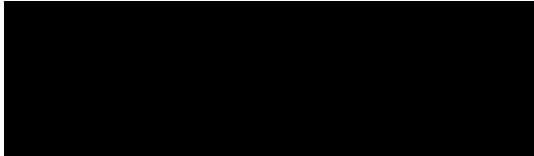


17 June 2020



Dear Tim

REQUEST FOR INFORMATION – OUR REFERENCE: 01-20-12379

Thank you for your email request dated 11 May 2020 in which you requested:

1. *Protocols or other agreements with telecommunication companies about the exercise of search powers (including production orders, intercepts, etc), including any updated versions of the documents supplied in response to the OIA request here: <https://fyi.org.nz/request/1069-telecom-inquiries-and-vodafone-protocol-police-manual-chapters#incoming-7303>*
2. *The latest versions of the police manual chapters relating to such search powers, as well as the latest chapter on the NZ Bill of Rights Act. (Again, versions have previously been released on fyi.org.nz.)*
3. *Policy and other guidance documents relating to how the police obtain information / evidence from overseas telecommunications companies, including any documents relating to the use mutual assistance powers, both formal and informal powers.*

I have considered your request in accordance with the Official Information Act 1982.

In regards to your request

1. *Protocols or other agreements with telecommunication companies about the exercise of search powers (including production orders, intercepts, etc), including any updated versions of the documents supplied in response to the OIA request here: <https://fyi.org.nz/request/1069-telecom-inquiries-and-vodafone-protocol-police-manual-chapters#incoming-7303>*

The Spark chapter as referenced has been removed and not replaced on the Police intranet. Accordingly this part of your request is refused under section 18(e) of the Official Information Act 1982; that the document alleged

Police National Headquarters

180 Molesworth Street. PO Box 3017, Wellington 6140, New Zealand.
Telephone: 04 474 9499. Fax: 04 498 7400. www.police.govt.nz

to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found.

The Vodafone manual has not been updated on the Police intranet and matches the version on FYI.org.nz. Accordingly this part of your request is refused under section 18(d) of the Official Information Act 1982; that the information requested is or will soon be publicly available:

In terms of current information, I enclose an extract from the Telecommunication Investigation Manual that covers the telecommunication companies and the exercise of search powers. Out of scope information has been redacted.

- 2. The latest versions of the police manual chapters relating to such search powers, as well as the latest chapter on the NZ Bill of Rights Act. (Again, versions have previously been released on fyi.org.nz.)*

Please find attached the Search Part 5 - Carrying out search powers with or without warrants, Search Part 9 – Production Orders, and Bill of Rights Police chapters.

- 3. Policy and other guidance documents relating to how the police obtain information / evidence from overseas telecommunications companies, including any documents relating to the use mutual assistance powers, both formal and informal powers.*

Generally overseas telecommunications companies will require a formal process under the Mutual Assistance in Criminal Matters Act 1992 ("MACMA")

Attached is an extract from the Interpol Police chapter outlining the process. Out of scope information has been redacted.

Further information can also be found at:

<https://www.crownlaw.govt.nz/assistance-for-foreign-authorities/mutual-assistance/>

I would comment that telecommunication data is not routinely sought from overseas companies. I am not aware of any requests being made through or by the Cybercrime unit.

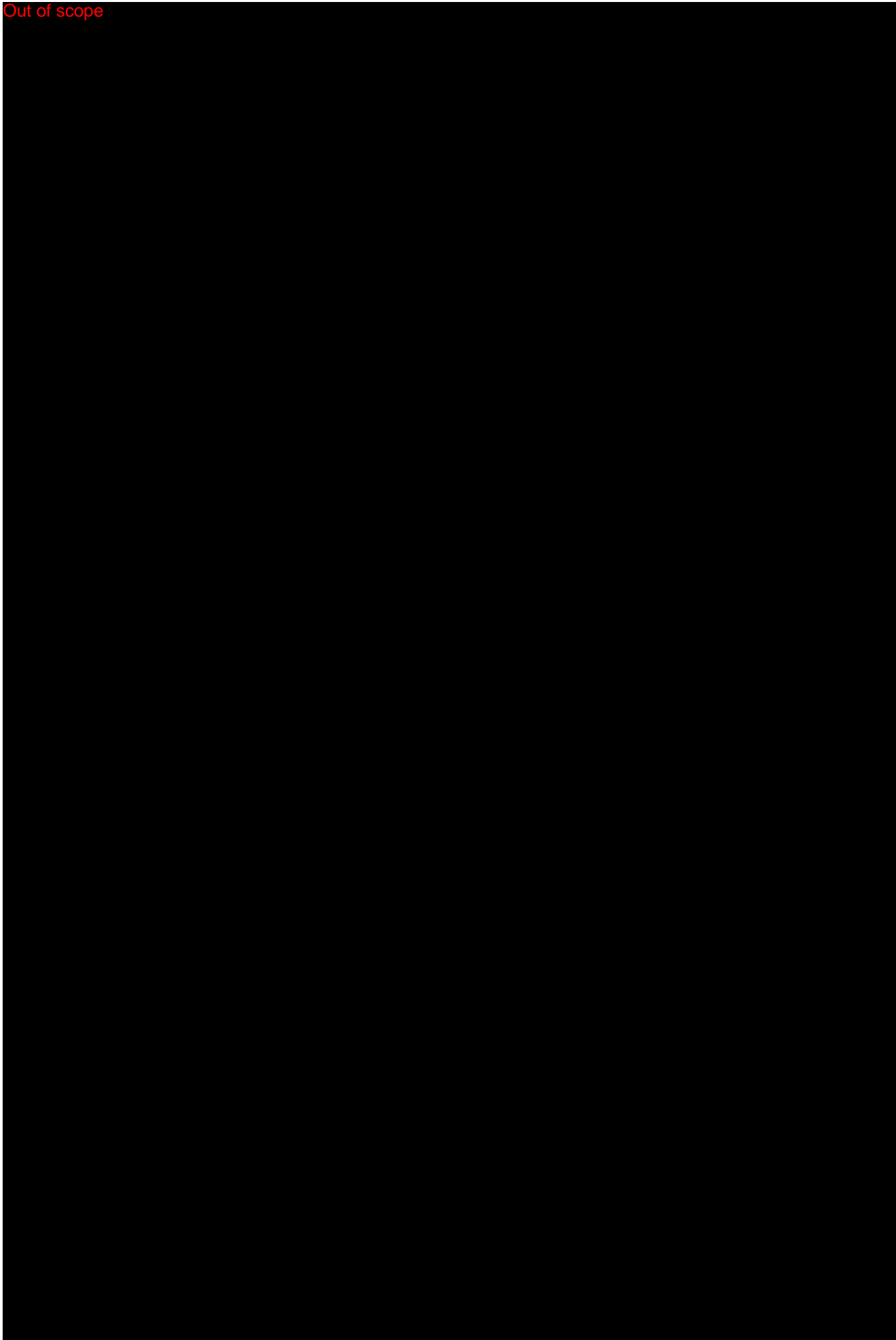
If you are not satisfied with my response to your request you have the right to complain to the Office of the Ombudsman to seek a review and investigation of my decision.

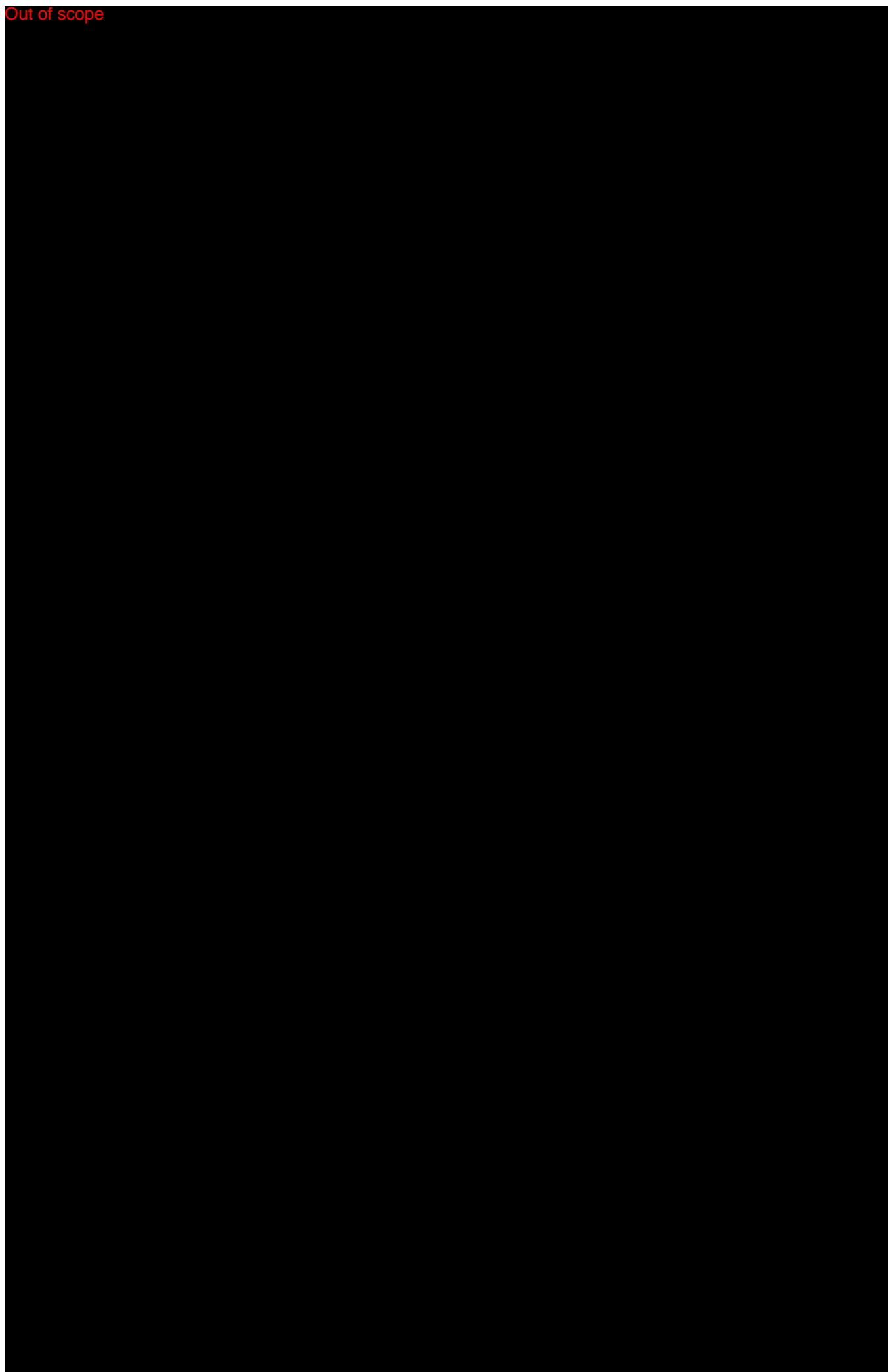
Yours sincerely

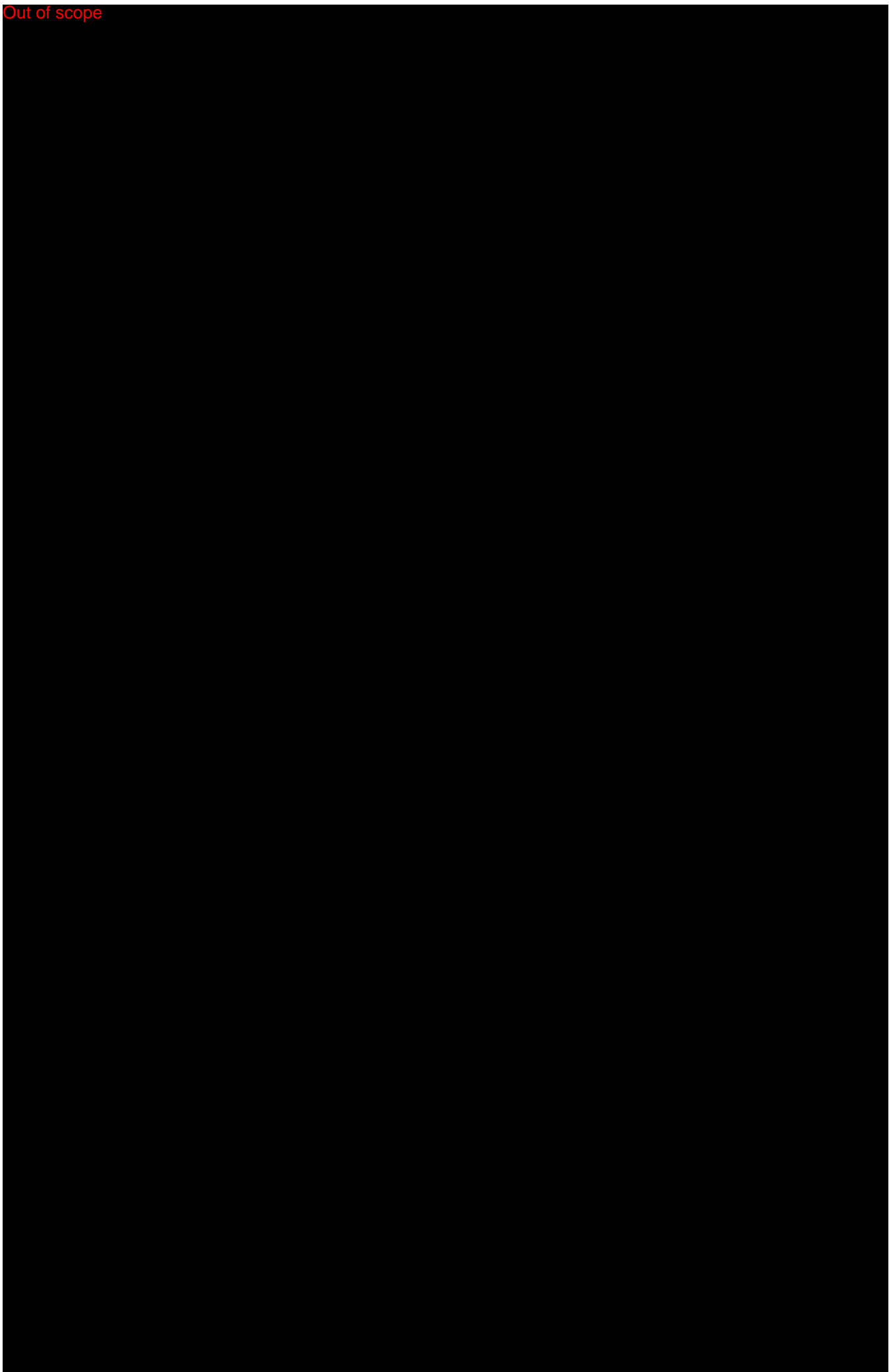
A handwritten signature in blue ink, appearing to be 'G. Dalziel', written over a horizontal line.

Detective Senior Sergeant Greg Dalziel
High Tech Crime Group
Police National Headquarters

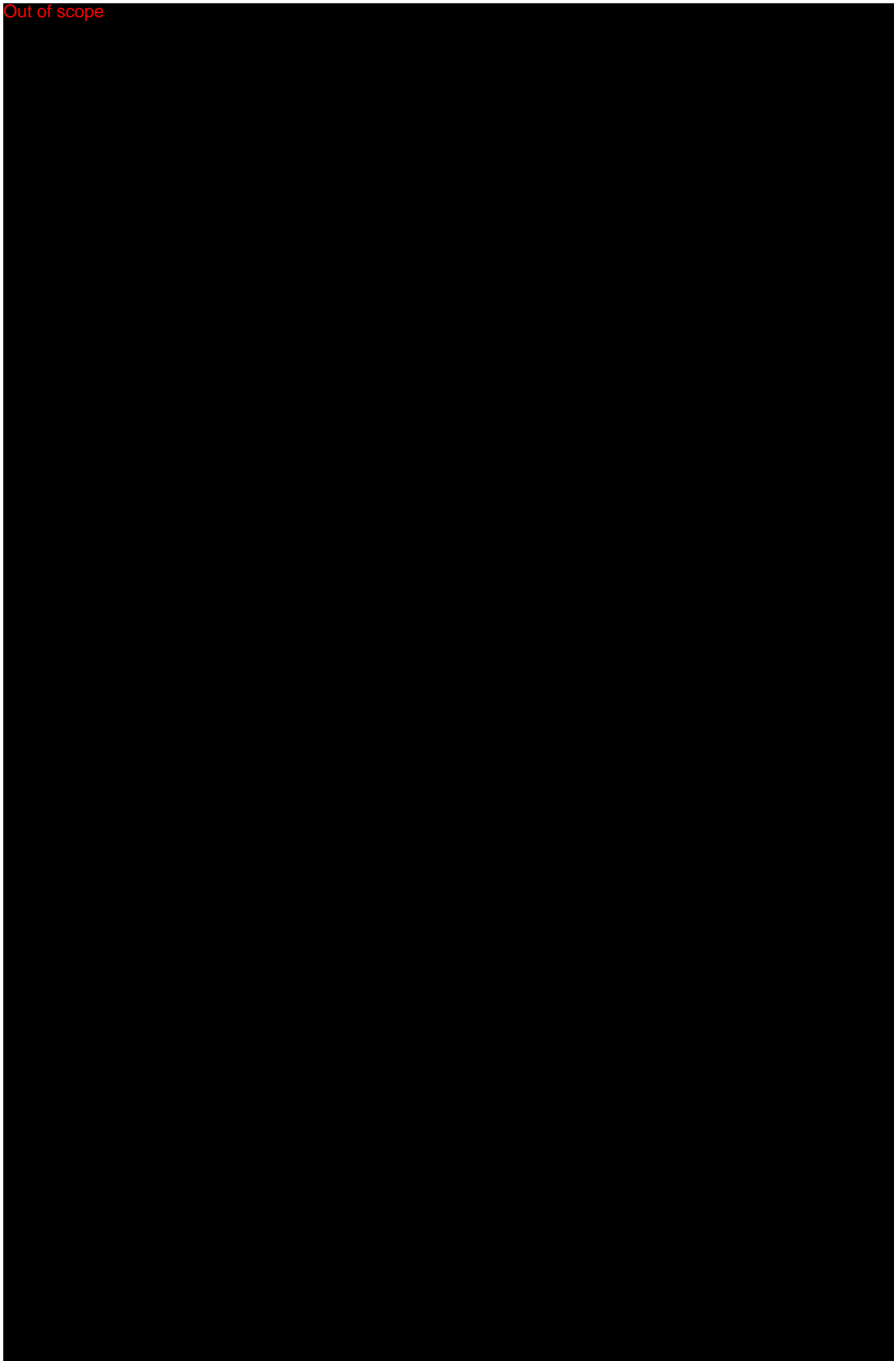
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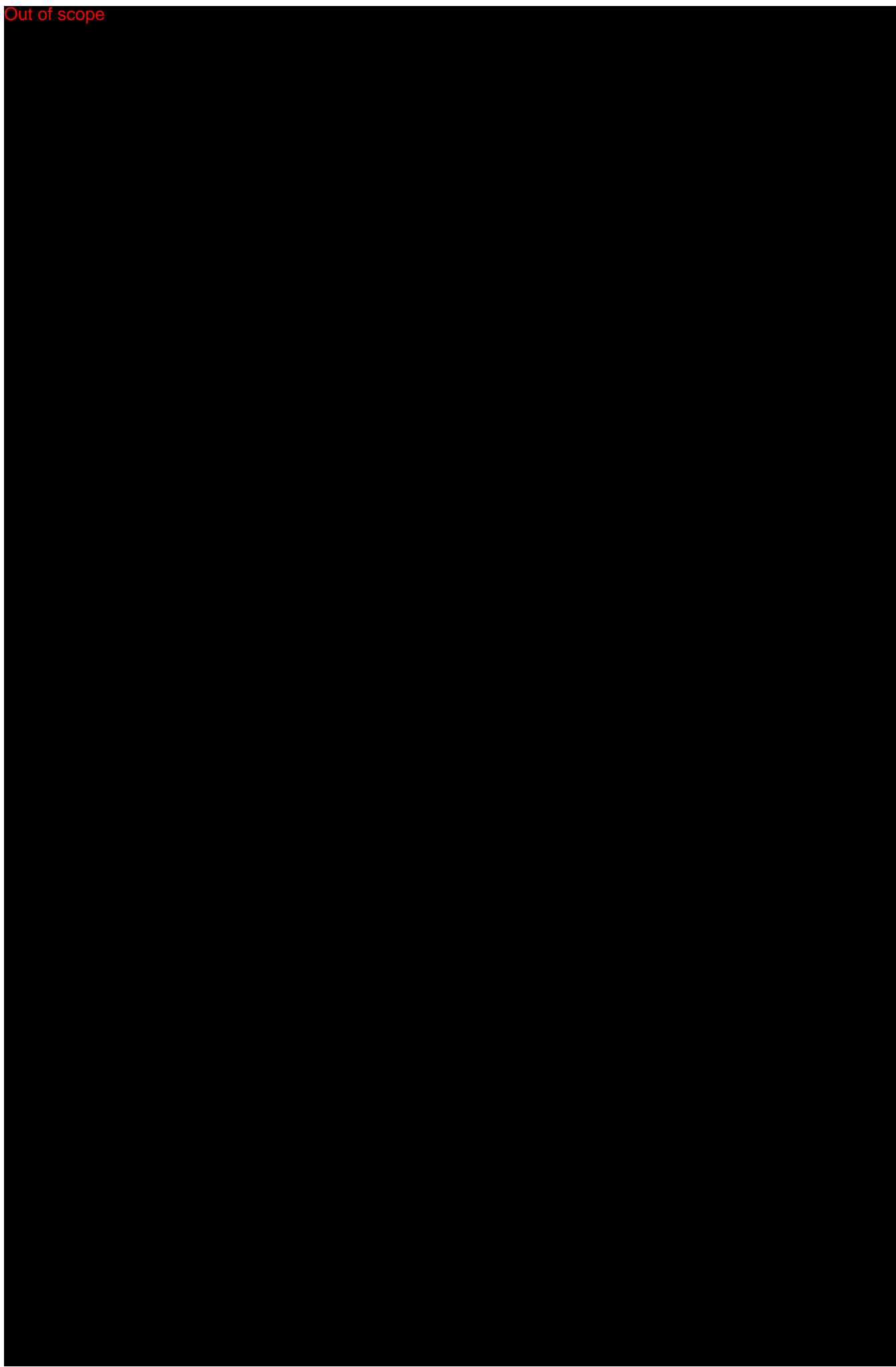




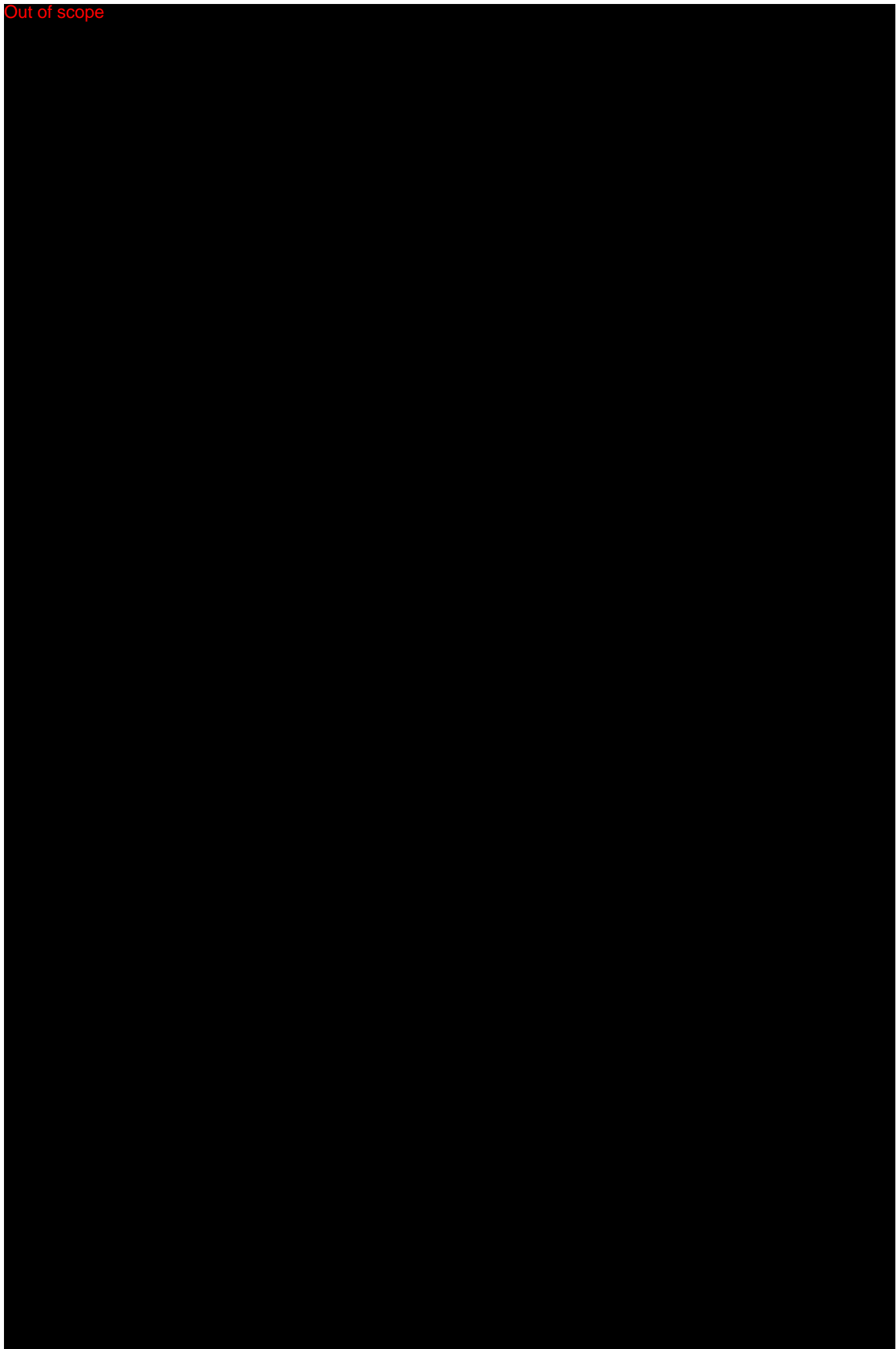
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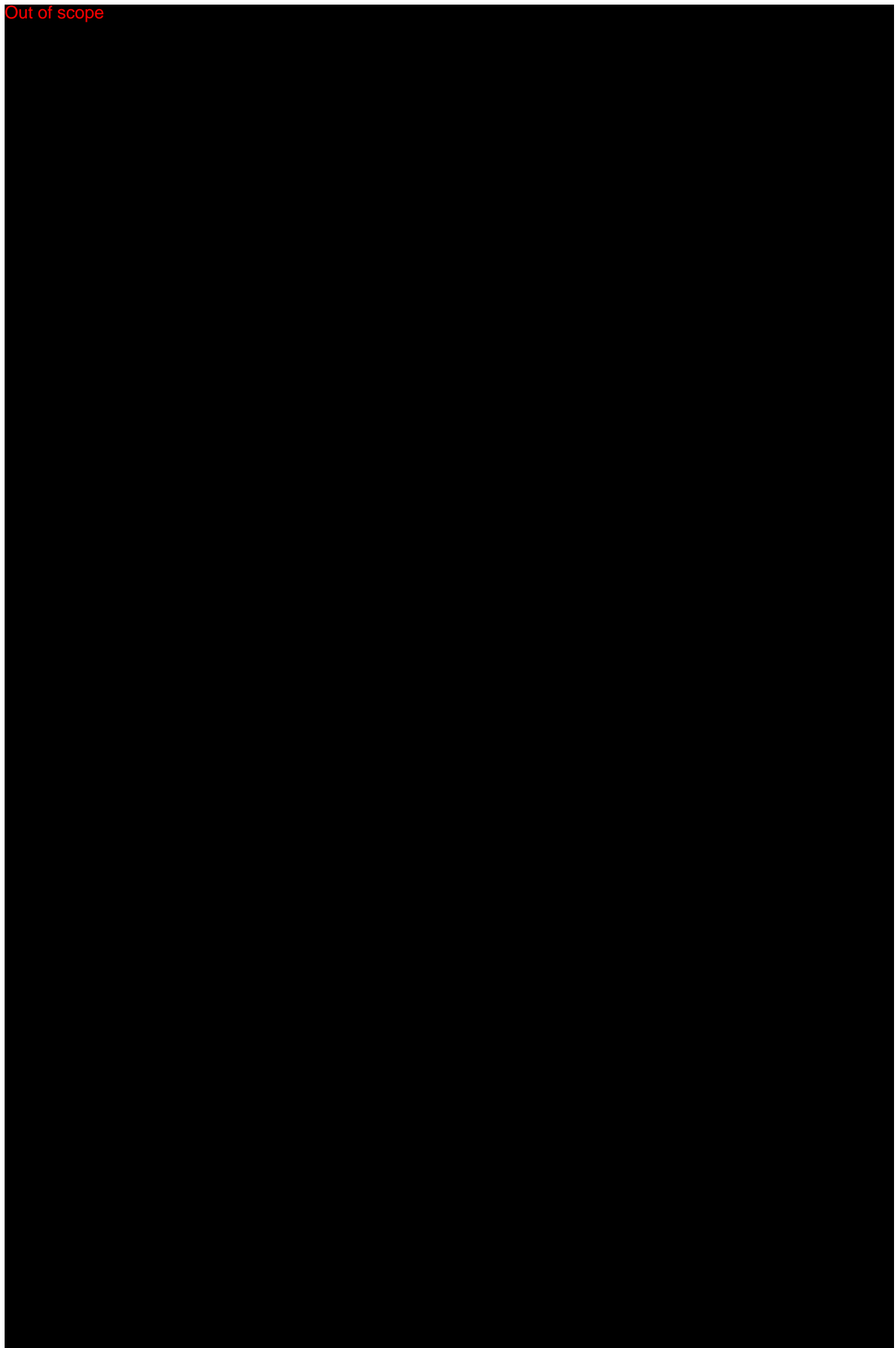
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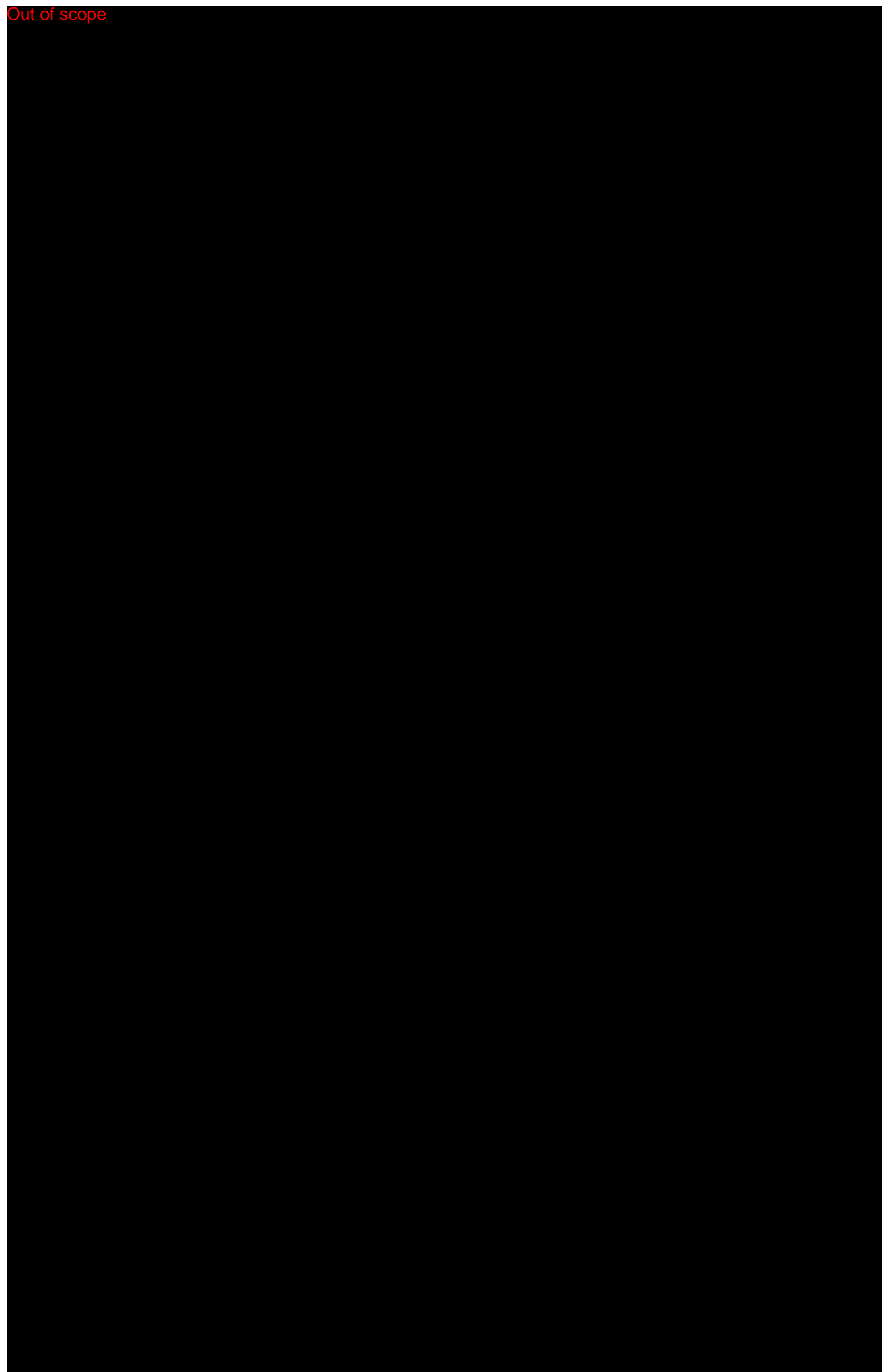


