

6 November 2018

Justice Policy Team
Police National Headquarters
Wellington

By email: dia.informationsharing@police.govt.nz

Re: Police/Registrar-General, information sharing agreement – consultation

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the public discussion document *Information Sharing Agreement for the supply of registered deaths, name changes, and non-disclosure directions to assist New Zealand Police for law enforcement purposes* (discussion document).
2. The discussion document seeks feedback on a proposed Information Sharing Agreement (proposed agreement) to be established under Part 9A of the Privacy Act 1993 (the Act). The proposed agreement is intended to enable effective information sharing between the Registrar-General, Births, Deaths and Marriages (Registrar-General) and Police for law enforcement purposes. The agreement will enable the Registrar-General to “regularly and proactively supply to Police details relating to registered deaths, name changes, and non-disclosure directions.”¹
3. The Law Society’s comments on the proposed agreement are set out below.

Types of information to be shared – clause 3

4. Clause 3 of the proposed agreement sets out the types of personal information to be shared. The three subsets of information are broadly defined, and each is described in general terms (for example “identifying information”, “information specific to the death” and “related information”), and the listed types of information are non-exclusive. All information on the types of records that the proposed agreement deals with (see Appendix 1 of the PIA) could potentially fit within one or other of the subsets listed in clause 3.
5. This creates potential for uncertainty. Clause 3 gives insufficient detail about what information will be shared under the agreement. The broad and inclusive language also creates a risk that the range of information that will be shared by the Registrar-General could be increased without notice to the public and without amending the proposed agreement.
6. It is acknowledged that the proposed agreement contains safeguards. However, over-collection of information is undesirable, even if it appears that the receiving agency is unlikely

¹ Public Discussion Document, *Information Sharing Agreement for the supply of registered deaths, name changes, and non-disclosure directions to assist New Zealand Police for law enforcement purposes*, p 3.

to retain or use the information.² The PIA indicates there was a high degree of certainty as a result of the testing process about what information is useful and necessary,³ and there is therefore no reason why the proposed agreement cannot be more specific about the information that will be shared.

7. The Law Society recommends that clause 3 should be redrafted to reflect the table of information at page 6 of the PIA, which clearly sets out the data to be provided by the Registrar-General under the proposed agreement. Including this table would provide greater certainty and would prevent scope creep.

Dispensing with notice of adverse actions – clause 7

8. Clause 7 lists the “adverse actions” – prevention, investigation, arrest, prosecution – that Police may take as a result of information sharing under the proposed agreement.
9. Clause 7 notes that “much of Police’s early assessment and investigative work is confidential to Police and advance notification of an adverse action could prejudice the integrity of the investigative process.”⁴ The clause specifies that Police may dispense with the notice requirement under section 96Q of the Act where the information shared under the agreement gives them reasonable grounds to suspect an offence has been or will be committed and the personal information is relevant to the detection, investigation, or prosecution of that offence.
10. The Law Society acknowledges that providing an individual with notification could be prejudicial to investigations. The potential for prejudice to investigations should be expressly listed as a factor to be considered when deciding whether to dispense with notice of adverse action. (The current requirement in clause 7 that information is *relevant* does not necessarily mean that providing notice may prejudice the investigation.)
11. In cases where release of personal information would not, in practice, affect the ability of the Police to investigate, it would be preferable for people to be provided with advance notification of an adverse action.
12. The Law Society therefore recommends that clause 7 should specify that Police are able to dispense with a notice of adverse action only if:
 - They have reasonable grounds to suspect an offence has been or will be committed;
 - The information is relevant to the detection, investigation, or prosecution of that offence; and

² Safeguards have been included in the proposed agreement to prevent misuse of the information. In particular, few people within Police will have access to the information, it can only be used for matching purposes and it must be destroyed after the match is complete except for the specific listed updates that can be made to NIA (see clauses 10 and 11).

³ Privacy Impact Assessment, *Progressive Steps: Sharing Death, Name Change and Non-disclosure Direction Information*, pp 5-6.

