

Part 15 - Government agency requests for assistance with search warrants and production orders

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Overview

Purpose of this chapter

This chapter details procedures for:

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

Principles of cooperation

Agencies with investigative and prosecution functions, but no statutory search and production powers (e.g. Ministry of Social Development) work closely with Police. The way in which Police and each agency works together is to be detailed in a schedule titled 'Agency requests for assistance with search warrants and production orders' to the Memorandum of Understanding between Police and the agency concerned.

These guiding principles apply to the agency making the request and Police:

- The agency concerned has the lead for the investigation and prosecution of suspected breaches of legislation under their responsibility and control
- If Police apply for a search warrant or production order, Police is the lead agency for:
 - applying for and executing search warrants and production orders
 - seizure of evidential material, receiving produced documents, custody and disposal of evidential material
- Police and the agency:
 - will work cooperatively to ensure appropriate and authorised information is provided in a timely manner
 - coordinate internal procedures to ensure efficient information flows
 - will incur their own personnel costs, but when extensive hardware costs are incurred by Police (e.g. considerable number of documents to be photocopied, electronic hardware associated with forensic copying etc.), then the agency will reimburse Police for the agreed costs
- Police and the agency will actively seek to exchange information and research where such exchange is likely to inform the:
 - investigation into suspected offences
 - application and execution of search warrants
 - application for production orders and receipt of produced documents
 - management of seizure, production, custody and disposal of evidential material
 - prosecution of suspects
- Police and the agency will ensure that the requirements of the:
 - [Privacy Act 2020](#) are met when exchanging personal information about individuals
 - [Search and Surveillance Act 2012](#) are complied with when applying for and executing search warrants and seizing evidential material; applying for production orders and receiving produced documents; and custody and disposal of evidential material

Potential risk of litigation

As with any power Police exercise, search and seizure powers must be exercised both lawfully and reasonably. A failure to take care in this area not only jeopardises prosecutions by exclusion of evidence, it also exposes Police to significant civil liability. When another agency is involved, particular care should be taken.

For example, in [Van Essen v A-G](#) [2013] NZAR 917 (HC), Police were required to pay damages to Mr Van Essen arising from a Police search of his home on behalf of ACC. Among other things:

- Police did a poor job of drafting the search warrant applications which didn't meet the minimum standards required. The Judge observed that the almost rote adoption of affidavits drafted by ACC raised serious doubts about the independence of police in the mind of an objective observer;
- Police failed to actively manage the actual and apparent conflict of interest by allowing the son-in-law of the ACC informant to be the O/C preparing the application;
- Personal information and some information that was irrelevant to the alleged criminal activity was seized;

- Police didn't directly supervise a private investigator engaged by ACC who assisted with the search;
- Police improperly handed over seized items to a private investigator engaged by ACC and some of the seized items were lost or unaccounted for.

Conflicts of interest

Police employees must avoid situations that might compromise, directly or indirectly, their impartiality or otherwise call into question their ability to deal with an agency's request for assistance with a search warrant or a production order in a fair and unbiased manner. For example, where the employee is related to the investigator of an agency requesting assistance, or related to a person who is the subject of the investigation.

The employee must inform their manager where any actual or perceived conflict of interest could arise and arrangements made for another constable to be assigned. **Note:** See the [Managing conflicts of interest](#) chapter and the references to conflicts of interest in the [Code of Conduct](#).

Related information

See also these Search chapters:

- [Part 2 - Search warrants](#)
- [Part 5 - Carrying out search powers with or without a warrant](#)
- [Part 9 - Production orders](#)
- [Part 12 - Procedures applying to seized and produced things](#)
- [Part 13 - Privilege and immunities under the Act](#)
- [Part 14 - Reporting](#)

References to "the Act"

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

Meaning of acronyms

This table provides the meaning of acronyms used in this chapter.

Acronym	Meaning
ACC	Accident Compensation Corporation
CIB	Criminal Investigation Branch
DFR	Digital First Responders are Districts' key contacts with the DFU.
DFU	Digital Forensic Unit
Director: NCIG	Director: National Criminal Investigations Group
DMCI	District Manager: Criminal Investigations
DFR	Digital First Responders - these are Districts' key contacts with the DFU
FMC	File Management Centre
HTCG	High Tech Crime Group
MoH	Ministry of Health
MOU	Memorandum of Understanding
MSD	Ministry of Social Development
NIA	National Intelligence Application
NCIG	National Criminal Investigations Group
NLO	Nominated Liaison Officer (<i>nominated by DMCI</i>)
PROP	Police Register of Property
O/C	Officer in Charge
SW	Search warrant

Requests from government agencies with no power to apply for a search warrant or production order

Assisting government agencies without statutory search and production powers

Some agencies such as the Ministry of Social Development (MSD), Ministry of Health (MoH) and Accident Compensation Corporation (ACC) have investigative functions, but cannot apply for their own search warrant or production order under the Act.