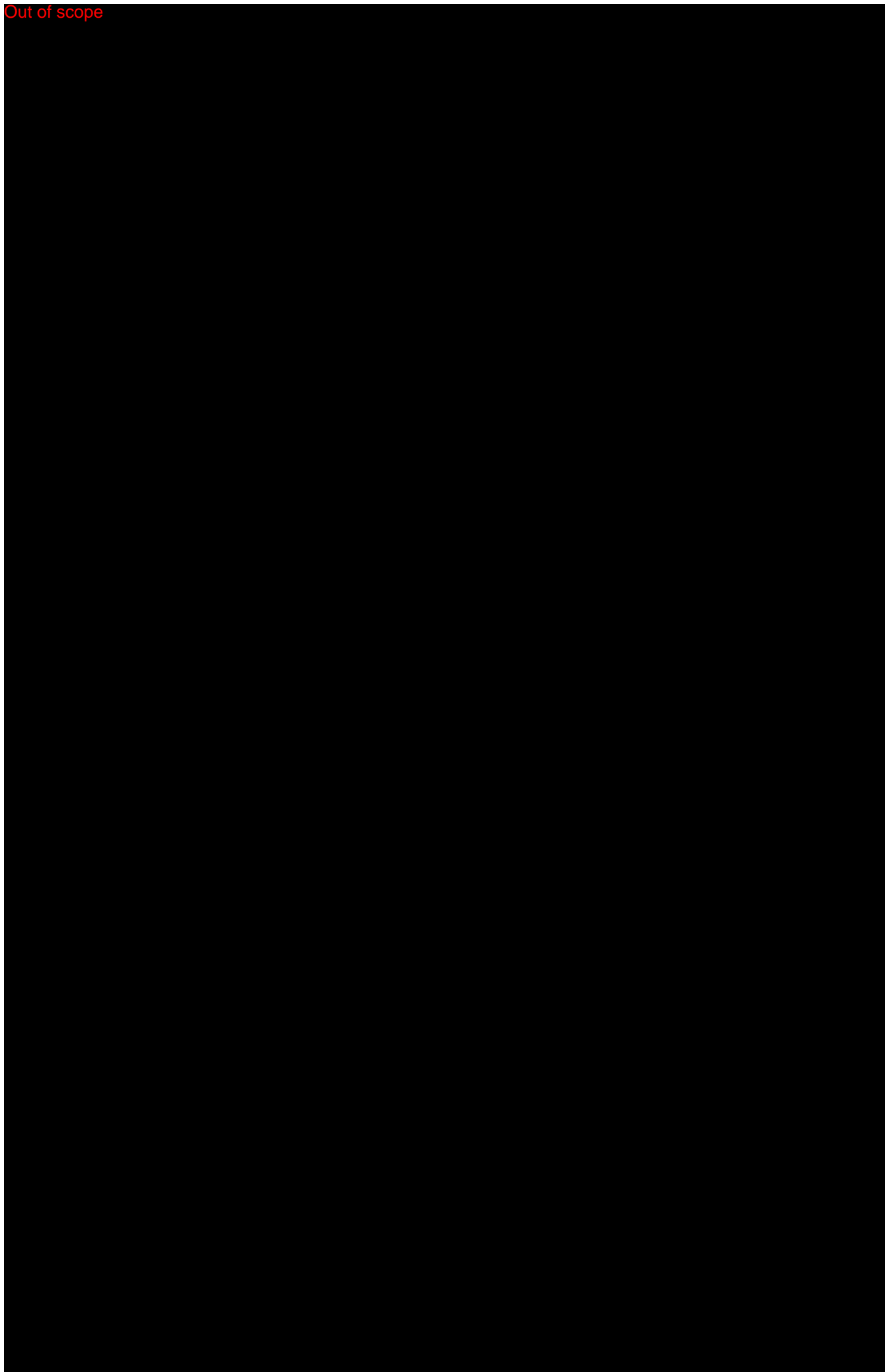
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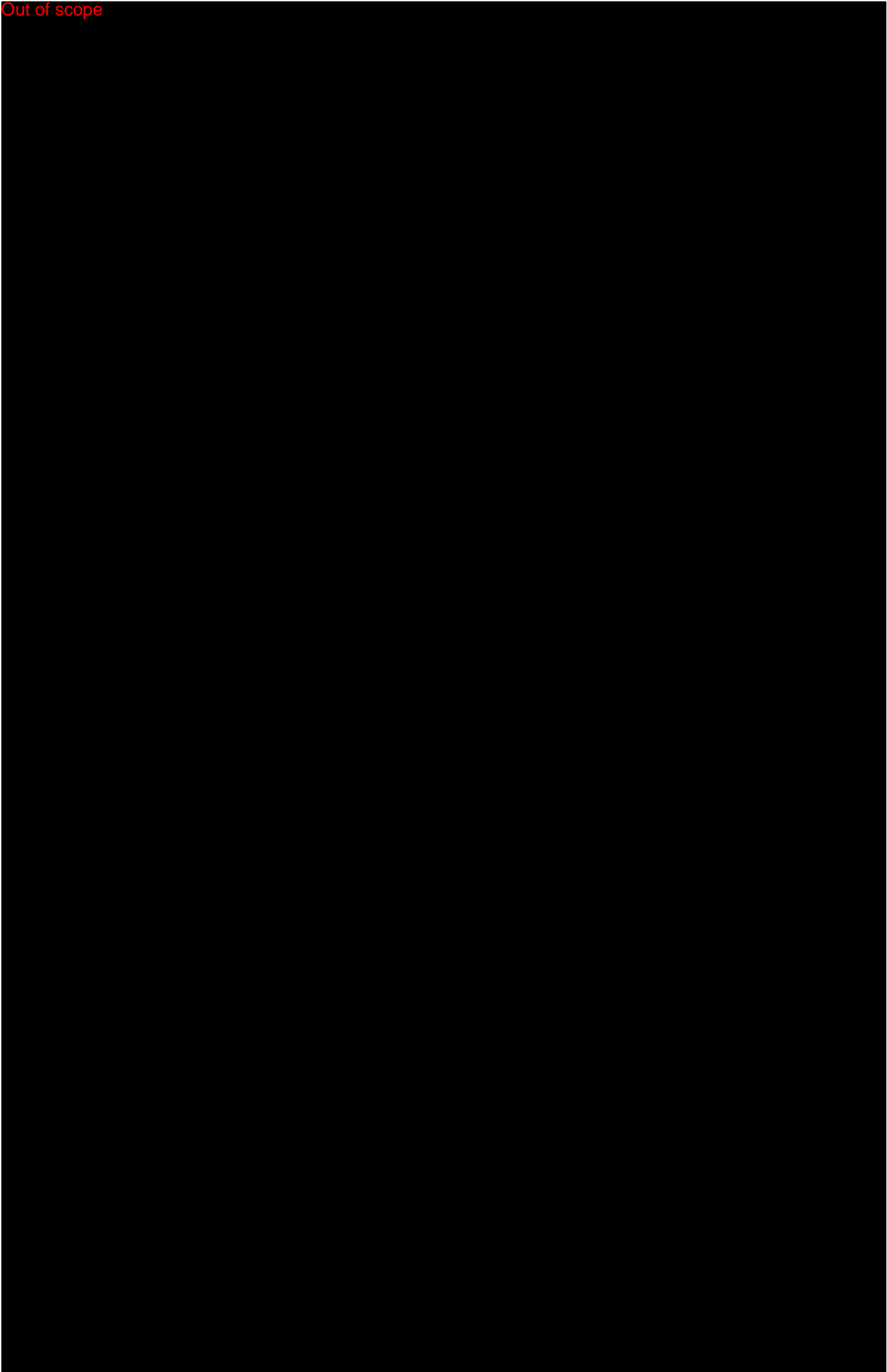
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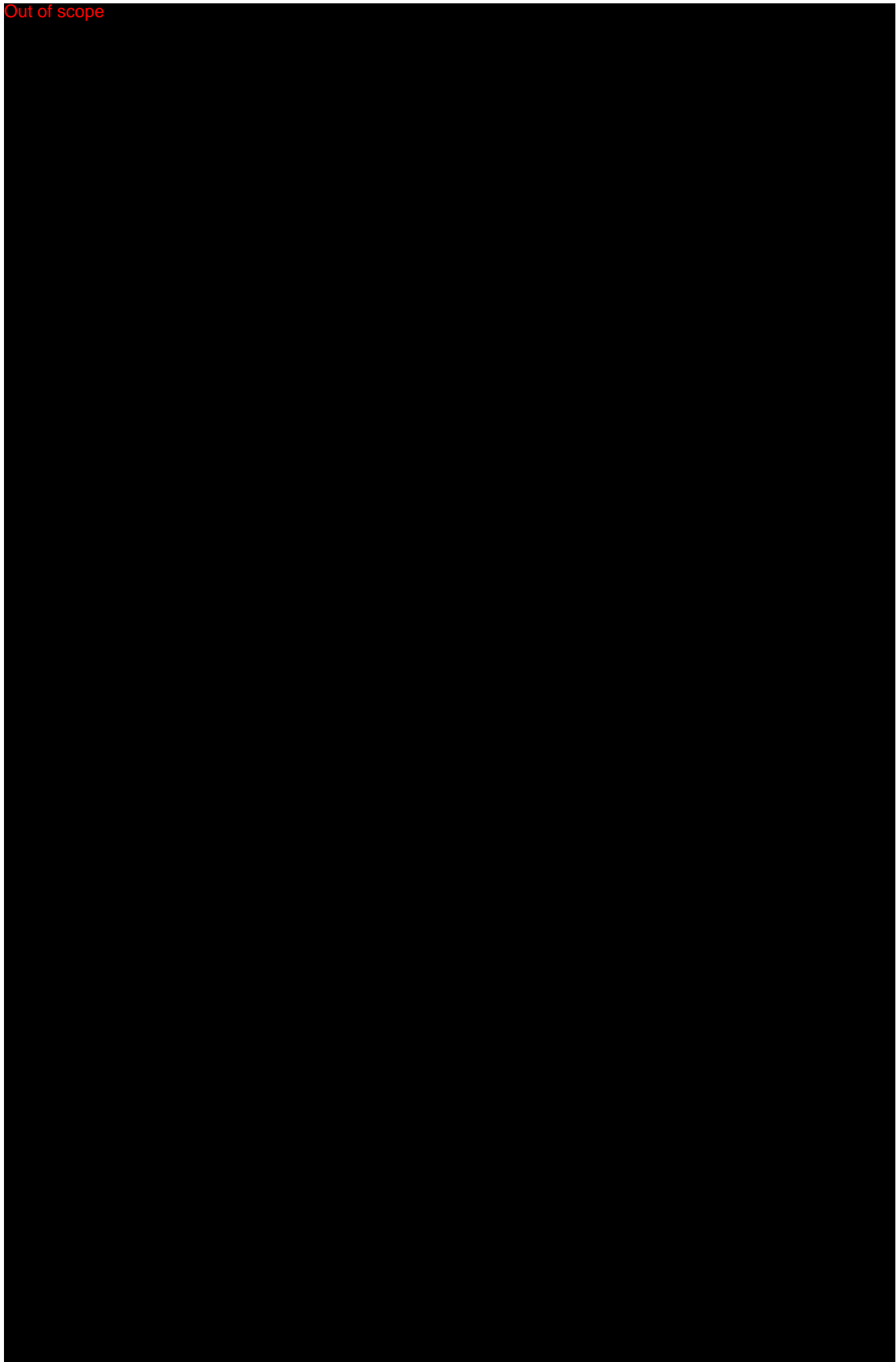




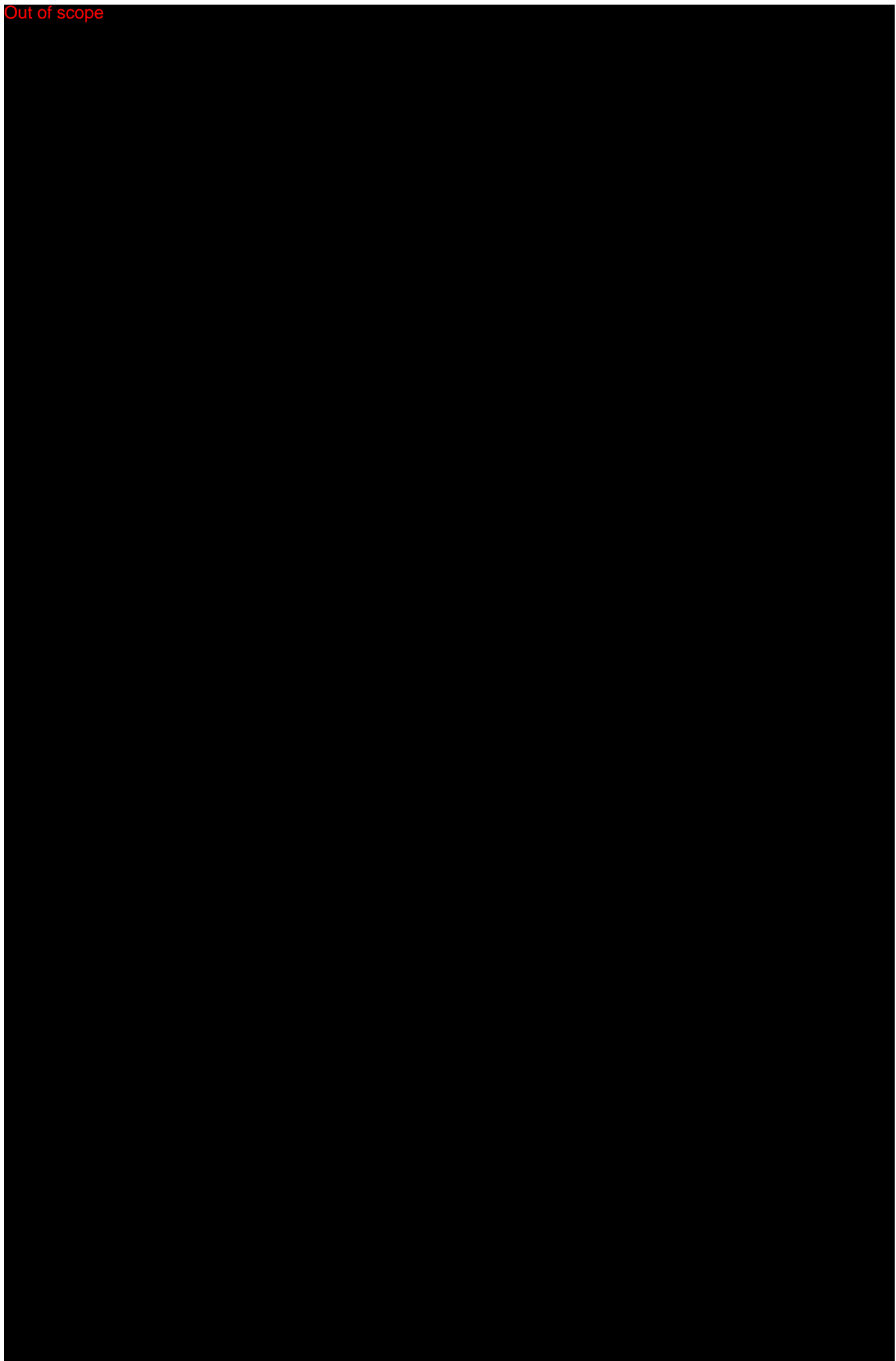
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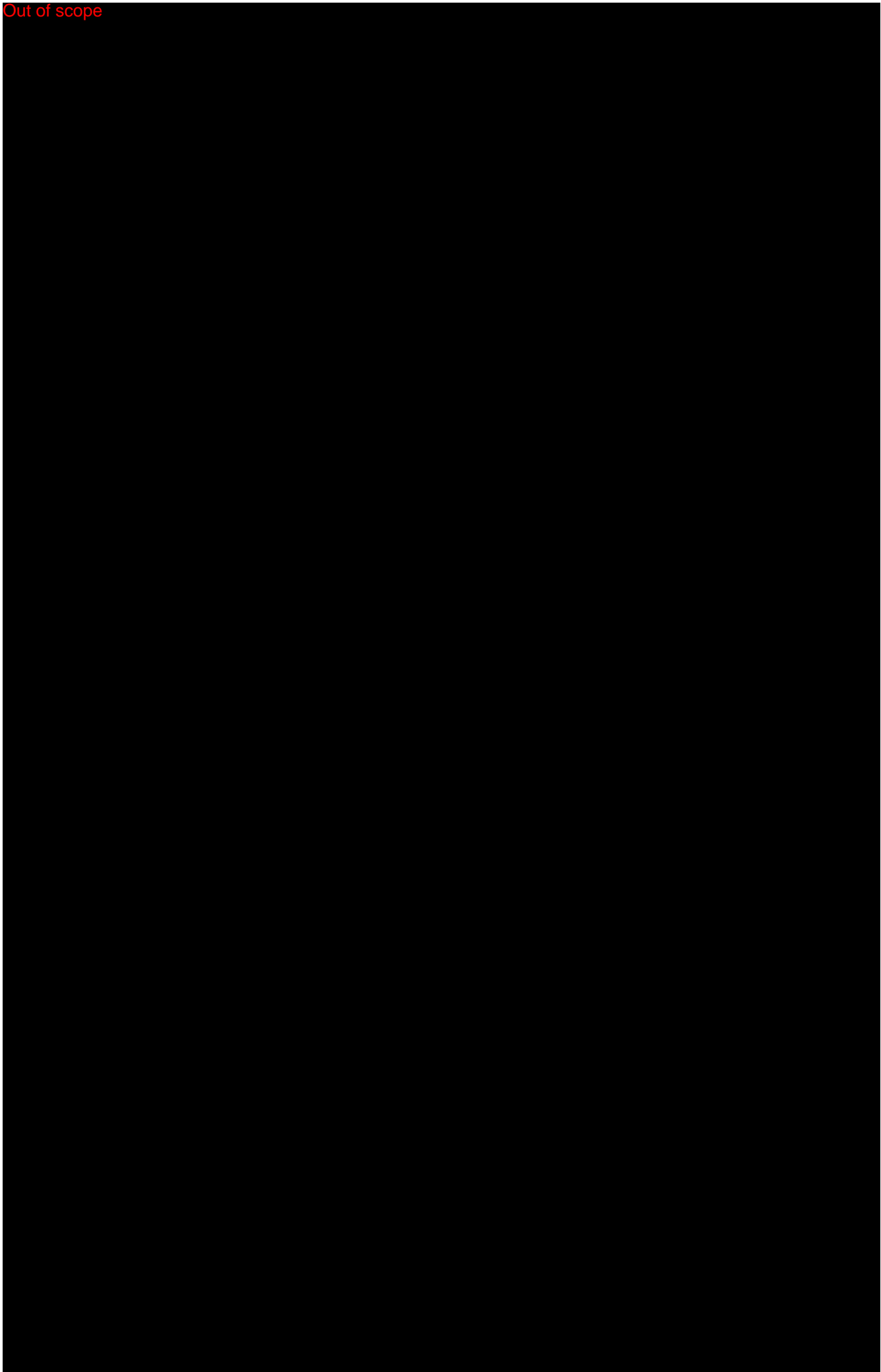


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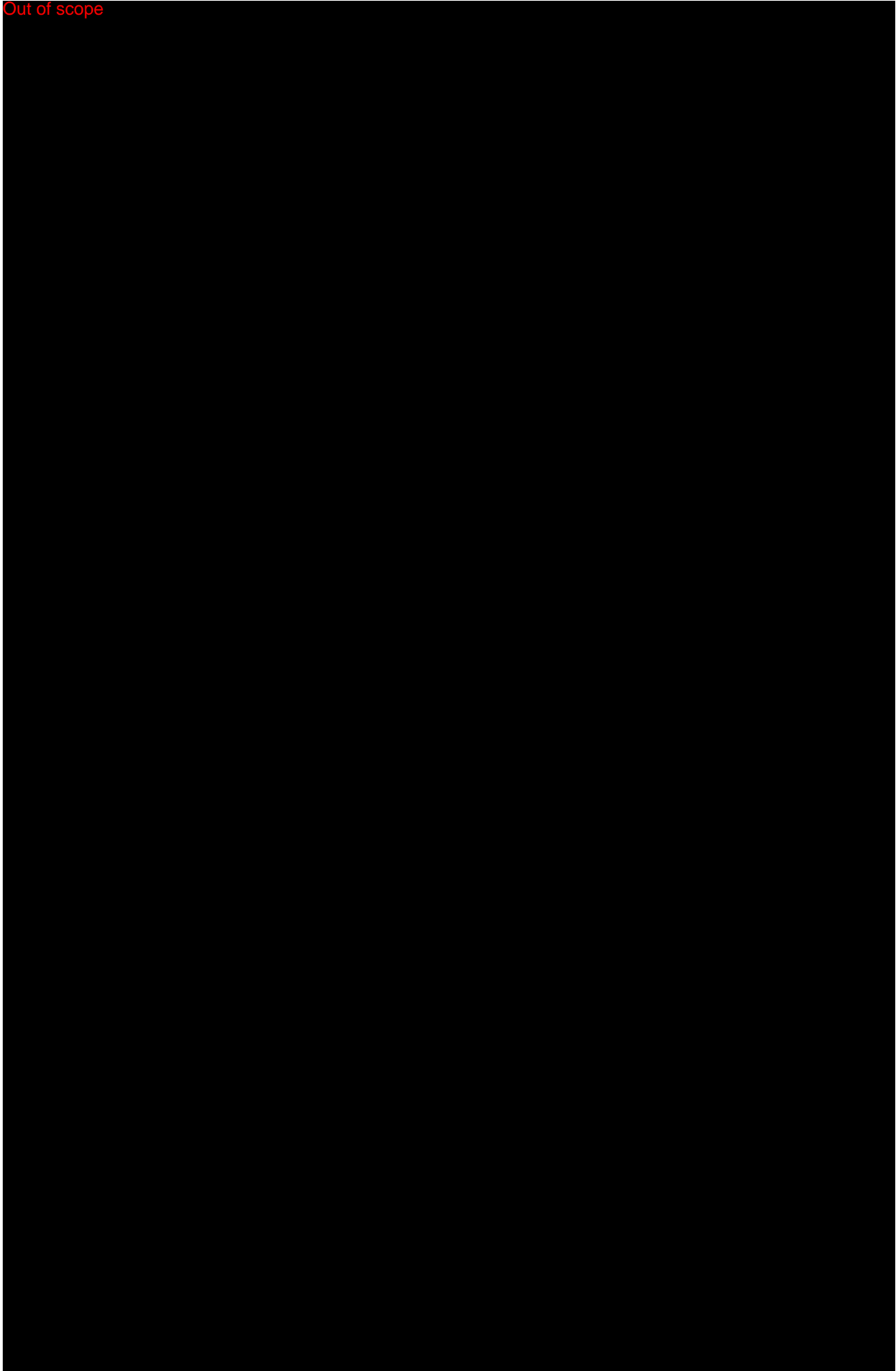


Out of scope









Telecommunication investigations, Continued...

Obtaining telecommunications data

Out of scope



In most cases, a Production Order is required to be executed on the telco provider to obtain telecommunications records.

Guidance on applying for Production Orders is found in [Part 9 - Production orders](#) of the 'Search' chapter.

Call associated data (CAD) process

The Search and Surveillance Act 2012 allows for the obtaining of call associated data (CAD) either as a historic process using a section [74](#) production order or on a continuing basis through a surveillance device warrant issued under section [53](#) of the Act. All CAD obtained via a production order will be sent to the investigator direct from the telecommunications company that was served the order. All CAD obtained pursuant to a surveillance device warrant are delivered to the CMC interception system along with the content of the telecommunication as authorised by the warrant. Analysis of call data obtained pursuant to a production order can be a useful investigative technique in its own right, and should precede the commencement of interception.

There can be a relationship between a surveillance device warrant and a production order. A surveillance device warrant to use an interception device will, under numbered paragraph 2 of the document, authorise the applicant to direct a network operator to provide CAD that is a document within the meaning of section [70](#) of the Act and related to a communication intercepted under the warrant. However, there may be occasions where call data records are required for analysis before sufficient information is available (e.g. identifying targets) to prepare making an application for a surveillance device warrant. In these situations apply for a production order in the first instance and follow-up with an application for surveillance device warrant when sufficient information has been obtained and the time is appropriate to commence surveillance activities.

Obtaining production orders under the Search and Surveillance Act 2012

Investigators must obtain approval from the "[district approver](#)" before making an application for a production order involving call associated data information. See applying for a production order - '[Approval to apply for production order directed at telecommunications provider](#)' in Part 9 of the Search chapter – Production orders.

Accurately describing the records you are seeking to obtain

Police have existing arrangements in place with the major telcos which outline expectations of telco response times for Police requests. The timeframes are:

- standard production order – within 10 business days
- forward facing production order – data to be provided once per week.

You should not set an expectation in a production order that contradicts the terms of these agreements. If the circumstances of your investigation require greater urgency, the matter should be escalated through the CMC. Care should be taken to ensure that production orders are drafted in accordance with best practice and the advice given in this chapter. This ensures the telco provider is able to respond as quickly as possible to requests.

Telecommunication investigations, Continued...

Out of scope

Obtaining telco records pursuant to other enactments

Police may obtain telco records under other enactments, for example:

- a written notice under section [120](#) of the Coroners Act
- a production order under Section [105](#) of the Criminal Proceeds (Recovery) Act 2009.

Obtaining telco records by consent

An individual can consent to Police obtaining their telco records. Be aware that records obtained by consent are limited to billing records of outgoing communications for that number. If incoming communications are required, you should seek a production order.

Obtaining telco records for a missing person

In the case of a missing person investigation where no offence has been identified Police may request telcos to consider disclosing the missing person's telco records using the Information Request Form. Police need to outline the legal basis why they think disclosing the information is justified under the Privacy Act 1993. In any event no requests made under the Privacy Act compel the telcos to make the disclosure.

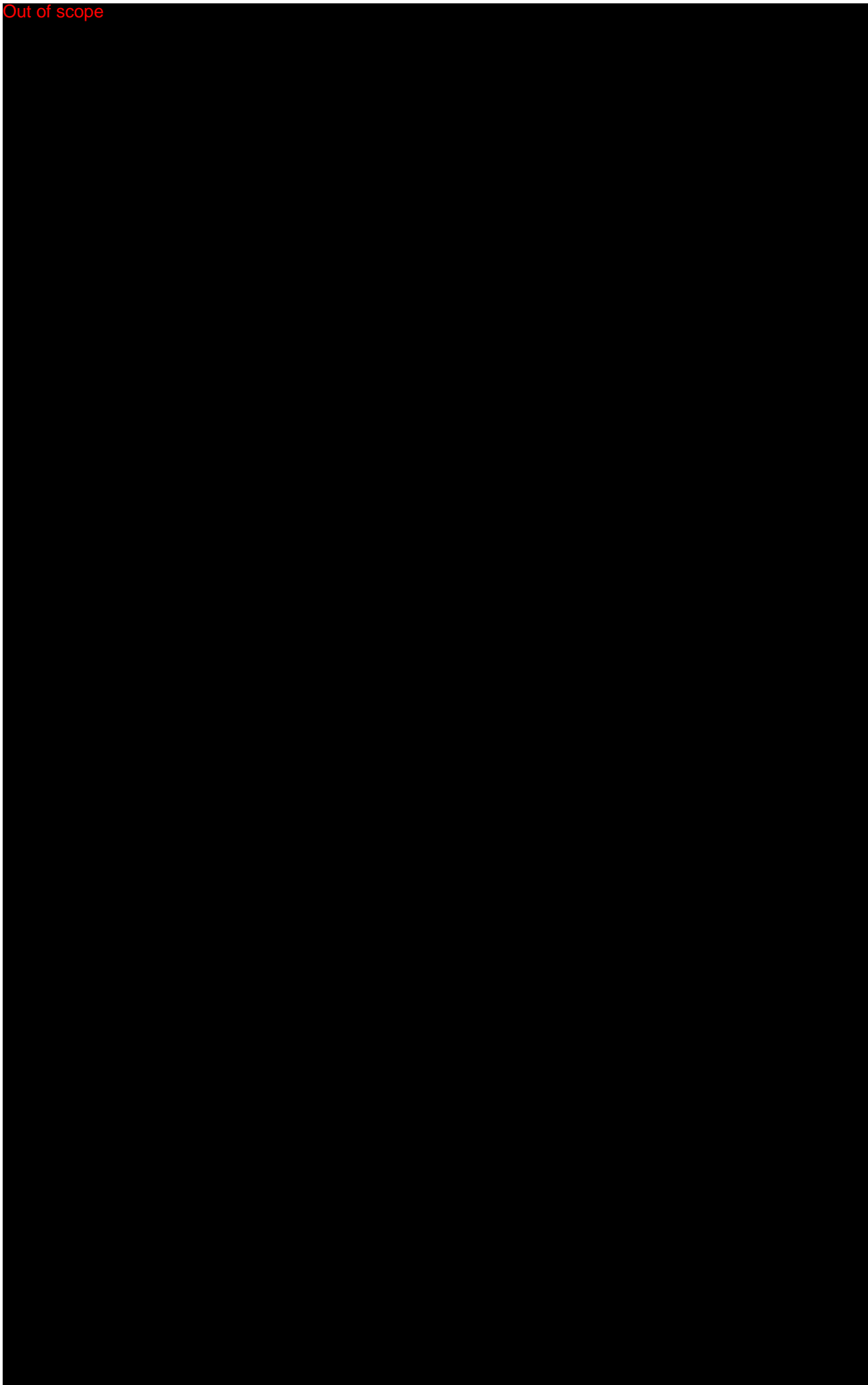
Prioritisation Requests

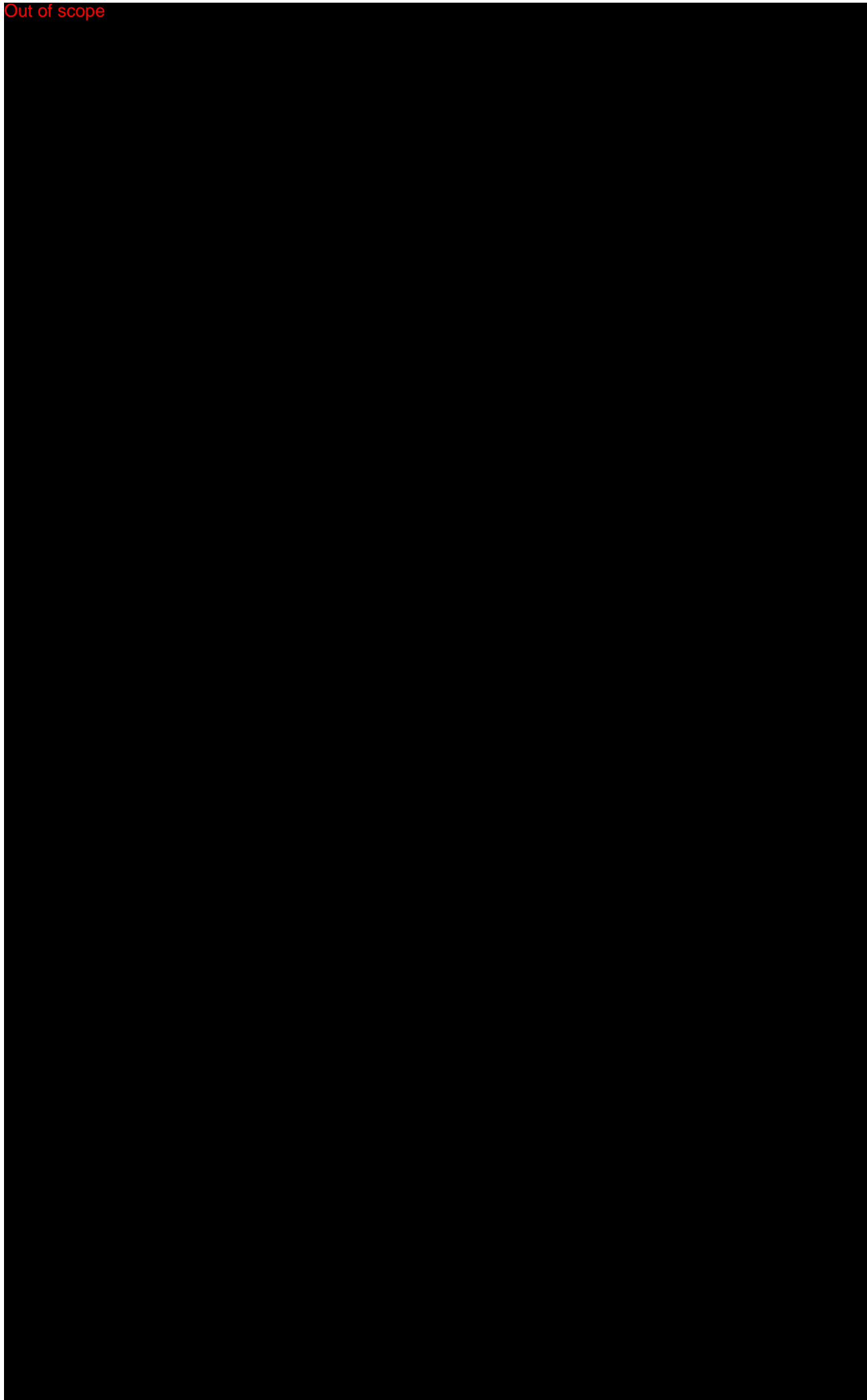
The seriousness of the investigation will dictate how and when you receive information. **LIFE and DEATH** incidents will take priority at telcos. **RING THE CMC IF YOUR REQUEST REQUIRES PRIORITISATION.**

Polling Information Request

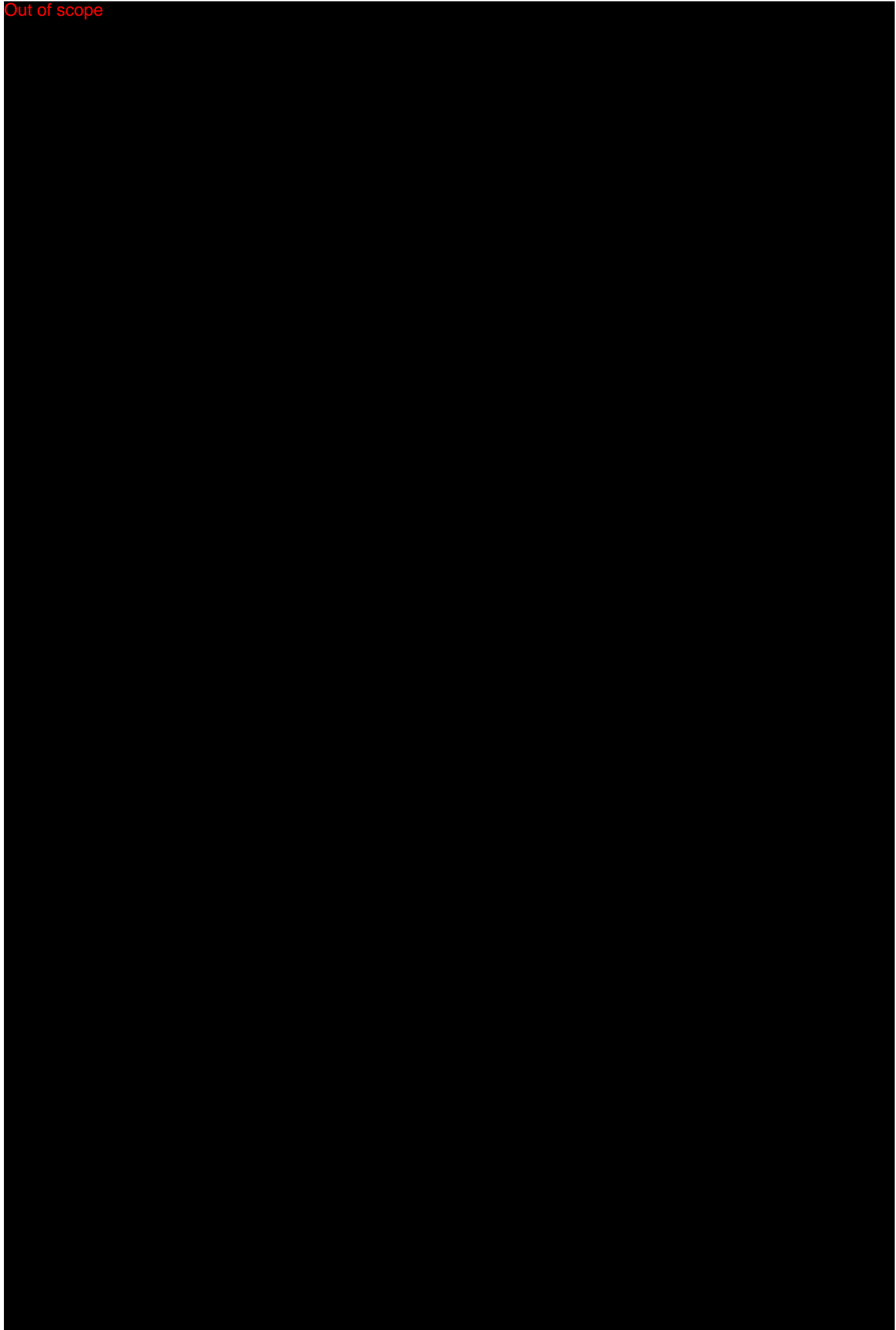
Comms Centre Polling request – this is sent to the Network Operations Centre (NOC) of the three telcos. It relates to a single polling request. A query is done on the Home Location Register (HLR) which is a record of only the last tower a phone polled off. The HLR is what assists the telco to route calls. There are **no** historic records and it is constantly overwritten with only the latest value. It is not possible to continually 'track' from this system as it requires constant manual queries. The NOCs are not set up to provide ongoing tracking information.

