

Part 2 - Search warrants

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Executive summary

Key points to note:

- Unless it is impracticable in the circumstances, you must obtain a search warrant before searching a place, vehicle or other thing.
- You must have reasonable grounds:
 - to suspect an offence punishable by imprisonment has been, is being, or will be committed, **and**
 - to believe that the search will find evidential material in respect of the offence, in the place, vehicle or other thing specified in the application.
- Where practicable, you must obtain written authority from a supervisor (sergeant or above) before applying. Include a completed Planned Action Risk Assessment and CARD prompt (located in WORD> Police Forms> Search and Surveillance> Search warrants> General) when seeking approval.
- Apply for a search warrant using the on-line Search and Surveillance system followed by a personal appearance before the issuing officer.
- Written authority must be obtained from a Detective Senior Sergeant or above to apply for a search warrant that is to be executed covertly. A covert search must be witnessed by a constable of or above sergeant level position or for the time being acting in the position of a sergeant.
- Police employees advised by email of a conflict where more than one document shares the same NIA target (e.g. two search warrants for the same address) must act to resolve the potential conflict by contacting the other document owner/supervisor and agree on a course of action.
- Only an issuing officer may issue a search warrant.
- Search warrants may be executed by any or all of the persons to whom it is directed, or any constable (whether or not it is directed to that constable or to every constable).
- When it is known in advance that Police employees will need to enter onto properties adjoining or near the target property for the safe execution of a warrant or AOS or TSU will be involved in executing a search warrant, you should seek a power of **entry** to those adjoining/nearby properties. Applications and warrants must be worded accordingly.
- The responsibility for retaining and securing a search warrant application once it has been presented for signing remains with the issuing officer. It is not the responsibility of Police to retain and deliver an application for a search warrant to the nearest Court.

Overview

Purpose of this chapter

This chapter details:

- who can apply for, issue and execute search warrants
- the [grounds for applying](#) and whose approval is required
- procedures for [making search warrant applications](#)
- what should be [included and avoided](#) in search warrant applications
- what should be included in applications when searches are to be [executed covertly](#) or when [neighbouring properties](#) are likely to be trespassed
- [issuing](#) search warrants
- requirements for retaining documents.

Warrant preference rule

The High Court in [Lethbridge v New Zealand Police](#) [2018] NZHC 2240 emphasised the importance of the warrant preference rule, maintaining it would be applicable in circumstances where there is no urgency or compelling practical reason not to obtain a search warrant.

See '[General principles applying to searches](#)' in the '[Part - Search introduction](#)' of the 'Search' chapter in relation to the search hierarchy with searching places, vehicles or things.

Other Law Notes relating to the warrant preference rule include:

- [Khalifa v New Zealand Police](#) [2021] NZHC 746
- [Mellas v R](#) [2020] NZCA 418
- [Smith v Police](#) [2019] NZHC 2111.

Application of Search and Surveillance Act to search warrants

The [Search and Surveillance Act 2012](#) (the Act) applies in respect of every warrant enabling the entry and search of any place, vehicle or [thing](#) except for search warrants issued under:

- Criminal Proceeds (Recovery) Act 2009 (access the application in Police Forms>Financial Crime>Criminal Proceeds)
- Films, Videos and Publications Classifications Act 2007 (access the application in Police Forms>Search and Surveillance>Search Warrants>Films, Videos, Publications)
- Mutual Assistance in Criminal Matter Act 1992 (access the application in Police Forms>Search and Surveillance>Mutual Assistance).

Search warrants issued under these three Acts are not recorded under the Search and Surveillance system.

"Thing" defined

In relation to search warrants, "thing" has a broad meaning. It includes anything whether tangible and intangible (e.g. an email address or access information to an Internet data storage facility such as the IP address).

([s97](#))

References to "the Act"

All statutory references in this chapter are to the [Search and Surveillance Act 2012](#) unless otherwise stated.

Related information

See Part 5 - [Carrying out search powers with or without a warrant](#) for information about executing search warrants including:

- entry and identification requirements
- what you can do when exercising search powers

- seizing property and accessing and seizing computer material
- privilege relating to the exercise of search powers.

See also [Part 14 Reporting](#) for information about when search warrant reports are required.

Applying for search warrants

When is a search warrant required

Unless it is impracticable in the circumstances, you must obtain a search warrant before searching a place, vehicle or other thing.

Where it is impractical to obtain a search warrant, you may exercise a warrantless power to enter and search under the Search and Surveillance Act 2012, if the statutory requirements are met and the use of the power is reasonable in all the circumstances.

What does a search warrant authorise

A search warrant may authorise you to enter and search any place, vehicle or other thing, for evidential material in respect of an offence punishable by imprisonment.

Who may apply for a search warrant

Any constable may apply for a search warrant.

Other persons (e.g. an enforcement officer such as a customs officer) are authorised to apply under other enactments. If those enactments are specified in column 2 of the Act's Schedule, the provisions of the Act governing how search and seizure powers are to be exercised apply to them.

(s97)

Note: Private individuals, for example - private investigators, cannot apply for a search warrant. They may instead make a complaint of an offence to you. If you are satisfied that there are sufficient grounds for obtaining a search warrant, then you may apply for the search warrant for Police execution.

Grounds for applying

You can apply for a search warrant if you have reasonable grounds:

- to suspect an offence punishable by imprisonment has been, is being, or will be committed, **and**
 - to believe that the search will find evidential material in respect of the offence, in the place, vehicle or other thing specified in the application.
- (s6)

See the definitions in [Part 1: Introduction](#) for the meaning of "reasonable grounds to suspect" and "reasonable grounds to believe" and the difference between the two.

Supervisor's approval required before applying

Where practicable, you must obtain written (includes electronic) authority from a supervisor of or above the position level of sergeant to make a search warrant application and their approval for the application's content. A 'Planned Action Risk Assessment and CARD prompt' must be submitted to the supervisor at the time of seeking authorisation. See the section 'Planning searches and assessing risk and community impact' in [Part 5: Carrying out search powers with or without warrants](#), for guidance on search warrant risk assessment procedures.

Remote access search approval

If you intend to apply for and execute a remote access search warrant you must first seek advice from the Cybercrime Unit, Digital Forensics Unit (DFU) or an Digital First Responders (DFR) before it is approved by a supervisor of or above the position level of sergeant.

