



## *Ministerial Policy Statement*

# Assumed identities

### Summary

It is lawful for authorised persons from GCSB or NZSIS to acquire, use and maintain an assumed identity. This MPS provides guidance on the conduct of this activity. In making decisions related to acquiring, using, and maintaining an assumed identity, GCSB and NZSIS must have regard to the following principles: legal obligations, necessity, proportionality, appropriateness, good faith, and oversight. The MPS also specifies certain matters to be included in internal policies and procedures.

Any agency, which receives a request for assistance to acquire, use, and maintain an assumed identity also must have regard to this MPS in considering that request, to the extent this MPS is known to that agency.

### Definitions

**The Act** means the Intelligence and Security Act 2017.

**Agency** includes a Minister, statutory officer, government agency, and private sector agency.

**Assumed identity**, in relation to an authorised person, means an identity the person assumes under the Act that:

- a) is not the person's real identity; or
- b) involves a false or misleading representation about one or more aspects of the person's real identity.

**Authorised person** means an employee of an intelligence and security agency who is authorised to acquire, use, or maintain an assumed identity.

**Employee** means any person who is, or will be, an employee of an intelligence and security agency, and who is approved by the Director-General of an intelligence and security agency to carry out activities for that agency.

**False document** includes a false document within the meaning of section 255 of the Crimes Act 1961.

**GCSB** means the Government Communications Security Bureau.

**NZSIS** means the New Zealand Security Intelligence Service.

### CONTEXT

1. To effectively perform their statutory functions, GCSB and NZSIS often need to carry out their activities in secret. One method of avoiding activities being attributed to GCSB or NZSIS is for employees to use assumed identities. Assumed identities allow a person to purport to have a

different identity, either in whole or in part. For example, employees may purport to be someone with a different name, date of birth or background to conceal their association with GCSB or NZSIS. Section 21 of the Act specifies the only purposes for which an employee of GCSB or NZSIS may acquire, use or maintain an assumed identity are:

- facilitating the ability of an intelligence and security agency to carry out its activities while maintaining the secrecy of those activities;
  - protecting the identity of the employee.
2. If GCSB's and NZSIS's methods of collection or the identity of employees, or those who support them, become known, GCSB and NZSIS may be unable to perform their functions. Assumed identities also provide employees with a greater degree of protection. Assumed identities may be used to facilitate a wide range of activities, including human intelligence, corporate functions such as procurement, cybersecurity activities, the collection of publicly available information, and protecting the identity of GCSB and NZSIS employees.

### **Acquiring and using an assumed identity**

3. An employee of GCSB or NZSIS may acquire, use, or maintain an assumed identity if authorised by the relevant Director-General, who is satisfied that the acquiring, use, or maintenance is necessary for a purpose specified in section 21 of the Act.
4. To help an assumed identity be convincing and withstand scrutiny, false documents may need to be made to support the use or maintenance of an assumed identity. An employee<sup>1</sup> of GCSB or NZSIS may create a false document (such as a false invoice for use as proof of address) if the relevant Director-General is satisfied that making and using a false document is necessary for a purpose specified in section 21, and if the document is not one ordinarily issued or given by a Minister (for example, a certificate of citizenship), or a government agency (for example, a passport).
5. GCSB or NZSIS may request assistance from another agency to acquire, use, or maintain an assumed identity. As specified in section 25(2) of the Act, a request must provide details of:
- the authorised person, as necessary to enable the assisting agency to provide the assistance;
  - the assumed identity being acquired (or that has been acquired) for the authorised person;
  - the assistance being sought from the agency; and
  - the specific evidence<sup>2</sup> of the assumed identity that the agency is requested to provide.

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<sup>1</sup> "Employee" in this context means a person employed in any capacity in the GCSB or NZSIS.

<sup>2</sup> "Evidence" in relation to an identity, means any documentation (whether physical or electronic) or thing that has a tendency to prove, or purports to establish, the identity (for example, a birth certificate, certificate of New Zealand citizenship, passport, or a driver licence); or can be used to support the proof or establishment of the identity (for example, a bank card or staff identity card).

