

<b>INFORMATION REQUEST</b>	
<b>Considerations by the Privacy Commissioner on the DDA elements of the Arms Bill</b>	
Deadline: 19 August 2019	Date of Response: 22 August 2019

## Purpose

1. The Privacy Commissioner has written to Ministers seeking a revision of the Direct Data Access (DDA) provisions in the upcoming Arms Act amendment. The Privacy Commissioner remains unconvinced of the need for a DDA mechanism to enable other agencies to access the firearms registry. This paper discusses those concerns and attaches a proposal that has been in development over past weeks.
2. Work was underway with a variety of agencies to determine appropriate DDA access to the firearms registry to help them manage staff safety. Following the Privacy Commissioner's earlier engagement, along with mixed responses from Ministers, this work has been put on hold and the proposed DDAs removed from current iterations of the Bill and Cabinet Paper.

**A range of policy work and engagement across government has been undertaken, but the Privacy Commissioner remains unconvinced of the justification for DDAs.**

3. The Privacy Commissioner wrote to Ministers on 5 August outlining several concerns with the proposals to enable DDA to and from the firearms registry.
4. Since then significant further policy work has been undertaken and decisions made, including those matters for which Ministers have indicated greater comfort, including:
  - 4.1. an agreement that there would be no DDA provisions in the Bill that would allow Police to access other agencies' information. This has been excluded from drafting.
  - 4.2. work with the Ministry of Health to narrow the scope of health practitioners to those are best placed to assess risks<sup>1</sup>. The conditions under which health practitioners can access the register under a DDA are that they must be a treating professional and there must be a clinical assessment that a person is a risk to themselves or others. Further details such as audit provisions will be set out in regulations. This proposal is included in the Bill.
  - 4.3. work with agencies with administrative functions in the firearms regime such as Customs and the Ministry of Foreign Affairs and Trade (MFAT) to determine their need to access the register to help with tracking and tracing firearms. These two agencies are included in the DDA provisions in the Bill.

<sup>1</sup> The scope includes registered medical practitioners, Nurse Practitioners, Duly Authorised Officers, such as crisis mental health professionals, and psychologists.

- 4.4. Further work with agencies that face staff safety risks to determine the potential for those agencies to access information from the registry and the limitations on such access. The more recent feedback received from the Privacy Commissioner has not been informed by this additional work.
5. The matter for consideration is whether agencies that have frequent contact with clients at their homes or in the community and are concerned about their staff safety should have DDA access to check the existence of a firearms licence linked to a particular name, or the registration of a firearm to a particular location.
- s 9(2)(g)(i)

Points to note are:

- 5.1. agencies would be tightly limited in their ability to access to the register because they must conduct their own risk assessment and determine that a risk to staff safety is present, before accessing the register. In this situation, only a small proportion of those with a firearms licence are likely to have their information checked. In addition, the existence of a firearm licence, or a firearm registered to a specified address cannot be seen as a proxy for risk, but information that in a situation of already identified risk, can assist agencies determine the nature of risk their staff may face.
- 5.2. agencies may not access names or addresses on the registry. They would only receive a positive or negative to a query concerning a name and/or address of a client already known to that agency
- 5.3. the details of any and each DDA would be set out in bilateral agreements between Ministers, and Police would undertake consultation with the Privacy Commissioner and with the new statutory firearms advisory group to be established through the forthcoming Firearms Legislation Bill during the development of the DDAs
- 5.4. Further work has identified additional administrative needs, similar to that already identified for MFAT and Customs. The Department of Conservation has noted that they require visibility of firearms licence holding to enable them to issue hunting permits. Inland Revenue requires visibility of import and export information to assess tax compliance for gun importers and exporters. Police considers that these situations justify DDA arrangements.

#### **Key issues raised by the Privacy Commissioner**

6. We understand the Privacy Commissioner appreciates the work Police has undertaken to narrow the scope of agencies, information types and purposes. However, his Office has indicated that it remains unconvinced of the rationale for DDA provisions. The OPC's preference is instead that Police operates within the bounds of the Privacy Act – with query to Police being made on a case by case basis as is the status quo.
7. The Privacy Commissioner is concerned about the potential for misuse of firearms information and the unintended safety consequences for people who have firearms licences or people living at addresses at which firearms are stored

who may become a target for firearms theft. The risks are increased the more people have access to the information.