Requests made to districts

Requests from such agencies for Police to apply for and execute a search warrant or production order on their behalf, must be made to either:

- the District Manager: Criminal Investigations (DMCI), or
- a nominated liaison officer (NLO) in each district.

It is expected that the agency will initially contact the DMCI or NLO to discuss the proposed search warrant or production order. That will be followed by the agency sending an electronic search warrant or production order request. See [documents required for all requests](#).

Note: If the request is accepted, Police will apply for the search warrant or production order on behalf of the agency, command the execution, and manage the seizure or production and custody of evidential material. If items are not transferred to the agency under section 90 because it is not a "law enforcement agency", Police will be responsible for the ongoing custody and subsequent disposal of those seized items.

Considering requests

Requests from other agencies for Police to make an application must be carefully considered.

Criteria to be met before provisionally approving requests

Before making a decision on the request, the DMCI or NLO must be satisfied these criteria are met:

- the application is justified and meets all legislative requirements
- the request and the making of an application are in accordance with any [MOU](#), letter of agreement or other protocol that may exist between that agency and Police
- the assessed risk of execution can be safely managed
- the workload involved with the application (making the application, the number of warrants or orders and their execution, seizure, receipt of produced documents, storage, management and disposal of seized or produced items) is manageable with other law enforcement commitments
- operational priorities impacting on Police at the time are not compromised.

Decision and timeframes for reply

The decision whether to provisionally approve, delay or decline the request must be given in writing as soon as practicable to the agency making the request. Reason(s) must be given if the decision is to delay or decline the request. The decision and reply should not exceed 14 days from receipt of initial request. Requests not actioned within 30 days and subject to further delay must be notified to the agency investigator in writing.

Note: Provisional approval is always subject to the applicant (constable who signs the application) being satisfied that the grounds for applying for the search warrant have been established.

Urgent requests

If the request from the agency is "urgent", there must be supporting information explaining why an application for and the execution of a search warrant or production order is required urgently.

The process for urgent requests is the same as a standard request, except that the decision to provisionally approve, delay or decline the request must be made and advised orally to the agency as soon as practicable and no later than 3 days from the receipt of the initial request. Any decision advised orally to the agency must be followed-up in writing immediately.

Dispute resolution

Where a decision made at a district level remains in dispute between that district and the agency, the matter must be resolved as agreed in a Memorandum of Understanding ([MOU](#)) and any accompanying schedule between Police and the agency. If no MOU or Letter of Agreement exists, the dispute may be elevated by the district or agency to the Director: National Criminal Investigations Group and the agency's equivalent level manager for resolution.

Case Management

The DMCI or NLO must ensure the initial request is:

- the trigger which leads to the creation of a [NIA](#) case
- correctly assigned in [NIA](#):
 - to the constable responsible for the application phase, or their supervisor if provisional approval is given, or
 - if the decision is to delay or decline the request, to themselves while the case pre-closure requirements before inactivation or filing are met.

Refer "[Guidance for completing NIA entry](#)".

See the [Case management](#) chapter for more information about recording, managing, monitoring and disposal of [NIA](#) cases.

Request, decision and managing assignment

(Applies to searches being undertaken with government agencies that have no power to apply for search warrants or production orders)

Decision outcomes

Term	Meaning
(Provisionally) Approved	The application and execution will be arranged as soon as resources and logistics can be organised between the agency and Police and subject to the officer who is assigned the matter being personally satisfied that the application is appropriate.
Deferred ("Deferred, resubmit your request after ...")	The request and application meet the legislative and protocol requirements, but cannot be accepted at this time because of factors such as risk, resource availability, and/or other operational priorities and commitments. Agency to resubmit request after a given time period.
Declined	The request and application fail to meet the legislative, protocol, risk, workload or operational criteria set by Police.

Process for submitting and considering requests

Follow this process for considering requests from agencies to have Police apply for a search warrant or production order and managing assignments.

