv) a bank account number nominated for the individual's tax purposes

financial transaction information, in relation to an individual, means information about a movement of the individual's assets and liabilities or an agreement to move the individual's assets and liabilities

Inland Revenue means the Inland Revenue Department

liabilities means current and previous liabilities

NZ Customs means the New Zealand Customs Service

NZ Police means the New Zealand Police

participating agency means NZ Police, NZ Customs, or the SFO

personal information has the meaning given in section 2(1) of the Act

personal record, in relation to an individual, means a record of the individual's current and previous names, aliases, trade names, and contact details and the date of birth of that individual

serious crime means an offence that is punishable by a term of imprisonment of 4 years or more

SFO means the Serious Fraud Office

social assistance means child support, student loan, or Working for Families

social assistance information, in relation to an individual, means information about the individual's current and previous social assistance status, entitlement, debt, liability, payments, and balance

tax information, in relation to an individual, includes information about the current and previous tax affairs, tax class, income, tax paid, tax refunds, tax adjustments, liabilities, and expenditure of the individual.

- (2) Any term that is used but not defined in this order has the same meaning as in the Act.

4 Information sharing agreement approved

- (1) The information sharing agreement described in subclause (2) is approved.
- (2) The information sharing agreement is the Information Sharing Agreement between Inland Revenue, New Zealand Police, New Zealand Customs Service, and the Serious Fraud Office made on 27 July 2020.
- (3) The agreement comes into force on the day on which this order comes into force.

Parties and lead agency

5 Parties to agreement and designation of lead agency

- (1) The parties to the agreement are as follows:
- (a) Inland Revenue:

- (b) NZ Police:
 - (c) NZ Customs:
 - (d) the SFO.
- (2) The lead agency is Inland Revenue.

Purposes for which information may be shared

6 Purposes for which information may be shared

The agreement authorises the sharing of personal information between Inland Revenue and the participating agencies for the following purposes:

- (a) the prevention, detection, and investigation of a serious crime that there are reasonable grounds to suspect has been, is being, or will be committed:
- (b) providing evidence of a serious crime that there are reasonable grounds to suspect has been, is being, or will be committed:
- (c) the prosecution of serious crimes.

Public services that agreement facilitates

7 Public services that agreement is intended to facilitate

The agreement is intended to facilitate the following public services:

- (a) the maintenance of public safety:
- (b) law enforcement and crime prevention, in particular—
 - (i) the prevention, detection, and investigation of serious crimes; and
 - (ii) the provision of evidence of serious crimes.

Personal information that may be shared under agreement

8 Personal information that may be shared under agreement

Information Inland Revenue may share at the request of participating agency

- (1) Inland Revenue may, at the request of a participating agency, share with the participating agency the following information in relation to an individual described in subclause (2):
- (a) tax information:
 - (b) financial transaction information:
 - (c) information about assets:
 - (d) employment information:
 - (e) personal record information:
 - (f) social assistance information.
- (2) An individual referred to in subclause (1) is—

- (a) an individual (A) who the participating agency has reasonable grounds to suspect has committed, is committing, or will commit, a serious crime:
 - (b) an associate of A:
 - (c) an individual who is or has been in a domestic relationship with A:
 - (d) an individual who is or has been in a financial relationship with A.
- (3) Information may be shared under subclause (1) only if the test for sharing set out in clause 10 is met.

Information Inland Revenue may share proactively

- (4) Inland Revenue may, on its own initiative, share with a participating agency the following information in relation to an individual described in subclause (5):
- (a) personal information of the kind described in subclause (1)(a) to (f); and
 - (b) any other personal information that Inland Revenue discovers, however it does so, in the course of performing its usual functions and duties.
- (5) An individual referred to in subclause (4) is:
- (a) an individual (A) who Inland Revenue has reasonable grounds to suspect has committed, or will commit, a serious crime:
 - (b) an associate of A:
 - (c) an individual who is or has been in a domestic relationship with A:
 - (d) an individual who is or has been in a financial relationship with A.
- (6) Information may only be shared under subclause (4) if the test for sharing set out in clause 11 is met.

Information participating agency may share with Inland Revenue

- (7) When making a request under subclause (1), a participating agency may share with Inland Revenue information relating to the personal records of an individual described in subclause (2), along with any other personal information that may, in any particular case, be required to enable Inland Revenue to do either or both of the following:
- (a) identify the individual who is the subject of the request:
 - (b) assess whether the test for sharing in clause 10 is met.

Information obtained by compulsion

- (8) This clause is subject to clause 12 (which is about the sharing of personal information that Inland Revenue has obtained under section 17I or 17J of the Tax Administration Act 1994).

9 Sharing of information between participating agencies

Information shared by Inland Revenue with a participating agency under clause 8(1) or (4) may not subsequently be shared by the participating agency with any other participating agency.

