

## **Part 9 - Production orders**

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## Executive summary

Key points to note:

- You have the choice whether a standard search warrant or production order should be sought in any given case. Businesses can offset the costs of complying with a production order against the avoidance of the disruption that would otherwise occur by physical entry and search of the premises under a search warrant.
- Using a production order should be an effective investigative tool and the offence(s) under investigation be sufficiently serious to justify the resource.
- The information sought should not make unreasonable or unnecessary demands on a provider of information, whom the order is against. Stipulate a reasonable delivery period (not less than a week). Otherwise in the case of a telecommunications provider apply for a surveillance device warrant.
- Your [district approver](#) must approve applications for production orders directed at a telecommunications provider for obtaining call data information.
- A Police Executive member or District Commander must approve production order applications relating to news media organisations.

## Overview

### Purpose

This part of the 'Search' 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 <a href="#">3(1)</a> of the Telecommunication (Interception Capability and Security) Act 2013.
Document	Document includes call associated data and the content of telecommunications in respect of which, at the time an application is made under section <a href="#">71</a> 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.
Network operator	Network operator has the same meaning as in section <a href="#">3(1)</a> of the Telecommunication (Interception Capability and Security) Act 2013.

([s 70](#))

### 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](#))

### Setting duration of production order

Ensure application time periods under section [76](#) are reasonable when seeking a production order.

In [Makaea v R](#) [2018] NZCA 284 the Court of Appeal found a high level of care is required by enforcement officers when determining whether the duration of a production order can be justified, particularly with the intrusion of privacy associated with cell phones.

**Note:** A shorter period may be desirable, with the option of obtaining a further order if circumstances warrant it.

## 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).

(s71(1))

### Approval to apply for production order directed at telecommunications provider

You must seek prior approval from your [district approver](#) before making an application directed to a telecommunications provider seeking information such as call associated data, or content.

### Matters to consider before granting approval

Before granting approval to apply for production orders, the district approver must take these matters into account and be satisfied:

- the grounds for applying for a production order are met
- the resource benefit of making an application is advantageous to Police and the investigation (i.e. the use of a production order is an effective investigative tool and the offence(s) under investigation are sufficiently serious to justify the resource)
- the information sought does not make unreasonable or unnecessary demands on the telecommunications provider, whom the order is against, particularly if those documents sought are forward looking (i.e. documents and call associated data coming into the control of the person etc whom the order is against while the order is in force). See the '[Issues for corporate recipients of production orders](#)' below for further information about the issues confronting individuals and organisations.

See '[Issues for corporate recipients of production orders](#)' for further information about the issues confronting individuals and organisations.

**Note:** The issuing officer will also apply external oversight of the grounds, reasonableness and necessity of the application when deciding whether or not to issue a production order.

### Production order wording for information from telecommunication providers

Production order wording can be found on the [CADARN](#) application. The CADARN application was created to normalise New Zealand call data record (CDR) spreadsheets. CADARN works by creating a single file that has call data from one or more CDR spreadsheets. The wording assists with all production orders going forward specifically where sim card origin information is requested. CADARN will accept the latest versions of the CDR spreadsheets from the following telcos:

- Spark ([Sparks new production order portal](#) - for further information click on the link)
- [One NZ](#) (previously Vodafone) - now at 74 Taharoto Road, Takapuna, Auckland
- 2degrees.

### Approval to apply for production order directed at media organisation

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, production orders and examination orders involving media organisations](#)' in '[Carrying out search powers with or without a warrant](#)'.

### Approval to apply for production order (other than media organisation and telecommunications provider)

Where practicable obtain written authority to make an application for a production order from a constable of or above the position level of sergeant where practicable.

## Issues for corporate recipients of production orders

All corporate organisations are confronted with these issues when they receive production orders:

- Rejecting production orders for want of accuracy and form.
- Seek an order for the full 14 days or 30 days where appropriate as the recipient needs time to action your request.
- Stipulating an unreasonable time period. Do not seek an order requiring delivery of the results within a short period of time. For example, delivery in 2 days. The delivery of the response should be every seven days, unless the circumstances dictate that it is important for a shorter time to be requested. See '[Stipulate reasonable delivery period for forward looking orders for Telco data](#)' for [call associated data](#) (CAD) from Telco agency teams for information about what is reasonable, alternative action and situations of urgency or emergency.
- The production order should be addressed to the corporate name of the organisation e.g. '2 Degrees Mobile Limited' etc. and not a named employee at that organisation unless there are special reasons to depart from this standard. Note that named employees will be concerned about their legal risks should they not comply within the required timeframes.
- In relation to telecommunication providers, requests for call associated data, content, subscriber details etc. that cannot be covered by an information request should be sought using a production order not a search warrant. **Note:** Should an information request form be acceptable for the type of information sought, then they are available on Police Forms > Reports.

**Note:** Seek advice, if you have not previously made application for a production order.

## Stipulate reasonable delivery period for forward looking orders for Telco data

When seeking forward looking production orders for [call associated data](#) (CAD) from a telecommunications provider (e.g. Spark, One NZ) ensure you stipulate a reasonable delivery period.