Step	Action (DMCI or NLO unless otherwise stated)								
1	The agency prepares the request and all accompanying documents. (See required request details below).								
2	<p>The agency's investigator and the DMCI or NLO in the geographical area where the intended search warrant is to be executed or in the case of multiple warrants or production order, the area from where the search or production coordination is to be managed, meet to discuss:</p> <ul style="list-style-type: none"> - the request for Police assistance - operational implications arising from the request - cost recovery in relation to: <ul style="list-style-type: none"> - resources to be used - photographing evidential material, copying documents or creating forensic copies of electronic data. 								
3	Consider the request and determine whether the criteria to be met before provisionally approving requests are satisfied.								
4	<p>Notify the agency's investigator of the decision to provisionally approve, defer or decline. The decision and reply to:</p> <ul style="list-style-type: none"> - a standard request should be made in writing within 14 days of receipt of the request - an urgent request should be made orally within 3 days of receipt of the request and followed-up in writing. <table border="1" data-bbox="129 831 1522 1182"> <thead> <tr> <th data-bbox="129 831 233 976">If the decision is:</th> <th data-bbox="233 831 1522 976">then:</th> </tr> </thead> <tbody> <tr> <td data-bbox="129 976 233 1122">Deferred</td> <td data-bbox="233 976 1522 1122">a reason and an approximate time period for the deferral must be given, so the agency can review their investigation/request, make changes if necessary, update the documentation as circumstances change during the intervening period, and resubmit their request for further consideration after the deferral period expires.</td> </tr> <tr> <td data-bbox="129 1122 233 1182">Declined</td> <td data-bbox="233 1122 1522 1182">a reason must be provided to the agency for the decision.</td> </tr> </tbody> </table>	If the decision is:	then:	Deferred	a reason and an approximate time period for the deferral must be given, so the agency can review their investigation/request, make changes if necessary, update the documentation as circumstances change during the intervening period, and resubmit their request for further consideration after the deferral period expires.	Declined	a reason must be provided to the agency for the decision.		
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Declined	a reason must be provided to the agency for the decision.								
5	<p>Record the agency's request and application as an electronic NIA docloc case (follow the link to the guidance below).</p> <p>Note: If the investigation is of a confidential nature, the identity of the person being investigated and the location or identity of the place, vehicle or thing to be searched must not be disclosed on the file or recorded in NIA. It must be recorded by the DMCI or NLO in a secure folder.</p>								
6	<table border="1" data-bbox="129 1435 1522 1742"> <thead> <tr> <th data-bbox="129 1435 389 1503">If the decision is:</th> <th data-bbox="389 1435 1522 1503">the DMCI or NLO...</th> </tr> </thead> <tbody> <tr> <td data-bbox="129 1503 389 1608">(provisionally) approved</td> <td data-bbox="389 1503 1522 1608">assigns and submits the file to the O/C CIB Area where the application is to be made and the warrant executed</td> </tr> <tr> <td data-bbox="129 1608 389 1675">deferred</td> <td data-bbox="389 1608 1522 1675">submits the file to the FMC for inactivating, so the file can be reactivated later if the status changes.</td> </tr> <tr> <td data-bbox="129 1675 389 1742">declined</td> <td data-bbox="389 1675 1522 1742">submits the file to the FMC for filing.</td> </tr> </tbody> </table>	If the decision is:	the DMCI or NLO...	(provisionally) approved	assigns and submits the file to the O/C CIB Area where the application is to be made and the warrant executed	deferred	submits the file to the FMC for inactivating, so the file can be reactivated later if the status changes.	declined	submits the file to the FMC for filing.
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declined	submits the file to the FMC for filing.								

Guidance for completing the NIA entry

When recording an agency's request and application as an electronic [NIA](#) docloc case:

- on the first Occurrence detail entry screen:
 - Subject must = "Non-enforcement agency [SW](#) request" or "Non-enforcement agency [PO](#) request"
 - Description must = "[SW](#) request from *name of agency/location of agency*" e.g. SW request from MSD Napier office, or "[PO](#) request from *name of agency/location of agency*" e.g. PO request from MSD Napier office

- Occurrence narrative - ensure that the name and contact details of the agencies' investigator is entered in this field.
- Occurrence address = Police DHQ address where the request is received
- Inc/Off code = "2Z - Other service request"
- Link to the NIA occurrence:
 - the person/s, places, vehicles etc in the agency's investigation
- Attach documents received with the request to the NIA occurrence as appropriate.

Note: Subject, Description and Inc/Off code must be entered as above to assist with national monitoring/reporting on these types of requests.