10 Test for sharing information: request by participating agency

The test for sharing referred to in clause 8(3) that must be met before Inland Revenue may share personal information requested by a participating agency is that—

- (a) the participating agency considers that there are reasonable grounds to suspect that a serious crime has been, is being, or will be committed; and
- (b) the participating agency considers that there are reasonable grounds to suspect that the personal information requested is—
 - (i) relevant to the prevention, detection, or investigation of the serious crime; or
 - (ii) evidence relevant to the prosecution of the serious crime; and
- (c) the participating agency has confirmed that it believes that the amount of information requested is reasonable and proportionate, having regard to the purpose or purposes for which the information is requested; and
- (d) the participating agency has confirmed that, where practicable, it has taken all reasonable steps to obtain the information from other sources, without success; and
- (e) Inland Revenue—
 - (i) has determined that it is practicable to share the information; and
 - (ii) is satisfied that the scope of the information to be shared is limited to that which is necessary for the purposes of the particular request; and
 - (iii) is satisfied that it is reasonable, necessary, and in the public interest to provide the information to the participating agency.

11 Test for sharing information: Inland Revenue proactively sharing

The test for sharing referred to in clause 8(6) that must be met before Inland Revenue may proactively share information with 1 or more participating agencies is that—

- (a) Inland Revenue considers that there are reasonable grounds to suspect that a serious crime has been, is being, or will be committed; and
- (b) Inland Revenue considers that there are reasonable grounds to suspect that the personal information is—
 - (i) relevant to the prevention, detection, or investigation of the serious crime; or
 - (ii) evidence relevant to the prosecution of the serious crime; and
- (c) Inland Revenue—
 - (i) has determined that it is practicable to share the information; and

- (ii) is satisfied that the scope of the information to be shared is limited to that which is necessary in the circumstances of the particular disclosure; and
- (iii) is satisfied that it is reasonable, necessary, and in the public interest to provide the information to the participating agency.

12 Personal information obtained by compulsion

- (1) Inland Revenue must not share personal information obtained under section 17I or 17J of the Tax Administration Act 1994 with NZ Police or NZ Customs (whether in response to a request under clause 8(1) or proactively under clause 8(4)).
- (2) Inland Revenue may share personal information obtained under section 17I or 17J of the Tax Administration Act 1994 with the SFO only if—
 - (a) the SFO requests the information under clause 8(1); and
 - (b) the information is of a type described in clause 8(1); and
 - (c) the test for sharing in clause 10 is met.
- (3) Inland Revenue may impose conditions in relation to the security or use of information shared with SFO under subclause (2).

How personal information shared under agreement may be used

13 How personal information may be used

- (1) A participating agency may use the personal information that it receives from Inland Revenue under clause 8(1) or (4) for the following purposes only:
 - (a) the prevention, detection, or investigation of a serious crime, or as evidence in the prosecution of a serious crime; or
 - (b) producing data on crime trends, but only after the personal information has been anonymised.
- (2) Inland Revenue may use the personal information referred to in clause 8(7) for the purposes specified in that clause, and for the purpose of processing the participating agency's request.

Exemptions from information privacy principles

14 Exemption from information privacy principle 2 (source of personal information)

- (1) The parties are exempt from information privacy principle 2 as provided in subclause (2).
- (2) It is not a breach of information privacy principle 2 if—
 - (a) personal information is collected by a participating agency from Inland Revenue or by Inland Revenue from a participating agency; and

- (b) the collection of that information is—
 - (i) in accordance with the agreement; and
 - (ii) for 1 or more of the purposes stated in clause 6.

15 Exemption from privacy principle 10 (limits on use of personal information)

- (1) The parties are exempt from information privacy principle 10 as provided in subclause (2).
- (2) It is not a breach of information privacy principle 10—
 - (a) if—
 - (i) personal information that is collected by a participating agency from Inland Revenue is used by the participating agency; or
 - (ii) personal information that is collected by Inland Revenue from a participating agency is used by Inland Revenue; and
 - (b) if the use of that information is—
 - (i) in accordance with the agreement; and
 - (ii) for 1 or more of the purposes stated in clause 6; and
 - (iii) in accordance with clause 13.

16 Exemption from information privacy principle 11 (limits on disclosure of personal information)

- (1) The parties are exempt from information privacy principle 11 as provided in subclause (2).
- (2) It is not a breach of information privacy principle 11 if—
 - (a) personal information is disclosed by a participating agency to Inland Revenue or by Inland Revenue to a participating agency; and
 - (b) the disclosure of that information is—
 - (i) in accordance with the agreement; and
 - (ii) for 1 or more of the purposes stated in clause 6.