Out of scope

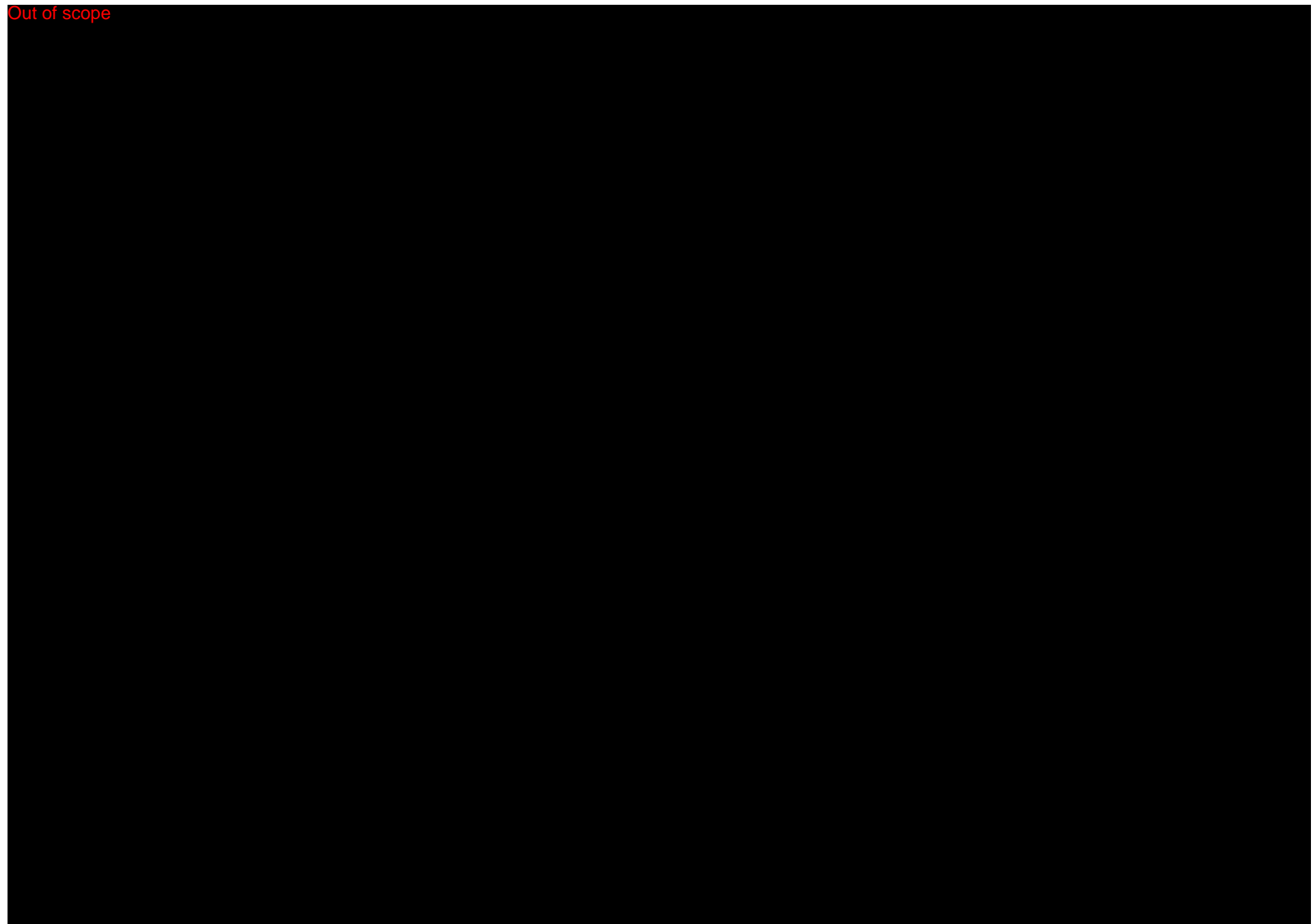




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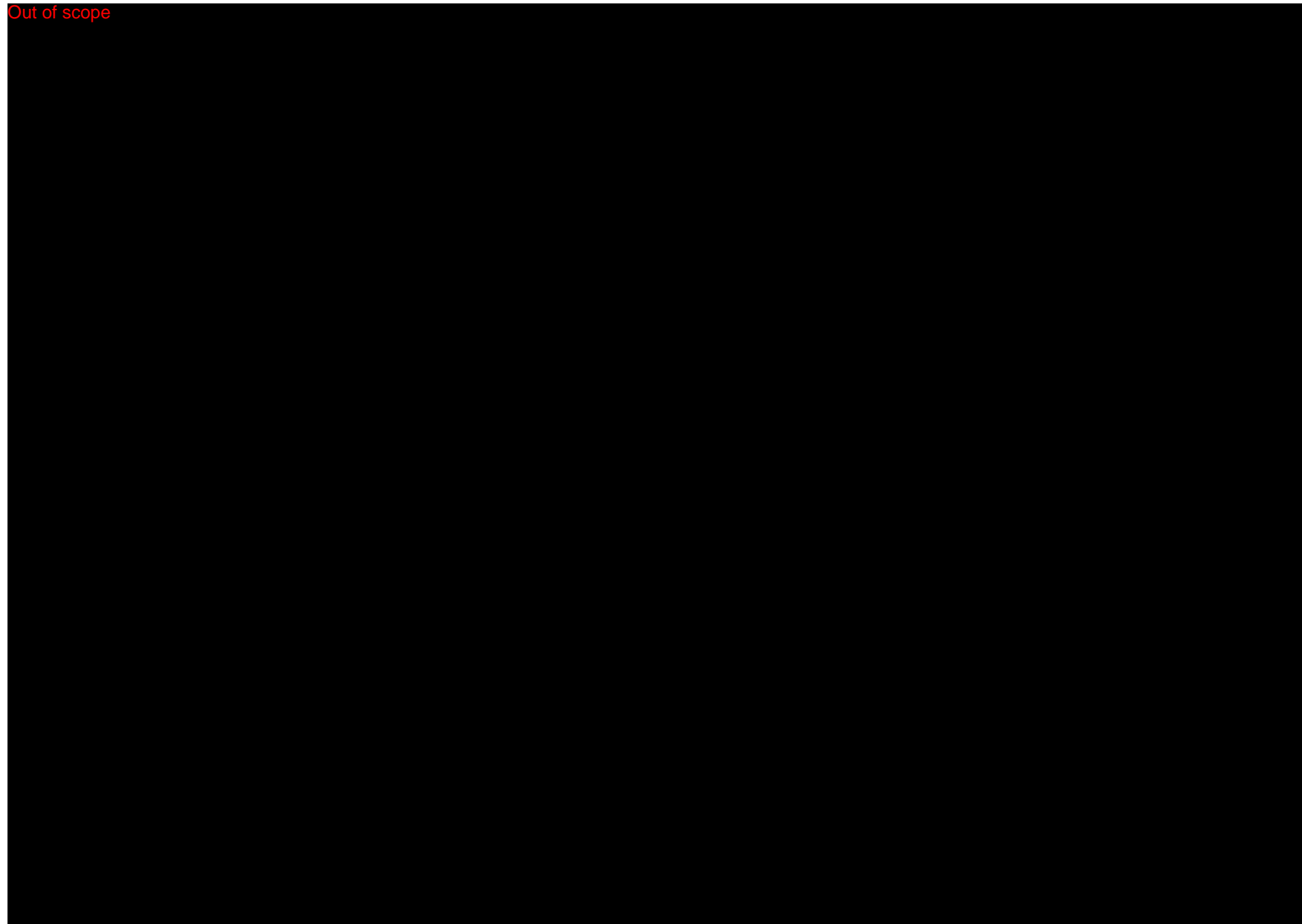


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Part 5 – Carrying out search powers with or without warrants

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Policy statement and principles

What

The [Search and Surveillance Act 2012](#) brings together most Police and law enforcement search, seizure, surveillance and related powers. The Act sets out detailed rights, powers and obligations in relation to exercising those powers. The powers in the Act are designed to make it easier to detect and apprehend offenders committing serious criminal offences.

This part of the [Search](#) chapter details procedures for Police employees carrying out search powers with or without warrant and provides guidance on associated rights, powers and obligations that arise when searching places, vehicles or things.

Searches by way of warrant or warrantless powers have inherent safety risks and because of their intrusive nature have the potential to cause harm to Police employees and the public. Police employees planning and undertaking searches must therefore mitigate these risks as much as possible while enforcing the law.

Why

Key functions of the Police are law enforcement, crime prevention and the maintenance of public safety. As an employer, Police has a responsibility to ensure that its employees are safe when they undertake their duties.

Compliance with the guidance and procedures in this chapter when carrying out search powers will:

- ensure compliance with the [Search and Surveillance Act](#), and other enactments like the New Zealand Bill of Rights Act 1990
- maximise safety and eliminate or minimise the potential harm that executing a search warrant or exercising a search power may have
- increase the chance of successful prosecutions.

How

To meet its objectives and obligations when carrying out searches with or without warrants, Police will:

- ensure it has a lawful authority to search and exercise any other incidental power in relation to that search, including the use of force
- conduct risk assessments when planning searches and take action to mitigate risks to protect the safety of the public and of staff carrying out the search
- only seize what it is lawfully entitled to seize
- provide appropriate announcements and identification on entry
- satisfy the notice and inventory requirements detailed in the Act after search or seizure.

Note: Searches of persons subsequent to arrest, are not covered in this chapter.

Part 5 – Carrying out search powers with or without warrants, Continued...

Powers incidental to search

Police actions authorised by search powers

Every search power (with or without a warrant) authorises you to:

Action	You may...
Enter and search	Enter and search the place, vehicle, or other thing you are authorised to enter and search, and any item(s) found in that place, vehicle or other thing. You can do this at any reasonable time.
Request assistance	Request assistance from any person with the entry and search (including a member of a hapū or an iwi if the place to be entered is of cultural or spiritual significance to that hapū or iwi).
Use reasonable force in respect of property only	Use reasonable force on property only to carry out the search and lawful seizure. Note: This power does not authorise the application of force to any person (s115(3)). (Section 125 covers use of force against a person for search purposes - see Searching people).
Seize	Seize anything that is the subject of the search or anything else that may be lawfully seized. See What can be searched and seized for more information.
Bring and use equipment	Bring and use any equipment or use any equipment found on the place, vehicle or other thing. You may also use electricity from the place, vehicle, or other thing to operate equipment that is reasonable to use in the circumstances for the entry and search.
Bring and use dog	Bring and use a trained law enforcement dog and its handler in or on the place, vehicle, or other thing being searched.
Copy documents	Copy any document, or part of a document, that may lawfully be seized.
Access a computer system or other data storage device	Use reasonable measures to access a computer system or other data storage device located (wholly or in part) at the place, vehicle or other thing if any intangible material that is the subject of the search may be in that computer system or device.
Copy intangible material	Copy intangible material accessed as above or which may otherwise be lawfully seized. This includes previewing, cloning, or using other forensic methods before or after removal for examination. See Searching for and seizing computer material for more information.
Take photographs, and recordings	Take photographs, sound and video recordings, and drawings of the place, vehicle, or other thing being searched and anything found there, if you have reasonable grounds to believe they may be relevant to the purposes of the entry and search.

(s110)

Powers when conducting remote access searches

If you are executing a search warrant authorising a remote access search, you may:

- use reasonable measures to gain access to the thing to be searched

Part 5 – Carrying out search powers with or without warrants, Continued...

- copy intangible material in the thing being searched or that may otherwise be lawfully seized (this includes previewing, cloning, or other forensic methods).
([s111](#))

Limitations on exercising search powers

The search powers listed [above](#) are subject to:

- any conditions imposed by an issuing officer when issuing a search warrant
- the privilege and confidentiality provisions in the Act.
([s115](#))

They are also subject the requirements of "reasonableness" under section 21 New Zealand Bill of Rights Act 1990.

Using assistants during searches

If you call on a person to assist you to exercise a search power, or a person has been required to assist you as a condition of a warrant, they are subject to your control and the overall responsibility for exercising the power rests with you.

You must, (unless they are another constable) accompany them when they first enter the place, vehicle, or other thing and provide reasonable supervision of them.
([s113](#))

Powers of persons called to assist

Any person called to assist you may enter the place, vehicle or other thing to be searched, but can only exercise the power of assistance and other powers listed in the table [above](#) as directed by you. For example, an assistant can only search places you determine are lawful to search, take photographs, or bring in and use equipment or electricity that you determine may lawfully be taken or used.

([s113](#))

Powers of persons called to assist remote access search

A person called to assist you execute a search warrant authorising a remote access search, has the same powers as you to:

- use reasonable measures to access the thing to be searched
- copy intangible material that is the subject of the search or that can be lawfully seized.

However, they can only exercise these powers under your control and supervision.

([s114](#))

Powers of constables who assist

Other constables assisting you with searches may exercise any power ordinarily exercisable by them, without direction or supervision from you.

Special powers when an application for search warrant is pending

See Part 2- [Search warrants](#) for information about your power to enter and secure a place, vehicle or other thing when a search warrant application is about to be made or is awaiting the issuing officer's decision.

Powers of detention incidental to searches of places and vehicles

If you are exercising a search power in relation to a place or vehicle, you (or a person assisting you) may **detain** any person to determine whether there is a connection between them and the object of the search if the person:

- was there at the start of the search, or
- arrives at the place or stops at, or enters, or tries to enter, the vehicle while the search is being carried out.

Part 5 – Carrying out search powers with or without warrants, Continued...

You may use reasonable force (e.g. handcuffing) to effect and continue the detention.

The detention:

- may be for any **reasonable period** but no longer than the duration of the search
- starts when you direct the person to remain and ends when you tell them they are free to go.

(s118)

Determining a connection

As soon as you have detained a person under section 118, you must take **active steps** to determine whether there is a connection between them and the search. The detention can only be for the shortest period practicable in the circumstances to determine this.

You cannot simply detain the person for the duration of the search and then on completion, consider the matter of connection. In essence, once people have been excluded and cleared of suspicion, they should be informed that they are free to go about their business.

Detention for the shortest period practicable

Endeavour to allow occupants back into a place or vehicle as soon as it has been secured and where it is physically practicable (e.g. sufficient room available) for them to be present and where they are not likely to hinder or obstruct the search.

If it is not practicable, you should assist the occupants to find alternative locations such as relatives' or friends' houses to stay while the search is completed.

Powers to search persons at a place or vehicle

If you are searching a place or vehicle, you may:

search any person...	if you have reasonable grounds to ...
<ul style="list-style-type: none"> • found at the place or in or on the vehicle, or • who arrives at the place, or • who stops at, or enters, or tries to enter or get into or onto the vehicle 	<ul style="list-style-type: none"> • believe that evidential material that is the object of the search is on that person, or • suspect the person is in possession of a dangerous item that poses a threat to safety and you believe that immediate action is needed to address that threat. <p>Exception: An exception to the above is when the search is for drugs — you can then search any person at the scene as a matter of course under section 19 or 21.</p>

(s119)

Note: If you **seize** any item posing a threat to safety, it must, **unless** possession constitutes an offence, be returned to the person:

- once your search has been completed, or
- when you are satisfied there is no longer any threat to safety.

Powers of search when suspect pursued

If you intend to search a person or vehicle, but that person or vehicle leaves before you are able to start or complete the search:

you may...	if you have...
<ul style="list-style-type: none"> • apprehend the person or • enter any place to apprehend the person or vehicle 	<ul style="list-style-type: none"> • been freshly pursuing the person from the intended search location until apprehended, and • you have reasonable grounds to believe that relevant evidential material is still on the person or in or on the vehicle.

Part 5 – Carrying out search powers with or without warrants, Continued...

(s120)

Note: You can effect the apprehension or undertake the search **only** if you are the officer in fresh pursuit, **unless** you are acting as that officer's assistant under section [113](#) and under their direct supervision and control.

Part 5 – Carrying out search powers with or without warrants, Continued...

Risk assessment when planning searches

Maximising safety and minimising risk

Maximising safety and eliminating or minimising risk when searching is the responsibility of all Police employees and those requested to assist with the search. Safety and risk reduction is met by adherence to police policies designed to manage safety and comply with obligations under the [Health and Safety at Work Act 2015](#). A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace.

Persons planning and conducting searches must take reasonable care to ensure their acts or omissions do not adversely affect the health and safety of other persons. Searchers must comply as far as practicable with any reasonable instruction given to enhance the safety and well-being of those involved in the search and with the [Health and Safety at Work Act 2015](#) or associated regulations. Investigative considerations are secondary to the safe execution of a search.

Planning searches of places, vehicles or things

All searches of a place, vehicle or thing by way of warrant or warrantless power must be treated as a critical incident involving risk with the potential to cause harm. Planning must be undertaken to:

- assess any threats arising, manage exposure, determine the necessity to intervene and decide the proportionate response
- identify issues that may impact on community trust and confidence in Police
- problem solve and apply decision-making.

Obtain a search warrant unless it is impracticable to do so (e.g. due to the fluidity and urgency of the situation) and apply contingency management and response arrangements into your operational planning and prepare operation orders.

Required risk assessments for searches

When planning and executing **any** search you should undertake:

- an [Operational threat assessment \(TENR\)](#)
- a [Planned Action Risk Assessment and CARD prompt](#)
- a [critical incident appreciation](#).

Conducting your risk assessments

- When conducting your assessments, follow detailed guidelines in:
- the '[TENR-Operational threat assessment](#)', and '[Community Impact Assessments \(CIAs\)](#)' chapters
- 'Community impact assessment for establishing road blocks', in Search Part 6 – [Roadblocks and stopping vehicles for search purposes](#)
- 'Critical incident appreciation process' in '[Control and command overview](#)'.

Additional risk assessments for search warrants

Before any search warrant is executed, use the [Planned Action Risk Assessment and CARD Prompt](#) to guide your TENR assessment. The CARD prompt then provides a template for the information that must be entered as a CARD event (via iNet—using a mobility device) before the search warrant is executed. (The CARD event should be entered between five and 30 minutes before the search warrant is executed.)

Urgent situations and re-assessing change

If the situation is urgent, requiring a warrantless search power to be exercised, you may carry out a mental TENR (rather than formal) assessment, and a mental community impact assessment. (The [Planned Action Risk Assessment and CARD Prompt](#) provides a

Part 5 – Carrying out search powers with or without warrants, Continued...

useful aid to assist this). You should also carry out ongoing mental TENR and community impact assessments as the situation changes during execution of the search.

Planned Action Risk Assessment and CARD Prompt, and 'OnDuty Noting'

Pre-search warrant risk and community impact assessments must be made using the ['Planned Action Risk Assessment and CARD Prompt'](#) for guidance.

After executing a search warrant, use a mobility device to submit an ['OnDuty Noting'](#) to provide intelligence information (related to either the subject/s or location) that might be useful to inform future activities.

Do not disclose planned action risk assessment without advice

Do not disclose the planned action risk assessment or ['OnDuty Notings'](#) without legal advice. A refusal to disclose the assessment can be made under section [16\(1\)\(a\)](#) and (c)(iii) of the Criminal Disclosure Act 2008.

Part 5 – Carrying out search powers with or without warrants, Continued...

Procedure for planning searches

Planning for searches

Use this table as a guide when planning searches of places, vehicles and things prior to execution.

Step	Action
1.	<p>Unless circumstances make it impractical, avoid using warrantless powers. Take time to obtain a search warrant.</p> <p>Note: If a search requires access via adjoining properties, ensure this information is included in the search warrant application.</p>
2.	<p>Obtain information/intelligence from as many relevant sources as possible. For example:</p> <ul style="list-style-type: none"> • Human Source Management Unit (HSMU) • Organised Crime Unit (OCU) • Search and Surveillance System • NIA • Intelligence reports • Lessons learned • Informal briefings/debriefings.
3.	<p>Undertake thorough risk and community impact assessments applying TENR.</p> <p>Note: Use the Planned Action Risk Assessment and CARD Prompt to provide a helpful guide to TENR, risk and community impact assessment thinking.</p> <p>See Examples of risks associated with searches (list is not exhaustive) below.</p>
4.	Undertake a critical incident appreciation
5.	Apply for search warrant using the online Search and Surveillance system, followed by an appearance before an issuing officer.
6.	<p>O/C Search Warrant assesses the response level and assesses the safety options associated with the response level. (Refer to the Planned Action Risk Assessment and CARD Prompt to help guide decision-making).</p> <p>Response level may include deployment of specialist groups such as: AOS (see steps 7 to 9), Dogs, Clan Lab, SSG, STG.</p>
7.	<p>If AOS is to be involved, have the AOS supervisor check the OC search warrant's risk assessment, safety options and recommended response level. If the risk justifies using AOS, they may need to undertake a reconnaissance to develop:</p> <ul style="list-style-type: none"> • a concept of operations • detailed pre-deployment briefing. <p>AOS will advise if the operation is beyond their capability.</p>
8.	<p>The O/C AOS:</p> <ul style="list-style-type: none"> • reviews the risk assessments and, if prepared, any concept of operations and pre-deployment briefing document • approves any deployment of AOS members (partial or full) and signs off the documents. <p>Note: This includes identification and consideration of principal tactics to be adopted and assets to be used (weapons, breaching, less lethal options, dogs, impact rounds etc.) within the context of identifiable operational limitations.</p>
9.	If AOS is to be used to execute the search warrant, execution is commanded by the AOS O/C.

Part 5 – Carrying out search powers with or without warrants, Continued...

	<p>Note: The timing and tactical approach is AOS’s responsibility. Investigative considerations are secondary to the AOS mission of ‘safe execution of the search warrant’.</p>
10.	<p>Execution team conducts pre-execution briefing. The Planned Action Risk Assessment and CARD Prompt provides helpful guidance for final pre-execution risk and community impact assessments.</p>
11.	<p>O/C Search Warrant or a designate enters a CARD event via iNet Viewer between 5–30 minutes before executing the search warrant.</p> <p>Note:</p> <ul style="list-style-type: none"> • This provides essential information for Comms and DCCs to support the safety of executing staff. • The Planned Action Risk Assessment and CARD prompt provides a template for the information required in the CARD event.

Note: These same instructions apply to a warrant to arrest when a search of a place is required to locate the suspect. See the ‘[Arrest and detention](#)’ chapter for further information.

Examples of risks associated with searches

All searches have inherent risks for employees, those being searched and the community to be factored into planning. Some examples are:

Occupier(s):	<ul style="list-style-type: none"> • May be armed with (or access to) firearms, weapons, explosives, disabling substances • Involved in manufacture or supply of firearms • Have history of violence, disorderly behaviour, resisting arrest, assaults Police, escaping and/or showing signs of aggression • Have aggressive pet(s) • Have history of growing, manufacturing, selling, supplying, consuming or believed to be under the influence of alcohol, drugs and/or psychoactive substances • Are gang members or have association with gangs • Suffering from psychological disorders, depression, suicidal symptoms and medical conditions (e.g. deafness) • Persons being searched may resist.
Place/vehicle:	<ul style="list-style-type: none"> • Fortified (e.g. gang premises), booby trapped or has security features (e.g. alarms, surveillance cameras) • Occupied by gang members • Dangerous and hazardous substances present or in immediate vicinity (e.g. petrol, chemicals) • Premises with potential hazards (e.g. internal access to adjoining premises, renovations without electrical, plumbing or building consent, open fire operating) • Equipment/machinery present that could be used as a weapon

Part 5 – Carrying out search powers with or without warrants, Continued...

<p>Tactics:</p> <ul style="list-style-type: none"> • Forced entry • Cordon, contain, appeal (CCA) 	<p>Forced entry whether after being announced or unannounced has the potential to create danger for Police and other people, because it is aggressive in nature and may in itself be a trigger for physical confrontation and retaliation.</p> <p>Forced entry risks may include:</p> <ul style="list-style-type: none"> • occupants may respond aggressively • may use firearms or other weapons • may think rivals are breaking in • may be booby traps • may be persons in close proximity to the entry point • may be dangerous dogs. <p>Cordon, contain, appeal risks may include:</p> <ul style="list-style-type: none"> • destruction of evidence • risk of injury or death to occupants who may be unlawfully detained on the premises or may become hostages • occupants may obtain more weapons • occupants may slip through the cordon.
<p>Other factors</p>	<ul style="list-style-type: none"> • Children, vulnerable people and public are present or nearby • Supporters of occupier(s) may intervene and be obstructive • Neighbours placed at risk of harm/retaliation

Safety options to mitigate search risks

Safety options to mitigate risk include:

Option	Description / consideration
Surveillance of the target before execution	Can be with or without a surveillance device. If a device is required, the surveillance regime in the Search and Surveillance Act 2012 applies – see the ' Surveillance ' chapter.
Best time for execution	For example: <ul style="list-style-type: none"> • when children are not likely to be present • during daylight hours for better identification of occupier(s) and enabling search • during business hours or after hours, when fewer occupiers are present.
Occupiers	Locating and making contact with occupier(s) away from the premises to be searched to separate them from firearms/weapons and hazards that may cause harm, e.g. when they are: <ul style="list-style-type: none"> • at another location (e.g. place of work or recreation) • in a vehicle – effecting a traffic stop and if there is insufficient information to arrest, offer them a ride to where the search warrant is being executed • in a vehicle or other location – effecting arrest (if sufficient grounds to arrest or a warrant to arrest exists) and taking the occupier(s) to the place where the warrant is being executed <p>Note: See 'Separating individuals posing risk from premises to be searched' for more information about planning this tactic.</p>
Entry (announced or unannounced)	Deciding whether to make an: <ul style="list-style-type: none"> • announced, or • unannounced entry. <p>(See 'Identification and announcement requirements on entry' and 'Exceptions to announcing entry and giving reasons for the search' in the 'Search warrants' chapter)</p>
Covert search	Conducting a covert search (approval required from a Detective Senior Sergeant or above – see 'Covert searches' in the ' Search warrants ' chapter).

Part 5 – Carrying out search powers with or without warrants, Continued...

Entry to other properties	Entry to adjoining or neighbouring properties to the place being searched (see 'Safe execution of warrants – entry to adjoining or neighbouring properties' in ' Search warrants ' chapter).
Risk mitigation strategies	Other options to mitigate risk may include: <ul style="list-style-type: none">• employees being clearly identifiable as police and Police labelling well displayed• use of uniform patrol vehicles, flashing lights and sirens• path of approach to be taken• having ambulance/medics available near search scene.

Note: See the [Community Impact Assessments \(CIAs\)](#) chapter for generic community impact considerations to mitigate community risks.

Part 5 – Carrying out search powers with or without warrants, Continued...

Separating individuals posing risk from premises to be searched

'Tactical' arrest or interception in public place

One tactical option available in some circumstances, is separating an extreme risk individual from the premises to be searched. This is commonly referred to as a 'tactical' arrest or interception. This tactical option needs to be lawfully undertaken and if detention or search of any kind is involved, it must be based on a specific power.

If an occupant of the address to be searched is an extreme safety risk (e.g. thought to have access to firearms or other weapons and/or be prepared to use them against Police), consideration must be given to separating that individual from their environment. This may involve:

- surveillance of the individual to ensure absence from the target address
- intercepting (searching/arresting) the individual in a safer location (e.g. public place).

Planning to separate individuals from premises

Careful consideration is required before separating an individual posing a risk from premises to be searched. Consider these key factors in relation to planning a tactical arrest or interception.

Factors	Description
1	Conduct a comprehensive TENR assessment. Note: The overriding principle of TENR is "Safety is Success". The safety of Police employees, the public, occupiers and suspects must take priority over other matters (even, if necessary, including potential loss of evidence).
2	Contemplate arresting the person before executing the search warrant (if there is sufficient evidence to arrest prior to the search).
3	Consider applying for both a warrant to arrest and for a search warrant if there is sufficient evidence available. Note: A warrant to arrest issued in conjunction with a search warrant better enables the interception and arrest in a public place; and at the same time execution of the search warrant.
4	In the absence of grounds to arrest the person, determine: <ul style="list-style-type: none"> • Are there grounds for a warrantless search (particularly if the warrant is for drugs or weapons that could be concealed on the person)? • Does the warrant include the individual's mode of transportation and power to search his vehicle away from the target address?
5	Effect a traffic stop or interception away from premises to be searched and obtain individual's cooperation to voluntarily attend search premises.
6	Consider advice from Legal Advisor on the viability/justification/legality of a 'tactical arrest or interception' type operation.
7	In some circumstances the tactical arrest or interception may be considered a safer option, but may also potentially introduce significant risk to the public, police or suspect. CIA assessment may be necessary for the tactical arrest or interception phase of the search warrant operation.
8	A tactical arrest or interception should never be considered a default option but rather a tactic for consideration.

Part 5 – Carrying out search powers with or without warrants, Continued...

Execution of searches and mandatory notifications to COMMS and DCCs

All searches carry inherent dangers and risks for Police employees and others. Notification must be done in a prescribed 4X CARD event.

Notification procedures to COMMS and DCCs

Warrantless searches

If you are exercising a **warrantless search** on a place, vehicle, or thing you **must** notify COMMS, **unless**:

- impracticable in the circumstances (e.g. out of radio and phone contact);
- your safety or the public's safety, or evidential considerations requires that the search be conducted immediately.

Using your radio (consider who might be scanning the Police radio) or mobile phone advise COMMS:

- your call sign(s), identity and the number of colleagues accompanying you
- event location where search is to be conducted
- time and date search is to commence
- units attending and units carrying firearms
- occupants details
- contact information for O/C
- target(s) / occupant(s) (PRN / DOB if known)
- of threats, exposure, necessity/authorisation, response/tactics from [TENR](#) mental assessment
- any tactical/additional information relevant to potential escalated response from COMMS.

Note: Ensure a 4X CARD event has been notified.

Executing search warrants

If you are executing a search warrant:

Step	Action
1	Review the ' Planned Action Risk Assessment and CARD Prompt ' risk assessment. Give special attention to TENR , community impact and staff safety.
2	Ensure all employees are involved in securing a safe environment and those conducting the search are briefed before effecting entry/search.

Part 5 – Carrying out search powers with or without warrants, Continued...

3	<p>Notify COMMS and DCCs of impending search through a 4X CARD event via:</p> <ul style="list-style-type: none"> • INet Viewer • Mobile Responder. <p>The CARD event should contain the following information:</p> <ul style="list-style-type: none"> • 4X –Search Warrant • event location • time and date to be executed • your identity and the number of colleagues accompanying you • units attending • units carrying firearms • target(s)/occupant(s) details (PRN/DOB if known) • contact information for O/C • any TENR (threat, exposure, necessity/authorisation, response/tactics and additional information and also for exercising warrantless search powers when risks have been identified relevant to potential escalated response from COMMS. <p>Note: The 4X CARD event ensures the (mandatory) notification of pending searches authorised by search warrant to both COMMS and DCCs. Remember, this must be carried out between 5–30 minutes before executing the search warrant.</p>
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Covert searches

If you are **executing a covert search** approved by a supervisor (sergeant or above) instead of carrying out the notification procedures for search warrants generally, notify the Shift Commanders at COMMS and DCCs by phone with the confidential details of the pending search covering the points identified for advising [warrantless searches](#).

COMMS and DCCs responsibilities

Shift commanders at COMMS and shift supervisors at DCCs are responsible for:

- advising only those subordinates on a 'needs to know' basis for safety to monitor the execution of overt search warrants
- keeping sensitive information, particularly involving covert searches, confidential, but still maintain a monitoring role
- responding to and taking command of any emergency that may arise from the execution of the search warrant

Note: Comms shift commander will take command of any emergency that may arise from the execution of the search warrant until such time as the District has appropriate resource and people in place to take command of the emergency.

- ensuring risks that are not mitigated are identified and acted upon.

Note: Planning, command and control of the execution phase remains with officer in charge executing the search warrant.

Steps to follow after execution phase

Follow these steps after executing a search warrant:

Step	Action
1	As soon as possible after the warrant is executed, the executing officer (or designate) completes and submits the electronic ' OnDuty Notings ' notification on their mobility device. Note in the Police file that the noting has been done.

Part 5 – Carrying out search powers with or without warrants, Continued...

2	<p>Learning for the future</p> <p>Notings should provide information obtained while executing searches that might be relevant to future risk assessments. This will improve our ability to assess risks to the safety of employees executing future responses, and identify measures to reduce the risk of harm to Police and others.</p> <p>If you think there might be a potential risk to other staff conducting search warrants not necessarily connected to your warrant (e.g. through criminals sharing man-trap ideas), notify Comms of the issue so they can pass on emerging trends to other staff in the field, and notify Lessons Learnt to ensure the knowledge can be shared.</p>
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Part 5 – Carrying out search powers with or without warrants, Continued...

Entry, announcement and identification requirements

Powers of entry

Every search power authorises the person exercising it, to enter and search the place, vehicle or other thing they are authorised to enter and search, and any item(s) found in that place, vehicle or thing, at any reasonable time.

(s110)

Search warrants to enter and search vehicles

If a search warrant authorises the search and entry of a vehicle, you may enter any place where you have reasonable grounds to believe the vehicle is to locate and search it.

(s127)

Identification and announcement requirements on entry

If you exercise a search power, you must **before your initial entry**:

- announce your intention to enter and search the place, vehicle, or other thing under a statutory power
- identify yourself (by name or ID)
- if not [in Police uniform](#) produce evidence of your identity.

You must also, either **before or on initial entry** provide the occupier of the place or the person in charge of the vehicle or other thing:

- a copy of the search warrant, (if it is not possible or practicable to have this in your possession, you may execute:
 - a facsimile or a printout of an electronically generated copy of the warrant, or
 - a copy which is endorsed to that effect)

(s131(1))

or

- for a warrantless search or securing a scene under section 117 when a warrant is pending, (if requested by any person affected) state the name of the enactment under which you are searching or propose to search and the reason for the search, unless impracticable to do so in the circumstances.