The execution of the search warrant should be overseen or conducted by staff from Cybercrime Unit, DFU or DFR due to the complexity of remote searches. An exception applies where delay would result in danger to persons or loss of evidential material.

Requests from other agencies for Police to make application

Some agencies such as the Ministry of Social Development (MSD) and Ministry of Health (MoH) have investigative functions, but do not have search warrant powers and therefore cannot apply for their own warrant, nor can they execute the warrant.

See Part 15 - [Government agency requests for assistance with search warrants and production orders](#) for guidance on:

- requests from agencies with no power to apply for search warrants or production orders to have Police obtain a search warrant or production order
- assisting law enforcement agencies that can apply for search warrants to execute their search warrants.

How to apply for a search warrant

Mode of application

You should apply for a search warrant in writing using the on-line Search and Surveillance system followed by a personal appearance before the issuing officer. (See [Written applications - Search and Surveillance system](#) in this chapter).

However, if this is impracticable in the circumstances, you may, with prior agreement of the issuing officer:

- make an application **orally**, e.g. by telephone or personal appearance, or
- have your written application considered without a personal appearance before and/or without oral communication with the issuing officer.

Written applications may be transmitted to the issuing officer electronically via the Electronic Operating Model. (**Note:** This system is not yet operational).

(s100)

When are oral applications allowed?

An issuing officer may allow an application to be made orally (e.g. in person or by telephone call) and excuse an 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 warrant should be issued can be properly determined on the basis of an oral communication or personal appearance, **and**
- all the required information (i.e. that required in a written application) is supplied to the issuing officer.

(s100(3))

Consider seeking an oral search warrant before conducting a warrantless search. In [R v Taylor](#) [2019] NZDC 15086 the Court emphasised the warrant preference rule that “if it is possible to obtain a warrant without prejudicing the purpose of a search, a warrant is to be preferred even when a warrantless power is available.

If an oral application is allowed, the Issuing Officer must record the grounds for the application as soon as practicable.

See [R v New Zealand Police](#) [2022] NZHC 28 that refers to the importance of knowing how to apply for an oral search warrant under the Search and Surveillance Act 2012. It is important to consider whether obtaining an oral search warrant is practicable. If it is, this course should be preferred over conducting warrantless searches.

Other Law Notes relating to oral search warrants include:

- [Renson v Police](#) [2021] NZHC 2342 - failure to consider obtaining an oral warrant
- [R v Taylor](#) [2019] NZDC 15086 - consider oral warrant before conducting warrantless search.

A written search warrant must also be issued. It is not possible to simply rely on the Issuing Officer’s agreement to undertake the activities authorised. The Issuing Officer must sign a warrant. For this reason, it will be necessary for the applicant to supply the Issuing Officer with a draft warrant or a template that can be populated.

Back-capturing oral applications in S&S System

When an oral application is made to the issuing officer, the applicant must enter (i.e. back capture) the application and the outcome(s) of the search warrant(s) as soon as practicable in the online search and surveillance system.

Back capturing oral applications early, enables:

- the target history details to populate on any relevant future applications on the same target;
and
- compliance with statutory requirements under the Act.

Applications without personal appearance or oral communication

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

- the question of whether the warrant 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 questions of, or seek further information from, the applicant.
(s100)(4)

Case Law


The case [Renson v Police](#) [2021] NZHC 2342 relates to unlawful warrantless search for cannabis under section [20](#) at a private dwelling and failure to consider obtaining an oral warrant. The failure to consider obtaining an oral warrant was significant in this case.

Written applications - Search and Surveillance system

Applications must be made in the Search and Surveillance system

All written search warrant applications **must** be made through the online Search and Surveillance system following the procedures below. (If the system is unavailable for any reason, follow the '[Manual application process](#)' in this chapter).

Note: A significant departure from these procedures and guidelines risks the warrant (and therefore the search) being deemed unlawful. This in turn may lead to the exclusion of evidential material under the Shaheed balancing test. See section [30](#) of the Evidence Act 2006.

Step	Action
Obtain initial approval	Where practicable, obtain approval from a supervisor of or above the position level of sergeant before completing a search warrant application.
Set-up <u>NIA</u> case	Set-up a <u>NIA</u> Case reference if one does not already exist. Note: Avoid identifying target addresses for forthcoming warrant applications in the narrative of the <u>NIA</u> case as this may compromise the security of subsequent warrant execution.
Assess risks	Consider the risks associated with executing the warrant if it is issued and what will be necessary to mitigate any risk of harm to Police and others. See ' Risk assessment when planning searches ' in 'Part 5 - Carrying out search powers with or without a warrant'. Note: A 'Planned Action Risk Assessment and CARD prompt' must be completed before the search warrant is executed and where practicable, before the application is authorised.
Assess community impact	Assess the impact of executing the search warrant on vulnerable people, community and interest groups. Plan to eliminate or minimise compromising or undermining wider community support, confidence and reassurance. A Community Impact Assessment form (in Police Forms) must be completed before the search warrant is executed, and where practicable, before the application is authorised. Mentally update this as the situation changes during execution of the search warrant. See: - ' Risk assessment when planning searches ' in 'Part 5 - Carrying out search powers with or without a warrant' - the ' Community Impact Assessments (CIAs) ' chapter.
Complete application	Complete a search warrant application. Following the guidance on the application form will ensure the information required by sections 98 and 103 in all warrant applications and search warrants is provided. Note: The Search and Surveillance system permits multiple warrants to be created from a single application. See the 'Search and Surveillance System User Guide' (PDF below) for more information about completing the application.
<div style="border: 1px solid black; padding: 2px;">  Search and Surveillance - User Guide 011214 (Final v2.0).pdf 3.18 MB </div>	

