

Chair, Cabinet Social Wellbeing Committee

APPROVED INFORMATION SHARING AGREEMENT TO DISCLOSE NAME CHANGES, DEATHS, AND NON-DISCLOSURE DIRECTIONS

Proposal

1. This paper seeks agreement to instruct the Parliamentary Counsel Office (PCO) to draft an Order in Council that will approve an Information Sharing Agreement between New Zealand Police and the Registrar-General of Births, Deaths, and Marriages (the Registrar-General).

Executive Summary

2. The Approved Information Sharing Agreement (AISA) will enable Police to receive information about registered name changes, registered deaths, and non-disclosure directions from the Registrar-General.
3. The draft Agreement sets out what information will be shared, about whom, the purpose of sharing, and how that information will be protected.
4. Some minor changes to the draft Agreement were made in response to the broadly supportive public submissions received on it in late 2018. The Privacy Commissioner supports the final version of the draft Agreement.
5. In accordance with the Privacy Act 1993 agreement is now being sought to draft the Order in Council that will approve the draft Agreement.

Background

6. The AISA is one of the initiatives being implemented as part of the Progressive Steps Project to improve sharing of identity information among certain agencies. The Progressive Steps Project is part of a wider work programme responding to the Government Inquiry into the Escape of Phillip Smith/Traynor (the Inquiry). I have recently reported back to Cabinet about the next stage for justice sector identity management work [CAB-19-MIN-0110].
7. An AISA is a legal mechanism enabled under the Privacy Act that authorises the sharing of information between agencies to facilitate the provision of public services. It can authorise information sharing that would otherwise breach the Information Privacy Principles of the Privacy Act.
8. The Cabinet of the previous Government agreed that an AISA should be developed to enable the Registrar-General to regularly share death and name change information with Police [CAB-17-Min-0414].

9. In October 2018, Cabinet agreed to release a draft of the Agreement and an accompanying discussion document for public consultation [CAB-18-MIN-0484]. The draft Agreement also proposed sharing information about non-disclosure directions applied for under the Births, Deaths, Marriages, and Relationship Registration Act 1995 (which restrict access to records to protect the safety of a person) following feedback from the Ministry for Women.

The Registrar-General will proactively share information with Police

10. The Agreement (attached at Appendix 1) will enable the Registrar-General to proactively supply to Police details relating to registered name changes, deaths, and non-disclosure directions. The information will be provided regularly in bulk batches through a secure file transfer. Police will then match this data against the records held in the Police National Intelligence Application (NIA), the system used by Police to manage information needed to support operational policing.
11. The Registrar-General can currently share this information where it is required for law enforcement purposes. However, this relies on Police either actively dealing with a person and making a specific query to the Registrar-General at that point, or seeking confirmation of information already known or suspected by Police. There is no current process where Police is proactively provided with this information.
12. The Births, Deaths, Marriages, and Relationship Registration Act enables certain personal information to be shared by the Registrar-General under an AISA. Police and the Department of Internal Affairs (DIA) considered alternative information sharing options, including through a Memorandum of Understanding, authorising disclosure of information to Police under another section of the Births, Deaths, Marriages, and Relationship Registration Act, or sharing under the Privacy Act. These options did not provide the same clear legislative authority for Police to regularly receive this information as an AISA.
13. Police requires the information regularly because it is not generally aware of the majority of cases where a person has changed their name, died, or has a non-disclosure direction in force. If the sharing was based on individual queries from Police to the Registrar-General, a large proportion of persons who changed their names, died, or had non-disclosure directions in force on their records would not be known to Police.