(s117)

Note: Where a warrant covers separate units of occupancy, an occupier of each unit searched should be provided with a copy of the warrant. If in doubt, take multiple copies of a warrant to a search scene to distribute if necessary. See [Law Note - Copies of search warrants to be given to all occupiers at properties with multiple dwellings](#)

See [Notice and inventory requirements after search or seizure](#) in this chapter for information about what to do if the occupier or person in charge of the vehicle is not present during the search.

Exceptions to announcing entry and giving reasons for the search

You do not have to announce your entry, identify yourself and give a copy of the warrant or notice of the reasons for a warrantless search if you have reasonable grounds to believe that:

- no person is lawfully present in, or on the place, vehicle, or other thing to be searched, or
- compliance with the requirements would:
 - endanger the safety of any person, or
 - prejudice the successful exercise of the entry and search power, or
 - prejudice ongoing investigations.

Part 5 – Carrying out search powers with or without warrants, Continued...

(s131(2))

Securing the scene to be searched

If you are carrying out a search, you may, in a manner and for a duration that is reasonable to carry out the search:

- secure the place, vehicle, or other thing searched (scene), or any area within that scene, or any thing found within that scene
- exclude any person from the scene or area, or give them any other reasonable direction, if you have reasonable grounds to believe they will obstruct or hinder you.

If requested by any person affected by the search, you must:

- identify yourself by name or ID
- state the name of the enactment under which the search is taking place and the reason for the search, unless it is impracticable in the circumstances
- if not [in Police uniform](#), produce evidence of your identity.

(s116)

Using force on entry and detaining people at the scene

See [Use of force against persons or property](#) in this chapter.

Being “in uniform”

Uniform is “distinctive clothing or equipment issued by the Commissioner to be worn by employees while on duty and having a colour scheme, pattern or style that enables the person wearing it to be readily identifiable as a Police employee”.

(s4 Policing Act 2008)

The wearing of SRBA as the only uniform item by plain clothed employees conducting searches is not sufficient to meet the criteria for being “in uniform”. They must produce identification when exercising search powers.

Part 5 – Carrying out search powers with or without warrants, Continued...

Use of force against persons and property

See also [Entry, announcement and identification requirements](#) in association with this section.

Using reasonable force to enter property

When exercising any search power you (and any assistant under your direction) may use any reasonable force in respect of any property to carry out the search and any lawful seizure.

(s110(c) and s113(2)(b))

You may also use reasonable force against any property or person to effect entry where this is justified under section 131(3), e.g. when entry is resisted or refused.

When deciding whether to force entry, you must consider the possibility that such entry may present a danger to:

- the Police party
- the occupants of the premises, including children or other vulnerable people present
- members of the public.

Announced forced entry

Before forcing an entry, give the people on the premises the opportunity to admit you. Announce your presence (e.g. by knocking on the door), [identify yourself](#) to the occupants and state why you are there and by what authority. If admission is denied or unreasonably delayed and it is safe to do so, you can make a forced entry.

Unannounced forced entry

In some situations, announcing the Police presence or purpose may be impracticable and a sudden, unannounced entry, by force if necessary, may be justified. Examples include:

- saving a person on the premises from death or injury
- situations where giving a warning might endanger the police involved
- preventing the destruction of evidence
- entering in the course of 'hot pursuit' of an offender.

(s131(2))

Before making an unannounced forced entry, assess the risk and consider:

- the tactical options available
- reasonable and practical alternatives to a forced entry
- the seriousness of the offence or circumstances
- any history of violence on the part of any person present on the premises
- danger to Police, the public or people present at the premises
- whether there are reasonable grounds for believing that evidence will be destroyed or disposed of.

Entry with firearms

If any employee is armed during a forced entry, other than during an AOS operation, the requirements detailed in the '[Police firearms](#)' chapter of the Police Manual must be met.

Ensuring the safety of Police and others

When making any forced entry, every effort must be made to ensure Police safety. A uniformed employee should, where practicable, stand at the entry point to ensure occupants or the public realise that it is Police entering the premises.

Part 5 – Carrying out search powers with or without warrants, Continued...

When an unobtrusive approach is required by employees in plain clothes (including AOS members), they must be issued with and wear a distinctive "Police" jerkin. This may be concealed or not worn until immediately prior to entry.

You must also consider the safety of the public and others present on the premises.

Detaining people at searches of places or vehicles

See [Powers of detention incidental to searches of places and vehicles \(s118\)](#) in the "Powers incidental to search" section of this chapter.

Options prior to using force on a person

If a person obstructs or resists you exercising an entry, search, stopping, detention or seizure power, consider these options.

Option	Action
1	Explain that their continued resistance or obstruction is an offence of resisting/obstructing Police against section 23 of the Summary Offences Act 1981.
2	Warn them, if practicable, that they will be arrested for the offence of resisting/obstructing Police if they do not desist immediately.
3	Arrest them for resisting/obstructing Police if: <ul style="list-style-type: none">• impracticable to warn the person, or• they continue to resist or obstruct you.
4	For further information, see the Arrest and detention or Use of force chapter.

Part 5 – Carrying out search powers with or without warrants, Continued...

What can be searched and seized?

What can you search?

You can only search for items specified in a search warrant or which are permitted under a warrantless power, and only in places that could contain them. For example, you could not search a drawer for a large television set - although you could for documents relating to it.

A vehicle can be searched if it is on the premises, but a vehicle parked on the street must be specified in the warrant.

Searching people at the scene

If you are searching a place or vehicle, you may search any person found there, or who arrives at the place or stops at, enters or tries to enter the vehicle, if you have reasonable grounds to believe:

- evidential material that is the object of the search, is on the person, or
- the person is in possession of a dangerous item that poses a threat to safety, and that immediate action is necessary to address that threat.

You can seize any such evidential material or dangerous item from the person.
(s119)

Note: In the case of searches for drugs, you may search any person at the scene as a matter of course under section [19](#) or [21](#).

What can you seize during the search?

Every search power authorises you to seize anything that is the subject of the search or that may lawfully be seized.
(s110(d))

If you find evidence of an offence other than the one specified in the warrant or covered by your warrantless power, you cannot seize it unless:

- you obtain another warrant, or
- you exercise [plain view](#) seizure under section [123](#).

Items of uncertain status

If you are not certain if something can lawfully be seized and it is not reasonably practicable to determine that where the search takes place, you may remove the item for examination or analysis to determine whether it may be lawfully seized.
(s112)

This removal power is limited to when you are exercising a search power to find an item but are not sure if the item found is the actual item you are searching for and therefore whether it may lawfully be seized. For example, if you are exercising a search power to locate cocaine and find a package containing white powder, you may remove the package under section 112 for the purpose of examination or analysis to determine whether or not the powder is cocaine and can then lawfully be seized.

The section 112 removal power could not be used, if for example, the purpose of your search is to find cannabis, but you find a television and are uncertain whether it is stolen or not. You would need to consider whether the circumstances are appropriate to exercise a plain view seizure under section [123](#) or to secure the place, vehicle or other thing being searched while an application for a search warrant is pending under section

Part 5 – Carrying out search powers with or without warrants, Continued...

117. (See “Special powers when search warrants are pending” in Part 2 - [Search warrants](#) for more information).

Seizure of items in plain view

If you are exercising a search power or are lawfully in a place as part of your duties, you may seize any item(s) you find in the course of carrying out the search or as a result of observations at that place, if you have reasonable grounds to believe you could have seized the item(s) under:

- any search warrant obtained under the Search and Surveillance Act or another enactment, or
- any other search power exercisable by you under the Search and Surveillance Act or another enactment.

If you seize an item(s) in circumstances where you are not already exercising a search power, you may exercise any applicable power conferred by s110 in relation to the seizure of the items. (See [Powers incidental to search](#) in this chapter). (s123(3))

Seizing privileged materials

Special rules apply in relation to the search and seizure of privileged or confidential materials held by lawyers, ministers of religion, medical practitioners, or clinical psychologists relating to clients or journalists relating to their sources. See Part 13 - [Privilege and immunities under the Act](#).

Part 5 – Carrying out search powers with or without warrants, Continued...

Searching for and seizing computer material

What computer material can be searched and seized?

The Search and Surveillance Act 2012 explicitly provides for the search and seizure of “intangible data” held in data storage devices such as computers and cell phones. A search of a place, vehicle or thing also extends to the search of any [computer system](#) or data storage device located in whole or in part at the place, vehicle or thing.

A search of a business’ computer network is therefore permitted even though the server is at premises other than those being searched. A search of any internet data accessible by the computer’s user on the premises being searched is also permitted. Thus emails on Gmail or Hotmail or data held in the “Cloud” may be accessible, whether or not the data is downloaded, and whether or not the computer automatically logs on to the internet site when it is switched on. In the event that a password is required, the user may be required to provide the password under section [130](#).

You are not permitted to obtain the password, by way of example, to a Gmail account from the user of the computer that is located in a place being searched and then to conduct a subsequent search of that account from the enforcement agency’s computer. That may only be done by way of a [warrant to conduct a remote access search](#).

See [‘Cloud computing’](#) in this chapter for information about cloud computing and how to get information out of “the cloud”.

Definitions related to computers

These meanings of terms relating to computers apply in relation to search powers unless the context otherwise requires.

Term	Definition
Access	Access in relation to any computer system means instruct, communicate with, store data in, receive data from, or otherwise make use of any of the resources of the computer system (s3).
Access information	Access information includes codes, passwords, and encryption keys, and any related information that enables access to a computer system or any other data storage device (s3).
Computer system	Computer system: <ul style="list-style-type: none">• means:<ul style="list-style-type: none">– a computer, or– 2 or more interconnected computers, or– any communication links between computers or to remote terminals or another device, or– 2 or more interconnected computers combined with any communication links between computers or to remote terminals or any other device, and• includes any part of the items described above and all related input, output, processing, storage, software, or communication facilities, and stored data (s3).
Remote access search	Remote access search means a search of a thing such as an Internet data storage facility that does not have a physical address that a person can enter and search (s3).

Part 5 – Carrying out search powers with or without warrants, Continued...

User	<p>A user is a person who:</p> <ul style="list-style-type: none"> • owns, leases, possesses, or controls the system, device, or site, or • is entitled, by reason of an account or other arrangement, to access data on an Internet site, or • is an employee of one of the above (s130(5)).
Specified person	<p>A specified person is:</p> <ul style="list-style-type: none"> • a user of a computer system or other data device or an Internet site who has relevant knowledge of that system, device or site • a person who provides an Internet service or maintains an Internet site and who holds access information (s130(5)).

Search of a computer under warrant

If you are obtaining a warrant and know at the time of application that the search is likely to include the search of a computer, you should:

- be as specific as possible in the application about the material that you are looking for
- where practicable, specify the procedures you will adopt to locate the material (e.g. use keywords to identify relevant files or locate the required material), although it is important to do this in a way that maintains the flexibility to undertake the search effectively.

A warrant that is too general and does not adequately spell out what is being looked for may subsequently be held to be invalid.

Search of a computer without warrant

If you are searching a computer under a warrantless power, you should:

- conduct the search in a way that most effectively targets the material you are looking for
- distinguish between material that may come within the scope of the search and material which is clearly irrelevant information.

You must not conduct a “fishing expedition” and should avoid appearing to others you are.

Carrying out a search of a computer

If you are authorised to search a computer (or other data storage device), you may:

- use any reasonable measures to access a computer system or other data storage device located (in whole or in part) at the place, vehicle, or other thing if intangible material that is the subject of the search may be on that [computer system](#) or device (s 110(h))
- remove the computer for further examination if it is not practicable to search it on the premises (s112)
- take a forensic copy of the hard drive to preserve the evidential integrity of the material (s110(i)) and if you find the material that you are looking for, maintain possession of that data
- require a person who owns, leases, possesses or controls the computer device or system, or an employee of such a person, to provide access information (e.g. password) or other information (e.g. de-encryption information) that is reasonable and necessary to allow you to access the data (s130). (Any person who fails, without reasonable excuse, to assist you exercising the search power when requested to do so, commits an offence (s178)).

Part 5 – Carrying out search powers with or without warrants, Continued...

Remote access searches authorised by warrants

A search warrant may authorise a “remote access search”, of a thing such as an internet data storage facility. The issuing officer must be satisfied that the thing is not situated at a physical address that is capable of being entered and searched (s103(6)).

The remote access search power is intended to allow access to electronic information that is for all practical purposes unable to be physically searched under any circumstances. For example, while each item of data hosted by Google is always held in a physical location, it may be fragmented across a number of servers in different jurisdictions and its precise location at any given time impossible to determine. In these circumstances, no physical address, either in New Zealand or overseas, can be entered in order to search for it. A remote access search warrant may then be obtained.

The warrant application should specify why the applicant believes that the data is not held at an accessible location. The warrant must specify with sufficient particularity the access information that identifies the thing to be searched remotely, such as the email address or the logon information relating to the site to be searched.

Note:

You **cannot** obtain a remote access search warrant merely because a server with web-based material is inaccessible in that particular circumstance, e.g. because it is overseas or its location has not been researched. In this event, you should:

- seek the cooperation of the organisation that hosts the server, or
- obtain a production order under s74, or
- seek mutual assistance through the Mutual Assistance in Criminal Matters Act 1992.

Additional powers when conducting remote access searches

If you are executing a search warrant authorising a remote access search, you may:

- use reasonable measures to access the thing to be searched, and
- copy any intangible material from the thing searched if it is the subject of the search or may otherwise be lawfully seized.

(s111)

Note: There are technical and cross border issues that may arise with “remote access searches” and both the Electronic Crime Laboratories and Legal Services must be involved in the preparation of these search warrants. The applications will require careful scrutiny by both groups.

Principles for data evidence gathering

The general principles of gathering data as evidence are:

Step	Principle description
1	No action taken by law enforcement agencies or their agents should change data held on a computer or storage media which may subsequently be relied upon in court.
2	Any person accessing original data held on a computer or on storage media must be competent to do so and able to give evidence explaining the relevance and the implications of their actions.
3	An audit trail or other record of all processes applied to computer-based electronic evidence should be created and preserved. An independent third party should be able to examine those processes and achieve the same result.
4	The person in charge of the investigation (O/C case) has overall responsibility for ensuring that the law and these principles are adhered to.

Part 5 – Carrying out search powers with or without warrants, Continued...

Procedures for accessing computers, securing evidence and creating forensic copies

Follow the procedures in '[Preservation and recovery of electronic evidence](#)' in the 'Crime scenes and forensics' section of the Police Manual when accessing computer systems and making copies of any intangible material found there to ensure the integrity of the evidence is preserved.

See '[Cloud computing](#)' in this chapter for information about cloud computing and how to get information out of "the cloud".

Note: All remote access search warrant applications and searches must be forwarded to the ECL. Specialist knowledge with remote access searches in this process is required to ensure national and international laws are observed.

Securing evidence

Where data is held online (e.g. Facebook profiles), the data is likely to be the original data and can change moments after being downloaded, making the [principles for data evidence gathering](#) difficult to follow. However, the basic premise is that you should copy what is there and maintain a proper record of the process used, the time, date etc. and secure a master copy of what was recovered.

If witnesses come to police stations with printouts showing messages that they have recovered themselves, you should:

- write that evidence out in full or refer to it within a formal written statement, and
- use the screen prints, photos or other hard copy evidence to support the statement.

If the evidence will only be visible for a short time, you may need to capture the data immediately to avoid losing it. In those circumstances a photograph of the screen, screen print, or internet browser 'save as' may be all that is required or is possible.

If data is collected under ad-hoc circumstances, consider recovering another evidential copy by or under the supervision of an operator at the Police Electronic Crime Laboratories (ECL). If the data still exists and is lawfully recoverable, a second copy will help establish the authenticity of the evidence, should that be in question.

Disposal of forensic copies

If you make a forensic copy, deal with it as follows:

If the copy...	you...
does not contain any "evidential material" (i.e. material that may be seized)	must ensure that the forensic copy is "deleted, erased or otherwise destroyed in a way that prevents retrieval" (s161(1)). In practical terms, this means that you must delete it so that it is not normally accessible on the hard drive.
contains a mixture of evidential material and non-evidential material	may retain the forensic copy in its entirety (s161(2)).

Information tending to incriminate

A specified person may not be required to give any information tending to incriminate themselves. However, this does not prevent you from requiring them to provide information or assistance that is reasonable and necessary to allow you to access data held in, or accessible from, a computer system or other data storage device that contains or may contain information tending to incriminate the person.

Part 5 – Carrying out search powers with or without warrants, Continued...

Privilege and confidentiality

Powers requiring a person to provide access, information or assistance are subject to the privilege and confidentiality provisions of the Act. (See Part 13 - [Privilege and immunities under the Act](#) for more information).

Part 5 – Carrying out search powers with or without warrants, Continued...

Cloud computing

Information in the cloud

Cloud computing has been around for a long time, but the term is relatively new. Applications, such as Hotmail, Facebook, Gmail and Dropbox are cloud based applications, because they reside in the cloud, i.e. not on your computer.

Cloud based applications are accessed by logging into them on the internet. A computer or even cell phone may be set up so it logs in automatically with one touch of a button (or icon). The computer sends a message to the other end, wherever that is by sending the user's username and password. The computer at the other end checks the password against the username and if it is correct the computer lets the user see their profile, pictures, files and whatever else the user may have stored there. The user does not have to know where the files are actually stored to be able to use them.

Systems used every day at Police premises such as NIA and PeopleSoft hold all the data that users access in a central repository (in New Zealand). Users access the data by logging in via a computer at their office and the central computer (server) allows access, because it recognises the user's username and password. There are additional safety measures to stop people logging in from computers outside the Police network. The 'cloud' system for Police is a much smaller cloud.

Advantages and disadvantages of cloud computing

The advantages and disadvantages of cloud computing include:

Advantages	Disadvantages
Data can be managed in one cloud space, so that allows one or more users to access the data from many different places. If the data relates to a database such as NIA, the application and data it uses can be managed and updated in one go, if data was held on many different computers, then every computer would have to be updated separately.	Cloud based data is always open for business, allowing users and hackers to gain or try to gain access 24/7. Therefore, security needs to be sound and current to: <ul style="list-style-type: none"> • keep pace with advancement of technology; and • manage the weakest link by ensuring the users are prioritised <p>Note: The biggest danger to cloud based accounts is the use of poor passwords such as "password" or the user's name, weak passwords make it easy to hack into accounts.</p>
Greater storage capacity avoiding the need to have much larger data storage facility on each computer.	Not always knowing: <ul style="list-style-type: none"> • where the data is situated at any one time • what jurisdiction data is held in • who might legally have access to the data • whether Police can legally get access to data held in the cloud by offenders.

Part 5 – Carrying out search powers with or without warrants, Continued...

<p>Data can be held in secure vaults maintained with up to date hardware and software only providing access to those who are authorised.</p>	<p>If users' intranet/internet connectivity goes down, so does their access to the data. Note: This problem can be avoided by mirroring the regular data that is used on both the local computer and the cloud server. Applications like Dropbox and Hotmail allow users to do this so they don't have to be online all the time to view the data.</p>
<p>There are economic advantages. It is cheaper to maintain, store and provide access to applications and databases in the cloud than it is to have multiple copies of applications on end user's computers. The migration of applications and databases is continuing towards cloud computing.</p>	

How to get information out of 'The Cloud'

There are a number of ways that you can recover information from the cloud:

Method	Description
<p>'Open source' (data is openly available to everyone)</p>	<p>Whenever you go online the information that is openly available is termed 'open source' and no special authority is required to see it (other than internal authority to visit the relevant site e.g. social forums and pornography sites). Note: The 'evidence gathering process' must be used to obtain and record the open source information.</p>
<p>Consent (data is lawfully available to a person)</p>	<p>Information that is not openly available such as Facebook profiles and messages that are locked down can be obtained through consent of a person who has lawful access to it. For example, cases where one person (the suspect) has sent incriminating messages to another (the witness) using Facebook, private messages can be recovered by the witness and presented as their evidence. Where a suspect consents to access to otherwise provide data, you must adhere to Subpart 2- Consent searches of Part 4 of the Search and Surveillance Act 2012.</p>
<p>Production orders (an organisation holds the data)</p>	<p>When data is held by a service provider within New Zealand or a cooperative organisation outside of New Zealand a production order will enable you to obtain the relevant evidence. Be aware that some offshore companies may require a search warrant in preference to a production order due to their procedures and in-country expectations. Note: Clearly identify all the relevant 'evidential material' within the order and make sure that it is all produced by the organisation.</p>

Part 5 – Carrying out search powers with or without warrants, Continued...

<p>Search warrants (data is held in New Zealand)</p>	<p>Most companies operating a cloud service are unlikely to have all their capacity in New Zealand. However, if a company operating a cloud service does have all its data in New Zealand and its cooperation with responding to a production order is in doubt, then use a search warrant.</p> <p>Note: Some offshore companies may also require a search warrant in preference to a production order, simply due to their in-country procedures and normal expectations.</p>
<p><u>Mutual Assistance in Criminal Matters Act 1992</u> (data is held offshore)</p>	<p>When the data is held offshore in a known country and by a known company such as Facebook, the normal process to obtain this data will be to write a mutual assistance request under the Mutual Assistance in Criminal Matters Act.</p> <p>Note: Advice can be obtained on the process from Crown Law and Interpol. See the section, '<u>Mutual assistance in criminal matters</u>' for information about the preparation of mutual assistance requests and Interpol's requirements</p>
<p>Remote access search warrants (the data's whereabouts is not known)</p>	<p>When the investigator does not know and cannot identify where the data is held, as is often the case with cloud held data, a remote access search warrant should be sought.</p> <p>Note:</p> <ul style="list-style-type: none"> • There are technical and cross border issues that may arise with "remote access searches" and both the Electronic Crime Laboratories (ECL) and Legal Services must be involved in assisting with the preparation of these search warrants. The applications require careful scrutiny by both groups. You should not attempt to recover data yourself. • Seeking a remote access search warrant should be considered last resort when other methods (consent, production orders or mutual assistance request cannot recover the data.

See also related procedures in this chapter for [Searching and seizing computer material](#).

Part 5 – Carrying out search powers with or without warrants, Continued...

Notice and inventory requirements after search or seizure

Notice requirements

There are strict notice requirements under sections [131](#) and [132](#) of the Act to be followed by persons exercising a search power or who conduct a remote access search.

Form of written notice when exercising a search power

The form of notice given before or after a search and seizure varies depending on whether the search was conducted with or without a warrant and whether or not the occupier or person in charge of the vehicle was present during the search.

For	you must:
<p>searches conducted when occupier or person in charge of vehicle or thing is lawfully present</p>	<p>give that person before or on initial entry:</p> <ul style="list-style-type: none"> • copy of the warrant and attached privilege information contained in the 'Notice to occupier, or the person in charge of vehicle or other thing present during search', or • if a warrantless search, a copy of the 'Notice to person present during warrantless search' (POL1275). <p>Note: The exception to this requirement is when you have reasonable grounds to believe an unannounced forced entry is justified in the following circumstances:</p> <ul style="list-style-type: none"> • a person is not lawfully present (e.g. a burglar), or • compliance would: <ul style="list-style-type: none"> - endanger the safety of any person - prejudice the successful exercise of the entry and search power, or - prejudice ongoing investigations. <p>(s131(1))</p>
<p>searches conducted when occupier or person in charge of vehicle or thing is not present</p>	<p>on completion of the search, leave in a prominent position at the place, or in or on the vehicle or other thing:</p> <ul style="list-style-type: none"> • a copy of the warrant and attached privilege information contained in the 'Notice to occupier, or the person in charge of vehicle or other thing not present during search', or • if a warrantless search, a copy of the 'Notice to person not present during warrantless search' (POL1275). <p>(s131(4))</p>

Part 5 – Carrying out search powers with or without warrants, Continued...

searches resulting in things seized	<p>at the time the thing is seized, or as soon as practicable after the seizure and no later than 7 days after that seizure, provide:</p> <ul style="list-style-type: none"> • to the occupier of the place, or the person in charge of the vehicle or other thing, and • to every other person you have reason to believe is the owner of the thing seized <p>the following:</p> <ul style="list-style-type: none"> • an inventory of items seized (POL 268) and the accompanying 'Notice to owners and others in relation to things seized, and • a copy of the authority (i.e. a copy of the warrant, POL1275) if the owner is different from the occupier or person in charge and has not previously received the relevant form. <p>(s133)</p>
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Note:

When a search warrant prints off the Search and Surveillance System it will have two attachments, one to be used if the owner is present, the other when they are not. Both attachments have appropriate headings to distinguish them.

Postponing compliance with notice and inventory requirements of items seized

See '[Application to postpone compliance](#)' for information about when compliance with the requirements to provide written notices about the exercise of a search power and of things seized during the search may be deferred.

Procedure for recording seized items and providing required notice

Follow these steps if you execute a search warrant or exercise any warrantless search power resulting in the seizure of items.

Step	Action
1	Distinguish whether the search is conducted with or without a warrant and whether or not the occupier or person in charge of the vehicle is present or not present during the search. Then follow the appropriate guidelines in the table ' Form of written notice when exercising a search power ' above.
2	<p>Complete a property record sheet (POL 268), sometimes referred to as an inventory of items, in triplicate including:</p> <ul style="list-style-type: none"> • from whom the things were seized and the location • a full description of what was seized • whether seized under a search warrant or warrantless search power. <p>Ensure the chain of custody of seized items is properly recorded on the reverse side of the POL 268.</p> <p>(If no items were seized, this will have been noted on the warrant or the POL1275 in a warrantless search).</p>

Part 5 – Carrying out search powers with or without warrants, Continued...

3	<p>Give the original of the completed POL 268 to the occupier of the place, or person in charge of the vehicle or other thing. The second page of the POL 268 contains the information required under section 133(1) about the authority for the seizure and rights of access to the items and to claim privilege.</p> <p>If it is not practicable to complete and leave the POL 268 and a copy of the authority for the search at the time of seizure, you must provide them to the occupier of the place or the person in charge of the vehicle or other thing within 7 days or seek postponement under section 134.</p> <p>Note: You do not have to provide this information to the occupier of the place or person in charge of the vehicle or other thing from which the seizure took place, if you are satisfied that none of the items seized are owned by that person. (s133(2))</p>
4	<p>If the owner, occupier of the place, or person in charge of vehicle or other thing is not present when things are seized, leave the:</p> <ul style="list-style-type: none"> • completed POL 268 (i.e. the inventory of items seized and notice to owners and others)), and • the search warrant and appropriate attached notice or POL1275 'Notice to person not present during warrantless search' at the address or in the vehicle in a prominent place. <p>If it is not practicable to complete and leave the documentation, you must provide it to the occupier of the place or the person in charge of the vehicle or other thing within 7 days or seek postponement under section 134. (s131(4))</p>
5	<p>If you have conducted a remote access search, e.g. of an internet data storage facility, follow the notice requirements for remote access searches below.</p>
6	<p>Retain the duplicate copy of the POL 268 on the file and the triplicate copy remains with the seized property.</p>

Limits on who can be treated as occupiers or people in charge

No person:

- under 14 years of age (unless found driving a vehicle with no passenger of or over the age of 14 years with authority to consent to the vehicle's search), or
- who you have reasonable grounds to believe is not the occupier of the place or person in charge of the vehicle or other thing.

can be treated as the occupier of the place or the person in charge of a vehicle or other thing for the purposes of section [131](#) and sections [133](#) to [135](#).
([s131](#)(6))

Notice requirements for remote access search

After completing a remote access search, you must send an electronic message to the email address of the thing searched:

- attaching a copy of the search warrant, and
- setting out:
 - a description of the thing remotely accessed during the search
 - the date and time of the commencement and completion of the search
 - the name and ID of the person who had overall responsibility for the search
 - the address of the office to which inquiries should be made.

Part 5 – Carrying out search powers with or without warrants, Continued...

If you are unable to deliver the required electronic message (or it is returned undelivered), you must take all reasonable steps to identify the user of the thing searched and to send the required information to them.
(s132)

Duty to give notice to owners of things that are seized

In addition to providing the occupier of a place or the person in charge of the vehicle or other thing notice of what is seized, section 133(1) requires you to provide to **any person you have reason to believe is the owner of the thing seized**:

- written notice specifying what was seized and information about the person's right to have access to the thing or claim privilege in respect of the thing seized, **and**
- a copy of the authority for the search (i.e. the search warrant or for warrantless searches, the name of the enactment under which the search took place.

The section also provides that this information must be provided as soon as practicable after the seizure and, in any case, within 7 days.

You must take care when providing this information to owners following seizure. Search warrants or advice of the exercise of a warrantless power and inventory of items seized (POL 268) all contain details of the location from where the items were seized and except for notices following warrantless searches, the identity of the person from whom they were seized. A POL 268 may also contain details of property belonging to a number of owners. Providing this personal information to the owner(s) of stolen property which is recovered, may pose a threat to the safety of the person from whom it was seized, e.g. the owner of a stolen item may be a gang member wanting retribution.

There are two courses of action available to you if you have concerns about the disclosure of identity information when complying with section [133](#):

Option	Action
1	Delete or mark out the identity and location on the inventory (POL 268) copy and the location of the search on the search warrant copy or the warrantless search power notice copy before providing to the owner. Seek advice from Legal Services if the owner disputes the deletions from the documents.
2	Apply to a Judge for postponement of notice and inventory requirements under section 134 . This option has limitations in that the application must be made within 7 days after the warrant is finally executed or the warrantless search power is exercised.

Notice and inventory requirements relating to production orders

Use the POL 268 to record items produced pursuant to a production order with appropriate amendments. However, **do not give** the Notice to Owners and Others in Relation to Things Seized on the back of the POL 268 to the person producing the items(s) and others who may have a legal or equitable interest in the item(s). The relevant notice information is contained in the Production order itself and a copy of this must be provided.

Procedure when seizing items for non-payment of fines

After seizing items, you must immediately deliver to the defendant, or leave in a conspicuous place on the premises:

- a list identifying the items seized, and

Part 5 – Carrying out search powers with or without warrants, Continued...

- a notice directing the defendant or the substitute for the defendant to notify the Registrar, within 7 days after the date of the seizure, whether the defendant or the substitute owns or has an interest in the property and to give the Registrar the name and address of any other person who owns or has an interest (including a lease or security interest) in the property.

Note: If you use the 'Property Sheet' (POL 268) to list the item(s) seized, then the 'Notice to Owners and Others in Relation to Things Seized' accompanying the form is not appropriate for use in these circumstances. Seek guidance from a Legal adviser with preparing an appropriate notice.

Deliver all seized items to the registrar.
(s99(5)&(6) Summary Proceedings Act)

Further information

For further information about seizing property, see also:

- [Accessing and seizing computer material](#) in this chapter
- [Postponing compliance with notice requirements](#) in this chapter
- the [Procedures applying to seized and produced things](#) chapter
- the [Privilege and immunities under the Act](#) chapter.

Part 5 – Carrying out search powers with or without warrants, Continued...

Postponing compliance with notice requirements

Application to postpone compliance with providing notices

If you exercise a search power, you may apply to a judge under section [134](#) for a postponement of the obligation to comply with providing a copy of the search warrant or other authority or a written notice about the search and seizure on the grounds that compliance would:

- endanger the safety of any person, or
- prejudice ongoing investigations.

If the judge is satisfied these conditions exist, they may postpone the obligation to provide a copy of the search warrant, authority or written notice for a specified period not exceeding 12 months.

Timeframes

An application must be made in the case of:

- a search warrant, at the time of the initial application or until the expiry of 7 days after the warrant is finally executed, or
- any other entry and search power, until the expiry of 7 days after the search power is exercised.

Application for further postponement or dispensation

If you obtained a postponement order under section [134](#)(3) of the Act, you may, before the expiry of that order, apply to a District Court for a further postponement or dispensation on the grounds that compliance would:

- endanger the safety of any person, or
- prejudice ongoing investigations.

If the judge is satisfied these conditions exist, they may grant a further postponement for a further specified period not exceeding 12 months, or order a permanent dispensation from the obligation to comply.

Note: An application for a further postponement may only be made once.

Restrictions on postponing compliance relating to seized things

A district court judge may not grant any postponement of or dispensation from, an obligation in respect of any thing that has been seized, unless the thing seized is:

- a copy or clone of any information taken or made, or
- possession of a thing by the person from whom it was seized is unlawful under New Zealand law (e.g. a controlled drug found in the possession of a member of the public in circumstances in which possession is an offence against the [Misuse of Drugs Act 1975](#)).

(s[135](#))

Part 5 – Carrying out search powers with or without warrants, Continued...

Search warrants, production orders and examination orders involving media organisations

Background

From time to time, news media organisations have information about or record the commission of offences on film, tape, photographs or sound recordings while they are covering newsworthy events. Such media material can be important to subsequent Police enquiries or in judicial proceedings and the Police may be duty bound to obtain:

- an examination order for the purpose of seeking information, or
- a search warrant or production order for the purpose of seizing or having produced such film, tape, photographs, sound or digital recordings.

However, news media organisations are very sensitive to the Police having recourse to their information or material for any reason and consider such access to be a potential threat to media freedom. Their principal concern is that reporters, film crews and photographers may be at risk if they are ever perceived by offenders as being gatherers of evidence for Police.

To minimise the risk of complaints when the Police execute search warrants on the premises of media organisations or serve production orders or examination orders, and to ensure compliance with the Search and Surveillance Act 2012 you must follow the procedures below.

Procedural guidelines (search warrants, production orders and examination orders)

Act **only** where the offence is serious enough to warrant the obtaining of:

- a search warrant, or production order and cannot be otherwise resolved without the seizure of any film, photographs, tape, sound or digital recordings, or
- an examination order and cannot be otherwise resolved without obtaining the information.

Follow these general steps (not necessarily in order) in addition to other requirements detailed in the Search chapter for exercising search, production and examination powers generally.

Step	Action
1	<p>Before you apply for a search warrant or production order obtain the authority of:</p> <ul style="list-style-type: none">• a Police Executive member in the case of Police National Headquarters, or• a District Commander in the case of a district matter. <p>If you wish to apply for an examination order you must have the approval of:</p> <ul style="list-style-type: none">• a Deputy Commissioner, or• an Assistant Commissioner, or• the District Commander (other than an acting District Commander) of the Police district in which the constable is stationed.
2	Make an application to a Judge unless in the circumstances this is impractical.

Part 5 – Carrying out search powers with or without warrants, Continued...