Complete de-confliction	<p>The Search and Surveillance system manages any de-confliction by sending email messages to owners of applications which share the same NIA target (e.g. two investigators who each have a search warrant for the same address).</p> <p>If you are advised of a conflict, you must act to resolve the potential conflict. Seek advice from your supervisor as necessary. Refer to the 'De-confliction' section in this chapter).</p>
Application history	<p>The Search and Surveillance system searches the system for other search warrant applications made during the previous 3 months. The online system will automatically populate the details of previous applications on your target in the last 3 months.</p> <p>If application history exists, but the information is 'closed' the other applicant (document owner) will be notified of the new application and is responsible for determining whether or not to disclose historical information for inclusion. See the 'De-confliction' section in this chapter for further guidance.</p>
Complete NIA checks	<p>Check your target in NIA for details of any other previous applications made under these enactments in the previous 3 months, which are not recorded in the Search and Surveillance system:</p> <ul style="list-style-type: none"> - Criminal Proceeds (Recovery) Act 2009 - Films, Videos and Publications Classifications Act 2007 - Mutual Assistance in Criminal Matters Act 1992. <p>Note: If any previous applications within the 3 month period are relevant to your target, you must comment in the "other information" field of your application, to ensure information provided to the Issuing Officer is complete and accurate.</p>
Record other applications	<p>Record details of any other applications in the previous 3 months that you are aware of that are not recorded in the system (e.g. applications obtained by an agency other than Police).</p> <p>Record the details in the "other information" field of your application.</p>
Seek online approval	<p>Submit your search warrant application online to a sergeant or above (normally your supervisor) for approval of the content of your application.</p> <p>(Your supervisor may seek legal advice if considered necessary).</p> <p>Review and revise the application as required.</p>
Print and sign the warrant /application	<p>Once approved by a supervisor, print out the search warrant and application and sign the application.</p>
Seek issue of warrant	<p>Take your application to an issuing officer.</p> <p>Include these documents with your application:</p> <ul style="list-style-type: none"> - a draft search warrant for the issuing officer's signature - a copy of the draft search warrant and notice to the occupier - all documents tendered in support of the application (annexes). <p>If making a written application or personal appearance before an issuing officer is impractical, see 'Mode of application' in this chapter).</p>

Information that must be included in search warrant applications

Section [98](#) prescribes the particulars that must be included in search warrant applications in reasonable detail.

For more detailed guidance see '[What should be included and avoided in applications](#)' in this chapter.

Complex warrant applications requiring significant formatting

The online Search and Surveillance system does not accommodate complex and lengthy applications requiring significant formatting involving tables etc. In these circumstances an appendix may be used to better present and clarify a complex application.

The appendix must be referred to within the relevant paragraph of the application and must be attached to the application when submitted to an issuing officer for consideration.

Manual application process

If the online system is not available, apply for a search warrant by following these steps.

Step	Action
Complete documents	<p>Complete these documents applying Microsoft 'Word' by setting out the format from previously used templates:</p> <ul style="list-style-type: none"> - Planned Action Risk Assessment and CARD prompt - Search Warrant - Search Warrant Application.
Seek initial approval	Obtain where practicable, written (includes electronic) authority from a supervisor (sergeant level or above) to apply for a warrant and for the application's content.
Check application history	Complete NIA checks to identify any other applications made in the previous 3 months and include details in the "other information" section of your application.
Seek supervisor's approval	Seek your supervisor's approval for the content of the application and warrant. Your supervisor will seek legal advice if necessary.
Print and sign the warrant /application	Once approved by a supervisor, print out the search warrant and application and sign the application.
Seek issue of warrant	<p>Take your application to an issuing officer for issuing.</p> <p>Include these documents with your application:</p> <ul style="list-style-type: none"> - a draft search warrant for the issuing officer's signature - a copy of the draft search warrant and notice to occupier - all documents tendered in support of the application (annexes). <p>Note: Ensure both the warrant and copy are signed by the issuing officer or has their unique identifier. If the copy is overlooked, then photocopy the original with the signature or unique number.</p> <p>If making a written application or personal appearance before an issuing officer is impractical, see 'Mode of application' in this chapter).</p>

Issue identified with Search and Surveillance template documents for search warrants for "Things"

Issue

When a device, such as a cell phone or laptop computer, is seized pursuant to a without warrant power, such as section 88 of the Search and Surveillance Act, and there is no urgency, a warrant should be obtained to permit ongoing retention of the device for examination purposes.

As Police are already in possession of the device, the search warrant should be for a "thing", namely the specified device. For further information on the application of the S&S Act to Police stations and searches of things, refer to the Law Note on [R v Lucas](#) [2015] NZHC 1944.

Recent Court decisions have revealed issues with the search warrant templates on the Search and Surveillance system, as they do not provide for searches of "things" outside of the warrant period.

This is because the search warrant template produces a warrant in the following form:

- "I have received an application under section 6 of the Search and Surveillance Act 2012 for a warrant to search a thing, namely Property, [XYZ cellular phone]."

And, at the end of the warrant:

- "The power to enter and search pursuant to this warrant may be exercised on [x] occasion with [x] days from the date of issue."

The same issues arise with the search warrant application. In this situation, the warrant only permits a search of the device on the number of occasions specified for the duration of the warrant. Any searches of the device outside of this period may be unlawful.

However, if a forensic copy of the device is made during the period of the warrant, and an examination reveals that it contains a mixture of data that is both evidential and non-evidential, ongoing searches of that forensic copy are permitted outside of the warrant period, if such a search was authorised by the search power under which the data was seized and copied. Section 161(2) of the Search and Surveillance Act states:

- "However, if an examination of the data shows that it contains a mixture of data that is evidential material and data that is not evidential material:

- the forensic copy of the data and any copies made of that copy may be retained in their entirety; and*
- that forensic copy and any copies made of that copy may continue to be searched, if such a search was authorised by the search power under which the data was seized and copied."*

The same issue does not arise for the templates for searches of "places" or "vehicles" pursuant to a search warrant where locating and seizing a device may be the object of that search. Ordinarily, items seized pursuant to a search warrant can be searched/examined as necessary after the expiry of the warrant execution period. This was confirmed by the Court of Appeal in [R v R \[2018\]](#) NZCA 341, at [21] - [26].

Solution

The issue is with the template generated for searches of devices already in Police's possession - not the S&S Act - where there are delays with the physical search.

Section 103 of the Act sets out the requirements for the form and content of search warrant applications. This includes a requirement to provide a description of what may be seized and the period during which that seizure can occur.

Pursuant to section 106(a) of the Act, a search warrant is executed when the person executing the warrant has seized all of the items specified in the warrant.