The period that you want the data delivered to you should be at least every week and not less. Shorter delivery periods cause considerable pressures for stretched Telco agency teams. If you seek daily data extractions, then apply for a surveillance device warrant. See the '[Surveillance](#)' chapter for making application for a surveillance device warrant.

If your case involves urgency or an emergency, then consult with the agency team who will endeavour to comply with your need.

## 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 '[Government agency requests for assistance with search warrants and production orders](#)'.

## 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 communication orally 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:

- 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(3))

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(4))

## 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:

- sufficient information to prove the reliability of what has been stated



- 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.

## **If further information about an informant is required**

See 'What should be included and avoided in applications' in [Search warrants](#) for the definition of 'informant', and the restrictions on revealing identity of informants and including Covert Human Intelligence Sources (CHIS) information in your production order application.

## **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.

## Application procedure for production orders

Preparation of the 'Application for a Production Order', 'Production Order', 'Production Order Cover Sheet', obtaining internal approval and submission of issued order and cover sheet are completed electronically.

### Requestor's procedure

A requestor for a production order must complete the following steps:

Step	Action
1	<p>Conduct pre-application checks:</p> <ul style="list-style-type: none"><li>- Set-up a NIA Case reference (file number) if one does not already exist.</li><li>- Complete background checks.</li></ul>
2	<p>Prepare and print the application and order:</p> <ul style="list-style-type: none"><li>- Ensure file number is included on the application and order.</li><li>- Sign the application.</li></ul> <p><b>Note:</b> 'Applications for Production Orders' and 'Production Orders' <b>must</b> be made using prescribed forms available in Police Forms &gt; Search and Surveillance &gt; Production Orders.</p>
3	<p>Seek prior <b>approval</b> to apply for production order. If order is directed:</p> <ul style="list-style-type: none"><li>- at telecommunications provider obtain approval from <a href="#">district approver</a></li><li>- at a media organisation obtain approval from Police Executive member in the case of PNHQ or District Commander for a district matter</li><li>- at other than a media organisation and telecommunications provider obtain approval from the position level of sergeant or above where practicable.</li></ul>
4	<p>If approved, present application to an issuing officer to issue order.</p> <p><b>Note:</b> A production order does not require the issuing officer's signature. All that is required is the name or other individual designation of the issuing officer (i.e. a number or a code).</p>
5	<p>Prepare 'Production Order Cover Sheet'. The form can be located in Police Forms (via Microsoft Word) in two folders (each folder is identical to the other).</p> <p><b>Go to</b> Police Forms (I-Z):</p> <ul style="list-style-type: none"><li>- &gt; Information Requests, or Search and Surveillance &gt; Production Orders</li><li>- &gt; Information Request Form / Production Order Cover Sheet (wait 3 seconds and 'Information Request Form - Page 1' information box will appear on the screen) &gt; complete details in the box, select 'Production Order Cover Sheet' and click on 'Next Page' to finalise details.</li></ul> <p>The 'Production Order Cover Sheet' is fully populated from the details you have entered and is to be saved and printed.</p> <p><b>Note:</b> Once the cover sheet is completed and saved, it cannot be altered. If it is incorrect, it can be disposed of and a new one created.</p>
6	<p>Attach the 'Production Order Cover Sheet' and 'Production Order' in an email and send to the agency providing the information (or upload it to the <a href="#">portal</a> in the case of a Spark NZ Production Order). The agency will provide the information directly to the requestor.</p>

## 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)

### Is issuing officer's signature required?

A production order does not require the issuing officer's signature. All that is required is the name or other individual designation of the issuing officer (i.e. a number or a code). Section [89\(1\)](#) of the Act sets out the application of Part [4](#). It is reasonable to assume that the same issuing requirements apply as for search warrants in the absence of further guidance. Part [4](#) applies to production orders (section [89\(1\)\(d\)](#) and (e) refers) and section [103\(4\)\(a\)](#) is in Part 4.

### 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 when the order is made or at any time while it 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 for the person executing the production order to have the order in their possession when executing it, one of the following may be executed:

- 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.

(s [78](#))

### Copy of retained document to be given

When you decide to retain a document that has been produced in compliance with a production order, you must as soon as practicable after the document is produced, take a copy of the document and give the copy to the person who produced the original document.

(s [79](#))

### Custody of produced things

See '[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 '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 and security of production order documents

The responsibility for retaining and securing a production order application once it has been presented for signing, remains with the issuing officer.

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

must retain...	until the later of the following...
in electronic form or otherwise: <ul style="list-style-type: none"><li>- the order</li><li>- a copy of the application (if made in written form)</li><li>- copies all documents tendered in support of the application</li></ul>	<ul style="list-style-type: none"><li>- the date of completion of any proceedings in which the validity of the order may be in issue, <b>or</b></li><li>- 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.</li></ul>

(ss [73](#)(2)(d) & [101](#))

For further information, see 'Retention and security of warrants and applications' in the '[Search warrants](#)' chapter. The guidance for search warrant documents also applies to production order documents.

### Reporting of production orders

There are no reporting requirements for production orders.