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Gang Intelligence Centre Information Sharing
New Zealand Police
PO Box 3017
Wellington

By email: information.sharing@police.govt.nz

Proposed information sharing agreement between the NZ Gang Intelligence Centre agencies

The New Zealand Law Society appreciates the opportunity to comment on the proposed Information Sharing Agreement (ISA) between the New Zealand Gang Intelligence Centre (GIC) agencies.

The Law Society's Human Rights & Privacy and Immigration and Refugee Law Committees have considered the consultation document and the draft *Information Sharing Agreement between the NZ Gang Intelligence Centre Agencies for the purpose of reducing gang-related harm to individuals and New Zealand society generally* (draft ISA). The Law Society's comments are set out below.

Purpose of the ISA

Section 96I(2)(a) of the Privacy Act 1993 (the Act) requires an ISA under to "specify with due particularity the purpose of the information sharing agreement". The purpose stated in the draft ISA (clause 1) is for the GIC agencies to share information and intelligence "to reduce Gang Related Harm". Gang Related Harm as defined in the draft ISA means:

harm done to individuals, families, communities, and New Zealand society generally through the criminal activities of Gangs including but not limited to: criminal activities including drug trafficking and money laundering, and antisocial aspects of Gang lifestyle and culture that contribute to significant adverse impacts such as child abuse and neglect, family violence, and alcohol and drug dependency.

The words "antisocial aspects of lifestyle and culture" are capable of a range of meanings, and interpretation will depend on subjective views that may change over time because of shifting social and cultural values. The "significant adverse impacts" of gang lifestyle and culture are also not sufficiently defined; although examples are given, the phrase is not limited to these.

Given the wide scope of collection, disclosure and use of sensitive information to be authorised by the ISA, its purpose needs to be specific and clearly defined. The Law Society recommends the definition of Gang Related Harm be amended as follows:

harm done to individuals, families, communities, and New Zealand society generally through the criminal activities of Gangs including but not limited to: criminal activities including drug trafficking and money laundering, and ~~antisocial~~ aspects of Gang lifestyle and culture that contribute to ~~significant adverse impacts such as~~ child abuse and neglect, family violence, and alcohol and drug dependency.

“Gang Associates”

The definition of Gang Associate is very broad and potentially would allow the ISA to be used to share information and intelligence on a broader scale than the ISA’s purpose and objectives (as stated in clause 1) would suggest:

Gang Associate(s) means a person who has been identified associating with a member or members of a Gang but is not themselves a member or prospect. A Gang Associate may have either a criminal or non-criminal association with a Gang. Gang Associates include both Professional Associates and those who act in an unlawful professional capacity for a Gang. They may attend Gang functions at the clubhouse or club runs. Gang Associates may include members of Gang supporter clubs and feeder group. [emphasis added]

The criteria for being identified as a Gang Associate are broad and include “a person who has been identified associating with a member or members of a Gang”, even if they are not themselves a member or prospect. The definition is silent as to who is doing the identifying. The person “may” attend Gang functions at the clubhouse or club runs, but there are no mandatory requirements of what a person may have done to be “identified” as a Gang Associate. Even people with no real nexus with a gang – such as fast-food delivery people – could potentially fall within the definition. The following change to the first sentence would make the definition more precise:

Gang Associate(s) means a person who is not a Gang member or prospect but who has a proven or suspected association (criminal or non-criminal) with a member or members of a Gang.

Description of information to be shared is incomplete

Clause 6 of the draft ISA contains a list of the personal information categories which may be shared by the GIC Agencies with the GIC. The information categories are listed in a table that covers four pages, covering:

- Assets
- Contact details
- Communications
- Criminal activity
- Domestic relationship
- Education
- Employment
- Financial
- Financial relationship
- Financial transaction
- Gang associates
- Health and disability
- Housing
- Identifying
- Immigration
- Import/export
- Professional associates
- Safety

- Social assistance
- Tax
- Travel, movement and location

A broad description of each information category is given, but the actual information within each category is not detailed. This means the draft ISA does not contain an exhaustive and detailed list of what personal information may be shared.