At a minimum, the template should be in the following form or similar:

- "I have received an application under section 6 of the Search and Surveillance Act 2012 for a warrant to seize a thing, namely Property, [XYZ cellular phone]."

And, at the end of the warrant:

- *“The power to seize the thing pursuant to this warrant may be exercised on [one] occasion within [x] days from the date of issue.”*

There are also other consequential changes required to the template form.

Until the Search and Surveillance system is amended, where a device such as a cell phone or computer is seized without warrant and a search warrant is subsequently required to search/seize that item, make sure no searches take place that are outside the period/parameters of the search warrant. The exception to this is where forensic copies of the device are made during the period of the warrant (see section [162\(2\)](#) of the Act).

The default period for warrants should be 30 days, as this new process will increase demand around device extractions and the work involved for trained staff. Multiple executions should also be requested, as trained staff may be required to use different techniques over the period of the warrant to access and extract the evidential material.

Further information

For further information on searches of computers and other devices, see:

- [Douglas v Police](#) [2019] NZHC 2672
- [Ruru v R](#) [2020] NZCA 64
- [Tupoumalohi v R](#) [2020] NZCA 117
- [Cellphone and computer searches](#) in this chapter.

Covert searches

Rationale for covert searches

The purpose of all searches is to obtain evidential material which it is **believed** on reasonable grounds will be found in the place, vehicle, thing or facility searched. Normally, with standard searches, every effort must be made to ensure the searches are executed in the presence of occupants.

However, there are exceptional cases, where it is desirable that the search not be revealed at the time the warrant is executed. For example, to advance an investigation it may be necessary for entry to be gained and a search made in the absence of the occupier and without their knowledge. This type of entry and search is referred to as a **covert search**.

Supervisor's approval required before applying for a covert search warrant

Obtain written (includes electronic) authority from a Detective Senior Sergeant or above to apply for a search warrant that is to be executed covertly. If the proposed search is deemed 'high risk', a Detective Inspector should be consulted.

Note: A covert search must be witnessed by a constable:

- of or above sergeant position level, or
- for the time being acting in the position of a sergeant.

Postponement of notice and inventory requirements

Sections [131](#) and [133](#) of the Act require the provision of a copy of the search warrant or if the search power is exercised without a warrant, a written notice to the occupier of the place or the person in charge of the vehicle or other thing being searched, no later than 7 days after exercising the power.

You may apply to a district court judge under section [134](#) to postpone compliance with these obligations on the grounds that compliance would:

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

In the case [Mellas v R](#) [2020] NZCA 418 the Court emphasised the significance of the police's failure to comply with [section 133](#) of the Act. Written notice of seizure is a statutory requirement with which compliance can only be deferred or excused by a Judge. The Court saw disregard of section 133 as cavalier and took this into consideration in excluding the evidence obtained.

See 'Postponing compliance with notice requirements' in '[Part 5 - Carrying out search powers with or without warrants](#)'.

(ss [134](#) and [135](#))

Cellphone and computer searches

When searching a cellphone or computer that has been seized through the lawful and successful execution of a search warrant, it is not necessary to obtain a further warrant for each search that is conducted in accordance with the original search warrant. See [R v R](#) [2018] NZCA 341.

Note: If a search for other purposes is needed, an additional warrant may be required.

Intangible material sought from cellphones and computers

All that is required when intangible material is sought from cellphones or computers, is that the search warrant expressly allows Police to access data, communications and images.

Specify intangible material sought from seized cellphones or computers

Specify in applications for search warrants and warrants what type of intangible material is being sought when seizing cellphones or computers. It is insufficient to state that Police wish to seize a particular cellphone. It is necessary to specify in the application and the warrant that intangible material on, or accessible from, the device is also sought.

See [Tupoumalohi v R](#) [2020] NZCA 117 to guide you with identifying intangible material sought in warrants from cellphones and computers.

Include communications sought on a cellphone in search warrants

Material to be searched on a cell phone should be described as specifically as reasonably possible in the search warrant application and search warrant, for example:

- communication applications such as Facebook Messenger or similar type of application
- diary records
- bank account records.

The Court of Appeal in [Ruru v R](#) [2020] NZCA 64 accepted that Police may not always be able to anticipate where and how information will be stored on a cellphone and that this should be reflected in the application.

Related information

See '[Searching for and seizing computer material](#)' in '[Part 5 - Carrying out search powers with or without warrants](#)' of the '[Search](#)' chapter for general guidance about searching cellphones and computers.

What should be included and avoided in applications

This section contains these topics:

- Information about using surveillance devices for safe execution of warrant
- Wording the search warrant application
- Including informant information in search warrant applications
- Good practice
- Errors commonly made with applying for search warrants

Information about using surveillance devices for safe execution of warrant

When it is known in advance that Police employees will need to use visual surveillance devices to look through the windows of the target property (e.g. a dwelling) in order to ensure the safe execution of a search warrant, it is good practice to inform the issuing officer who authorises the search warrant.

Consult specialist groups for safe execution of search warrant

When specialist groups such as [AOS](#) or [TSU](#) will be involved in the execution of a warrant, and where time allows, they should be consulted about how the warrant may be executed and whether use of surveillance devices will be necessary.

This will not always be possible or practicable, particularly in situations of urgency. It is therefore accepted that employees may need to briefly use surveillance devices, for the safe execution of the warrant, even though no specific authorisation has been obtained.

Wording the search warrant application

Follow this guide when wording your search warrant application:

Step	Action
1	<p>Be clear in your application that you are not seeking a power to use a surveillance device to obtain evidential material, but rather you are advising the issuing officer of the proposed use of surveillance devices for safety reasons.</p> <p>Note: It is important to explain why the use of surveillance devices is necessary and provide the issuing officer with the relevant safety information.</p>
2	<p>Use this example as a guide and vary it according to your specific circumstances:</p> <p>9. Additional information</p> <p>I provide the following additional information:</p> <p>Use of surveillance device required for safe execution of warrant</p> <p>s.6(c) OIA</p>
	<p>In terms of section 49 of the Search and Surveillance Act 2012, it is not intended that the use of these or other similar devices will obtain information that is evidential material in respect of the offence(s) for which this warrant is sought.</p> <p>9.2 This use of surveillance devices for the purpose of ensuring the safe execution of the warrant does not amount to an application or an authority to use surveillance devices to obtain evidential material under the Search and Surveillance Act 2012.</p>

Trespass onto other properties to execute search warrant safely

See the section '[Safe execution of warrants - entry to adjoining/neighbouring properties](#)' for further guidance with wording application and warrant.