6. A request from GCSB or NZSIS must also confirm that it is being made for the purpose of facilitating the ability of GCSB or NZSIS to carry out their activities while maintaining the secrecy of those activities and/or protecting the identity of an employee of GCSB or NZSIS.
7. An agency that receives a request for assistance from GCSB or NZSIS can choose to either grant the request or decline it. The agency can decline the request if it is not satisfied that the assumed identity will be used appropriately, or if the agency thinks it otherwise appropriate to decline the request (section 26(2)). This is important as agencies who may be asked to assist have statutory responsibilities with respect to the integrity of the schemes they administer. If considering whether to decline a request, the agency must have regard to the matters set out in section 26(3) of the Act which include the purpose of the assumed identity and the protections that are or will be in place for the purpose of ensuring that an authorised person will use the assumed identity appropriately. An agency can make further inquiries of GCSB or NZSIS if they wish, which GCSB or NZSIS must respond to (as far as possible).
8. GCSB or NZSIS must also request assistance from the relevant agency where alteration is required to identity information in a public register or publicly available record, for example, births, deaths, or marriages information (section 26(4)).

#### **Maintaining an assumed identity**

9. Once an assumed identity has been acquired, any changes necessary to maintain the assumed identity (including to authorised persons, assistance sought, or evidence) must follow the same processes and restrictions that applied when the assumed identity was acquired and the original evidence was created.

#### **Protecting and cancelling an assumed identity**

10. GCSB or NZSIS may need to protect the fact that an identity was an assumed identity, even when that identity is no longer in use. To protect such information, GCSB or NZSIS may direct any agency to cancel evidence of an assumed identity (section 27), subject to specific legislation requiring the retention of certain information, such as records under tax legislation and the Public Records Act 2005. The cancellation must be undertaken in the manner set out by the relevant Director-General (section 27(2)). Assisting agencies also have obligations (section 30) to restrict access to information they hold about the assistance they have provided.

#### **Immunities**

11. The Act provides protection from criminal and civil liability for individuals authorised to acquire, use and maintain an assumed identity (section 32) and persons who provide assistance in relation to an assumed identity request (section 31). These immunities only apply to acts and omissions which have been done in good faith and with reasonable care. They do not extend to anything in breach of a contractual arrangement (unless a breach is a necessary consequence of using or maintaining an assumed identity) or any acts that require the holding of a qualification when the person does not hold that qualification in their own right. For example, an NZSIS employee using an assumed identity of a pilot, may not fly a plane while using that assumed identity unless they have a genuine qualification to do so.

## GUIDANCE FOR GCSB AND NZSIS

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### Scope

12. This MPS applies to acquiring, using, and maintaining an assumed identity, any request for assistance in relation to an identity, and the creation of false documents to support an assumed identity (collectively, 'actions in relation to assumed identities').
13. GCSB and NZSIS have different needs for assumed identities but both the GCSB and NZSIS are governed by this MPS. Internal policies and procedures may be shared, where possible.
14. Where an assumed identity is used to create a legal entity, whether or not the entity is created in accordance with subpart 2 of Part 3 of the Act, this MPS applies. The creation and maintenance of entities with legal identity, status or capacity conferred under the provisions of subpart 2 of Part 3 is addressed in the *Legal Entities MPS* [link].
15. Where an assumed identity is used in the collection of human intelligence, this MPS should be read alongside the *Lawful collection of human intelligence MPS* [link].
16. Where an assumed identity is used in the collection of publicly available information, this MPS should be read alongside the *Obtaining and using publicly available information MPS* [link].
17. This MPS does not apply to false or misleading representations made by an employee of GCSB or NZSIS, using their real identity, about their employment under section 228 of the Act. Such activity is covered by the *False or Misleading Representations MPS* [link].
18. Any agency considering a request for assistance in relation to an assumed identity, must have regard to this MPS to the extent it is known to that agency (section 26(3)(b)). Assisting agencies may decline the request in accordance with subsections 26(2) and (3). They do not need to make their own assessments, however, about whether a request meets the principles below. This MPS contains relevant information for agencies that receive requests for assistance but is not intended to provide specific guidance to assisting agencies to support their decision making.

