

## Summary: Sensitive Category Individuals Policy

*Policy approved 29 July 2021*

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

### Introduction

The legislative and compliance framework the NZSIS operates within requires the agency to have policies in place to ensure operational collection activity involving sensitive category individuals is appropriately authorised and managed.

The relevant policy outlines the types of individuals and situations the agency considers sensitive and sets out GCSB and NZSIS's obligations towards these individuals. Their information, and privileged information as required by the Intelligence and Security Act 2017 and Ministerial Policy Statements.

### Policy

#### *Scope*

The policy applies to all GCSB and NZSIS staff, and any person currently working under the authority of or engaged by GCSB or NZSIS.

The policy applies to situations where the subject of the information or activity is a sensitive category individual, or where a sensitive category individual is not the subject but may be indirectly affected by agency activities, or where the activity involves access to privileged information.

#### *Defining a Sensitive Category Individual*

The policy establishes three categories of SCIs:

Sensitive because they are vulnerable

Sensitive because of their access to New Zealander's privileged information

Sensitive because of their occupation/role

#### *Assessing whether a person is a Sensitive Category Individual*

Staff must be alert to any factors that may increase the likelihood of encountering a sensitive category individual or their data, as sometimes staff will not know they are interacting with a person in this category.

Reasonable efforts using already available information must be made to determine if investigative or operational activity is being conducted about, or directly involves, a sensitive category individual. Staff must not however, undertake further intrusive activity for the sole purpose of making that assessment.

#### ***Sensitive because they are vulnerable***

Children and young persons: a child means a person under 14 years. A young person means a person aged 14 or over and under 18. This policy applies to New Zealand and foreign children and young people.

## Released under the Official Information Act 1982

Staff must seek to confirm a date of birth to determine if an individual is a child or young person. If there is any indication that an individual is a child or young person then they should be considered a child or young person until confirmation can be obtained.

### *Persons vulnerable by reason of illness or other incapacity*

This policy applies to New Zealand and foreign persons vulnerable by reason of illness or other incapacity.

Where it is unclear if a person is vulnerable for such a reason, advice should be sought internally or externally, as operational security permits.

### *Refugees, asylum seekers, claimants and protected persons*

This policy applies to New Zealand and foreign refugees, asylum seekers, claimants and protected person. To be considered a refugee, asylum seeker, claimant or protected person, the individual must fall within the definitions outlined in the Immigration Act 2009; with reference to the UN Refugee Convention, the Convention Against Torture, and the Covenant on Civil and Political Rights.

### ***Sensitive because of their access to New Zealanders' privileged information***

Privilege is protected by law. It recognizes public interest in protecting certain New Zealanders' communications or information in the context of particular relationships.

Under the ISA, privilege holders can only be New Zealand citizens or those holding a New Zealand permanent resident visa. The policy also applies to overseas individuals who have privileged communications with New Zealanders to ensure the protection of the privileged information of the New Zealander.

### *Lawyers/legal advisors*

It may be difficult to determine whether an individual is a legal advisor before beginning activity. Staff must consult with the relevant agency's legal team if in doubt.

### *Medical practitioners*

A medical practitioner is a health practitioner who is registered with the Medical Council of New Zealand as a practitioner of the profession of medicine. AS a matter of policy, the agencies also consider medical practitioners registered to equivalent bodies overseas who are consulted by New Zealanders to be SCIs in the same way as medical practitioners registered in New Zealand.

### *Minister of religion*

Whether a person is a minister of religion will depend on their status within a church or other religious or spiritual community. This policy applies to New Zealand ministers of religion, and foreign ministers of religion who are consulted by a New Zealander.

If there is any doubt about whether a person is a minister of religion, staff must seek advice from the relevant agency's Compliance or Legal team.

### ***Sensitive because of their occupation/role***

#### *New Zealand Members of Parliament (MPs)*

Staff are expected to confirm whether an individual is a Member of New Zealand's Parliament through open source checks.

## Released under the Official Information Act 1982

### *Members of the Judiciary*

Staff are expected to confirm whether an individual is a member of the New Zealand judiciary through open source checks.

### *Journalists*

A journalist is an individual whose normal course of work involves the preparation of news, and analysis of or commentary on news, for publication or broadcast in a public news medium, and who is a New Zealander, or employed as a journalist in New Zealand or by a New Zealand media company.

If there is any doubt about whether a person is a journalist, staff must seek advice from the relevant agency's Compliance or Legal teams.

### **Policy Principles**

*All activity must be lawful, necessary, and proportionate*

The fact that a person is an SCI does not prevent agencies conducting activity involving the person or their information however staff and relevant approvers must ensure that any activity involving an SCI is lawful, necessary and proportionate.

*Staff must act in accordance with this policy when conducting any activity involving or likely to involve Sensitive Category Individuals, their information, or privileged information.*

Staff must be alert to any factors indicating the presence of an SCI or that may increase the likelihood of encountering an SCI or their data, and apply this policy when it is likely that the activity involves an SCI or their information.

### *Identifying SCIs*

Staff must consider all available information to determine if investigative or operational activity is being conducted about, or directly involves, a sensitive category individual. If so, staff must seek approval at the required level according to the policy.

If a person is identified as a sensitive category individual after collection, the continuation of the activity or the use of the information must be approved in accordance with this policy. If the information is irrelevant, it should be destroyed.

### *Approval levels*

The policy establishes a regime that must be followed for authorising any investigative or operational activity against sensitive category individuals. Staff must ensure that any activity involving a sensitive category individual is appropriately authorised using the framework established in the policy, in addition to the usual approvals required to conduct such activity (e.g. under a valid warrant).

### *Agency documentation and record keeping*

The agencies will ensure that requirements regarding SCI's information and privileged information are clearly recorded in all relevant internal guidance.