Including informant information in search warrant applications

Informant defined

Under section 3 of the Act, 'informant' has the same meaning as in section 6(1) of the Criminal Disclosure Act 2008, i.e. any person who provides verbal or written information, whether or not in recorded form, to a law enforcement officer.

'Informant' is not restricted to Covert Human Intelligence Sources (CHIS).

Revealing identity of informants (not CHIS)

The names and other identifying details of informants who are not registered as CHIS may be withheld but care must be exercised to ensure they are informants rather than witnesses, i.e. that they gave information with an expectation that their identity would be protected (refer *R v Williams* - see Law Notes - [30 May 2007](#) & [R v Kissling](#)).

While the issuing officer may require you to supply further information concerning the grounds on which the warrant is sought, they must **not**, in any circumstances, require you to disclose the name, address, or any other identifying detail of an informant **unless**, and only to the extent that the information is necessary for them to assess:

- the credibility of the informant, and/or
- whether there is a proper basis for issuing the warrant.

(s98(2)(b))

Including CHIS information

Follow these steps relating to [CHIS](#) information.

Step	Action
1	Do not name a CHIS in the search warrant application or include any information that could lead to their identification. Explain to the issuing officer that they have supplied the information on the basis of their identity being kept confidential.
2	If the issuing officer wishes to assess information relied on from a CHIS, then as far as possible, report information received in the CHIS's own words.
3	<p>You can use hearsay evidence to outline the grounds for the application, if it is of high reliability. Indicate its reliability by stating:</p> <ul style="list-style-type: none"> - the CHIS's credibility - the CHIS's reliability and whether they have given reliable information in the past, e.g. "In the past, Covert Human Intelligence Source "A" has supplied Police with information that has proved to be reliable". - whether the information has been confirmed by other means. <p>Note: Current Police guidance on providing sufficient information to the warrant issuer about a CHIS is contained in Law Notes issued in respect of <i>R v Williams</i> [2007] NZCA 52 (see Law Notes - 30 May 2007) and <i>R v Dunedin</i> District Court, so the warrant issuer can assess reliability. <i>R v Williams</i> [2007] 3 NZLR 207 and R v Kissling [2009] 1 NZLR 641 refer.</p>
4	Be prepared to withdraw any search warrant application if the issuing officer demands details that identify the CHIS.

Good practice

Follow the steps in this table when applying for a search warrant. It outlines good practice for [written applications](#) and for [orally communicating applications](#) for search warrants.

Step	Action
1	Accurately describe the offence you believe the search relates to.
2	<p>Explain what you expect to find and why, and where you expect to find it and why. Be as specific as possible.</p> <p>However, if a specific description of the evidential material sought would endanger any person or prejudice ongoing investigations (e.g. assist a suspect to suppress or destroy evidential material), consider seeking a postponement under s 134 from the obligation under s 131(4) to provide a copy of the search warrant. (See 'Postponing compliance with notice requirements' in 'Part 5 - Carrying out search powers with or without a warrant').</p>
3	<p>Ensure you describe the place where you expect to find the item accurately, such as the correct address of a house or registration number of a car.</p> <p>Case Law:</p> <p>In The Queen v Costello [2022] NZCA 64, the case stressed the importance of specifying the address to be searched and associated buildings in warrant application. When applying for a search warrant in circumstances where there are multiple separate buildings within the address, it is important for Police to provide as much detail as possible regarding the area they intend to search. For example, they can provide a Google Maps satellite image or outline the boundaries to specifically include or exclude certain buildings. Doing so will provide clarity and help prevent subsequent challenges to the searches.</p>
4	Include a description of all relevant information held or received (whether favourable or unfavourable) and all relevant inquiries made.
5	When describing the information received, state the date when each piece of information was received, who received the information, and in what circumstances. Provide an assessment (with reasons) of the significance and reliability of the information.
6	Describe the relevant inquiries that have been made. State the date on which each inquiry was made, who made it, how each inquiry was conducted, and the circumstances in which it was conducted. Explain (with reasons) the significance of those inquiries.
7	Explain any delay between the last receipt of information and/or the last inquiry and the application for a warrant. If there has been a delay in applying for a warrant, make any necessary inquiry to ensure everything contained in the application is current and explain why that is so.
8	Follow the guidance on including information about informants above.
9	Explain the reason for every expression of belief in the application. You should never express a conclusion without saying why.
10	Scrutinise the grounds on which you apply for a warrant and consider, taking the role of 'devil's advocate', whether the application meets the statutory criteria.

Errors commonly made with applying for search warrants

If you are the applicant for a search warrant, **do not**:

- apply for too wide a warrant (i.e. be specific about describing place, vehicle or other thing to be searched, or items to be seized)
- state conclusions without saying why
- include standard form material on the criminal activity being investigated unless it is relevant to the particular application
- leave out relevant information
- include misleading information
- rely on:
 - suspicion, rumour or gossip (in [Alexander v Police \[2019\] NZHC 2920](#) the Court found the warrant was unlawfully issued on those grounds and, consequently, the evidence was unlawfully obtained and ruled inadmissible)

- anonymous tips, (e.g. from Crimestoppers) will usually not form sufficient basis for obtaining a warrant (the information must be considered sufficiently reliable; either by its nature, or by independent corroboration, see [Schaaf v R](#) [NZHC] 176)
- describe the belief of "the Police" or the belief of another person. Applicants must describe their own personal belief in a state of affairs justifying the issue of a warrant, and the facts that make them hold that belief. If you refer to the belief of another constable, or information received by another constable, that constable should be identified.

Two other common faults can be avoided with your search warrant application by:

- explaining any delay in applying for a warrant
- saying why you believe a [CHIS](#) is reliable.

De-confliction

De-confliction process outlined

Where more than one active document shares the same NIA target (e.g. two search warrant applications for the same address), the de-confliction process will prevent the interests of one investigation from conflicting with the interests of the other.