3	<p>Maintain close liaison with the "manager" of the particular news media premises prior to the execution of the search warrant, production order or examination order.</p> <p>Note:</p> <ul style="list-style-type: none"> • The exception being where the manager is a suspect or is otherwise involved in the subject matter of the search warrant. • If the manager is a suspect, seek a search warrant rather than a production order. <p>The reasons for the execution of a search warrant, production order or examination order should always be explained where it is reasonably practical to do so.</p>
4	<p>Be aware that journalists have rights conferred on them under section 68 of the Evidence Act 2006 to protect certain sources.</p> <p>If you are serving a production or examination order, or intend to exercise a search power under a search warrant on the manager of a news media outlet and you believe they may be able to claim rights to protect certain sources or other privilege, then you:</p> <ul style="list-style-type: none"> • must give the manager or their lawyer, a reasonable opportunity to claim a privilege recognised under Subpart 5 of Part 4 of the Search and Surveillance Act 2012, and • may, if you are unable to identify or contact the manager or their lawyer, within a reasonable period: <ul style="list-style-type: none"> - apply to a Judge of the High Court (in relation to journalist's rights to protect certain sources) or to a Judge of the District Court (in respect of all other privileges) for a determination as to the status of the thing, and - do any thing necessary to enable the court to make that determination. (s145)
5	<p>If you receive or expect to receive a claim of privilege and are unable to search a thing pending resolution of the privilege claim, then follow the 'Procedures when searches involve privileged material' (steps 4 to 9) in the chapter "Part 13 - Privilege and immunities under the Act".</p> <p>Note: You may still secure the thing to be searched, but must not search it, and deliver the thing or copy of it to the court to enable a determination of a privilege claim.</p>
6	<p>Where you use any seized material to facilitate interviews of suspects, you should not disclose the source of the material to the persons being interviewed.</p>
7	<p>Avoid calling news media personnel, such as reporters, film crews or photographers as witnesses. If this is not practicable, serve a witness summons that describes the seized material being produced in evidence, to preserve the impartiality of the witness.</p>
8	<p>In accordance with normal Police practices of evidential disclosure, provide defence counsel with access to seized film, photographs, tape, sound or digital recordings prior to any judicial hearing.</p>
9	<p>You should notify an authorised person who represents the particular news media organisation involved of any film, tape, sound or digital recording or photograph that is copied. The notification should include the reasons and the authorisation for doing so, either under the Search and Surveillance Act 2012 or with consent from that authorised person.</p>

Part 5 – Carrying out search powers with or without warrants, Continued...

10	Advise the Manager: Brand and Media at PNHQ as soon as possible where a search warrant is executed on the premises of a media organisation or a production order or examination order is undertaken, so that any media questions directed to the Commissioner can be quickly dealt with.
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Notice to Crown Prosecutor

The [procedural guidelines](#) must be brought to the notice of the Crown Prosecutor in any case where it is intended to call a member of the news media to give evidence relating to any film, photograph, tape, sound or digital recording seized by Police.

Protection of journalists' sources

Note the provision under section [68](#) and [69](#) of the Evidence Act 2006. The privilege conferred on journalists under section 68 is recognised for the purposes of the Search and Surveillance Act 2012 (see section [136](#)). See the section '[Procedural guidelines \(search warrants, production orders and examination orders involving media organisations\)](#)' in this chapter.

Production orders

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Executive summary

Key points to note:

- You have the choice whether a standard search warrant or production order should be sought in any given case. Businesses can offset the costs of complying with a production order against the avoidance of the disruption that would otherwise occur by physical entry and search of the premises under a search warrant.
- Using a production order should be an effective investigative tool and the offence(s) under investigation be sufficiently serious to justify the resource.
- The information sought should not make unreasonable or unnecessary demands on a provider of information, whom the order is against. Stipulate a reasonable delivery period (not less than a week). Otherwise in the case of a telecommunications provider apply for a surveillance device warrant.
- Your [district approver](#) must approve applications for production orders directed at a telecommunications provider for obtaining call data information.
- A Police Executive member or District Commander must approve production order applications relating to news media organisations.

Production orders, Continued...

Overview

Purpose

This part of the 'Search' chapter provides information about production orders including:

- the effect of the orders and how they relate to other powers
- who may apply
- whose authorisation is required before applying
- the conditions to be met before applications can be made and orders issued or made
- the procedures for making applications
- the form and content of orders
- what can be done with documents seized under a production order
- requirements for reporting and document retention.

Definitions

This table details the meanings of terms used in this chapter.

Term	Meaning
Call associated data	Call associated data has the same meaning as in section 3(1) of the Telecommunication (Interception Capability) Act 2004.
Document	Document includes call associated data and the content of telecommunications in respect of which, at the time an application is made under section 71 for a production order against a network operator, the network operator has storage capability for, and stores in the normal course of its business, that data and content.
Network operator	Network operator has the same meaning as in section 3(1) of the Telecommunication (Interception Capability) Act 2004.

(s70)

Related information

See also:

- '[Offences under the Act](#)' (relating to orders) in [Search introduction](#)
- [Examination orders](#).

Production orders, Continued...

About production orders

What are production orders?

Production orders are orders made under section [74](#) of the Search and Surveillance Act 2012 requiring a person or organisation (such as a business) to produce documents to enforcement agencies as evidential material of a specified offence.

Production orders are issued by issuing officers. (These are the same people as for search warrants).

Production order versus search warrant

You have the choice whether a standard search warrant or production order should be sought for use in any given case. While compliance costs are incurred by a business issued with a production order, these costs are offset against the avoidance of the disruption that would otherwise occur by physical entry and search of the premises under a search warrant. Very often production order powers will be less intrusive and involve less cost, than using search warrants as an alternative.

Duration of production order

A production order is in force for the period specified in the order (not exceeding 30 days after the date on which the order is made).

([s76](#))

Production orders, Continued...

Applying for a production order

Who may apply?

Any constable may apply to an issuing officer for a production order. (See further information about [making applications](#) in this chapter).

(s71(1))

Approval to apply for production order directed at telecommunications provider

You must seek prior approval from your [district approver](#) before making an application directed to a telecommunications provider seeking information such as call associated data, or content.

Matters to consider before granting approval

Before granting approval to apply for production orders, the district approver must take these matters into account and be satisfied:

- the grounds for applying for a production order are met
- the resource benefit of making an application is advantageous to Police and the investigation (i.e. the use of a production order is an effective investigative tool and the offence(s) under investigation are sufficiently serious to justify the resource)
- the information sought does not make unreasonable or unnecessary demands on the telecommunications provider, whom the order is against, particularly if those documents sought are forward looking (i.e. documents and call associated data coming into the control of the person etc whom the order is against while the order is in force).

See, '[Issues for corporate recipients of production orders](#)' for further information about the issues confronting individuals and organisations.

Note: The issuing officer will also apply external oversight of the grounds, reasonableness and necessity of the application when deciding whether or not to issue a production order.

Approval to apply for production order directed at media organisation

If your application relates to a news media organisation, you must:

- obtain approval from a Police Executive member in the case of PNHQ or a district commander for a district matter, and
- follow the guidance on '[Search warrants, production orders and examination orders involving media organisations](#)' in '[Carrying out search powers with or without a warrant](#)'.

Approval to apply for production order (other than media organisation and telecommunications provider)

Where practicable obtain written authority to make an application for a production order from a constable of or above the position level of sergeant where practicable.

Issues for corporate recipients of production orders

All corporate organisations are confronted with these issues when they receive production orders:

- Rejecting production orders for want of accuracy and form.
- Seek an order for the full 14 days or 30 days where appropriate as the recipient needs time to action your request.
- Stipulating an unreasonable time period. Do not seek an order requiring delivery of the results within a short period of time. For example, delivery in 2 days. The delivery of the response should be every seven days, unless the circumstances dictate that it is important for a shorter time to be requested. See '[Stipulate reasonable delivery](#)'

Production orders, Continued...

[period for forward looking orders for Telco data](#) for [call associated data](#) (CAD) from Telco agency teams for information about what is reasonable, alternative action and situations of urgency or emergency.

- The production order should be addressed to the corporate name of the organisation e.g. '2 Degrees Mobile Limited' etc and not a named employee at that organisation unless there are special reasons to depart from this standard. Note that named employees will be concerned about their legal risks should they not comply within the required timeframes.
- In relation to telecommunication providers, requests for call associated data, content, subscriber details etc that cannot be covered by an information request should be sought using a production order not a search warrant.

Note: Should an information request form be acceptable for the type of information sought, then they are available on Police Forms > Reports.

Note: Seek advice, if you have not previously made application for a production order.

Stipulate reasonable delivery period for forward looking orders for Telco data

When seeking forward looking production orders for [call associated data](#) (CAD) from a telecommunications provider (e.g. Spark, Vodafone) ensure you stipulate a reasonable delivery period.

The period that you want the data delivered to you should be at least every week and not less. Shorter delivery periods cause considerable pressures for stretched Telco agency teams. If you seek daily data extractions, then apply for a surveillance device warrant. See the [Surveillance](#) chapter for making application for a surveillance device warrant.

If your case involves urgency or an emergency, then consult with the agency team who will endeavour to comply with your need.

Requests from other agencies for Police to apply

Other agencies with investigative functions but without enforcement powers may request Police to obtain and execute a production order on their behalf. In these cases, follow the procedures in 'Search - [Government agency requests for assistance with search warrants and production orders](#)'.

Grounds for applying for a production order

You may apply for a production order if you have reasonable grounds to:

- **suspect** that an offence has been, is being, or will be committed (it must be an offence for which you could apply for a search warrant), and
- **believe** that the documents sought by the proposed order:
 - constitute evidential material in respect of the offence, and
 - are in the possession or under the control of the person against whom the order is sought, or will come into their possession, or under their control while the order is in force.

(s72)

How to apply

You must apply for a production order in writing along with a personal appearance before, or communication orally with, the issuing officer unless it is impracticable to do so in the circumstances. In this situation you may apply to:

- make an application [orally](#), e.g. by telephone or personal appearance, **or**
- have your application considered [without a personal appearance or oral communication](#).

(ss73) & 100)

Production orders, Continued...

All applications for production orders **must** be made using prescribed forms available in Police Forms > Search and Surveillance > Production Orders.

Oral applications for a production order

An issuing officer may allow an application for a production order to be made orally (e.g. by telephone or by personal appearance) and excuse the applicant from putting all or part of the application in writing if satisfied that:

- requiring a written application would result in a delay that would compromise the effectiveness of the search, **and**
- the question of whether the order should be issued can be properly determined on the basis of an oral communication or personal appearance, **and**
- all required information is supplied to them (orally, or partly orally and partly in writing).

(s100(3))

If an oral application is allowed:

- the issuing officer must record the grounds for the application as soon as practicable
- the applicant must complete:
 - the application form capturing the information conveyed to the issuing officer as soon as practicable and in any event within 24 hours, and
 - the order.

(s100(4))

Applications without personal appearance or oral communication

An issuing officer may allow an application for a production order without a personal appearance or oral communication if satisfied that:

- the question of whether the order should be issued can be properly determined on the basis of the applicant's written communication, and
- the information required for the application has been supplied to the issuing officer, and
- there is no need to ask any questions of, or seek any further information from, the applicant.

(ss73 & 100)

Information required in production order applications

Applications for a production order must include:

- the applicant's name
- the provision authorising the making of an application for a search warrant in respect of the suspected offence
- a description of the offence that it is suspected has been, is being or will be committed
- the facts relied on to show reasonable grounds to suspect an offence has been, is being or will be committed
- a description of the documents for which production is sought
- the facts relied on to show reasonable grounds to believe the documents sought are in the possession or under the control of the person against whom the order is sought
- whether the person should be required to produce those documents that are in their possession or under their control when the order is made:
 - on one occasion only, or
 - on an ongoing basis (i.e. at the time the order is made **and** which come into their possession or under their control at any time while the order is in force).

(s71(2))

Using hearsay evidence

Production orders, Continued...

Hearsay evidence can be used to outline the grounds on which the application is made, if it is highly reliable. Indicate its reliability by stating:

- sufficient information to prove the reliability of what has been stated
- the informant's reliability and whether they have given reliable information in the past. An appropriate way to say this is: "In the past, Informant A has supplied Police with information that has proved to be reliable."
- whether the information has been confirmed by other means.

If further information about an informant is required

See 'What should be included and avoided in applications' in [Search warrants](#) for the definition of 'informant', and the restrictions on revealing identity of informants and including Covert Human Intelligence Sources (CHIS) information in your production order application.

Which issuing officers should you approach?

Always check the current list of authorised issuing officers in your district as they will change from time to time.

It is recommended that an issuing officer from a District or High Court is selected depending on where resultant proceedings are likely to be heard. If outside court hours or no court is available, take the application to another issuing officer.

Production orders, Continued...

Application procedure for production orders

Preparation of the 'Application for a Production Order', 'Production Order', 'Production Order Cover Sheet', obtaining internal approval and submission of issued order and cover sheet are completed electronically.

Requestor's procedure

A requestor for a production order must complete the following steps:

Step	Action
1	<p>Conduct pre-application checks:</p> <ul style="list-style-type: none"> • Set-up a NIA Case reference if one does not already exist. • Complete background checks.
2	<p>Prepare and print the application and order. Sign the application.</p> <p>Note: 'Applications for Production Orders' and 'Production Orders' must be made using prescribed forms available in Police Forms > Search and Surveillance > Production Orders.</p>
3	<p>Seek prior approval to apply for production order. If order is directed:</p> <ul style="list-style-type: none"> • at telecommunications provider obtain approval from district approver • at a media organisation obtain approval from Police Executive member in the case of PNHQ or District Commander for a district matter • at other than a media organisation and telecommunications provider obtain approval from the position level of sergeant or above where practicable.
4	<p>If approved, present application to an issuing officer to issue order.</p> <p>Note: A production order does not require the issuing officer's signature. All that is required is the name or other individual designation of the issuing officer (i.e. a number or a code).</p>
5	<p>Prepare 'Production Order Cover Sheet'. The form can be located in Police Forms (via Microsoft Word) in two folders (each folder is identical to the other).</p> <p>Go to Police Forms (I-Z):</p> <ul style="list-style-type: none"> • > Information Requests, or Search and Surveillance > Production Orders • > Information Request Form / Production Order Cover Sheet (wait 3 seconds and 'Information Request Form – Page 1' information box will appear on the screen) > complete details in the box, select 'Production Order Cover Sheet' and click on 'Next Page' to finalise details. <p>The 'Production Order Cover Sheet' is fully populated from the details you have entered and is to be saved and printed.</p> <p>Note: Once the cover sheet is completed and saved, it cannot be altered. If it is incorrect, it can be disposed of and a new one created.</p>
6	<p>Attach the 'Production Order Cover Sheet' and 'Production Order' in an email and send to the agency providing the information. The agency will provide the information directly to the requestor.</p>

Production orders, Continued...

Issuing production orders

Who issues production orders?

An [issuing officer](#) (as for search warrants) may make a production order against a person if satisfied on application that the [grounds for making a production order](#) are met.

(s74)

Is issuing officer's signature required?

A production order does not require the issuing officer's signature. All that is required is the name or other individual designation of the issuing officer (i.e. a number or a code). Section [89\(1\)](#) of the Act sets out the application of Part [4](#). It is reasonable to assume that the same issuing requirements apply as for search warrants in the absence of further guidance. Part [4](#) applies to production orders (section [89\(1\)\(d\)](#) and (e) refers) and section [103\(4\)\(a\)](#) is in Part 4.

Form and content of production orders

A production order must be in the prescribed form and require the person against whom it is made (**person A**):

- to give the applicant, or a person identified in the order, any documents described in the order that are in their possession or under their control when the order is made or at any time while it is in force, **and**
- if any of those documents are not, or are no longer, in the possession or under the control of person A, to disclose, to the best of their knowledge or belief, the documents' location to the applicant or person identified in the order.

The production order **must** set out:

- the name of person A
- the grounds on which the order is made
- the documents required to be given
- whether the documents must be produced on one occasion only, or on an ongoing basis for the duration of the entire order
- the time by which, and the way in which, the documents must be produced.

The production order may describe the documents required to be given by reference to a class or category of document.

Note: If the production order is made against a body corporate or an unincorporated body, the order may specify an individual (by name or by reference to a position held in the body) who is to comply with the order as the body's representative.

(s75)

Production orders, Continued...

Executing production orders

Execution without being in possession of the order

If it is not possible or practicable for the person executing the production order to have the order in their possession when executing it, one of the following may be executed:

- a facsimile or a printout of an electronically generated copy of the order
- a copy made by the person to whom the order is directed, at the direction of the issuing officer and endorsed to that effect.

(ss [77](#) and [105](#))

Documents produced under production order

If any document is produced in compliance with an order, you may do one or more of the following:

- retain the original document if it is relevant to the investigation. In this situation you must, as soon as practicable, give a copy to the person who produced it
- take copies of the document, or of extracts from it
- if necessary, require the person producing the document to reproduce, or to assist any person nominated by the Commissioner or their delegate to reproduce, in usable form, any information recorded or stored in the document.

(s [78](#))

Copy of retained document to be given

When you decide to retain a document produced in compliance with a production order, you must as soon as practicable after the document is produced, take a copy of the document and give the copy to the person who produced the original document.

(s [79](#))

Custody of produced things

See Search - [Procedures applying to seized and produced things](#) for information about:

- the custody of produced things
- obtaining access to or the release of produced things
- when ownership is disputed
- return and disposal of produced things.

Responding to an assertion of privilege

See 'Privilege relating to production and examination orders' in Search - [Privilege and immunities under the Act](#).

When are orders invalid?

A production order is invalid if:

- having regard to the information in the application, the grounds for lawful issue of the order were not satisfied at the time of issue
- the order contains a defect, irregularity, omission, or want of form that is likely to mislead anyone executing or affected by the order as to its purpose or scope.

If an order is invalid, neither section [204](#) of the Summary Proceedings Act 1957 nor section [379](#) of the Criminal Procedure Act 2011 applies to that order.

(s [107](#))

Production orders, Continued...

Document retention and reporting

Retention and security of production order documents

The responsibility for retaining and securing a production order application once it has been presented for signing, remains with the issuing officer.

When a production order is issued, **the applicant:**

must retain...	until the later of the following...
in electronic form or otherwise: <ul style="list-style-type: none">• the order• a copy of the application (if made in written form)• copies all documents tendered in support of the application	<ul style="list-style-type: none">• the date of completion of any proceedings in which the validity of the order may be in issue, or• the date of destruction or transfer of the order and other documents under the Public Records Act 2005 or any other enactment or rule of law.

(ss73(2)(d) & 101)

For further information, see 'Retention and security of warrants and applications' in the '[Search warrants](#)' chapter. The guidance for search warrant documents also applies to production order documents.

Reporting of production orders

There are no reporting requirements for production orders.

New Zealand Bill of Rights

Detailed table of contents

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[Summary of the Act and its application to policing](#)

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- [Key rules for Police arising from the Act](#)
- [Summary of the Act](#)
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[Right not to be deprived of life](#)

- [Rights under section 8](#)
- [Deaths involving Police](#)
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[Right not to be subjected to torture or cruel treatment](#)

- [Rights under section 9](#)
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[Freedom of expression and peaceful assembly](#)

- [Freedom of expression under section 14](#)
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[Right to be secure against unreasonable search and seizure](#)

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- [Breach of rights and admissibility](#)
- [Court appearances](#)

Policy statement and principles

What

The [New Zealand Bill of Rights Act 1990](#) (NZBORA) is designed to affirm, protect and promote human rights and fundamental freedoms in New Zealand. NZBORA provides that individuals have the right to:

- be secure against unreasonable search and seizure
- not be deprived of life
- not be subjected to torture or cruel treatment
- not be arbitrarily arrested or detained
- freedom of expression, peaceful assembly and movement
- freedom from discrimination.

NZBORA applies to many policing activities. It imposes specific obligations on police officers. For example, section 23 of NZBORA sets out the rights of persons who are arrested or detained and requires, for example, that such persons be informed of the reason for the arrest or detention.

This chapter summarises the rights protected by NZBORA and outlines Police obligations under NZBORA.

Why

Police officers are entrusted by law to exercise very significant powers, such as the power of arrest and detention, and without warrant entry to private premises. NZBORA is a statement of legal principles that limits the powers that the state may bring to bear on individuals. NZBORA applies to acts done by executive branches of the government (such as Police) and to persons performing a public function, power or duty at law (such as constables).

NZBORA requires agencies such as police to exercise their powers in a manner that is consistent with the rights and freedoms guaranteed under NZBORA. Exercise of police powers in a Bill of Rights consistent manner:

- is required by law
- fosters trust and confidence in police decision making and therefore in New Zealand Police
- limits claims against police by persons who feel aggrieved by police actions.

Failure to act consistently with NZBORA may lead to exclusion of evidence and failure of prosecutions, and successful civil claims against Police.

How

To ensure its obligations under the NZBORA are met Police will:

- include the rights and freedoms granted under the Act in the training of frontline staff
- appropriately reflect the rights and freedoms provided by the Act in its policies and procedures, particularly those relating to arrest and detention, questioning, investigation of offences, searching people, use of force and managing demonstrations
- comply with the 'Chief Justice's Practice Note on Police Questioning' and provide advice about rights to people who are arrested or detained, or where police want to question a person where there is sufficient evidence to charge them with an offence
- treat potential breaches of the NZBORA by its employees seriously and investigate and respond to them appropriately.

Summary of the Act and its application to policing

Purpose of this chapter

This chapter contains:

- a brief [summary](#) of the [New Zealand Bill of Rights Act 1990](#) (NZBORA)
- detailed discussion of Police obligations under sections 21 to 25 of the Act.

Section [23](#) relates to the procedures Police must follow when arresting and detaining suspects. It must be considered alongside the '[Chief Justice's Practice Note on Police Questioning](#)'. It is the section of the Act with the most potential to impact on frontline Police. (See '[Rights of people arrested or detained](#)' in this chapter)

Key rules for Police arising from the Act

These are some of the most important rules associated with the NZBORA.

	Rule
1	When you are investigating an offence and you locate suspects or other people you think may provide useful information, you may ask questions but must not suggest that it is compulsory for the person to answer.
2	If you want to question someone and you have sufficient evidence to charge that person with an offence, you must caution the person before inviting them to make a statement or answer questions about that offence.
3	If you have arrested or detained a person pursuant to any enactment, you must caution them, even if you had already given the caution before the suspect was arrested or detained.
4	There is no power to detain a person for questioning or to pursue enquiries, although a person can assist voluntarily with enquiries.

Summary of the Act

The NZBORA applies only to:

- acts done by the legislative, executive or judicial branches of the government (the actions of a trading company, such as TVNZ Ltd, even though a State enterprise under the State Owned Enterprises Act 1986, are not done in the performance of a public power and hence the NZBORA does not apply).
- the performance of any public function, power or duty pursuant to law.

The NZBORA is primarily intended to affirm, protect and promote human rights and fundamental freedoms. It provides:

- protection against the powers of government agencies
- minimum standards for public decision-making
- protection for human rights and basic freedoms.

The Act:

- gives statutory authority to many rights that have always existed but have done so only in common law (examples include the right not to be deprived of life and the right not to be subjected to torture or cruel treatment)
- requires that any limits on the rights and freedoms contained in NZBORA are to be reasonable such that they are capable of being "demonstrably justified in a free and democratic society".

The Act applies to almost every aspect of policing. For example, policing demonstrations may impact on the rights to freedom of expression, manifestation of religion and belief, or peaceful assembly (ss[14](#), [15](#), [16](#)). Intelligence and prevention activities may impact on the protection against discrimination on the basis of race (s[19](#)). A killing by police or death in custody impacts on the right to life (s[8](#)).

New Zealand Bill of Rights, Continued...

The New Zealand Bill of Rights Act also imposes some specific obligations on Police:

- [s21](#) - protection against unreasonable search and seizure
- [s22](#) - protection against arbitrary arrest and detention
- [s23](#) - rights of persons arrested or detained
- [s24](#) - rights of persons charged with an offence
- [s25](#) - minimum standards of criminal procedure

Summary table

This table gives a broad outline of the sections in the Act and identifies matters relevant to Police.

Part	Content
Part 1 , sections 2-7	General provisions of the Act relating to interpretation and application of the Act and other NZ law
Part 2 , sections 8-20	Relate to the life and security of the person, democratic and civil rights, and minority rights. These sections affirm existing rights not previously included in statute.
Part 2, sections 21-22	Relate to actions Police might take while conducting investigations, e.g. searching, seizing, arresting and detaining. (Prior to the Act, these sections were not regulated by statute but by cases such as <i>Entick v Carrington</i> (1765) 19 State Tr 1029 and <i>Blundell v Attorney-General</i> [1968] NZLR 341).
Part 2, section 23	Relates to the rights of people when they have been arrested or detained.
Part 2, section 24	Sets out the rights of persons charged with an offence. Applies to defendants appearing before the courts and prisoners detained in Police cells after being arrested for an offence.
Part 2, sections 25-27	Relate to the administration of justice.
Part 3 , sections 28-29	Have no direct effect on Police.

Further information

For further information about the application of the NZBORA in specific situations refer to these Police Manual chapters:

- [Arrest and detention](#)
- [People in Police detention](#)
- [Investigative interviewing suspect guide](#)
- [Chief Justice's Practice Note on Police Questioning](#)
- [Youth justice](#)
- [Search](#)
- [Searching people](#)
- [Use of force](#)
- [Behaviour offences](#)
- [Unlawful assembly and/or rioting](#)
- [Demonstrations](#)
- [People with mental impairments](#)
- [Sudden death](#)
- [Police involvement in deaths and serious injuries.](#)

Right not to be deprived of life

Rights under section 8

Under section 8 no one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.

Deaths involving Police

Police officers are occasionally required to use force in self defence or defence of another, and in keeping the peace and apprehending offenders. Section 8 of the Act applies where a person dies as a result of Police actions. Such actions must be lawful and justifiable, for example in self defence or defence of another.

For more information see:

- [Use of force](#)
- [Police firearms](#)
- [Homicide and Serious Crime Investigations](#)
- [Police involvement in deaths and serious injuries.](#)

Deaths in Police custody

There is no general obligation on Police to prevent deaths. However, there is a positive obligation towards vulnerable people under Police control, such as prisoners and people in Police detention. See these chapters for the applicable procedures:

- [People in Police detention](#)
- [People with mental impairments](#)
- [Youth justice](#)
- 'Care and suicide prevention' in [Arrest and detention](#).

Right not to be subjected to torture or cruel treatment

Rights under section 9

Everyone has the right not to be subjected to [torture](#), or to [cruel, degrading, or disproportionately severe treatment or punishment](#). The purpose of section 9 is to ensure that all persons are treated with respect for their inherent dignity and worth.

Section 9 is particularly relevant to the treatment of prisoners. For example, deliberately strip searching a prisoner in a public area in order to humiliate or subdue them, may breach section 9.

Section 9 and the 'UN Convention Against Torture' include an obligation to investigate credible claims of torture and cruel, degrading and disproportionately severe treatment. Police will often be involved in such investigations. The IPCA is the National Preventative Mechanism for torture and cruel treatment, and oversees investigations into complaints of torture and cruel treatment by Police. (See 'Independent Police Conduct Authority (IPCA)' in the ['Police investigations of complaints and notifiable incidents'](#) chapter.

Breach of section 9 may lead to a substantial award of compensation by the courts (see [Taunoa v Attorney-General](#) [2008] 1 NZLR 429).

Torture

'Torture' is defined under the Crimes of Torture Act 1989 as any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as:

- obtaining information or a confession
- punishment for any act or omission
- intimidation or coercion
- for any reason based on discrimination of any kind.

Cruel, degrading or disproportionately severe treatment

'Cruel, degrading or disproportionately severe treatment' covers a range of treatment which deliberately inflicts severe suffering, gravely humiliates and debases the person, would shock the conscience of the community, or is grossly disproportionate to the circumstances. The circumstances and the nature of the treatment are relevant:

- state of mind of the victim and whether he/she is especially vulnerable, e.g. suffers a mental health condition
- motive of the perpetrator and whether the treatment was deliberate
- the duration of the treatment
- the severity of harm.

Freedom of expression and peaceful assembly

Freedom of expression under section 14

Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind and in any form.

'Expression' covers manifestations of ideas and information of any kind and in any form, including behaviour bordering on the offensive or disorderly. This right is particularly relevant to policing demonstrations, offences of disorderly and offensive behaviour and breach of the peace.

The right is limited by the criminal and civil law, for example 'offensive' and 'disorderly' behaviour, insulting language, breach of the peace, hate speech, contempt of court and censorship laws. The limit must be reasonable in the circumstances of the behaviour - an issue which will be decided by the court in each case.

Freedom of peaceful assembly under section 16

Everyone has the right to freedom of peaceful assembly.

An 'assembly' is two or more people meeting with a common goal. Assemblies must be 'peaceful' to be protected by the right. An assembly which inconveniences members of the public may still be peaceful, and one non-peaceful person does not extinguish the right for the rest of the assembly. For an assembly to be found non-peaceful requires a serious and aggressive effect on people or property.

Demonstrations, behaviour offences and breach of the peace

The rights to freedom of expression, association and peaceful assembly underpin public protests, demonstrations and occupation of public spaces. When policing protests and demonstrations, cognisance must be taken of:

- the rights to freedom of expression and peaceful assembly
- the extent to which the expression/demonstration is impinging on the rights of others to use the public space, and
- whether the behaviour warrants the intervention of the criminal law.

The courts take a liberal approach to expressive behaviour by demonstrators. The level of behaviour required for 'disorderly' and 'offensive' behaviour or 'insulting language' is much higher for demonstrators conveying an opinion on a matter of public interest, than for other types of behaviour. In order to reach the threshold of offensive or disorderly, protestors' behaviour must either:

- substantially inhibit other people from enjoying their right to use the public amenity, and/or
- cause greater offence than those affected can reasonably be expected to tolerate, to the extent that it is seriously disruptive of public order.

(Refer [R v Morse](#) [2009] NZCA 623, [Brooker v Police](#) [2007] 3 NZLR 91, [Wakim v Police](#) [2011] 9 HRNZ 318, [Thompson v Police](#) [2012] NZHC 2234, [Pointon v Police](#) [2012] NZHC 3208).

Breach of the peace is not an offence, but carries a power of arrest (s42 Crimes Act). The rights to freedom of expression and peaceful assembly will impact on the validity of a decision to arrest to prevent a breach of the peace (refer [Police v Beggs](#) [1999] 3 NZLR 615).

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The legal tests for disorderly and offensive behaviour and insulting language and breach of the peace are likely to evolve further in the protest context. Generally, Police employees should consider:

- Does the behaviour express a view on a matter of public interest?
- Does the behaviour intrude on the rights of others in a public space?
- Does this intrusion go beyond what a reasonable person, respectful of the rights to freedom of expression and assembly, could be expected to tolerate?
- Does the behaviour pose an actual risk of public disorder (e.g. is it intimidation, victimisation, bullying or is there a real risk of violence occurring)?
- Does the behaviour warrant the intervention of the criminal law?

Protesters have a right to protest in government spaces (e.g. the entrance foyer of a building), subject to limitations that are reasonable and demonstrably justifiable. Before police become involved with a protester who has been asked to leave a government space, you should do your own assessment of the reasons why the official says that the protester has to be moved on. You should ask yourself, does the official's reasoning make sense and does it justify police action, given an individual's right to peaceful protest. If the protester is causing a hazard, or disrupting business, one option is to see if the protest action can be modified. (*Routhen v Police* [2016] NZHC 1495)

For more information see these parts of the 'Public Order Policing' chapter:

- [Behaviour offences](#)
- [Unlawful assembly and-or riot](#)
- [Demonstrations](#)
- [Mass arrest planning](#).

Non-publication orders and contempt of court

Generally, judicial proceedings should be published to ensure transparency of the justice system. However, in criminal cases the defendant's right to a fair trial may overcome the right to freedom of expression, and may justify a non-publication order. Breach of a non-publication order, or other expression which interferes with the administration of justice may lead to conviction for contempt of court and imprisonment. See the '[Sub-judice](#)' 'Media' chapter.

Freedom of movement

Rights under section 18

- Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand.
- Every New Zealand citizen has the right to enter New Zealand.
- Everyone has the right to leave New Zealand.
- No one who is not a New Zealand citizen and who is lawfully in New Zealand shall be required to leave New Zealand except under a decision taken on grounds prescribed by law.

There are many prescribed limits on the right to freedom of movement, such as immigration decisions, extradition, bail conditions, imprisonment and home detention.

Police often curtail individuals' freedom of movement within New Zealand. Police actions in detaining and arresting people are generally covered by section 22 [arbitrary arrest and detention](#). However, [bail conditions](#), road closures (see 'Powers>To close roads' in the '[Unlawful assembly and-or riot](#)' chapter) and other short-term curtailments may impinge on the right and must be reasonable.

Freedom from discrimination

Rights under section 19

Everyone has the right to freedom from discrimination on the grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation. Affirmative action to advance a particular group does not amount to discrimination.

Discrimination means treating someone detrimentally because of one of the prohibited grounds (such as race). A policy may also be discriminatory where it has the effect of treating a group of people differently, even if this is not the intention. However many government policies and social programmes target specific groups, and are not discriminatory. Policing operations or prevention programmes which target a particular harm are unlikely to be discriminatory.

Police employees interact with people from all walks of life with all characteristics, and should ensure conduct does not discriminate on any of the prohibited grounds. Respect for people and avoiding discrimination is one of the principles of the Police '[Code of Conduct](#)'.

Examples of Police policies outlining affirmative actions for certain groups of people or procedures to ensure that discrimination does not occur in certain situations include:

- [Identifying drivers with face coverings](#) (see the section 'Process to follow for religious or cultural face coverings')
- [Police cultural groups](#)
- [Neighbourhood Policing Team \(NPT\) guidelines](#)
- [Deploying Iwi, Pacific and Ethnic Liaison Officers](#)
- [People with mental impairments](#)
- [Youth justice](#).

For discrimination in the workplace, see the '[Discrimination and harassment policy](#)'.

Right to be secure against unreasonable search and seizure

Rights under section 21

Under section [21](#), everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence, or otherwise.

The basis of the right is the need to protect an individual's reasonable expectation of privacy from intrusion by the government. This will vary depending on the nature, place and extent of the intrusion on the privacy interest ([R v Grayson & Taylor](#) [1997] 1 NZLR 399 (CA), [Hamed v R](#) [2012] 2 NZLR 305 (SC), [R v Alsford](#) [2017] NZSC 42).

Generally, a search or seizure will be reasonable if it is conducted under a statutory power and the public interest in administering criminal justice outweighs the individual's privacy interest ([R v Thomas](#) (2001) 19 CRNZ 392 (CA)). Police have extensive search and seizure powers, with and without warrant, provided in statute. (See the '[Search](#)' Police Manual chapter).

The protection against unreasonable seizure does not amount to a right to property ([P F Sugrue Ltd v Attorney-General](#) [2006] 3 NZLR 464 (PC)).

What is a 'search'?

There is no set definition of a 'search', either in statute or case law. Recent case law suggests a 'search' requires a conscious act of state intrusion into an individual's reasonable expectation of privacy, as opposed to a mere observation ([Pollard v R](#) [2010] NZCA 294; [Lorigan v R](#) [2012] NZCA 294 applying [Hamed v R](#) per Blanchard J).

