

## **Summary: Joint Policy Statement Obtaining and Using Publicly Available Information**

*Summary prepared under section 16(1)(e) of the OIA, in order to protect the interests of section 6(a).*

### **Purpose**

1. The purpose of this joint policy statement is to provide direction to the Government Communications Security Bureau (GCSB) and New Zealand Security Intelligence Service (NZSIS) staff about obtaining and using publicly available information in the performance of their statutory functions, and in circumstances where an authorisation is not required.
2. The *Ministerial Policy Statement (MPS) on Obtaining and Using Publicly Available Information* also provides guidance on the conduct of this activity.

### **Defining publicly available information**

3. The policy includes definitions of key terms, including 'publicly available information'. This means data that may reasonably be accessed by a member of the public and where, based on the circumstances, it is likely that the owner of the data and/or the operator of the website or infrastructure intended for the data to be accessible.

### **Principles**

4. The policy sets out a number of principles which guide the agencies collection and use of publicly available information. These are:
  - Least intrusive means - GCSB and NZSIS must use the least intrusive means available to collect the information required in a secure, timely and reliable manner.
  - Respect for privacy – the agencies should minimise collection of personal information about third parties, confirm the purpose and proportionality of collecting personal information, assess the accuracy of the information, and consider if any special precautions should be taken to protect the information.
  - Necessity and proportionality – the collection and use of publicly available information must be necessary for the performance of an ISA function and the amount and type of information sought must be proportionate to the intelligence requirement.
  - Respect for freedom of expression – The agencies must respect the right to freedom of expression (including the right to advocate, protest, and dissent).

5. The Policy also confirms that the agencies must ensure the collection of publicly available information is lawful and seek legal advice where uncertain. The policy identifies some specific areas where legal risk may arise or where an authorisation may be required.

### **Copyright considerations**

6. The majority of GCSB and NZSIS's collection of open source information will not result in a copyright infringement. Where it does, it may be provided for under the statutory exemption contained at section 63 of the Copyright Act 1994; where copyrighted material can be used by or on behalf of the Crown for the purpose of national security.

7. Where GCSB or NZSIS employees have any concerns or uncertainty as to whether actions of proposed actions have, or will result, in a copyright infringement they should seek advice from the relevant legal team.

### **Record Keeping and data retention**

8. The policy provides requirements for the secure storage of information, creation of accurate records, and compliance with data retention and management policies and disposal schedules.

### **Responsibilities**

9. The policy sets out staff and manager responsibilities for compliance.