The Search and Surveillance system will send a de-confliction email to the owners of documents (and their supervisors) which share the same NIA target. If you are advised of a conflict, you must act to resolve the potential conflict.

This diagram illustrates the document owners or 'users' who will or will not receive de-confliction messages.

Original Document (User 1)	New Application (User 2)	Who is notified by email
Open	Open	Both user 1 and 2
Open	Closed	User 2 only
Close	Open	User 1 only
Closed	Closed	Both user 1 and 2

"Open" document

A search warrant application prepared in the Search and Surveillance system and entered as an "open" document will result in all document owners making or having made applications in the system to search the same target being notified.

Note: Applications that have been made in the system must be current for the document owner to be notified.

"Closed" document

A search warrant application prepared in the Search and Surveillance system and entered as a "closed" document will prevent other document owners of "open" applications in the system intending to search the same target from being notified of the "closed" document's existence.

Open→Open / Closed→Closed

Both document owners and their supervisors receive a message, if both documents are "open" or both are "closed".

De-confliction action

If you receive a de-confliction email you must contact the other document owner/supervisor and agree a course of action. This will depend on individual circumstances and on the potential that each application has to impact on the other investigation (if executed).

The agreed outcome may involve:

- joint execution of both warrants
- one of the applications being delayed /withdrawn,
or
- coordination of the execution of both warrants.

Closed→Open / and Open→Closed

If one owner has categorised their document as "open" and the other as "closed" (generally by an investigator in the covert area), only the closed document owner (and supervisor) will receive an email while the "open" owner will not.

When a closed document owner (and supervisor) is made aware of another warrant application, the closed document owner and their supervisor must carefully consider the implications of how the new application and execution of the warrant would affect their investigation and weigh this up against their obligation to inform the new applicant.

Generally, the closed document owner or their supervisor will contact the applicant, the applicant's supervisor or the applicant's manager.

De-confliction actions - closed document owner

These actions may be taken by the closed document owner and their supervisor:

- arrange for the "open" applicant to withdraw or delay their search warrant application, if execution may adversely affect the ongoing covert operation
- allow the proposed application to proceed with the covert application history disclosed in the proposed application, or
- if an application:
 - is in the preparatory stage and has **not been made** by the closed applicant to an issuing officer, not advise the "open" applicant, supervisor or their manager about the covert operation, the covert search warrant application or execution of the warrant
 - has **already been made** by the closed applicant to an issuing officer, then some action must be taken to advise the open applicant, supervisor or their manager of the application to ensure the organisation does not mislead the issuing officer in contravention of the statute when the open applicant presents their application for signing.

Special powers when warrant applications are pending

Power to secure scenes

If a search warrant application is about to be made in relation to a place, vehicle or thing, or has been made but not yet granted or refused by an issuing officer:

you may...	if you...
at any time that is reasonable in the circumstances: <ul style="list-style-type: none"> - enter and secure the place, vehicle, or other thing, and - secure any item(s) found there, and - direct any person to assist with the entry and securing of the place, vehicle or other thing, or the securing of items in it 	believe that evidential material may be destroyed, concealed, altered, damaged, or removed before a decision is taken to grant or refuse the issue of a search warrant.

You may only exercise these special powers until the first of the following occurs:

- the expiry of six hours from when the power is first exercised
 - the warrant is available for execution at that place or vehicle or in respect of that other thing
 - the application for a search warrant is refused.
- (s117)

The case [McIntyre v R](#) [2020] NZCA 503 clarifies that it can be appropriate to include police observations made when invoking section [117](#) of the Act in search warrant applications. Inclusion was appropriate in this case because the observations corroborated the reasons for seeking a warrant.

Issuing search warrants

Issuing officers

Only an issuing officer may issue a search warrant.

An issuing officer is:

- a District Court or High Court Judge
- a person, such as a Justice of the Peace, Community Magistrate, Registrar, or Deputy Registrar, who is **authorised** by the Attorney-General to act as an issuing officer (s 108)

Note: Not all Justices of the Peace, Community Magistrates, Registrars, or Deputy Registrars, are authorised issuing officers.

Limitation on jurisdiction of certain issuing officers

If an issuing officer is employed or engaged by a law enforcement agency, they must not consider or perform any function in relation to any application made by a law enforcement officer employed or engaged by the same agency.

(s 109)

Which issuing officers should you approach?

You should follow these steps when deciding which issuing officer to use when applying for a search warrant:

Step	Action
1	Always check the current list of authorised issuing officers in your district as they change from time to time.
2	If your application references information from a sensitive source, make it to an issuing officer in the District or High Court. Otherwise use whichever issuing officer is most convenient. During office hours this will usually be an issuing officer in the District Court, however applications made outside court hours or at times of high court demand should be made to another issuing officer.
3	If for the reasons given in step 2 it is more appropriate to take your search warrant application to the court, use an issuing officer from a District or High Court depending on where resultant proceedings are likely to be heard. Note: There are no issuing officers in the High Court other than High Court Judges.
4	Endeavour to give notice to the issuing officer before applying for a search warrant, unless it is impracticable to do so.

Note: The application for search warrant must always be left with the issuing officer to file at the nearest court. Police employees must not deliver the application on behalf of the issuing officer.

Form and content of search warrants

Every search warrant must be in the prescribed form and be directed to every enforcement officer who has authority to execute the warrant.

Section 103(4) lists the particulars that must be included in every search warrant in reasonable detail. Following the guidance on the search warrant application form and the guidance in this chapter on what should be [included and avoided](#) in applications, will ensure the information required by section 103 is provided.

(s 103)

Conditions may be specified in the warrant

An issuing officer may specify in the warrant any conditions they consider to be reasonable including (without limitation):

- any restriction on the time of execution that is reasonable
- a condition that the occupier or person in charge of a place must provide reasonable assistance to a person executing the warrant if, in the absence of such assistance, it would not be practical to execute the warrant without undue delay. **Note:** A person is not required by any condition imposed to give any information that may incriminate them (s103(7))
- a condition requiring the Commissioner to provide them with a search warrant report within a specified period. See 'Search warrant reports may be required by issuing officers' in '[Part 14- Reporting](#)'. (s103(3)(b))

Note: You must update the search warrant in the Search and Surveillance system with the details of:

- whether or not the search warrant is granted, refused or withdrawn before presenting to an issuing officer; and
- any conditions imposed by an issuing officer.