A search is not:

- kneeling and using a torch to observe an article secreted inside a car headlight ([R v Dodgson](#) (1995) 2 HRNZ 300 (CA))
- asking a person to hold up a bicycle so the serial number can be checked ([Everitt v A-G](#) [2002] 1 NZLR 82 (CA))
- asking a person to hold out their hands for inspection ([R v Yeung](#) HC Akl 22 May 2009)
- a voluntary request to a power company for aggregated monthly power usage data ([R v Alsford](#) [2017] NZSC 42 and [R v Gul](#) [2017] NZCA 317).

What is a 'seizure'?

There is no statutory definition of 'seizure'. Seizure is 'removing something from the possession of someone else' ([Hamed v R](#)). An item generated by exercising a search or surveillance power (e.g. a photograph) is not a 'seizure' (s3 Search & Surveillance Act).

Unreasonable searches and seizures

A search is unreasonable if the circumstances giving rise to it make the search itself unreasonable or if the search is carried out in an unreasonable manner. ([R v Grayson & Taylor](#) [1997] 1 NZLR 399). The principles of reasonable search by Police are set out in the chapter on 'Search' (see 'General principles applying to searches' in the '[Search introduction](#)' chapter).

Unlawful searches and seizures

Unlawful searches will almost always be unreasonable and breach s 21. However, a search undertaken in good faith where the searcher was mistaken about their power of search may not be unreasonable ([R v Jefferies](#) [1994] 1 NZLR 290). For example, a

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search may be reasonable where the wrong search power was used, but the search could have lawfully been conducted under other powers ([R v Abraham](#) 30/8/05, CA253/05, [R v Timutimu](#) [2006] DCR 38, [Haliday v R](#) [2017] NZCA 108).

Minor irregularities during search

A search that is unlawful because of a minor irregularity may, depending on the circumstances, not be unreasonable. In such a case, the evidence obtained in the search may be admissible - see [R v Faasipa](#) (1995) 2 HRNZ 50 (CA). However, even where a breach is minor or technical, a search or seizure will not normally be held to be reasonable if the police realised the error **before** the search or seizure was undertaken. ([R v Williams](#) [2007] 3 NZLR 207, para [21]).

Searches carried out in an unreasonable manner

A search that would otherwise be reasonable is unreasonable if it is carried out in an unreasonable manner (e.g. a strip search conducted in the street where there are no law enforcement considerations necessitating that approach and when the search could have easily been carried out in private). ([R v Pratt](#) [1994] 3 NZLR 21; [R v S](#) (10 May 2001, High Court Auckland, Paterson J, T001794), [R v Williams; Van Essen v A-G](#) [2013] NZHC 917.

Rub-down and strip searching a person

Unwarranted strip or rub-down searches may breach section [21](#) or [s23\(5\)](#) (see '[Rights of people arrested or detained](#)'). Deliberate degrading and repeated strip searching to punish a detainee may breach section [9](#) (see [Right not to be subjected to torture or cruel treatment](#)). (Refer [Forrest v A-G](#) [2012] NZAR 798 (CA), [Reekie v A-G](#) [2012] NZHC 1867, [Taunoa v A-G](#) (CA)). The remedy for unjustified rub-down and strip searches is usually compensation, although this may be limited by the [Prisoners and Victims Claims Act 2005](#).

Electronic surveillance

Searching includes electronic surveillance. Again, there is no set definition whether surveillance without special capabilities (such as night vision) will be a 'search' ([Lorigan v R](#), [Hamed v R](#)).

Powers and duties regarding surveillance activities are set out in the [Search and Surveillance Act 2012](#) and the '[Search](#)' chapter.

Remedies for unreasonable search

The usual remedy for a breach of section 21 is exclusion of evidence under section [30](#) Evidence Act ([Hamed v R](#)).

Some unreasonable searches may also warrant compensation ([Baigent's Case](#) [1994] 3 NZLR 667; [Forrest v A-G](#) [2012] NZAR 798 (CA)). However, for prisoners in Police custody, compensation may be limited by the [Prisoners and Victims Claims Act 2005](#).

Right to not be arbitrarily arrested or detained

Rights under section 22

Under section [22](#) everyone has the right not to be arbitrarily arrested or detained.

Police employees have powers to arrest and detain under various statutes (see '[Arrest and detention](#)').

'Arrest'

The term 'arrest' has been thoroughly discussed by the Court of Appeal in *R v Goodwin*: "...arrest must have its Crimes Act meaning of a **communicated intention** on the part of the police officer to hold the person under lawful authority." ([R v Goodwin](#) (No 1) [1993] 2 NZLR 153; (1992) 9 CRNZ 1)

'Detention'

A person will be regarded as 'detained' if:

- there is physical deprivation of a person's liberty, or
- there are statutory restraints on a person's movement, or
- they have a reasonably held belief induced by police conduct (or other official conduct) that they are not free to leave.

([R v M](#) [1995] 1 NZLR 242 (per Blanchard J)); ([Police v Smith and Herewini](#) [1994] 2 NZLR 306).

Where a deprivation or restraint is only temporary, detention is less likely to have occurred.

Examples of arrest or detention include when a person has been:

- formally arrested
- handcuffed ([R v Royal](#) (1992) 8 CRNZ 342)
- locked in a room or building, or put in a place that they cannot leave voluntarily
- placed in a police vehicle against their will.

Each of these acts can be described as a positive act of physical detention that communicates an intention to hold a person under lawful authority. In such a situation, the suspect is under arrest within the meaning of the Crimes Act and Police must inform the suspect of their rights under section [23](#) by giving the [caution](#).

Powers to arrest and detain are discretionary, and a Police employee must determine whether to arrest or detain in the circumstances of each case. (See 'Deciding whether to arrest' in '[Arrest and detention](#)'). An arrest or detention will be 'arbitrary' if it is capricious or without reasonable cause. Also if the arrest/detention was unlawful or proper procedures were not followed.

Before an arrest is made, the arresting officer must be clear in their own mind that the arrest is justified and reasonable, and that alternative action, such as a summons, is not appropriate. ([Neilsen v Attorney General](#) [2001] 3 NZLR 433; (2001) 5 HRNZ 334 (CA)). A failure to consider the discretion to arrest will be arbitrary. ([Attorney-General v H](#) [2000] NZAR 148).

Holding in custody while making enquiries

A reasonable arrest/detention may also become arbitrary if it lasts longer than necessary, for example longer than required to bring an offender before the Court. (See 'Releasing arrested or detained people' in '[Arrest and detention](#)').

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A suspect arrested on one offence cannot be kept in custody for "mere convenience sake" while enquiries are made into another offence for which he or she may later be interviewed. If the suspect is eligible for bail, you must give it as soon as practicable. ([R v Rogers](#) (1993) 1 HRNZ 282)

Stopping vehicles to arrest

You cannot stop a vehicle to undertake general enquiries ([R v Bailey](#) [2017] NZCA 211, [Ghent v Police](#) [2014] NZHC 3282). It may be classed as an arbitrary detention. You can stop a vehicle to enforce any of the provisions of the Land Transport Act or Traffic Regulations under section [114](#) of the Land Transport Act 1998.

You are entitled to stop a vehicle under section [9](#) of the Search and Surveillance Act 2012 for the purpose of arresting any person in the vehicle, if you have good cause to suspect that person of having committed an imprisonable offence or of being unlawfully at large (e.g. a person for whose arrest a warrant (other than a warrant issued under Part 3 of the Summary Proceedings Act 1957 in relation to fines enforcement) is in force). Any deviation from the above procedure will be viewed as an arbitrary detention, and any evidence seized as a result is likely to be ruled inadmissible. ([R v P & F](#) (31 July 1996, Court of Appeal, CA219/96 CA270/96))

Note: The powers incidental to stopping a vehicle under section [9](#) are set out in section [10](#).

Remedies

An arbitrary arrest or detention may lead to exclusion of evidence, release from detention, or compensation. For further information see [Arrest and detention](#), [Youth Justice](#), [People with mental impairments](#).

Rights of people arrested or detained

Rights under section 23

Section [23](#) codifies Police duties during arrest and detention, so that basic human rights and freedoms are protected. Under the section, people who are arrested or detained under an enactment have the rights to:

- be informed of the reason for arrest or detention at the time of the arrest or detention
- consult and instruct a lawyer without delay and to be told of that right
- have the arrest or detention's validity determined by the Court by way of habeas corpus and to be released if it is not lawful
- after arrest, to be charged promptly or released
- if not released after arrest, to be brought before a court or tribunal as soon as possible
- refrain from making any statement and to be informed of that right
- be treated with humanity and respect.

'Arrest' and 'detention'

See '[Right to not be arbitrarily arrested or detained](#)' (s22) for determining whether a person has been arrested or detained. See also the '[Arrest and detention](#)' chapter.

Giving the caution

The '[Chief Justice's Practice Note on Police Questioning](#)', issued under section [30](#)(6) of the Evidence Act 2006, provides guidance on police questioning. It includes a caution, containing the advice requirements of section [23](#).

The wording of this [caution](#) for adults and young persons is detailed on an insert card in constable's notebooks.

A caution must be given to:

- adults who are arrested or detained, or where Police want to question an adult where there is sufficient evidence to charge that person with an offence
- children or young persons when detained or arrested and, in accordance with section 215 of the Children's and Young People's Well-being Act, before questioning a child or young person when there are reasonable grounds to suspect them of having committed an offence, or before asking any child or young person any question intended to obtain an admission of an offence. (See the '[Youth Justice](#)' chapter.

Failure to give the caution may result in a finding that evidence was improperly obtained and the evidence excluded under section [30](#) of the Evidence Act.

Questions about statements or other evidence

Whenever a person is questioned about statements made by others or about other evidence, the substance of the statements or the nature of the evidence must be fairly explained ([Chief Justice's Practice Note on Police Questioning](#)).

Guidance on detention

Not every restraint will amount to a detention for the purposes of section [23\(1\)](#). The courts have recognised particular circumstances in which a short delay in affording rights may be necessary to preserve evidence or to ensure personal safety. In such cases, there is no detention under an enactment for the purposes of section 23(1)(b)(right to consult and instruct a lawyer without delay and to be informed of that right) — examples include:

- When a motorist is stopped at the roadside to undergo a breath-alcohol screening test ([Temese v Police](#) (1992) 9 CRNZ 425 (CA))
- When a motorist is stopped at the roadside and asked to supply his or her particulars as permitted by the land transport legislation
- When a motorist is taken to hospital following an accident and a doctor is requested to take a blood sample for alcohol testing ([Police v Smith and Herewini](#) [1994] 2 NZLR 306 (CA))
- When undertaking the execution of a search warrant reasonable directions may be given to persons whom there are reasonable grounds to believe will obstruct or hinder the search, e.g. persons may be excluded from the house or instructed that if they remain in the house, they are to stay in a specified room ([Powerbeat International Ltd v Attorney-General](#) (1999) 16 CRNZ 562 (HC), section 116 Search and Surveillance Act 2012).

Treatment with humanity and respect

There is a positive obligation on Police to ensure that all people who are arrested, detained or deprived of their liberty are treated with humanity and respect for the inherent dignity of the person. Serious deliberate or reckless ill-treatment of a detainee may breach section [9](#).

Treatment in breach of section [23\(5\)](#) includes:

- excessive use of force against a detainee ([Archbold v A-G](#), [Falwasser v A-G](#))
- failure to provide medical treatment when requested
- unlawful restraint to prevent self-harm ([Reekie v A-G](#))
- failure to comply with regulations or policies which provide minimum entitlements, such as food, clothing, exercise time ([Taunoa v A-G](#), [Reekie v A-G](#))
- routine or deliberate unnecessary strip searching ([Taunoa v A-G](#), [Reekie v A-G](#))
- failure to ensure the detainee's safety and protect them from other detainees.

Remedies for breach of section 23(5) typically include compensation (\$30,000 in [Falwasser](#) - excessive use of O/C spray against a detainee in Police cells; \$35,000 in [Taunoa](#) - long-term policy of reduction in minimum entitlements in prison, designed to reduce prisoner's resistance; \$4,000 in [A-G v Udompun](#) [2005] 3 NZLR 204 - failure to provide sanitary products or allow a shower). However, the [Prisoners and Victims Claims Act 2005](#) may impact on compensation for prisoners.

Further information

Refer to the '[Arrest and detention](#)' chapter for information about what constitutes arrest and detention.

Notifying rights

Ensuring rights are understood

"Unless there is an evidential basis justifying a contrary conclusion, proof that the Police advised the suspect of the section [23\(1\)\(b\)](#) rights should lead to the inference that the suspect understood the position." ([R v Mallinson](#) [1993] 1 NZLR 528; (1992) 8 CRNZ 707)

However:

- "...it is the detainer's obligation to ensure the whole right is conveyed and understood...or at least in a manner open to understanding." [R v Hina](#) (24 June 1992, High Court Wanganui, Greg J, T7/92), and
- "It may be necessary to inform an arrested or detained person more than once of his rights...it may not be in compliance with the Act for a person to be told 'perfunctorily' of the stipulated right..." ([R v Tunui](#) (1992) 8 CRNZ 294), ([R v Dobler](#) [1993] 1 NZLR 431).

This extended obligation would apply, for example, where the suspect:

- is stressed, confused or fatigued at the time of the arrest
- has a poor command of the English language
- has a passive nature, or limited intelligence
- may have difficulty hearing because of background noise
- needs an interpreter (e.g. of sign language or a foreign language).

However, over a period of time, re-advising a suspect may be necessary, depending on how long the interview has lasted. If a serious offence is uncovered in the interview, the best practice would be to re-advise.

Note there are particular requirements relating to explanations of rights to be given to children or young persons. These must be given in a manner and in language that the child or young person can understand (section [218](#) Children's and Young People's Well-being Act 1989, [R v Z](#) [2008] 3 NZLR 342; (2008) 24 CRNZ 1 (CA)) (See the '[Youth Justice](#)' Police Manual chapter).

Written notifications

If the suspect is given the [caution](#) in approved written form, the Act has been complied with. "There is nothing in the Act which requires that an arrested person be advised of his/her rights verbally rather than in writing." ([R v Grant](#) (1992) 8 CRNZ 483)

Timing of the notification

The admissibility of a confession will be jeopardised if the person was not informed of their rights at the proper time.

Exceptions

There are exceptions:

"Police officers cannot be expected to be concerned with uttering warnings while their safety is threatened. However, once control is established by Police the suspect should be informed of his/her rights." ([R v Butcher & Burgess](#) [1992] 2 NZLR 257; (1991) 7 CRNZ 407)

Where time is of the essence (e.g. where delay will cause danger to others, or an ongoing and real danger that evidence will be lost) then efforts to contact a lawyer will be considered in the light of those dangers.

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"The expression 'without delay' is not synonymous with 'instantly' or 'immediately'...was the delay reasonable in all circumstances, having regard to the purpose of the right." ([R v Mallinson](#) [1993] 1 NZLR 528; (1992) 8 CRNZ 707)

See also '[Detaining while searching](#)'.

Lawyers

Police Detention Legal Assistance Scheme

When cautioning someone who is arrested or detained, or someone against whom there is sufficient evidence to charge with an offence, the person must be told:

- of their right to consult and instruct a lawyer without delay and in private, and
- that the right may be exercised without charge under the Police Detention Legal Assistance Scheme.

When are rights requested

If the suspect indicates a desire to exercise their rights, the interview must be stopped until they have contacted a lawyer.

Once the suspect has invoked the lawyer access right, Police are under a duty to refrain from attempting to elicit evidence from that person until they have had a reasonable opportunity to consult a lawyer ([R v Taylor](#) [1993] 1 NZLR 647 (CA)).

"The detainer is required to refrain from attempting to gain evidence from the detainee until the detainee has had a reasonable opportunity to consult and instruct a lawyer." [MOT v Noort](#); [Police v Curran](#) [1992] 3 NZLR 260, 280 (CA), quoted in Butler & Butler, *The New Zealand Bill of Rights Act: A Commentary*, p463.

However, in [R v Ormsby](#) (8/4/05, CA493/04), the Court of Appeal concluded that there is no absolute prohibition on Police questioning a suspect who has received legal advice and has told Police that the burden of that advice is that the suspect should remain silent but despite this the suspect continues to answer questions.

In [R v Perry](#) [2015] NZCA 530 the Court of Appeal considered the authorities on what encouragement or persuasion may be applied to encourage a suspect to answer questions when they have asserted a right to silence:

"[32].....The authorities establish the following principles:

- (a) There is no absolute prohibition on further questioning by the police after the right to silence has been asserted.
- (b) Rights earlier asserted may be waived, provided the waiver is an informed and voluntary one.
- (c) In determining whether there has been an informed and voluntary waiver of the rights earlier asserted, an evaluative approach is applied.

[33] In applying the evaluative approach, we consider that the following points emerge from the authorities. First, if the police take "positive or deliberate step[s] to elicit incriminating evidence" once the right to consult a lawyer is asserted but before the consultation has taken place, the suspect is not regarded as having given a voluntary waiver in respect of any statements that are made in response to those steps...

[34] Secondly, where the police have agreed with the lawyer that there will be no further discussion with an accused without the lawyer being present (that being the accused's instructions to his or her lawyer), an informed voluntary waiver must be given if the discussion is to continue. A waiver will be informed and voluntary where the police inform the accused of the arrangement that has been made with the lawyer and ask whether he or she wishes to change the instructions to the lawyer or waive the need for compliance with them....

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[35] Thirdly, where the suspect has received advice to assert the right to silence, the police may not take steps to “undermine the value of the legal advice” that has been given....

[36] Fourthly, where a suspect has exercised his or her right to silence but is then further questioned, the suspect’s rights are not necessarily subverted or eroded. Notwithstanding, an initial reliance on advice from a lawyer, matters can evolve. Where there has been no cajoling by the police to change the suspect’s mind, a valid waiver can be given even though the lawyer is not further consulted....

...
[38] Finally, there are the cases where a person has exercised their right to silence but subsequently makes incriminating statements not knowing that they are talking to the police. In that context the Supreme Court has adopted the “active elicitation” test....”

The interviewing officer can continue the interview once the suspect has consulted and instructed a lawyer. However, the court will decide whether any evidence elicited before the lawyer's arrival will be admissible. If the lawyer is on their way, best practice would be to suspend the interview until they arrive ([R v Aspinall](#) (13 March 1992, High Court, Christchurch, Holland J, T8/92))

Right to privacy

The [Chief Justice's Practice Note](#) states that a suspect is entitled to consult a lawyer in private. However, Butler & Butler, *The New Zealand Bill of Rights: A Commentary*, p 681, consider that advice as to privacy must be given on detention as this is part of the right to a lawyer guaranteed by section [23\(1\)\(b\)](#).

Police cannot deny privacy on the grounds that no private room is available.

However, in some circumstances, the right to privacy may be overridden by other considerations. In [R v Piper](#) [1995] 3 NZLR 540; (1995) 13 CRNZ 334, the Court of Appeal stated that Police may be justified in not offering privacy, where it would not be safe to leave the accused alone or because there was a risk that the appellant would try to dispose of evidence and warn others.

Privacy may not be necessary where the suspect has indicated that they do not require it.

Reasonable assistance

In some situations, contacting a lawyer will require considerable time and effort on the part of the interviewing officer.

You must make a reasonable, honest and determined effort to contact a lawyer. ([R v Himiona & Anor](#) (10 February 1992, High Court Rotorua, Doogue J, T69/91)). However, police are under no obligation to find for the suspect their lawyer of choice when the contact phone number cannot be found. ([R v Tallentire](#) [2012] NZHC 1546)

The time and effort given to contacting a lawyer before the interview is continued need only be ‘reasonable’. If Police can convince the courts that an honest and determined effort was made to contact a lawyer, the failure of this effort will not automatically exclude an admission made after the suspect has asked for a lawyer.

Other phone calls

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The right to consult a lawyer is not a right to consult any other person or organisation. The person can do this for the purpose of obtaining a lawyer, but not for the purposes of obtaining advice that a lawyer might give if contacted directly. [Ellis v Police](#) (AP 93/94) and [Chisholm v Police](#) (AP 92/94, 12 October 1994, High Court, Dunedin).

There is no legal requirement for police to offer a suspect the opportunity to phone multiple lawyers if they are not satisfied with the legal advice they have obtained when their rights have been properly facilitated. ([Police v Hendy](#) [2011] DCR 263)

Waivers

A suspect is not obliged to have a lawyer present during the interview. However, the waiver of the right to a lawyer under section [24](#)(c) must be established in an unequivocal manner (Butler and Butler, *The New Zealand Bill of Rights: A Commentary*, p 762).

"The right conferred by section [23](#)(1)(b) to consult a lawyer is clearly a right which the arrested person is able to waive, provided that this is done clearly and with full knowledge of that right." ([R v Biddle](#) (1992) 8 CRNZ 488)

"A valid waiver requires a conscious choice that is both informed and voluntary, and it cannot be implied from silence or failure to request rights." ([Police v Kohler](#) [1993] 3 NZLR 129)

Questioning a person in custody

Recording statements

Where a person in custody or in respect of whom there is sufficient evidence to charge makes a statement, that statement should preferably be recorded on video or DVD. If not, the statement must be recorded permanently on audiotape or in writing. The person making the statement must be given the opportunity to review the tape or written statement or to have the written statement read over, and must be given the opportunity to make corrections and or add anything further.

Where the statement is recorded in writing the person must be asked if they wish to confirm the record as correct by signing it ([Chief Justice's Practice Note on Police Questioning](#)).

Interactions between police officers and detainees which are closely connected to a statement which the suspect is, or is contemplating, making and which are likely to be material to what the suspect says or does should, where practicable, be recorded. (*R v Perry* [2016] NZSC 102)

Further information

For further information about recording suspect's statements refer to the 'Account: statements and notes' section in the '[Investigative interviewing suspect guide](#)'.

Questioning must not amount to cross-examination

Any questions you put to a person in custody, or in respect of whom there is sufficient evidence to file a charge, must not amount to cross-examination ([Chief Justice's Practice Note on Police Questioning](#)).

Breach of rights and admissibility

"Once a breach of section [23](#)(1)(b) has been established, the trial judge acts rightly in ruling out a consequent admission unless there are circumstances in the particular case satisfying him or her that it is fair and right to allow the admission into evidence." (*R v Kirifi* [1992] 2 NZLR 8; (1991) 7 CRNZ 427)

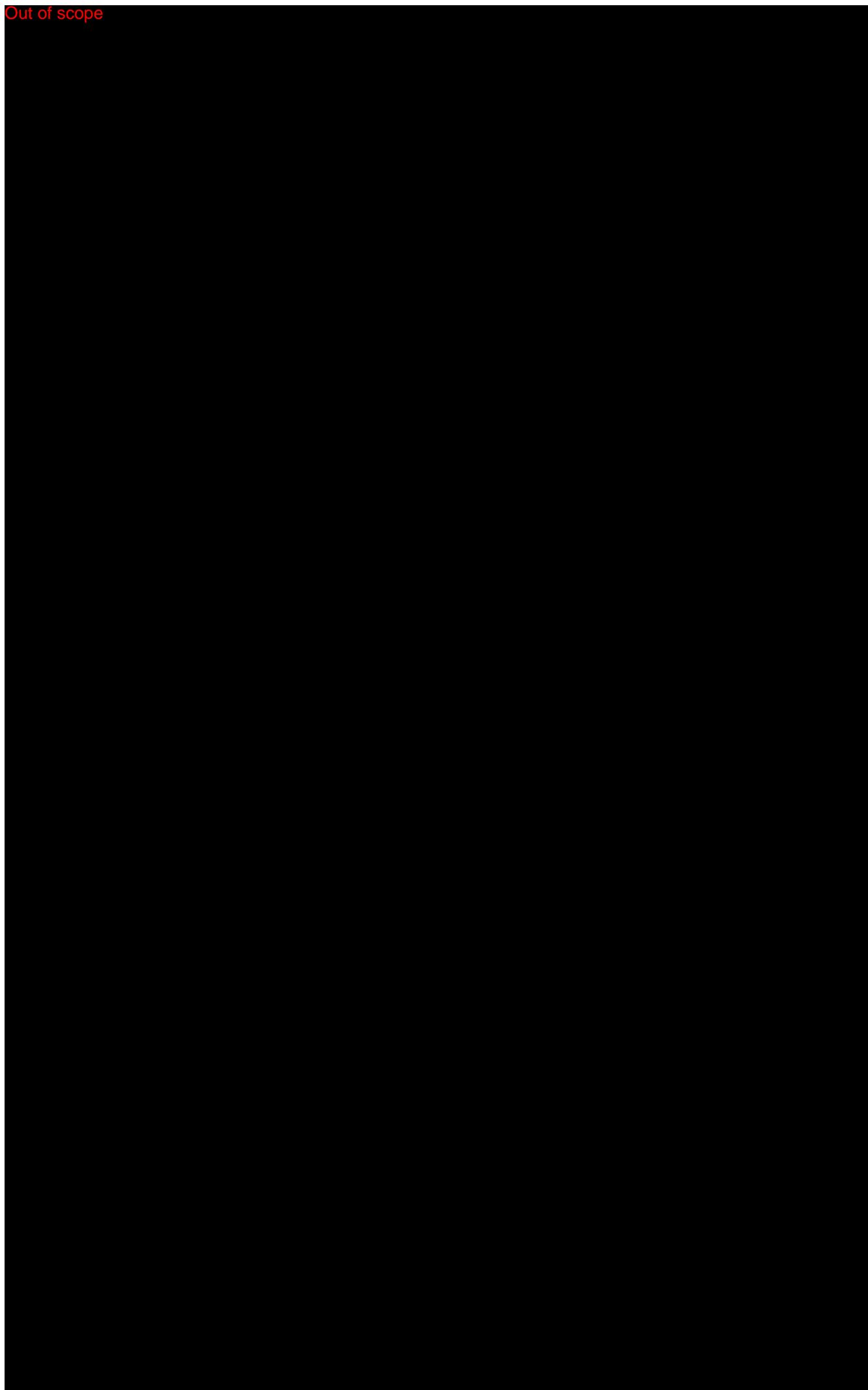
Breaches of other people's rights cannot be relied upon by third parties to secure a personal remedy of evidentiary exclusion: *R v Williams* [2007] 3 NZLR 207; (2007) 23 CRNZ 1; *R v Wilson* [1994] 3 NZLR 257 (CA).

Court appearances

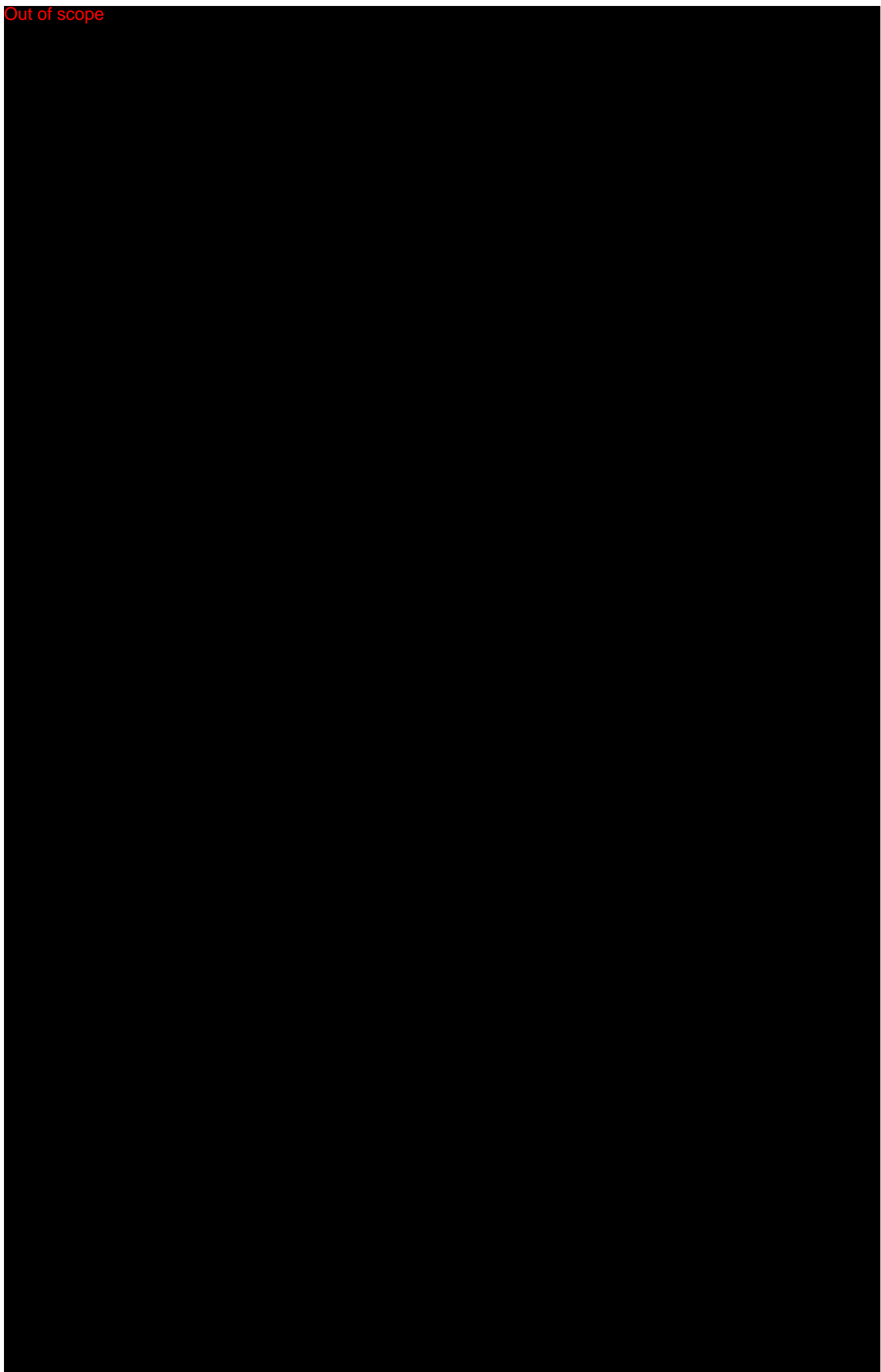
An arrested person must be charged promptly or be released, whether without charge or on police bail following charge (see information on police bail in the '[Bail](#)' chapter > Deciding whether to grant or oppose bail). There is an urgency about this requirement but matters such as reasonable time for processing, obtaining legal advice and other police emergencies are 'justified limitations' on it (*R v Rogers* (1993) 1 HRNZ 282).