### Principles

19. The following principles constitute a framework for good decision making and best practice. They must be taken into account by GCSB and NZSIS when taking actions in relation to an assumed identity. Using and maintaining an assumed identity should be subject to ongoing review as to whether the use and maintenance remains consistent with these principles.

### Legal obligations

20. GCSB and NZSIS must ensure the creation and maintenance of assumed identities is carried out in accordance with the law. Where appropriate, legal advice should be sought.
21. Authorised persons using assumed identities remain subject to New Zealand law, including contract and criminal law. Beyond using an assumed identity, an employee may only do what

would be lawful under their own identity, unless they are acting under an authorisation issued under Part 4 of the Act.

### ***Necessity***

22. Assumed identities must have a clear purpose, and only GCSB or NZSIS employees with a clear need for that assumed identity may be authorised persons. Each authorisation must include the rationale for acquiring, using, or maintaining the assumed identity, and each assumed identity should only be used and maintained for as long as is necessary to fulfill its purpose.
23. Some positions may require an assumed identity as a core part of the role and to enable operationally urgent work to occur. Given the time that may be required to build comprehensive supporting evidence, assumed identities may be developed in advance of being required for use. If the purpose and need for an assumed identity no longer exists, the creation of that assumed identity should be reviewed as to whether it is necessary.
24. Evidence and false documents to support an identity should only be manufactured to the extent necessary to support the existence of an assumed identity.

### ***Proportionality***

25. The use of assumed identities, including using falsely created documents to support the identity, and the associated risks related to a particular activity when using an assumed identity, should be proportionate to the outcome sought to be achieved. When assessing proportionality GCSB or NZSIS should, at a minimum, consider the scope of the proposed activity, the risk the activity poses to the person using the assumed identity and any assisting agency, and the reputational risk to GCSB, NZSIS, or the New Zealand Government if the use of the assumed identity is compromised in some way.

### ***Appropriateness***

26. Employees of GCSB or NZSIS may only be authorised to acquire, maintain or use an assumed identity for the purposes set out in section 21 of the Act (maintaining the secrecy of the activities of the GCSB and NZSIS or protecting the identity of the employee). An assumed identity must not be used for personal purposes, including personal gain. GCSB and NZSIS must have suitable protections in place, including ongoing monitoring and training, to ensure assumed identities are used appropriately.
27. An agency that receives a request for assistance to acquire, use, and maintain an assumed identity, may decline a request if it is not satisfied the authorised person will use the assumed identity appropriately, or it otherwise considers that it is appropriate to decline the request. GCSB and NZSIS must make all reasonable endeavours to establish and maintain good relationships with agencies they request assistance from and, where necessary, make arrangements for employees in assisting agencies to receive the relevant national security clearance to enable them to receive classified information.
28. Only identities that are not legally prohibited (for example, police officers) may be created as assumed identities. Assumed identities must not be an exact match with people of the same

name and birth date born in New Zealand (unless the assumed identity is in part using the employee's true identity), and should be otherwise appropriate.

### ***Good faith***

29. GCSB and NZSIS employees must act in good faith and with reasonable care at all times when taking any action in relation to assumed identities; including when requesting assistance from other agencies, and when making any representations in the course of using an assumed identity. This includes providing, subject to security requirements, sufficient information for an agency to decide whether to grant a request for assistance, and confirmation that the assumed identity to be acquired or maintained meets the specified statutory purpose under section 21 the Act.
30. Actions in relation to assumed identities will generally be considered to have been made in good faith and with reasonable care if they are (as applicable):
- in accordance with statutory obligations, authorisations and any agreement in place with another agency regarding assistance related to assumed identities;
  - in accordance with this MPS and associated internal policies, guidelines and procedures;
  - consistent with managerial expectations; and
  - a legitimate function of the employee's role (or the role of GCSB or NZSIS).

