



Helpful guidance when reporting on the GCSB and NZSIS

The Government Communications Security Bureau and the New Zealand Security Intelligence Service exist to help keep New Zealand and New Zealanders safe. Our work must often be carried out in secret, but we are big believers in transparency where possible.

The introduction of new legislation and supporting Ministerial Policy Statements encourage greater transparency around aspects of our work with the general public. Coupled with existing legislative settings these act to help balance public interest with the need to protect classified material and national security.

When it comes to media engaging with the intelligence agencies, it is useful to know there is statutory guidance about what information can be published, and how. This guidance is set out below. If you are ever in doubt, please do not hesitate to get in touch with us before you run your story by emailing media@nzic.govt.nz

Intelligence and Security Act 2017

Publishing information about employees *(Section 227)*

There are limitations when it comes to publishing the names of staff.

Section 227 of the Intelligence and Security Act places a restriction on the publication and broadcasting of the fact that any person is an employee of GCSB or NZSIS or is in any way connected to one of our employees (this includes contractors and people we work with outside our own agencies).

This measure is in place to protect staff and the people they work with.

Publication in news media, including broadcast, print and online is an offence with a fine of up to \$5,000 in the case of an individual, and up to \$20,000 in the case of an organisation.

The Director-General of Security and Director-General GCSB are declared roles so it is fine for media to say who they are and where they work.

Publishing Inspector-General reports
(Section 191)

Inspector-General reports can only be published once they have been made public.

You can only publish, broadcast or otherwise distribute or disclose information relating to an inquiry once the Inspector-General has released it publicly; or if the Inspector-General has approved the information for release; or if the Minister has provided written consent; or if a complainant discloses the advice provided to them by the Inspector-General; and/or the fact of an inquiry being conducted.

It's an offence to publish and/or broadcast outside of these bounds. You'd be looking at a fine of up to \$10,000 or a prison term of up to two years.

Ministerial Policy Statements

Collecting Information Lawfully
(Sensitive category individuals)

The Intelligence and Security Act 2017 is supported by 11 Ministerial Policy Statements (MPSs) which encourage greater transparency around aspects of our work. The MPSs set out the Minister's expectations and guidance for the agencies on how certain lawful activities should be conducted.

One of these MPSs is about how the intelligence agencies collect information. GCSB and NZSIS are required to have a policy which sets out the restrictions and protections necessary in the conduct of collection activities in respect of sensitive categories of individuals.

GCSB and NZSIS are not permitted to investigate a person purely based on the exercise of their right to freedom of expression. We would not interfere with this right without a good reason to do so and in accordance with our mandated statutory objectives and functions. This is why journalists are treated as a sensitive category. This means if either agency were to investigate a journalist, extra checks and balances would be applied to ensure the investigation is necessary and proportionate.

The Crimes Act 1986

Communicating official information
(Section 78A)

The improper handling or communication of official information without the proper authority to do so can result in significant penalties. It is an offence to:

Knowingly or recklessly, and with knowledge that you are acting without proper authority, communicate any official information knowing it's likely to prejudice the security or defence of New Zealand.

With intent to prejudice the security or defence of New Zealand, retain or copy any official document where you know you do not have proper authority to retain or copy; which you know relates to the security or defence of New Zealand; and which would, by its unauthorised disclosure, be likely prejudice the security or defence of New Zealand.

Knowingly fail to comply with any directions issued by a lawful authority for the return of an official document—which is in your possession or your control; which you know relates to the security or defence of New Zealand; and which would, by its unauthorised disclosure, be likely to seriously prejudice the security or defence of New Zealand.

Breach of any of these offences is punishable by up to three years imprisonment.

Communication or retention of classified information
(Section 78AA)

New Zealand has laws which make the wrongful communication, retention, or copying of classified information an offence (Section 78AA).

Classified information is official information that is classified under the NZ Government Security Classification System.

This offence applies to two sets of people – those who hold (or have held) security clearances, and any person who has received information, in confidence, through an authorised disclosure knowing that the information is classified.

A breach of this offence is punishable by a prison sentence of up to five years.

For example, if there was a national security situation and media is provided with classified information by the agencies in the context of a confidential background briefing to help inform publication decisions, it would be an offence to retain, copy or disclose that information.

Please note: unauthorised disclosures of classified information to the media by a person with a security

clearance is an offence. Anyone receiving information should be aware of the risk that they are a potential party to an offence.cxd

The main concern in this regards is that the disclosures risk revealing capabilities and targets. This in turn could have a real and negative impact on national security.

Anyone with concerns about the activities of the agencies can make a protected disclosure within the agencies or to the Inspector-General of Intelligence and Security.