Signing the search warrant

Ensure the issuing officer signs or uses their unique identifier on the original search warrant and the duplicate copy of the warrant for the occupier of a place or person in charge of a vehicle. If the signing is overlooked on the duplicate copy, then photocopy the original with the signature or unique identifier and leave that photocopy with the occupier or person in charge of the vehicle.

Application for search warrant refused

Follow these steps if an issuing officer, after considering your application, refuses to sign the accompanying search warrant:

Step	Action
1	Note and record the issuing officer's reasons for refusing to issue a search warrant.
2	<p>Consider the reasons for refusal and if those reasons:</p> <ul style="list-style-type: none"> - can be fixed, then: <ul style="list-style-type: none"> - address all the reasons for the refusal - redraft the application and proposed search warrant, ensuring the reasons for refusal are addressed in the appropriate paragraphs of both documents - re-submit the application to the same issuing officer who refused to issue the search warrant. If that issuing officer is not available, you must inform the second issuing officer of the reasons why the first issuing officer refused to issue a search warrant - cannot be fixed, then: <ul style="list-style-type: none"> - re-evaluate whether or not to continue your investigation without the search warrant being issued, or - if the reasons do not appear to be justified, prepare a report and submit the file through your supervisor to Legal Services for direction.

Note: There is no hierarchy of "issuing officers" under the Act. A High Court Judge has the same status as a District Court Judge or Registrar. If for instance, a District Court Judge refuses to issue a search warrant, do not attempt to make the same application to a High Court Judge.

Who may execute a warrant and when?

Who may execute a search warrant?

Search warrants may be executed by:

- any or all of the persons to whom it is directed, or
- any constable (whether or not the warrant is directed to that constable or to every constable).
(s103(3)(a))

If a search warrant is executed covertly, a constable of the position level of sergeant or above, or an employee acting in that capacity must be present.

If a remote access search warrant is executed, the execution must be overseen or conducted by staff from Cybercrime Unit, Digital Forensics Unit or a Digital First Responder (DFR). Exceptions to this are only to be made where delay would result in danger to persons or loss of evidential material.

To execute a search warrant you must be in possession of the original search warrant, or if impractical a copy of a type permitted by [s105](#).

Period warrant is valid for

The period during which the warrant may be executed may be:

- a period specified by the issuing officer not exceeding 14 days from the date of issue, or
- a period specified by the issuing officer not exceeding 30 days from the date of issue, if you have justified why this is necessary and the issuing officer is satisfied that more time is necessary for execution.
(s103(4)(h))

When can search warrants be executed?

Search warrants can be executed at any time that is reasonable in the circumstances, unless the issuing officer has restricted the time of execution as a condition of the warrant (e.g. that it only be executed between the hours of 8.00am and 6.00pm).

When are search warrants considered executed?

A search warrant is executed when you and any person assisting you:

- have seized all the evidential material specified in the search warrant, or
- leave the place, vehicle or other thing searched and do not return within four hours.

The warrant is not executed if you leave but one of your assistants remains at the place, vehicle or other thing searched.

Multiple executions

A search warrant may only be executed once, unless execution on more than one occasion is applied for and justified and authorised by the search warrant.

If a warrant authorises execution more than once, it may be executed the number of times specified in the warrant, until:

- all evidential material specified in the warrant is seized, or
- the time limit (14 days or, any longer period specified by the issuing officer not exceeding 30 days from the date of issue) has expired.
(ss 103(4)(h) and 106)

Safe execution of warrants - entry to adjoining or neighbouring properties

Introduction

When it is known in advance that Police employees will need to enter onto properties adjoining or near the target property for the safe execution of a warrant or AOS or TSU will be involved in executing a search warrant, you should seek a power of **entry** to those adjoining/nearby properties.

Where specialist groups such as AOS or TSU will be involved in a warrant's execution and, where time allows, they should be consulted about how the warrant may be executed and whether entry to adjoining properties may be necessary.

This will not always be possible or practicable, particularly in situations of urgency. It is therefore accepted that Police staff may need to briefly enter onto properties adjoining or near the target property, for the safe execution of the warrant, even though no specific authorisation has been obtained.

Application to include entry to adjoining or neighbouring properties

If a warrant is to be sought to **enter and search** for evidential material located at one address (e.g. 5 East Street), but in the process of executing the warrant, Police need to trespass on adjoining or neighbouring properties (e.g. 3 and 7 East Street), then the warrant application should also seek a warrant to only **enter** the adjoining or neighbouring properties (e.g. 3 and 7 East Street).

The justification for this is within sections 98(1)(d) and 103(4)(f) in the case of search warrants.

Wording application and warrants

Make it clear that you are seeking a power of entry only in respect of the adjoining or neighbouring properties for safe execution of warrant and explain why and provide the Judge or issuing officer with the relevant legal basis. Where appropriate, also make it clear that the entry to dwellings on the adjoining or neighbouring property is not sought.

For the search warrant application form, use 'Additional information' section (search warrants at paragraph 9). For example:

9. Additional information

I provide the following additional information:

Power of entry on other properties required for safe execution of search warrant

9.1 The Armed Offenders Squad will be assisting with execution of this warrant. In order to ensure safe execution of the warrant, the Armed Offenders Squad may need to enter onto the following properties adjoining the property to be searched:

- a. [address].
- b. [address].
- c. [address].

(the "neighbouring properties")

9.2 The reasons why Armed Offenders Squad may need to enter these neighbouring properties are:

- a. [explain why e.g. why is Armed Offenders Squad required in the first place (e.g. risks associated with the particular individual or address), why these particular properties need to be entered. Could be to do with location of property to be searched (e.g. in rear section not easily viewed from street) or need to be able to observe the property from different sides/angles or to maintain cordon around person who could be armed. Should have a paragraph dedicated to each property and why it is necessary to enter that property. Should explain in relation to each property what the entry will involve (e.g. just within the yard - don't need to enter premises).]
- b. etc

9.3 This power to enter the neighbouring properties is sought in reliance on sections 98(1)(d) and 103(4)(f) of the Search and Surveillance Act 2012, which distinguishes between places that may be entered and places that may be entered and searched

For the warrant form, insert details of additional properties to be entered at paragraph 6. For example:

6. This warrant also authorises you at any reasonable time, to enter (but not search) the following premises or areas:

6.1 the property (but not the dwelling) at [address]

6.2 the property (but not the dwelling) at {address] etc.

for the sole purpose of ensuring the safe and effective entry onto, entry into, or search of any place, vehicle or thing specified in paragraph [].