### ***Oversight***

31. GCSB and NZSIS must carry out all activities in a manner that facilitates effective oversight, including through keeping appropriate records about the acquisition, use and maintenance of assumed identities.
32. Section 45 of the Act requires GCSB and NZSIS to maintain a detailed register of the assumed identities acquired and specifies the information to be recorded. All of the information in this register may be accessed at any time by the responsible Minister and the Inspector-General of Intelligence and Security. In addition to these requirements, GCSB and NZSIS should also record the purpose of acquiring, using, and maintaining assumed identities.

### **Matters to be reflected in internal policies and procedures**

33. As public service agencies, GCSB and NZSIS must comply with policies and procedures common to all public service agencies.<sup>3</sup>
34. In addition, GCSB and NZSIS must have, and act in compliance with, internal policies and procedures that are consistent with the principles of this MPS, and have systems in place to

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<sup>3</sup> This includes the Public Service Act 2020 and the Health and Safety at Work Act 2015.

support and monitor compliance. Those policies and procedures must also address the following matters:

### ***Agreements with assisting agencies***

Where GCSB and NZSIS are likely to regularly request assistance from a specific agency to assist with actions in relation to assumed identities, an agreement should be in place between the relevant Director-General and the chief executive of the assisting agency. This agreement should include provisions for how requests will be made, processes for providing the relevant assurances to the assisting agency to allow them to consider the request, and processes for managing any disputes that may arise if a request is declined. Such agreements should be made available to the Inspector-General of Intelligence and Security on request.

### ***Periods of review***

GCSB and NZSIS must have in place periods of review in relation to:

- the list of authorised persons associated with assumed identities; and
- assessments of the ongoing necessity of maintaining each assumed identity (to ensure there continues to be a purpose and need for the assumed identity).

### ***Information management***

Information related to assumed identities will be among some of the more sensitive information held by GCSB and NZSIS, given the need to protect GCSB and NZSIS employees' real identities. This information, including registers of assumed identities, must be handled and stored at an appropriate level of classification with clear access controls that correspond to the sensitivity of the information. The *Information Management* MPS [\[link\]](#) will also apply in relation to this information.

### ***Training***

All GCSB and NZSIS employees involved in acquiring, using, and maintaining assumed identities should be appropriately trained for the role they are expected to undertake and be aware of all relevant laws, policies and procedures. Training should be provided before employees carry out work involving assumed identities, and whenever there are changes or updates to the policies and procedures.

### **Authorisation procedures**

35. Approval to acquire, use, and maintain assumed identities should be authorised at a level of seniority within GCSB or NZSIS that is commensurate with the level of operational, reputational, legal and health and safety risks involved. Authorisation procedures should include consideration of the risk to assisting agencies and possible impacts on the integrity of statutory and regulatory schemes under which the assistance is being provided. The Directors-General of GCSB and NZSIS should have delegations in place for such authorisations.

36. The Directors-General must establish processes for approving the acquisition, use, and maintenance of assumed identities. These processes should require applications for assumed identities to identify the purpose for which they are required.
37. GCSB and NZSIS must have a dedicated team (either individually or shared between the agencies) that is responsible for processes associated with assumed identities. Assumed identities should not be created by anyone that is outside this team(s) unless authorised to do so. The dedicated team(s) will be responsible for maintaining relationships with assisting agencies involved in generating assumed identities and supporting evidence. Before being approved, the team(s) should consider any risk that a proposed identity poses to the security of any other assumed identities used by authorised persons or legal entities of either the GCSB or NZSIS.

#### **Duration of ministerial policy statement**

38. This MPS will take effect from 01 March 2025 for a period of three years. The Minister who issued an MPS may, at any time, amend, revoke or replace the MPS.

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Ministerial Policy Statement issued by:



**Hon Judith Collins KC**

Minister Responsible for the Government Communications Security Bureau

Minister Responsible for the New Zealand Security Intelligence Service

**01 March 2025**