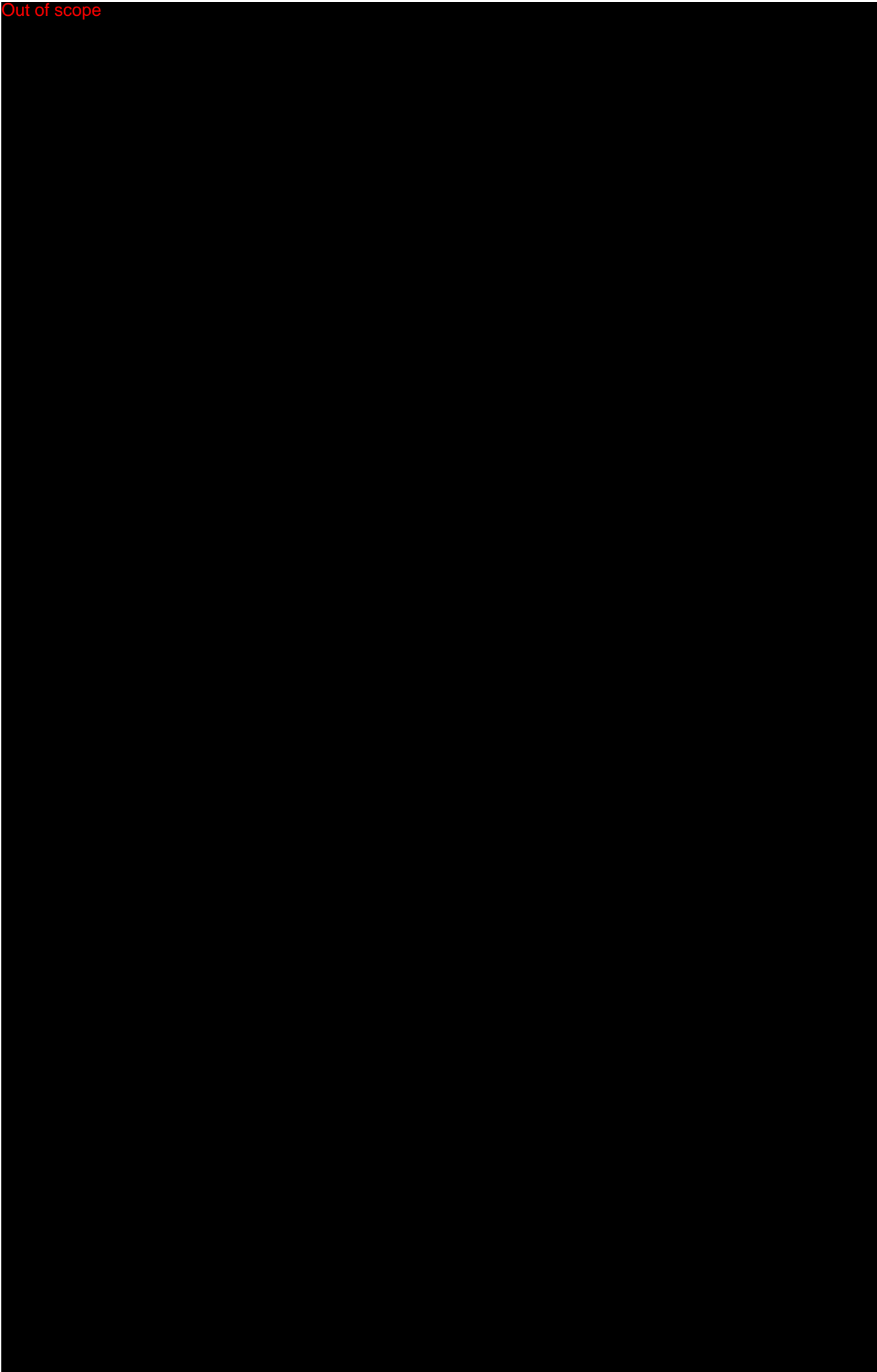
A person charged must appear at the next available court sitting. They cannot be held while enquiries are conducted into separate offences. (*R v T* (1994) 11 CRNZ 380)

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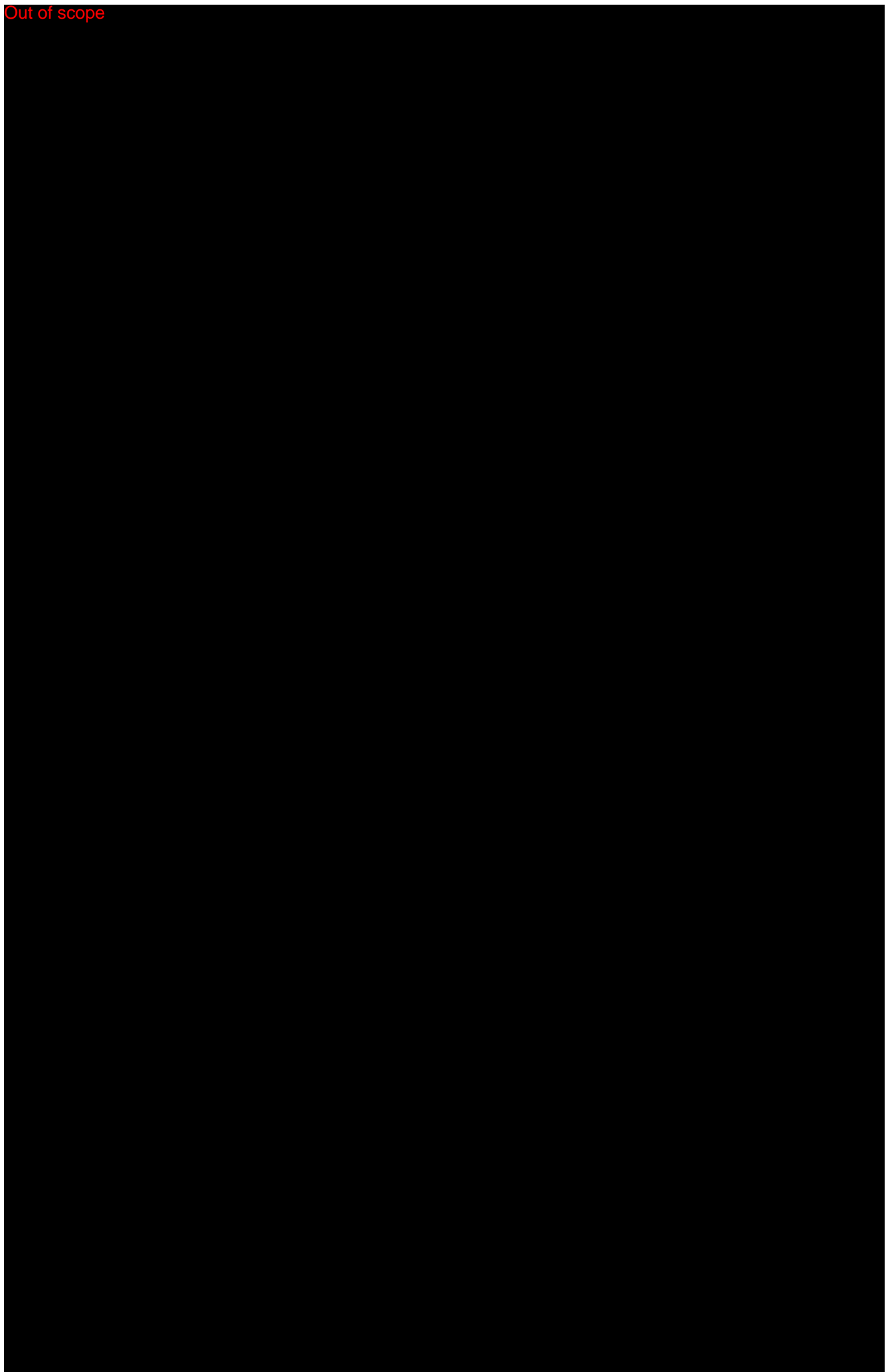


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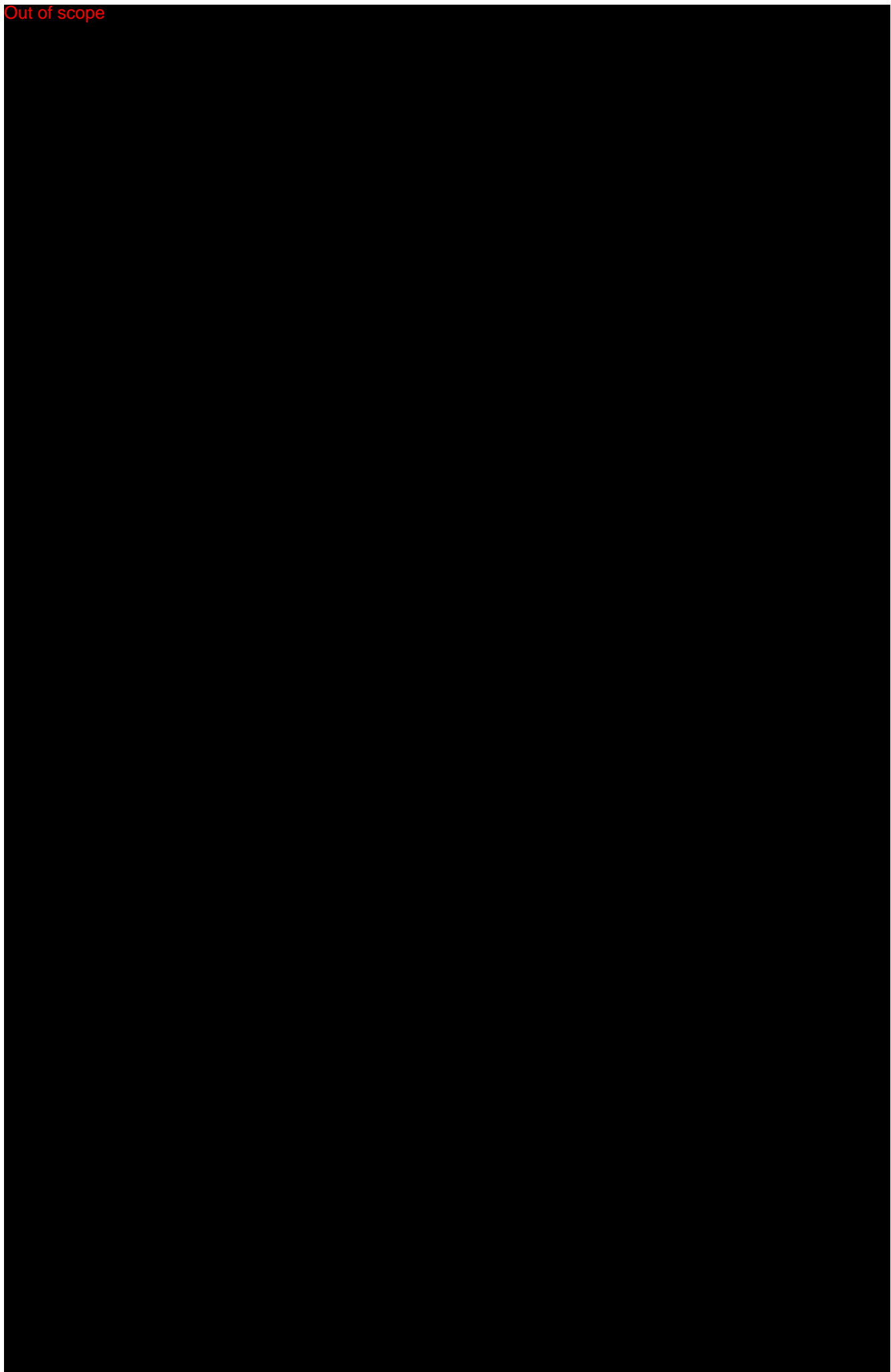


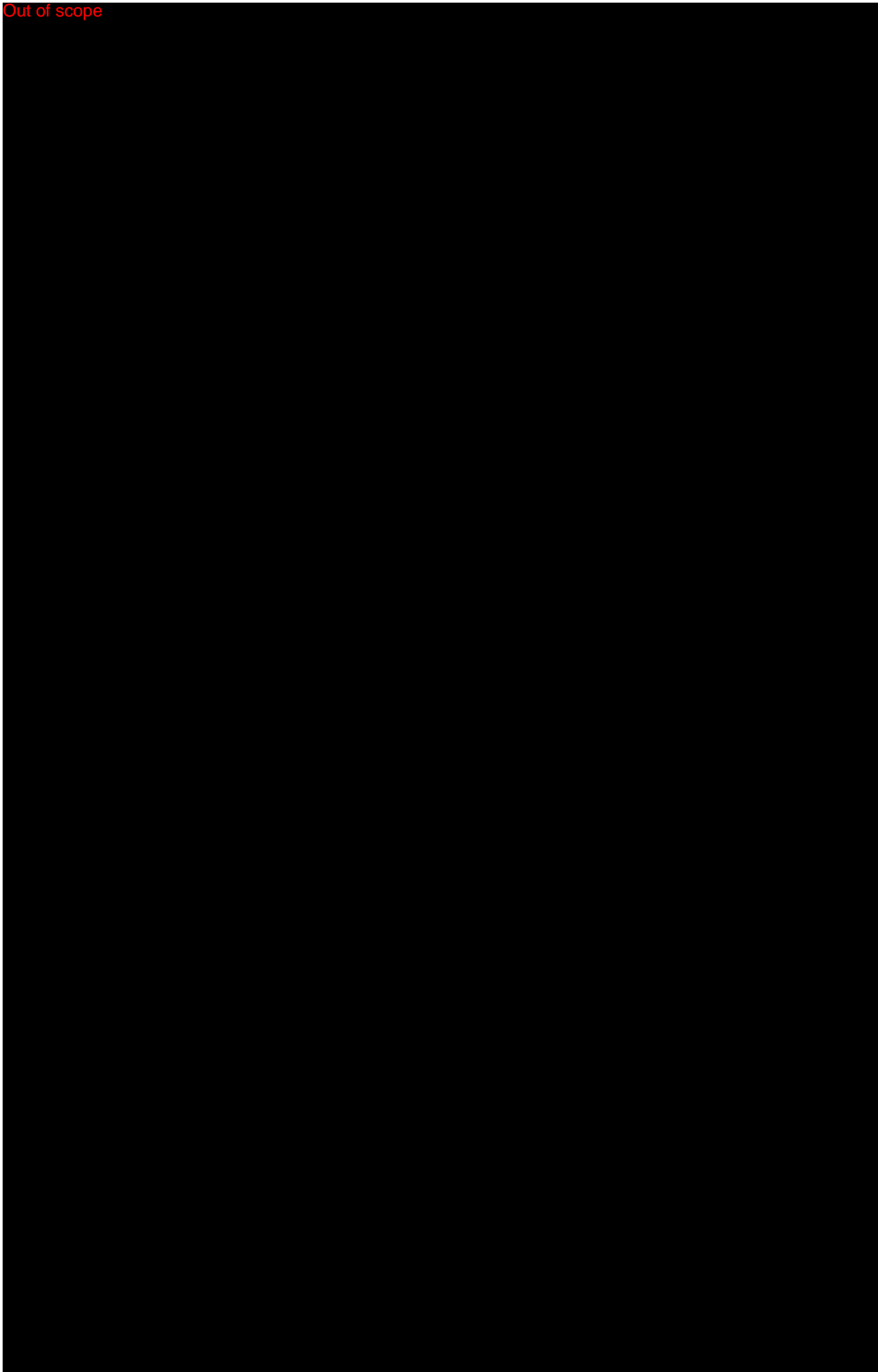


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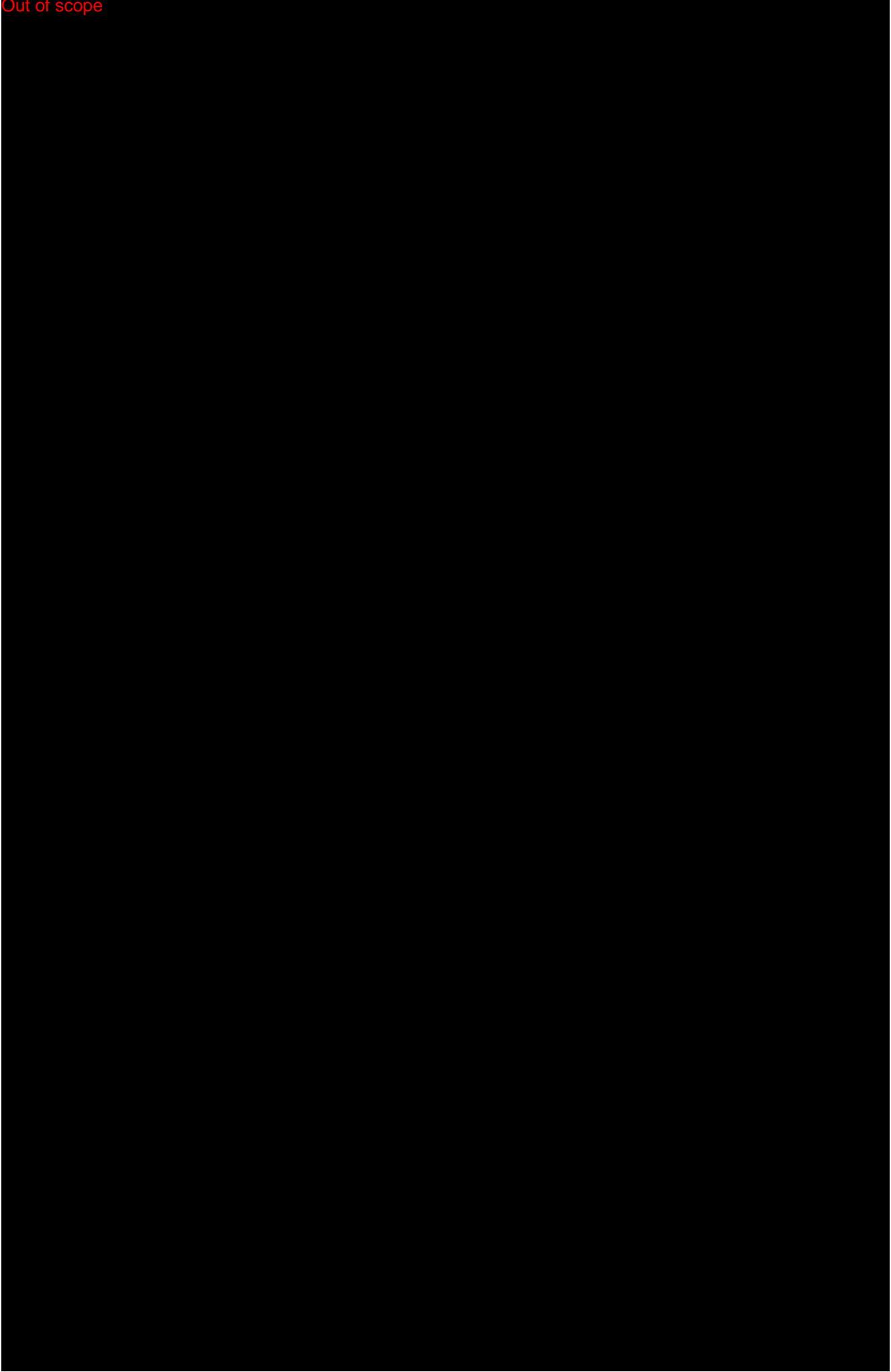


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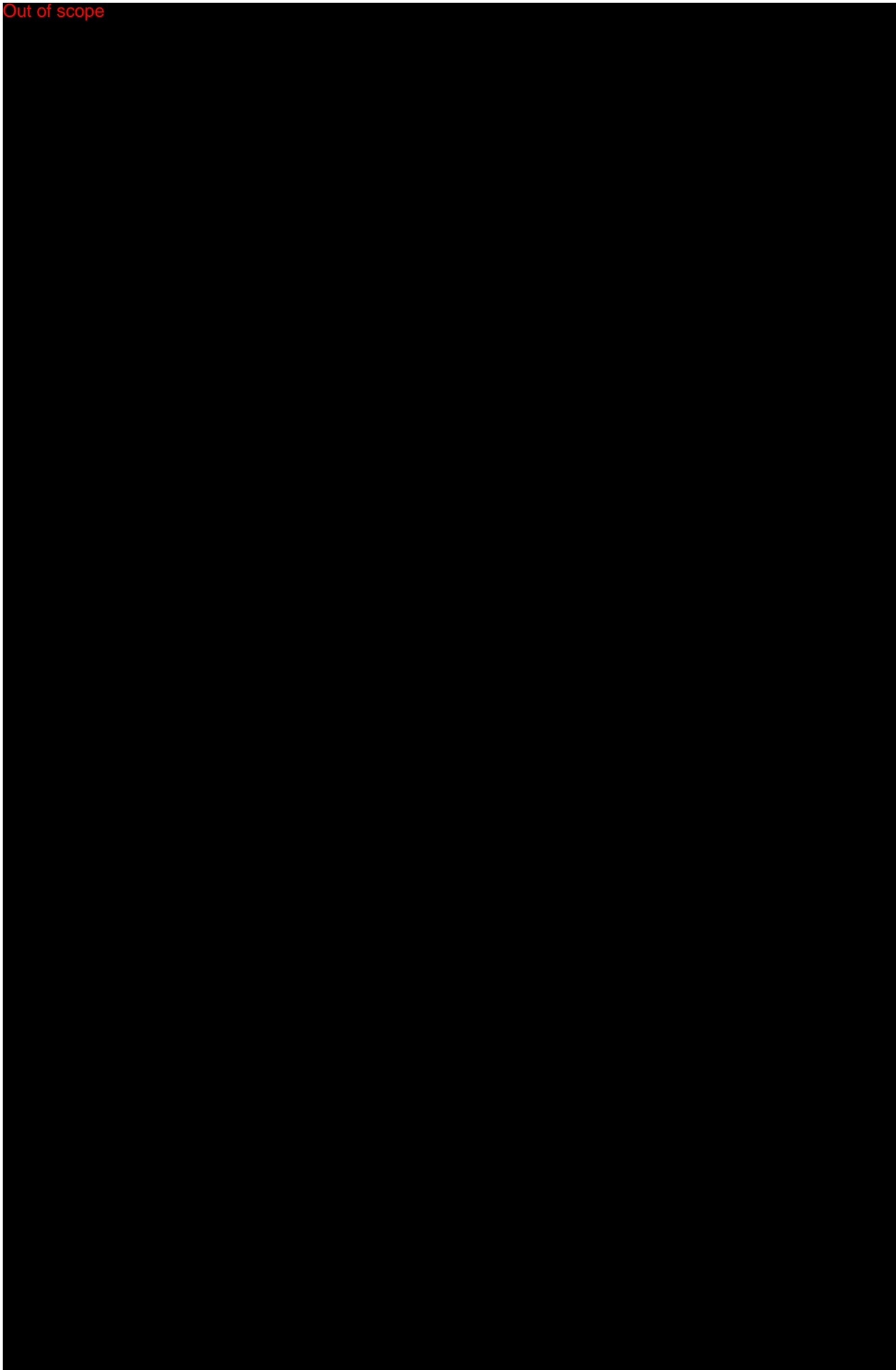




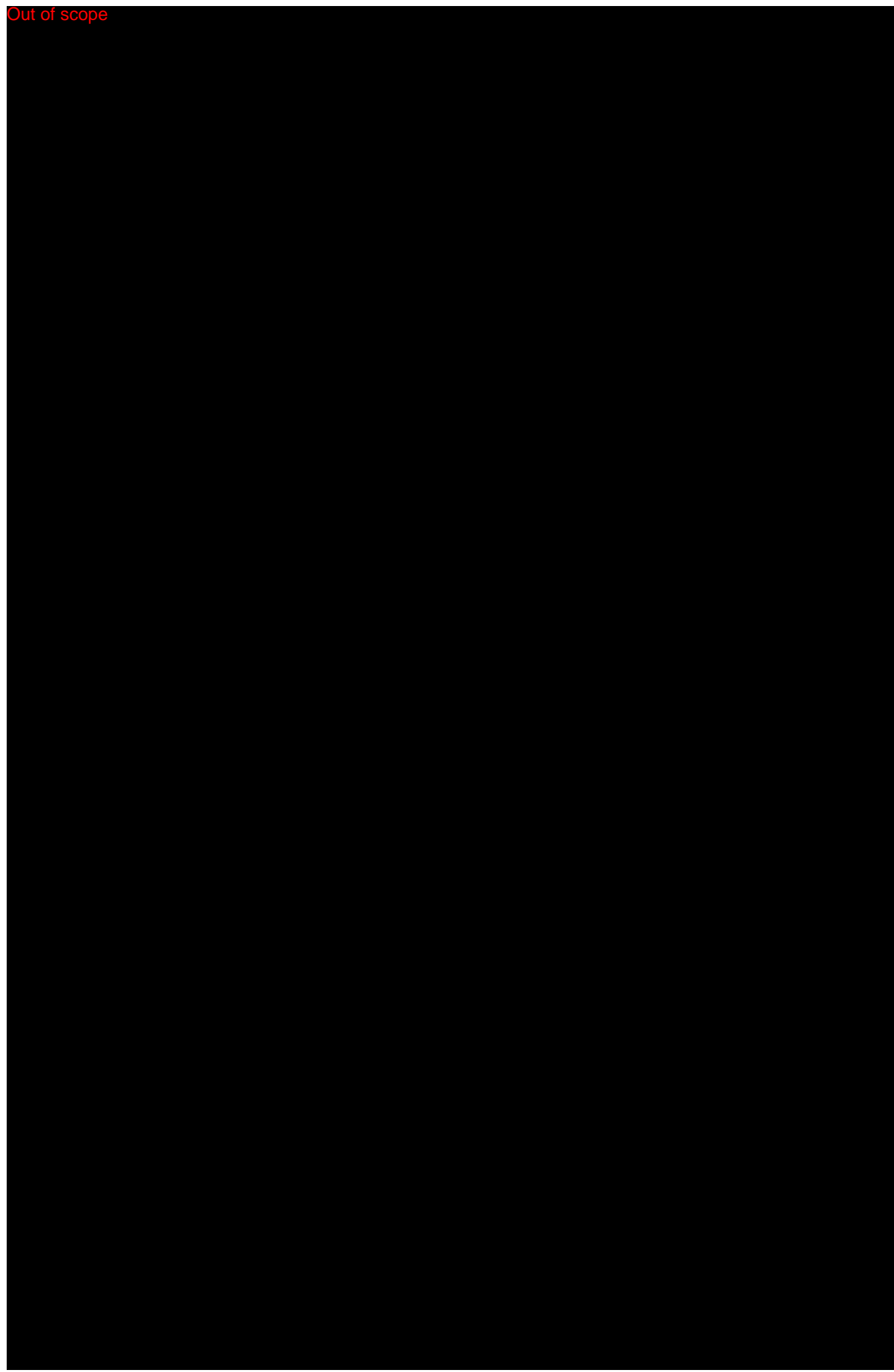
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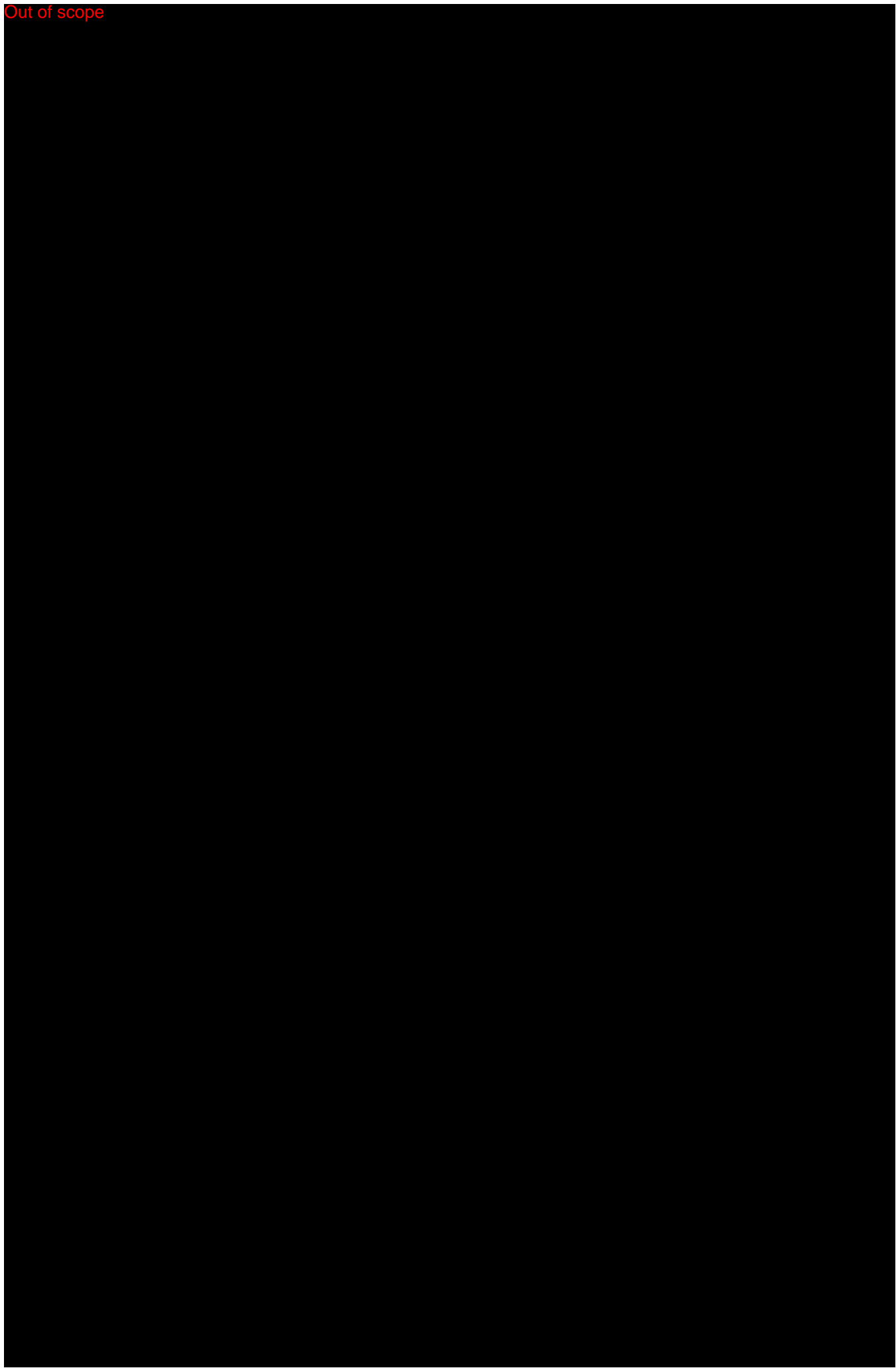


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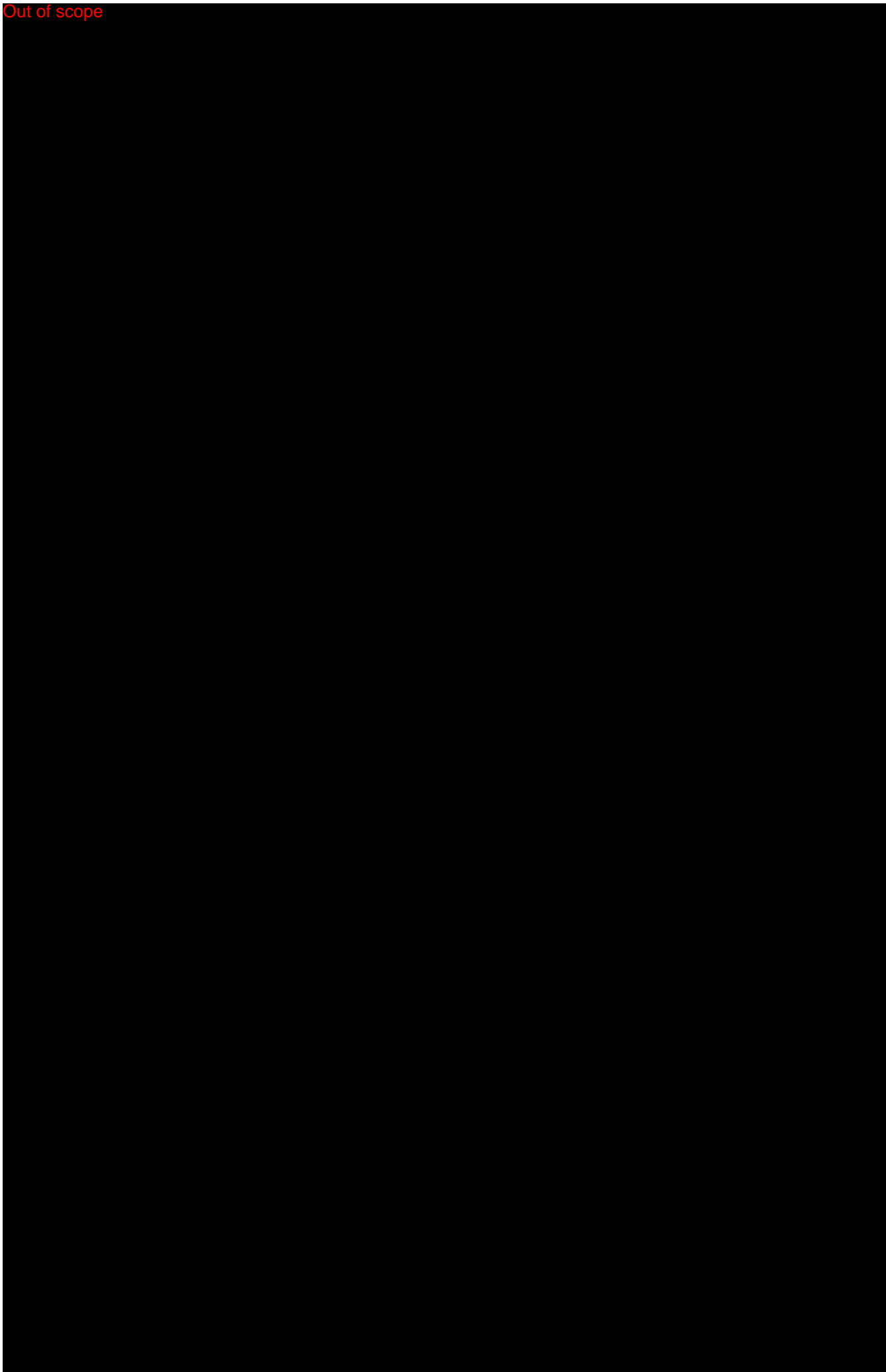


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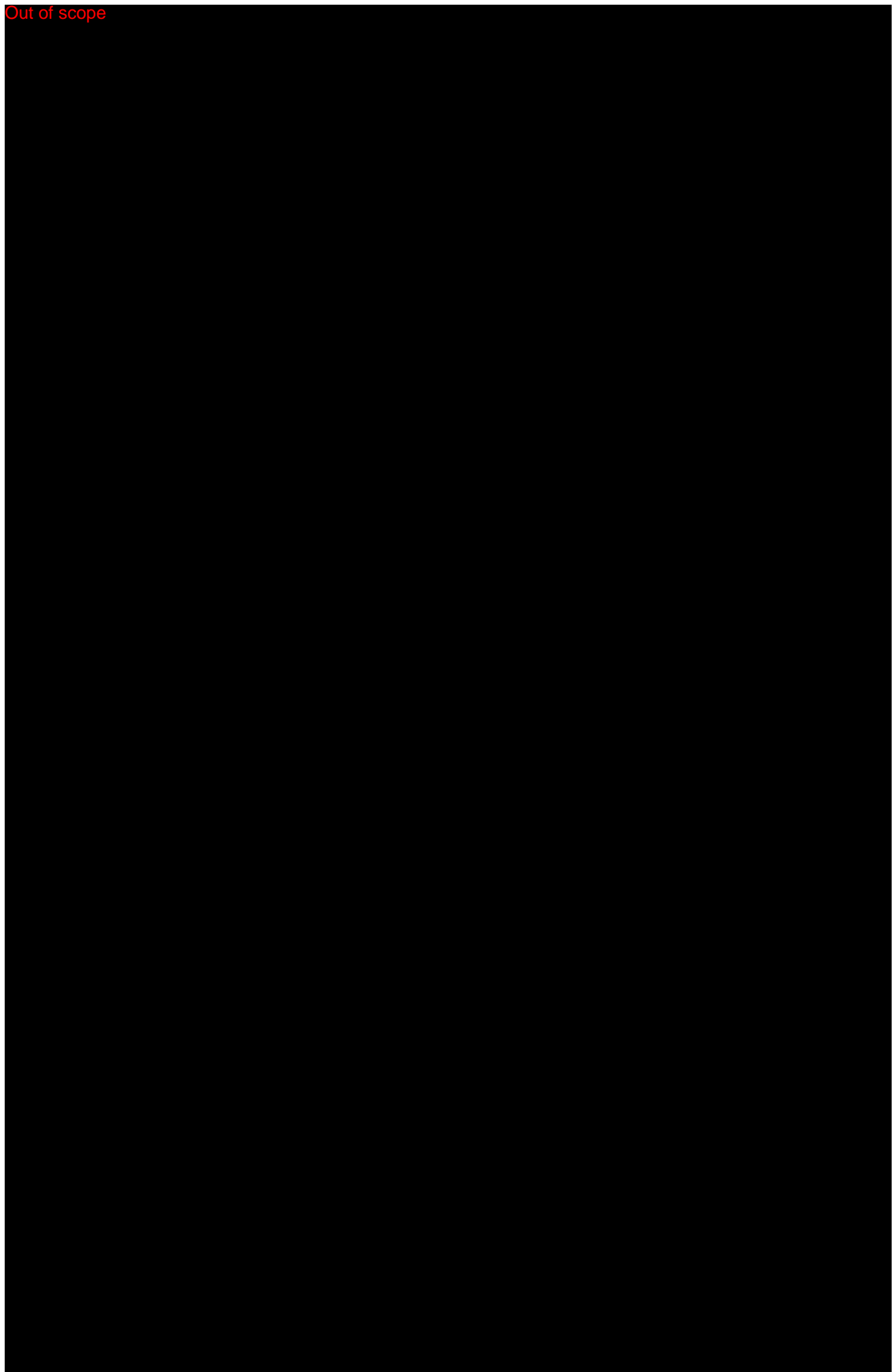