⁴ Information Sharing Agreement between Registrar-General and New Zealand Police relating to Supply of registered death, registered name change, and non-disclosure direction information to assist New Zealand Police for law enforcement purposes, at p 7.

- Providing advance notification of an adverse action would create a real risk of prejudice to the Police's ability to investigate.

Safeguards used to protect the personal information and minimise privacy risks – clause 9

13. Clause 9 sets out safeguards to protect individuals' privacy and ensure that any interference with privacy is minimised. As noted in the proposed agreement, the majority of death notices currently come via an online form from funeral directors.⁵ On rare occasions it may come via a party known to the deceased. In the latter case, the party known to the deceased is advised that information may be released to Police who may subsequently disclose it to other parties in accordance with legislation.
14. Where information is provided by funeral directors, affected people will only know that information about the deceased will be supplied to Police if the funeral directors let them know directly. While the Registrar-General cannot *require* funeral directors to provide information to affected parties, the proposed agreement should record that the Registrar-General will ask funeral directors to let the relevant people know that certain types of information about deaths is being provided to Police.

Privacy breaches – clause 15

15. Clause 15 stipulates the processes to be followed in the event of privacy breaches. As currently drafted, it refers to notifying the Privacy Commissioner only in the event of a "significant" privacy breach. The Law Society notes the Privacy Bill (Bill), currently before Parliament, proposes to introduce mandatory notification of privacy breaches. The current version of the Bill does not specify that the threshold for notification must relate to the 'significance' of the breach. The Bill also contains a range of other obligations on parties, such as notifying individuals, and providing certain specified information in that notification.
16. While the proposed agreement will not override those provisions, it may be sensible to use general language in the agreement, to minimise any confusion or uncertainty caused by the passage of the Bill. A general reference could be inserted in clause 15 that "*The parties will observe any new legal requirements to notify the Privacy Commissioner or individuals of breaches (such as those in the proposed new Privacy Act) once that law is in force.*"

General comments – potential for updating non-offender information on NIA

17. The discussion document and Privacy Impact Assessment (PIA) indicate a clear public policy justification for matching offender information, (or information about potential offenders/persons of interest), on the Police National Intelligence Application (NIA), with the information supplied by the Registrar-General. However, there does not appear to be sufficient justification given for updating information about third parties (such as victims of crime, witnesses and family members).
18. It is not clear from the definition of NIA (at p 4 of the proposed agreement) whether information is referenced by, or searchable by, the names of others in a way that would

⁵ Ibid, at p 8.

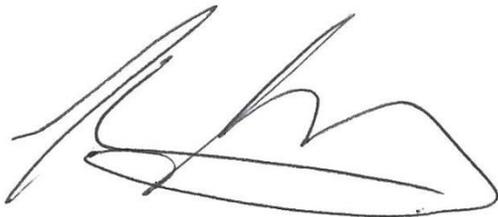
enable information to be matched as a result of the information sharing with the Registrar-General.

19. If it is possible for Police to use the information supplied by the Registrar-General to update third party information (as seems likely), then the benefits of doing so need to be made clear in the proposed agreement. For example, the benefit of sharing non-disclosure directions covering victims of crime is plain. However, it is not apparent what the benefits might be of updating a victim's name if they change it. Similarly, it is unclear why the fact a family member (of an offender or potential offender) is now deceased might need to be updated on NIA.
20. This creates a risk that Police may add information to NIA about people who are not of interest from an investigation or maintenance of law perspective. There may be a justification for doing so (at least with deaths information), but that has not been explained in the consultation materials.

Conclusion

21. This submission has been prepared with the assistance of the Law Society's Human Rights and Privacy Committee. We hope these comments are helpful, and if further discussion would assist please do not hesitate to contact the Law Society, through the Committee Secretary, Amanda Frank (amanda.frank@lawsociety.org.nz / 04 463 2962).

Yours sincerely

A handwritten signature in black ink, appearing to be 'K. Beck', written in a cursive style.

Kathryn Beck
President