Adverse actions

17 Adverse actions

- (1) This clause states the adverse actions that a participating agency and Inland Revenue can reasonably be expected to take (if any) in relation to an individual as a result of the sharing of personal information under the agreement.
- (2) A participating agency can reasonably be expected to take law enforcement action in relation to the commission or suspected commission of a serious crime, and such action may, without limitation, include the following:
 - (a) the investigation or prosecution of potential serious crimes:

- (b) intervening to prevent serious crimes from being committed:
 - (c) detaining or arresting a person:
 - (d) seizing any thing:
 - (e) exercising a statutory power in relation to any action referred to in paragraphs (a) to (d).
- (3) Inland Revenue will take no adverse action as a result of the sharing of personal information under the agreement, other than to the extent that the following may be considered adverse actions:
- (a) using personal information that it receives from a participating agency about an individual to locate personal information that it holds about that individual; or
 - (b) sharing personal information that it holds with a participating agency about that individual.

18 Procedure before adverse action taken

- (1) Before taking any adverse action against an individual as a result of sharing personal information under the agreement, a participating agency must comply with—
- (a) all applicable internal policies and guidelines of the agency; and
 - (b) the Solicitor-General’s Prosecution Guidelines (as applicable).
- (2) The agreement provides that—
- (a) the participating agencies will not provide notice of adverse action under section 96Q of the Act; and
 - (b) to the extent that Inland Revenue’s actions may be considered adverse actions, Inland Revenue will not provide notice of adverse action under that section.

Miscellaneous

19 How to access agreement

- (1) A copy of the agreement is available online at the following websites:
- (a) <http://www.ird.govt.nz>:
 - (b) <http://www.police.govt.nz>:
 - (c) <http://www.customs.govt.nz>:
 - (d) <http://www.sfo.govt.nz>.
- (2) A copy of the agreement is also available at Inland Revenue, Asteron Centre, Level 5, 55 Featherston Street, Wellington.

20 Schedule 2A of Privacy Act 1993 amended

- (1) This clause amends the Privacy Act 1993.

- (2) In Schedule 2A, repeal the item relating to the Information Sharing Agreement between Inland Revenue and NZ Police.
- (3) In Schedule 2A, after the item relating to the agreement between the Department of Internal Affairs and the Registrar-General made on 18 October 2019, insert the item set out in the Schedule of this order.

21 Revocation

The Privacy (Information Sharing Agreement between Inland Revenue and New Zealand Police) Order 2014 (LI 2014/184) is revoked.

Schedule
Amendment to Schedule 2A of Privacy Act 1993

cl 20

Information sharing agreement between Inland Revenue, New Zealand Police, New Zealand Customs Service, and the Serious Fraud Office made on 27 July 2020	The maintenance of public safety. Law enforcement and crime prevention, in particular, the prevention, detection, and investigation of serious crime and the provision of evidence of serious crime.	http://www.ird.govt.nz http://www.police.govt.nz http://www.customs.govt.nz http://www.sfo.govt.nz	Inland Revenue	(a)	tax information:
				(b)	financial transaction information:
				(c)	information about assets:
				(d)	employment information:
				(e)	personal record information:
				(f)	social assistance information:
				(g)	other personal information discovered by Inland Revenue in the course of performing its duties.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 1 October 2020, approves an information sharing agreement entered into under the Privacy Act 1993 (the **Act**) between Inland Revenue, the New Zealand Police, the New Zealand Customs Service, and the Serious Fraud Office.

Under the agreement, the parties can share personal information for the purposes of the prevention, detection, or investigation of a serious crime or that is evidence in the prosecution of a serious crime. Serious crime is defined as a crime that is punishable by imprisonment for a term of 4 years or more.

Inland Revenue may share the information described in *clause 8(1)* with the New Zealand Police, the New Zealand Customs Service, or the Serious Fraud Office (each a **participating agency**) if the test for sharing information is met (*see clause 10*). Inland Revenue may proactively share any personal information described in *clause 8(1)* with a participating agency if the test for proactively sharing information is met (*see clause 11*).

This order includes provisions stating—

- the purposes for which personal information may be shared:
- the public services that the agreement is intended to facilitate:
- the categories of personal information that may be shared:
- how the parties may use the personal information:
- the information privacy principles from which the parties to the agreement are exempt:
- the adverse actions that the parties may be expected to take as a result of the sharing of the personal information.

This order inserts into Schedule 2A of the Act information regarding the agreement that is required to be inserted under section 96L(3) of the Act.

Regulatory impact statement

The Inland Revenue Department produced a regulatory impact statement on 20 August 2019 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://taxpolicy.ird.govt.nz/publications/year/2020>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

**Privacy (Information Sharing Agreement Between
Inland Revenue, New Zealand Police, New Zealand
Customs Service, and Serious Fraud Office) Order 2020**

2020/196

Issued under the authority of the Legislation Act 2012.
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This order is administered by the Inland Revenue Department.

Wellington, New Zealand:

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