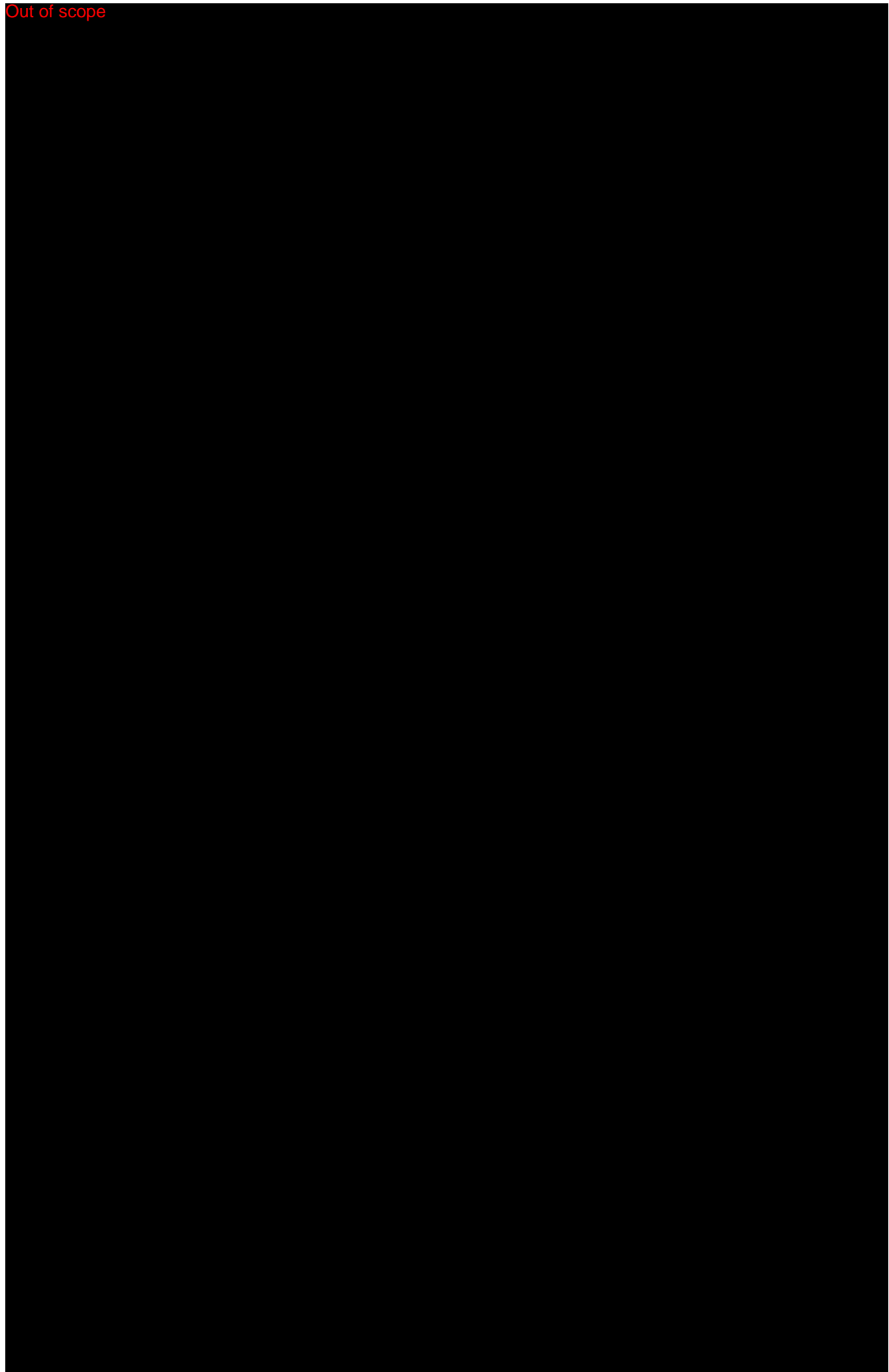


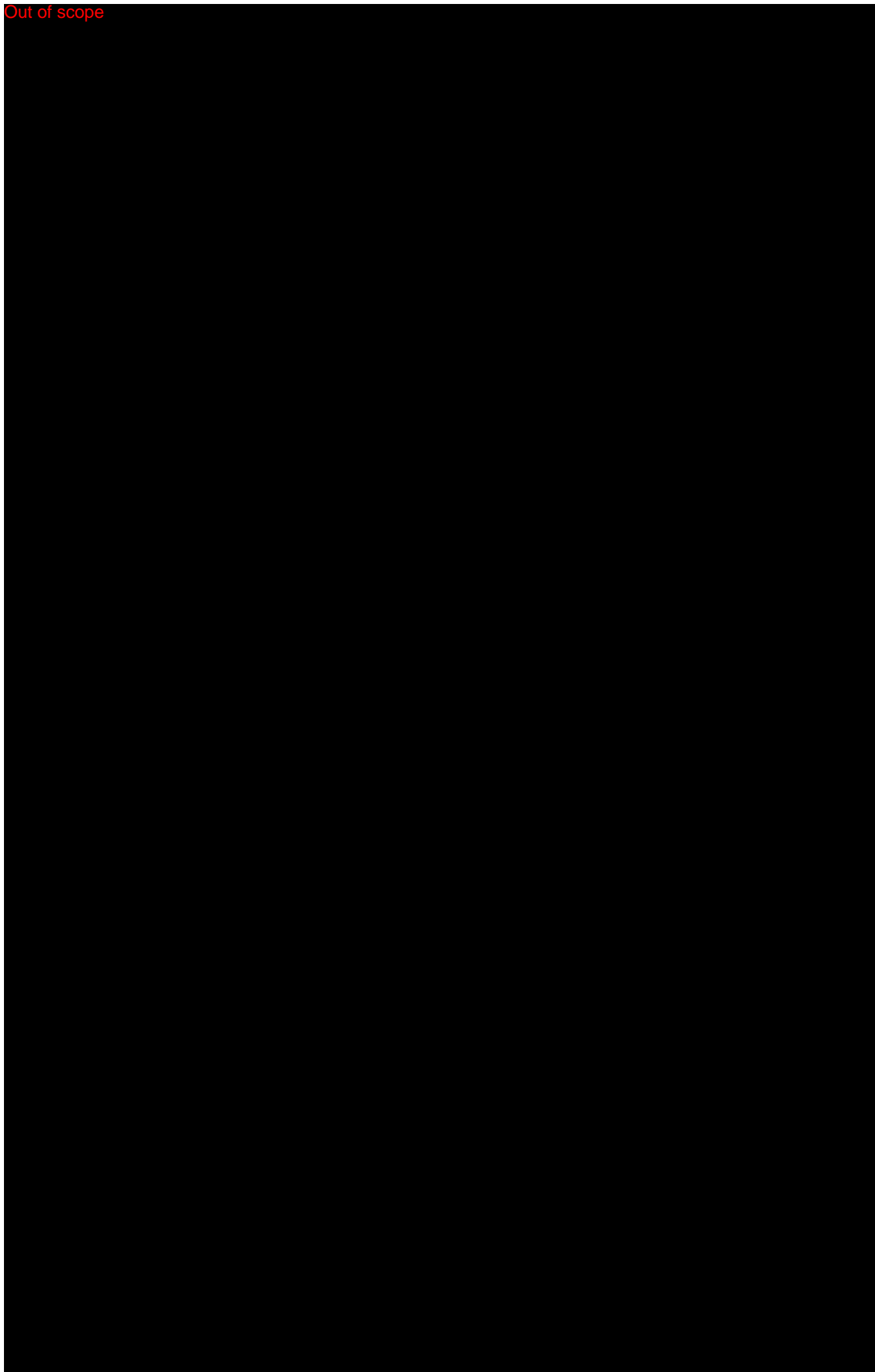


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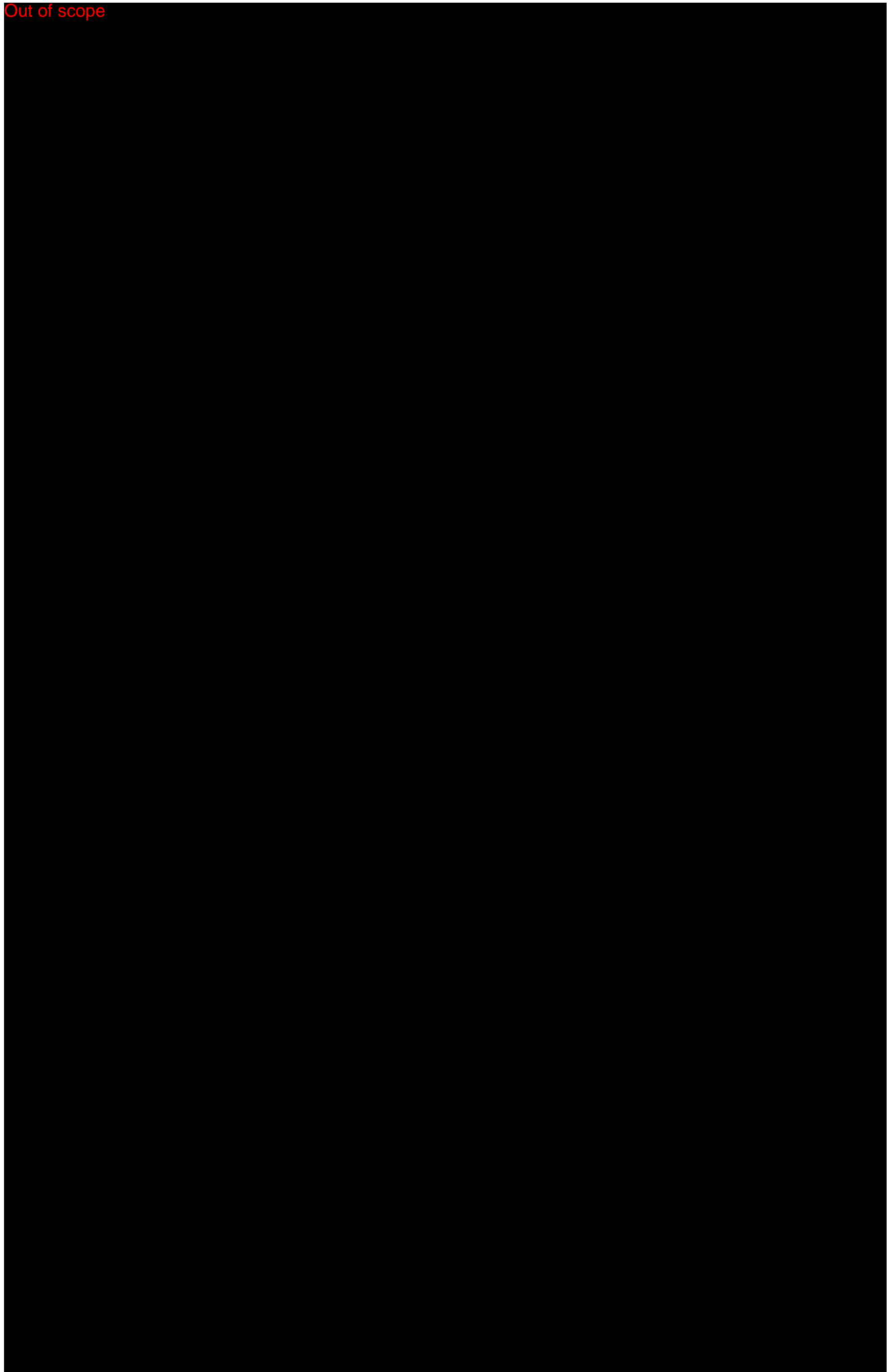


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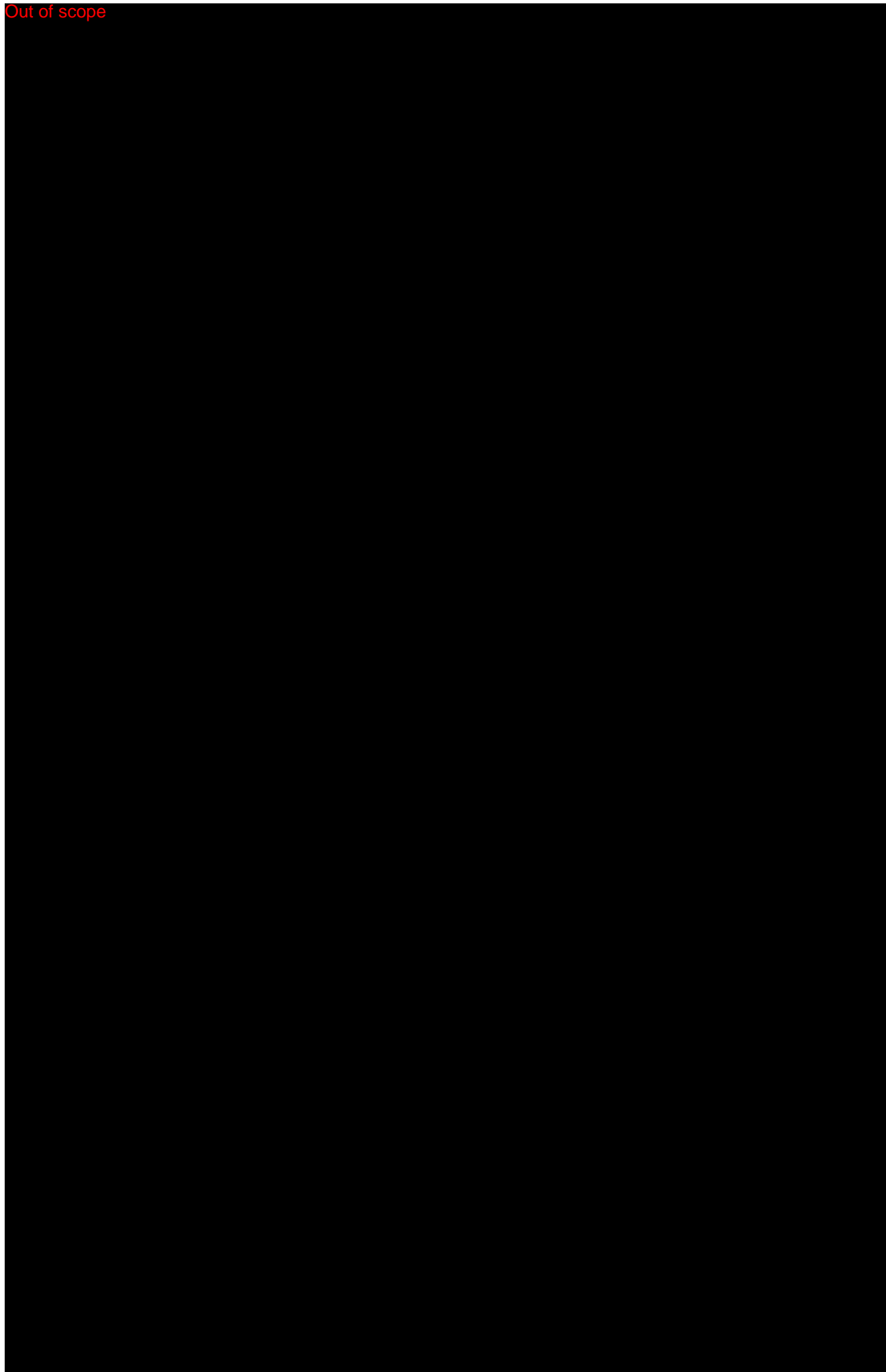


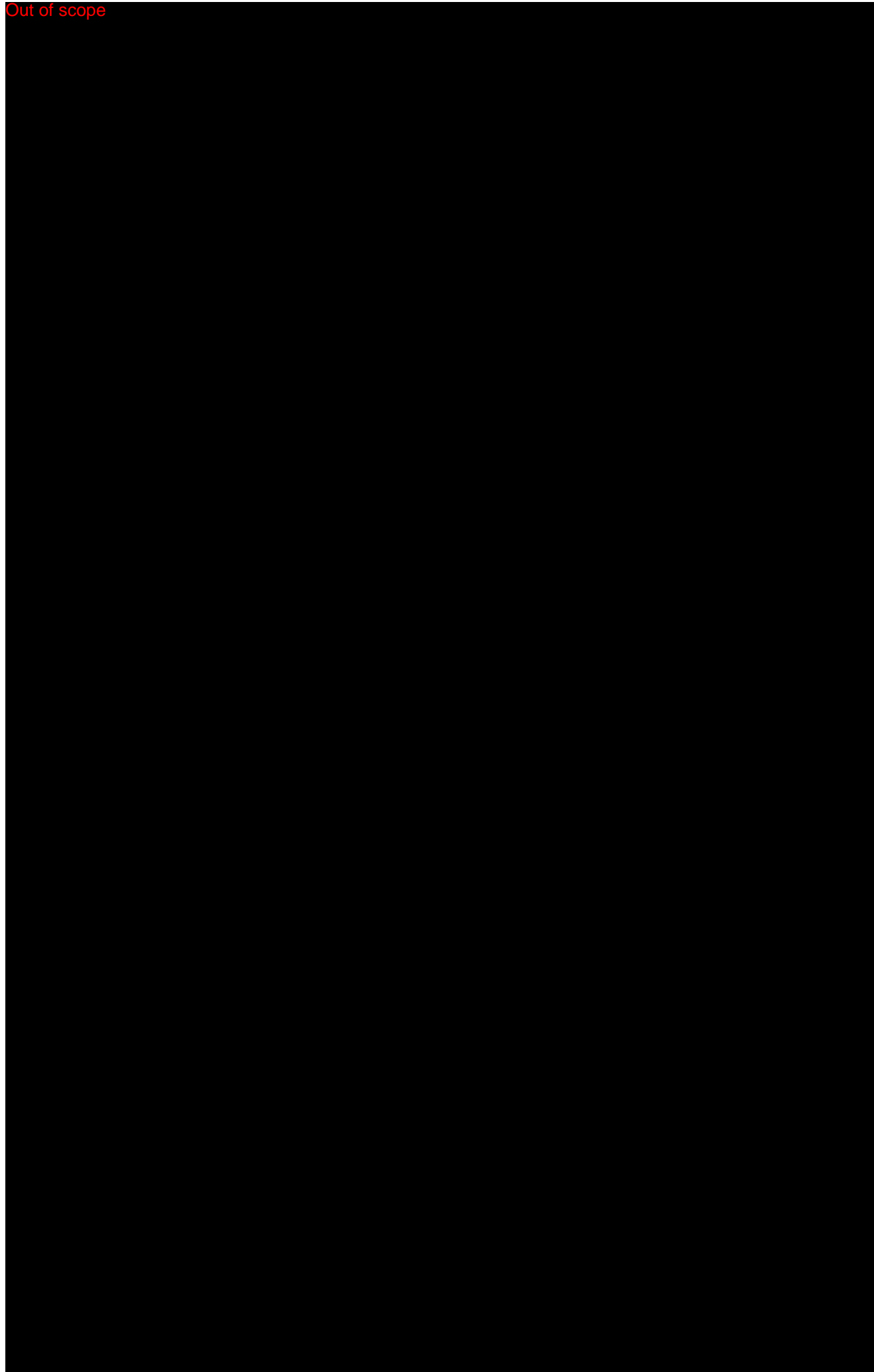


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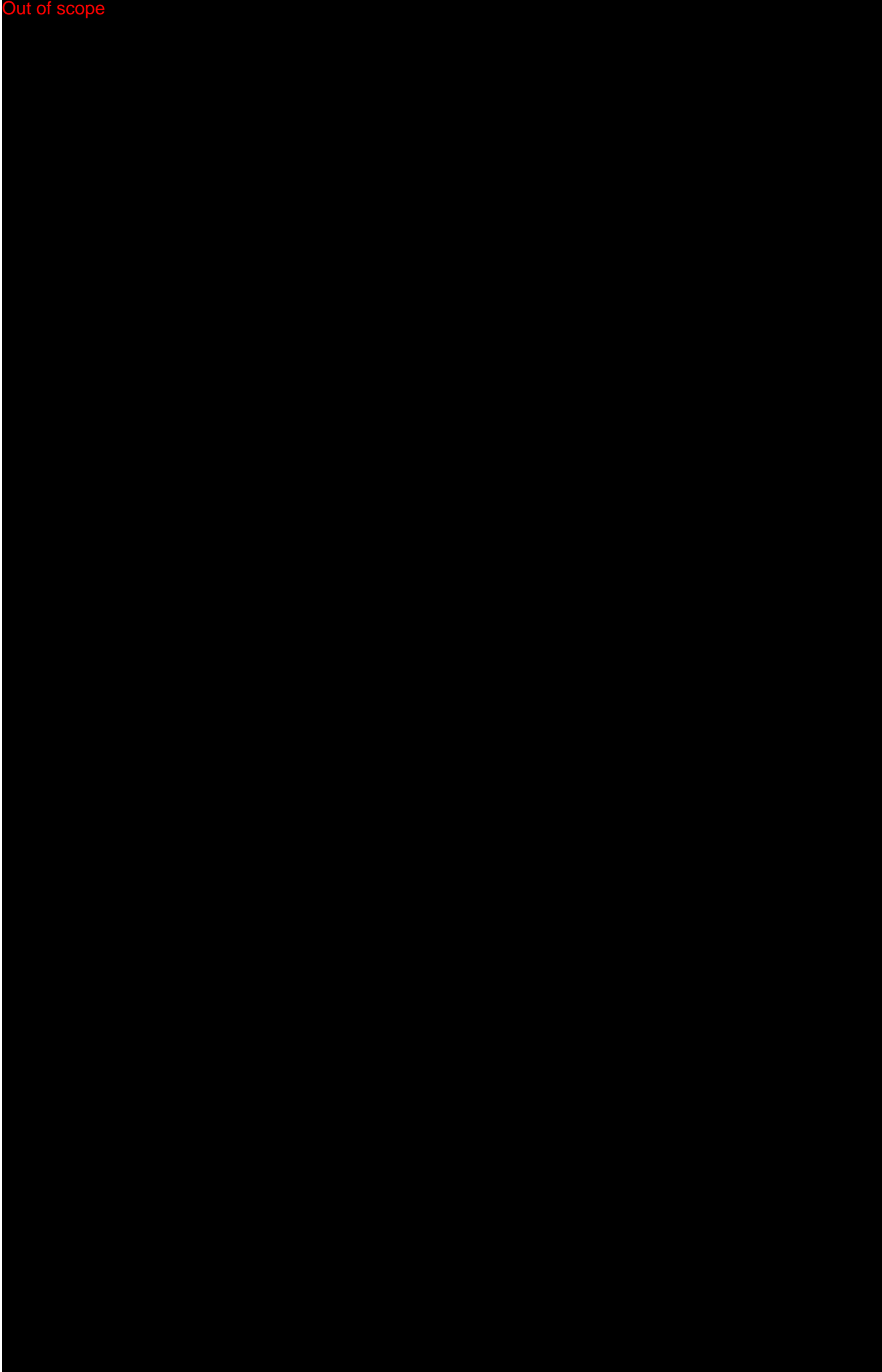


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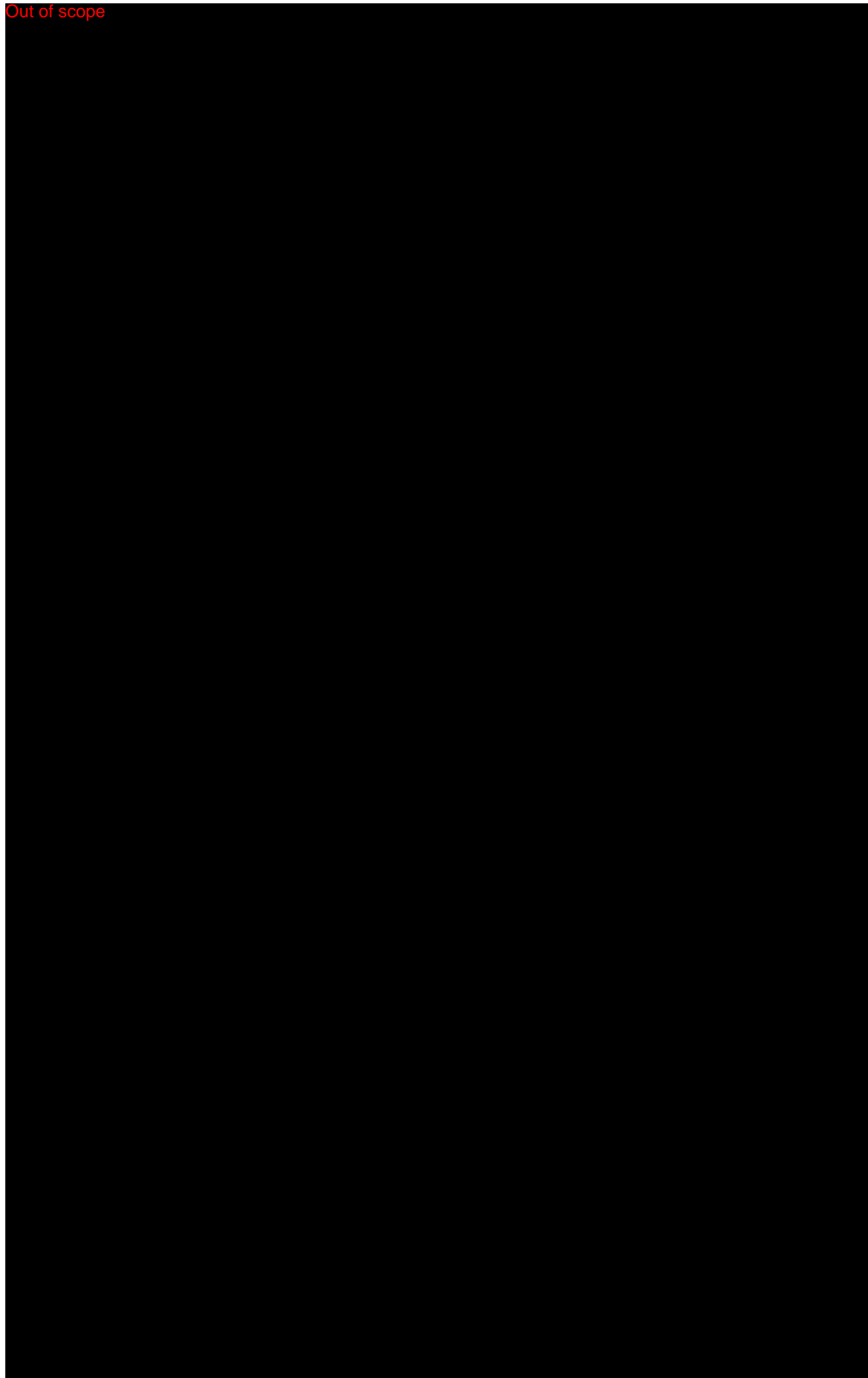


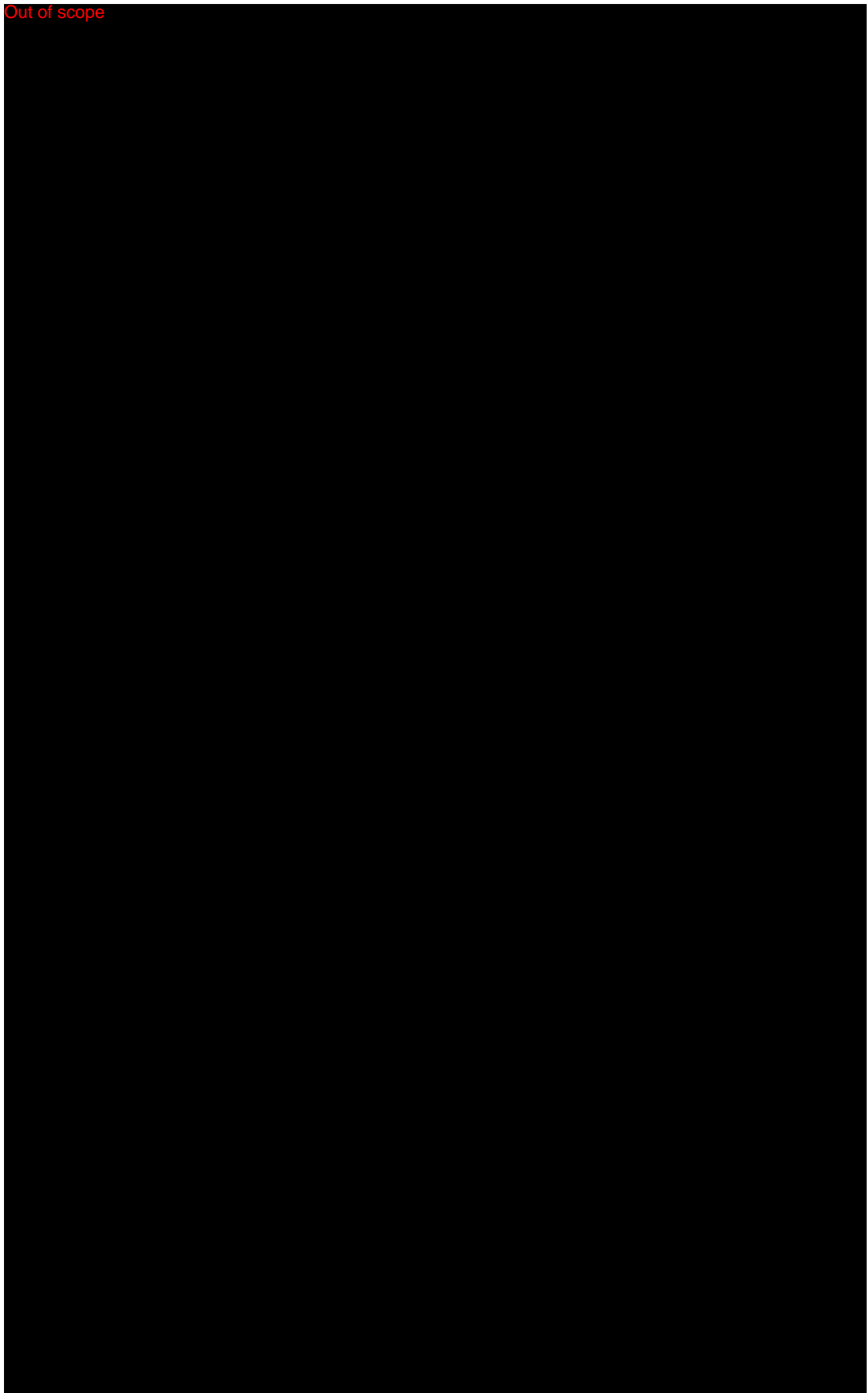


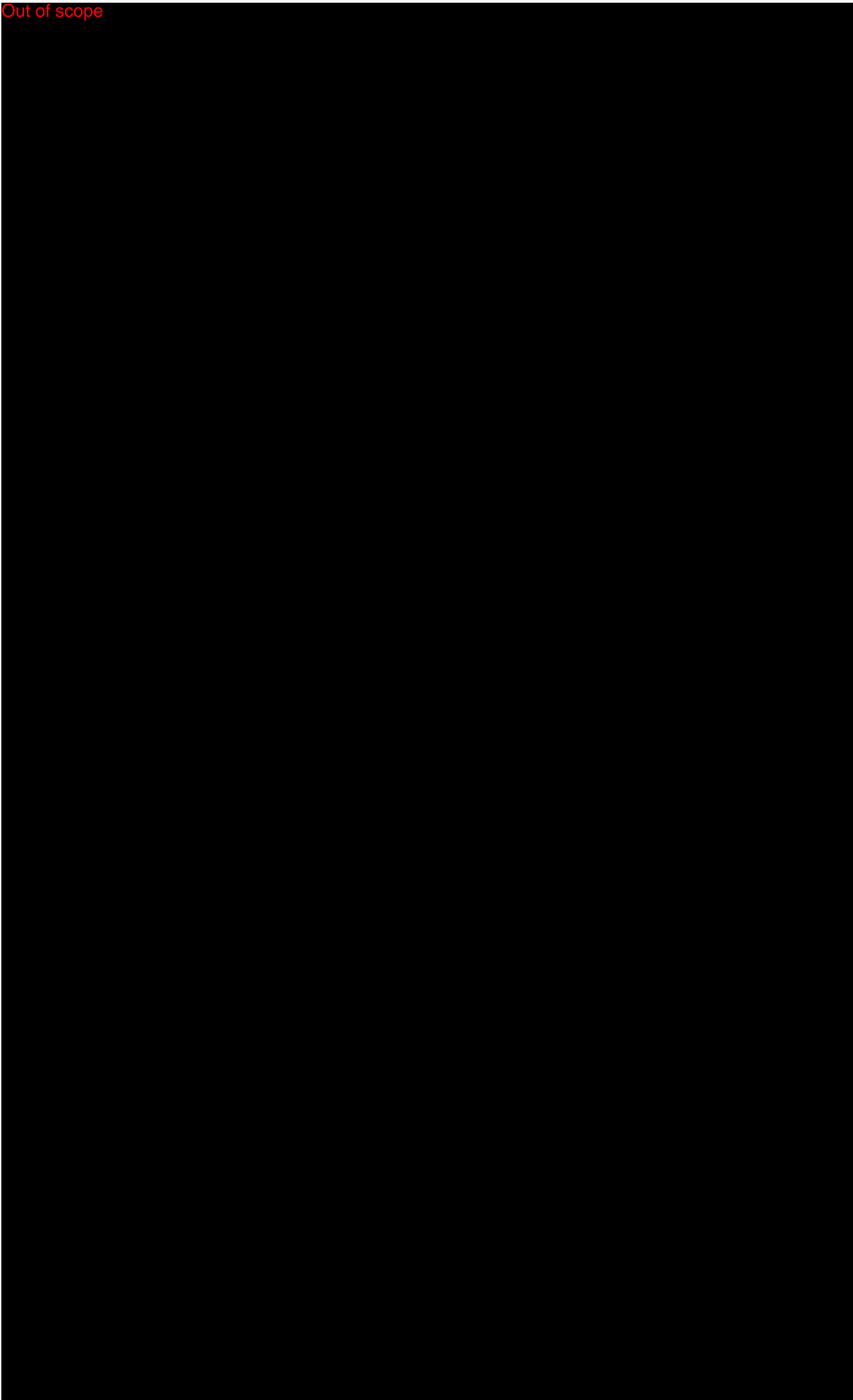
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Mutual Assistance in Criminal Matters

This section contains the following topics:

- [Introduction](#)
- [Requests made by NZ Police](#)
- [Requests received from overseas](#)

Introduction

The intelligence INTERPOL Wellington can obtain from other countries through INTERPOL channels or through NZ Police Liaison Officers (PLOs) is usually supplied in context of a criminal investigation and for intelligence purposes only. None of this intelligence can be used evidentially. International law also prevents overseas countries from executing search warrants on behalf of NZ Police except by authority of a Mutual Assistance Request (MAR).

In order to enable New Zealand to request any coercive power to be exercised (such as search warrants) or any information to be obtained in an evidential format (such as court affidavits) from another country, a Mutual Assistance Request (MAR) is required. Crown Lawyers oversee the Mutual Assistance in Criminal Matters Act 1992. All MARs are passed through diplomatic channels (MFAT in NZ). This Act also implements New Zealand's international obligations to facilitate requests to New Zealand for assistance in criminal investigations and prosecutions.

In general, NZ Police require MARs when requesting work overseas such as obtaining telephone or ISP information, bank records, asset seizure, other work requiring search or seizure powers and obtaining formal affidavits and documents.

INTERPOL Wellington manages all MARs for NZ Police, both incoming and outgoing. All MARs must be processed and quality assured by INTERPOL Wellington. The office assists district staff and liaises with Crown Law on behalf of NZ Police.

Requests made by NZ Police

For detailed instructions and guidelines on MARs click the following link: [Guidelines for Police in preparing MAR request](#).

All requests must be thoroughly prepared and must meet the minimum standard before being forwarded through the relevant District Crime Manager to INTERPOL Wellington. On receipt of the request, one of the Senior INTERPOL Investigators will be allocated to manage the request and liaise with Crown Law. All requests will be coded with a unique INTERPOL reference number, please use this number in all correspondence with the office. Once the request has been assessed and approved, INTERPOL Wellington will formally present it to Crown Law.

Requests received from overseas

All MAR requests sent to New Zealand are received and assessed by the Crown Law Office. Once a search warrant application has been approved by the Attorney General, the requests are forwarded to INTERPOL Wellington for NZ Police action.

INTERPOL Wellington will review and assess the requests further to ensure it meets NZ legal requirements. Once reviewed, the requests will be directed to the relevant Police District Crime Manager for action. Attached to the request will be full instructions on the MAR procedures and processes that need to be followed by the CIB to successfully complete the request. Once completed, the MAR needs to be passed back through INTERPOL for transmission to the originating country.