The AISA will help Police to maintain accurate records to improve public safety

14. The objective of the Agreement is to improve the accuracy of Police information in NIA about individuals. This will include victims, witnesses, and other people for whom Police has a record of identity. This will assist the Police in carrying out its function relating to the maintenance of the law, including maintaining public safety, law enforcement, crime prevention, and intervention to prevent or reduce harm to individuals and New Zealand society in general.
15. There are significant benefits to Police receiving the information. Police will be better able to reduce the risk that offenders escape justice by changing their names. Being aware of a new name will help Police to engage with people,

whether to assist in knowing their preferred name when following up on a complaint, discussing a crime against the person, or to provide a service to them. Having accurate information on whether a non-disclosure direction is in force enables Police to better manage the use of that person's information.

16. A number of safeguards exist to protect the personal information and minimise privacy risks. If a successful match in NIA is found, the person's NIA record will be updated to show they are now deceased, have changed their name, or have a non-disclosure direction in force. The information provided by the Registrar-General to enable the update of NIA will then be securely destroyed. Any information that does not match a record in NIA will also be destroyed.
17. Police will only update existing records in NIA, not create new records. The exception will be the creation of a new record in NIA for a person with a non-disclosure direction who has not come into contact with Police before, so that Police will know to protect the name of that individual if they come into contact with them in the future.
18. More accurate identity information in NIA will enable Police to:
 - 18.1. link two identities to one individual (for example linking to an existing identity and the associated criminal histories)
 - 18.2. maintain accurate records by correcting identity information (for example to maintain accurate registers or to enforce court orders or warrants)
 - 18.3. detect and correct false information provided by individuals (for example detecting identity fraud or persons attempting to evade Police), and
 - 18.4. protect the identity of individuals who have a non-disclosure direction in force.
19. There is some information that will not be shared with Police under the AISA. This is pre-adoptive birth registrations, pre-sexual assignment or reassignment birth registrations, and birth, name change, or death registrations with a non-disclosure direction under the Domestic Violence Act 1995. This is because this information is subject to different access rules and cannot be shared utilising an AISA. Police can access this information on a case-by-case basis outside the proposed AISA.

Feedback from Public consultation

20. Public consultation on a draft of the Agreement was undertaken between 9 October and 6 November 2018 with five submissions received. Of those, two were from individual citizens and three were from organisations. In summary, there was broad support for the Agreement across submitters, with none opposed to it. Three submitters made suggestions to improve or revise the Agreement. A summary of submissions is attached at Appendix 2.
21. Matters raised included the level of specificity with which the draft Agreement describes the information to be shared; how the information would be shared;

and the policy justification for the Agreement covering 'non-offenders' (eg, victims and witnesses). The majority of submitter feedback, however, covered privacy issues – including:

- comment on the Agreement's proposal that Police dispense with the adverse action notice requirement under section 96Q of the Privacy Act
- potential clarification of the wording in clause 9 (Privacy safeguards) of the Agreement
- the timeframe for destruction of non-matched information
- communicating with the public that the information will be shared with Police
- potential risk of name change information being released before a non-disclosure direction has been obtained if a person applies for both at the same time
- the process for privacy breaches.

22. All matters raised have been considered to determine if amendment to the Agreement was required. Some changes were made in response to the feedback received from submitters, including:

- clarifying the intent/wording of some clauses
- adding in text on the rationale for the Agreement applying to all people in NIA (and not just offenders)
- clarifying that information received from the Registrar-General will be destroyed as soon as reasonably practicable
- revising the privacy breach clause around when the Privacy Commissioner will be notified of privacy breaches.

23. Some matters raised will be addressed with the development of Operational Procedures to support the implementation of the Agreement (eg, further detail around destruction of information) or via other mechanisms. For example, DIA will revise the privacy notices on its website and information contained in relevant application form instructions to advise people that the information will be shared with Police under the Agreement. This will include advising people who apply for a name change and a non-disclosure direction simultaneously that once the name change is registered it will be shared with Police, and that this may be prior to the non-disclosure direction being approved.