Note: If practicable seek legal guidance with wording the application and warrant for entry to adjoining or neighbouring properties.

Retention and security of warrants and copies of applications

Retention and security of search warrant applications

Occasionally issues arise relating to Police concerns over security of a search warrant (or production order) application before its execution. Those concerns may include:

- safety of Police employees, issuing officers, victims and public
- integrity of the Police operation being compromised
- security of information, and
- sensitivity of the investigation.

The responsibility for retaining and securing a search warrant (or production order) application once it has been presented for signing remains with the issuing officer.

Under section 73 (retention of production order application) and section 101 (retention of search warrant application) a written application for a search warrant (or production order) or in the case of an oral application, then the record of the application made to **any** issuing officer must be retained under the control of the Registrar of the District Court closest to the place at which the application is made, whether or not the application is granted or refused.

Procedure when security of applications may be compromised

Follow these steps whenever the security of search warrant (or production order) applications retained by an issuing officer may be compromised:

Step Action

- 1 - Assess all security risks relating to the application, issuing of warrant (or order) and retention of application. This risk assessment must be made before approaching the issuing officer.
 - If there are any concerns about:
 - safety of any persons
 - integrity of the Police operation being compromised
 - security of the information
 - sensitivity of the investigation

consider having the application issued by a Judge or Registrar of the District Court rather than a Justice of the Peace or other authorised person, as the application can be secured immediately at the court.

- 2 Fully communicate all security issues to the issuing officer.
- 3 Remember, it is the issuing officer's role to secure the application once it has been presented for signing. The issuing officer is solely responsible for ensuring that the application is lodged and properly secured at the nearest court.

Note: It is not the responsibility of Police to retain and deliver an application for a search warrant to the nearest Court.

- 4 Any issues around security of applications, other documents or the safety and integrity of Police operations relating to issued search warrants (or production orders) must be referred immediately to the O/C CIB for the area and resolution sought through the local Court Manager.

Filing warrant documents after execution

You must retain these documents in the relevant NIA case file (whether in electronic form or otherwise):

Police policy requirement	- if applicable, written authority from supervisor authorising application for search warrant
Legislative requirement (s 101)	- a copy of the search warrant application, if made in written form, otherwise a record of the oral application made (Note: If the application contains sensitive information, consider securing it elsewhere and endorsing the file accordingly); - copies of all documents tendered in support of the application - the search warrant - a copy of any search warrant report required by the issuing officer under section 104.

Note: The specified documents must be retained until the later of:

- conclusion of any proceedings
- destruction of the documents in accordance with policy '[Retention and disposal of Police records](#)'.

Disclosure and requests for copies of search warrant applications

Search warrant applications are subject to disclosure under the [Criminal Disclosure Act 2008](#) and as a general rule are disclosed. Applications may also be the subject of a request under the [Official Information Act 1982](#) or the [Privacy Act 2020](#).

Search warrant applications containing sensitive information could be withheld under all three Acts (Criminal Disclosure Act 2008, Official Information 1982 and Privacy Act 2020) if the release would be likely to prejudice the maintenance of the law (this would apply to CHIS information).

Before any of the contents are released you must:

- consult the constable who made the search warrant application, and
- if the disclosure may reveal the identity of a CHIS, then also obtain approval from the O/C Human Source Management Unit (HSMU); or
- seek advice from a legal advisor.

For detailed guidance relevant to:

- disclosure of search warrants, see the 'Further restrictions on disclosure' in the '[Criminal disclosure](#)' chapter
- personal and official information requests, see the '[Privacy and official information](#)' Police Manual chapter.

Quick reference guide: search warrants

Pre-application checks and set-up

Step Action

- 1 Set-up a NIA Case reference if one does not already exist.

Note: Avoid identifying target addresses for forthcoming warrant applications in the narrative of the NIA case as this may compromise the security of subsequent warrant execution.

- 2 Check NIA for any notings of search warrants issued under other Acts in the previous three months. This information must be included in the application.
- 3 Complete any other background checks and TENR (Planned Action Risk Assessment and CARD prompt) and [Community Impact Assessment](#) as required.

Apply for search warrant

Step Action

- 1 Create the warrant application using the Search and Surveillance (S&S) system.
- 2 Review and follow-up on any de-confliction notifications advising of other active warrant applications for the same target(s). Contact the other applicant(s) and determine whether or not to proceed.
- 3 Review any information in the three-month history section of the application and carry out NIA checks to determine if it is relevant to your target or not. Include notes accordingly in the 'Additional Information' section of the application to provide clarity for the issuing officer.

Approvals

Step Action

- 1 Submit the draft application to the approving officer (sergeant or above). Review and revise as required.
- 2 Finalise the application and recheck the three-month history. Entries in this section will be automatically refreshed prior to printing and may change as time progresses during preparation of the warrant.
- 3 Print the application and warrants, sign the application and present them for authorisation to an issuing officer.
- 4 Review/revise the warrant as required, to gain authorisation.
- 5 Record any conditions specified by the issuing officer in the Search and Surveillance system.

Execute warrant

Step Action

- 1 Execute the search warrant as authorised.
- 2 Complete an inventory of items seized (POL268) if any.
- 3 As soon as practicable, provide a copy of the search warrant and inventory to the occupier of the place/person in charge of vehicle, or if not present, leave in a prominent place.

Search warrant notifications and reporting

Step Action

- 1 Record the outcomes and other information in the Search and Surveillance system.
- 2 Complete and submit the electronic post warrant intelligence noting ('OnDuty Notings') notification on your mobility device.
- 3 Where applicable, complete a notification using the 'Create Notification' feature on the Microsoft Outlook Bulletin Board to notify relevant groups about drugs, firearms, children, etc.
- 4 If required by the issuing officer, produce a search warrant report to the issuing officer using the Search and Surveillance system.