The explanation given in clause 10 of the draft ISA is that “*Operational Protocols will contain more detailed operational information than is possible in this Agreement*”, and that “*Information contained in the Operational Protocols will include but is not limited to, a list of information that each GIC Agency may share with the GIC under this Agreement ...*”.

The ability to monitor and limit the scope is impaired because the draft ISA does not contain a comprehensive list of the personal information to be shared. Clause 10 states there will be consultation about the Operational Protocols with the Privacy Commissioner but this is merely a consultation, and the Privacy Commissioner does not have the power to approve or reject the personal information proposed to be covered in the Operational Protocols.

A comprehensive overview of the Operational Protocols as part of the ISA would limit the risk of breaches of the Act and infringements on the privacy of individuals. The infringement on people’s privacy under the ISA is such that public consultation about the proposed Operational Protocols is warranted, regardless of any drafting difficulty. A full list of the information to be shared needs to be provided. Practical difficulties are not so large as to be sufficient reason to avoid this step.

Immigration – risks of inadvertent/inappropriate disclosure

Establishing an ISA for the GIC and GIC agencies presents significant privacy risks for clients of Immigration New Zealand (INZ), who are inherently vulnerable, particularly in the case of refugees and protected persons.

Privacy concerns for clients of INZ are heightened because their rights and practical ability to pursue remedies in case of breach are inherently limited. Different considerations therefore apply to INZ (a unit within MBIE, a GIC agency) in relation to the ISA.

As noted above, the draft ISA does not contain an exhaustive and detailed list of what personal information may be shared, and the Law Society recommends that there should be a comprehensive overview of the Operational Protocols (including a full list of the information to be shared, and the conditions of use) and public consultation undertaken. This is particularly important in the case of immigration information.

Claimants, refugees, and protected persons

Despite section 151(1) of the Immigration Act 2009 assuring confidentiality of the fact of a refugee or protection claim or particular relating to a claim, disclosure may nevertheless occur so long as it occurs in accordance with section 151(2), which sets out a number of broad exceptions. In particular, section 151(2)(b) permits disclosure for the purposes of the maintenance of the law, including for the prevention, investigation, and detection of offences in New Zealand or elsewhere.

There are significant risks to the safety of a refugee or protected person, or their families, should information be inappropriately shared, particularly with a claimant’s country of origin. A more free-flowing and efficient information sharing arrangement between MBIE (including INZ) and the GIC, as well as indirectly with the other GIC agencies, increases the risk of inadvertent or otherwise inappropriate sharing of confidential refugee information.

Section 151(2) of the Immigration Act already erodes the ability of the New Zealand government to give assurances of confidentiality to vulnerable claimants, refugees and protected persons. The draft

ISA, which gives GIC agencies the ability to *proactively* share information with the GIC and thereby indirectly share information with other GIC agencies, would further erode confidentiality in refugee and protection matters, to the point where confidentiality could no longer be assured by the New Zealand government and section 151(1) of the Immigration Act would be rendered meaningless.

Establishing the proposed ISA presents significant privacy risks for immigration claimants, refugees and protected persons. The issue appears to be a fundamental one and the risk of inadvertent or otherwise inappropriate disclosures is unlikely to be adequately mitigated by constraints and conditions on the use of information and internal agency procedures. The sheer size of MBIE and the breadth of its mandate amplifies the risk to unacceptable levels.

The Law Society therefore recommends that INZ as a unit within MBIE be excluded from the ISA. Alternatively, if INZ is to be included, at a minimum the information sharing between INZ and the GIC should only be allowed on a one-way, request-only basis (i.e. requests can only be made by the GIC to INZ, not vice versa, and with no proactive sharing of information in any circumstance).

Conclusion

If you would like to discuss any of the comments further, please do not hesitate to contact the Law Society's Law Reform Manager, Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz / 04 463 2912).

Yours faithfully

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

Kathryn Beck
President