Privacy Commissioner's Statement

24. The Privacy Commissioner has been consulted throughout the development of this Agreement and appreciates the constructive engagement from officials. He is pleased that Police will not amend their records unless they are certain of an identity match and that sensitive identity information relating to adoption and gender reassignment is excluded from the Agreement. The Commissioner also notes that the Agreement includes specific provisions to protect individuals who have concerns about their safety and who have blocked public access to their DIA records.

Consultation

25. This paper has been consulted with the Ministry of Justice, Department of Corrections, Department of Internal Affairs, New Zealand Customs Service, Ministry of Business, Innovation and Employment (Immigration New Zealand), New Zealand Transport Agency, Ministry of Transport, Te Puni Kokiri, Ministry for Women, Ministry for Pacific Peoples, Ministry of Social Development, Inland Revenue Department, Oranga Tamariki—Ministry for Children, Statistics New Zealand, the Treasury, the Office of the Privacy Commissioner, Parliamentary Counsel Office, and the Department of Prime Minister and Cabinet (Policy Advisory Group). The State Services Commission has been informed.

Financial Implications

26. Costs to develop the AISA, and supporting systems, were met within project funding. The cost to implement the AISA and ongoing sharing of information between the agencies will be met from within baselines.

Legislative Implications

27. An Order in Council under the Privacy Act is required for the Agreement to be approved and come into effect. I anticipate that the Order in Council will be submitted to Cabinet for consideration in early August 2019 and for the Agreement to take effect in August 2019.

Impact Analysis

28. The Impact Analysis requirements apply and a Regulatory Impact Assessment is attached to this paper. An AISA is considered the only viable option to enable the information sharing as proposed – short of bespoke legislative change, which is counter to the purpose of creating the AISA-making framework in the Privacy Act in the first place.
29. A cross-agency Quality Assurance Panel with representatives from the Ministry for Primary Industries and the Treasury has reviewed the Regulatory Impact Assessment “Improvements to the accuracy and timeliness of Police information regarding name changes, deaths and non-disclosure directions” produced by the New Zealand Police and dated April 2019. The review team considers that it meets the Quality Assurance criteria.
30. The analysis outlines a clear problem and shows that alternative options have been carefully considered, the costs and benefits analysed, and implementation risks identified and mitigated.

Human Rights

31. The proposals in the draft Agreement are consistent with the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.

Gender Implications

32. The AISA will have implications for victims of intimate partner violence who change their name to stay safe. Police is developing a means to ensure staff are aware of a non-disclosure direction, and will develop business processes to outline how records relating to identities with non-disclosure directions in force should be dealt with by staff.

Disability Perspective

33. There are no specific implications for people with disabilities associated with the proposals in this paper.

Publicity

34. I am proposing to release a media statement announcing the AISA before it comes into effect. Police and DIA will also publish information about the AISA on their websites. The Registrar-General will revise the privacy notices and relevant forms to explain the effect of the AISA.

Proactive Release

35. I propose to proactively release this paper, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

36. The Minister of Police recommends that the Committee:
 1. **note** that information sharing for the purposes of delivering public services may be done under Part 9A of the Privacy Act 1993 through an Order in Council using the Approved Information Sharing Agreement mechanism
 2. **note** that Police and the Registrar-General, Births, Deaths, and Marriages have developed a draft Information Sharing Agreement for the purpose of providing Police with information about registered name changes, registered deaths, and non-disclosure directions (attached)
 3. **note** that public consultation and consultation with the Privacy Commissioner has taken place as part of the development of the draft Information Sharing Agreement
 4. **agree** to the policy proposals contained in the draft Information Sharing Agreement
 5. **authorise** the Minister of Police to make editorial changes to finalise any matters in the draft Information Sharing Agreement
 6. **invite** the Minister of Police to instruct the Parliamentary Counsel Office to draft an Order in Council, which will approve the Information Sharing Agreement

between Police and the Registrar-General, Births, Deaths, and Marriages, in accordance with the Privacy Act 1993.

Authorised for lodgement

Hon Stuart Nash
Minister of Police

PROACTIVELY RELEASED