#### *Controls over misuse*

8. The Bill would specify that DDA agreements must:
  - 8.1. describe the level of authority or seniority in an agency at which access to the firearms registry is approved, which provides accountability within Government agencies
  - 8.2. set out the conditions for access to the registry including the requirement to identify a risk to staff safety through an effective risk assessment. A DDA agreement will provide for audits and processes for breaches of privacy. Including reporting breaches to the OPC.
9. In addition, Police's system would create a digital footprint in the case of misuse, which acts as both a deterrent and a means of investigation

#### **Policy considerations**

##### *The rationale*

10. The risks of over-access to information must be balanced against the risk that information is not accessed at all when it could have minimised the risk of misuse of a firearm.
11. At the heart of Police's rationale for making provision for DDA's with other agencies is the protection of staff within the public service. In practice, the kind of case by case information exchange envisaged by the Privacy Commissioner places much weight on decision-makers assessing their risks accurately and taking the steps required to engage across agencies. However, a shooting is a low probability, high impact event. In post-event review, it is common to find that important information that should have been shared on a case by case basis wasn't.<sup>2</sup> DDA provisions therefore reduce the opportunity for human error and single points of failure

##### *Health information flows*

12. Cabinet agreed that doctors and mental health professionals should have a responsibility to inform Police of health concerns. The physical or mental state of a person can be a key factor as to whether they are safe to hold a firearms licence for their own or others' safety. Enabling health professionals to fulfil this responsibility requires them to be able to access information about whether an individual holds a firearms licence or has access to firearms.
13. Putting such a responsibility on health professionals without access to firearms licencing information creates the potential risk of significantly higher sharing of information as health professionals may feel obliged to provide a notification of

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<sup>2</sup> Reducing Error and Influencing Behaviour  
<https://www.hse.gov.uk/pUbns/priced/hsg48.pdf> Behavioural Insights

risk with the 4.5 million New Zealanders who do not own a firearms licence as well as for the 255,000 who do “just in case”.

14. As with the proposed information sharing above, only a yes/no response to a query is possible, no other information on the individuals would be shared.
15. Police agrees that there remains considerable work before the appropriate conditions and limitations are put in place. Providing for data sharing of this kind requires a regulatory process to be undertaken during 2020. This is the time for the detail to be pursued and agreements with Cabinet to be sought. As part of this work Police will undertake consultation with the Office of the Privacy Commissioner and with the statutory advisory body to be established by the Firearms Legislation Bill.

*The potential for misuse of information*

16. The Privacy Commissioner is concerned about increasing access to information because the more people who know where firearms are stored the greater the risk that this information will be misused and provided to people who intend to steal firearms. This elevates safety risks for firearms licence holders. Police is well aware of this concern.
17. For health practitioners, the risk of misuse in this way is mitigated through a number of factors. The access has been significantly narrowed down by the conditions under which health practitioners can access the registry. Only specified health professionals would be able to query the register and only after a medical history is taken, an examination has occurred, and the health professional has formed a clinical suspicion that the person poses a risk of harm to themselves or to others.
18. Importantly, the Bill was not proposed to enable health practitioners to access information on firearms being registered to a particular address. This information may be helpful as it would identify the risk of a person that poses a risk of harm to themselves, or others, having access to a firearm licensed to another person. However, effective security should limit inappropriate access and this does provide a level of information on address that may be a step too far.
19. Further, the consequences of misuse of information for health practitioners is high given they are regulated under the Health Practitioners Competence Assurance Act 2006. Misuse of firearms information could result in disciplinary action and the consequences of this on a professionals' ability to practice are significant.
20. Police considers that firearms information, when accessed by a health professional would be held in the same way as other health data on that individual and is not aware of such information being misused, leaked, or made available to any great extent. We do not see the justification for the Privacy Commissioner suggesting that this arrangement creates “a situation where holding a firearms license will be public knowledge”.

## Next steps

21. There is now a small extension to the time available to complete the Bill (now intended to go to CBC on 2 September and Cabinet on 9 September). Within this time, Police would be happy to workshop the issues identified with the Office of the Privacy Commissioner to see if agreement could be reached on appropriate framing of the primary legislation that mitigate the Bill's impacts on privacy.
22. If DDA arrangements are not to be pursued for staff safety purposes through the Firearms Legislation Bill, Police will work with other agencies to progress Memoranda of Understanding, or AISA arrangements to enable case by case information to be appropriately shared to minimise public service staff risk.

## Recommendations

Police recommends that you:

- a) discuss the Privacy Commissioners concerns with him
- b) signal to the Privacy Commissioner that with a new timeframe for the Bill, there may be time for Police to work with the Office of the Privacy Commissioner to develop proposals that mitigate the Bill's impacts on privacy
- or
- c) instruct Police to cease work on DDAs for staff safety purposes.

	s 9(2)(a)	