Managing the assignment

The O/C CIB Area is responsible for managing the assignment of the agency's request from receipt of approval given by the DMCI or NLO.

Step	Action (O/C CIB Area)
1	<p>Arrange for a suitable officer(s) to:</p> <ul style="list-style-type: none"> - be assigned the request file - conduct the planning and risk assessment - apply for a search warrant or production order - carry out the execution and reporting of the search warrant or production order - take responsibility for the seizure, production, storage, custody and disposal of exhibits (evidential material). <p>Note: Be aware of actual or potential conflicts of interest before assigning the request file. See also:</p> <ul style="list-style-type: none"> - paragraph titled 'Conflicts of interest' in this chapter; and - the 'Managing conflicts of interest' chapter and information on conflicts of interest in the Code of Conduct.
2	Ensure the above tasks are progressed in a timely manner.

Documents required for all requests

Requests for Police to apply for and execute search warrants or production orders on an agency's behalf must be emailed with the following documents attached:

- draft agency affidavit that includes information under the following headings:
 - the suspect(s)' identity (including date of birth if known)
 - the alleged offending (including statutory references for each offence) and relevant information to support the allegation
 - in relation to search warrants:
 - the place, vehicle, thing or facility to be searched and its location
 - a description of evidential material being searched for and why it is evidential material in relation to the alleged offending
 - facts or information indicating that the evidential material will be found in the proposed search
 - in relation to production orders:
 - the name and address of the person, (including body corporate or, unincorporated body) it is proposed should be subject to production
 - a description of the documents to be produced and why they are evidential material in relation to the alleged offence
 - facts or information that show the documents are in the possession of the person or under their control
 - how it is proposed that the production occurs
- additional information in relation to both types of proposed applications:
 - any information relevant to whether any material to be searched, seized or produced could be protected by any of the privileges recognised by section [136](#) of the Act.

- all other relevant information, whether helpful or not.
- covering report that includes information about:
 - contact details of the agency and agency's investigator
 - the facts established by the agency's investigation to date, without reference to any suspicions or beliefs held by the investigator
- in relation to search warrants; profile of target address, vehicles, or things to be searched including occupiers or other persons who may be present
- in relation to production orders; profile of target person, body corporate, or unincorporated body
- agency's pre-search risk assessment of:
 - **threat** - includes intent, capability, opportunity and the physical environment
 - **exposure** - includes safety of agency staff, Police and the public and security of the operation
 - **necessity** - whether to act now, later or not at all
- any other documents containing information that may assist the application and execution phases.

Notes:

- The assigned constable must consider whether they can form the required levels of suspicion/belief from the information supplied by the agency and other information obtained when considering the request (e.g. information from [NIA](#), other Police sources etc.). If any shortfalls cannot be rectified after discussion with the agency, the assigned constable must not make the application. Assigned constable to advise supervisor and other agency that there is insufficient evidence to proceed with an application to an issuing officer and therefore the request is [declined](#).

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See:

- [Appendix 1 - Information required by Police for search warrant](#) for further guidance about what information is required from the requesting agency
- [Appendix 2 - Information required by Police for production order](#) for further guidance about what information is required from the requesting agency.

Application, planning and risk assessment

(Applies to government agencies that have no ability to apply for search warrants or production orders)

Application process

The assigned constables must follow these steps:

Step	Action (assigned constable(s))
1	<p>Discuss with the agency's investigator their investigation, search or production planning, resource impact, application for and execution of the search warrant or production order, and subsequent seizure, production, storage, and disposal of evidential material. Have them finalise and swear their draft affidavit.</p> <p>Note: You must personally be satisfied that the grounds for the warrant or order application are justified and other legislative requirements for the warrant or order are met. If you are not and the agency is unable to provide additional material to meet any shortfalls, do not make the application. Instead, advise the agency's investigator and your supervisor.</p>
2	<p>Be aware of recognised privileges under section 136 of the Search and Surveillance Act 2012. Privileged communications or information may not be searched. Consult with your legal adviser in the usual way over any privilege issues.</p>
3	<p>Complete an application for search warrant or production order in the usual way.</p> <p>Note:</p> <ul style="list-style-type: none"> - remember the application is yours and it should contain all relevant information and your suspicions of an offence and belief that evidential material is obtainable, not simply the suspicions of the agency's investigator - do not simply cut and paste the entire contents of the agency's affidavit to your application for warrant or order. You can of course cut and paste selected information that is relevant.
4	<p>In relation to a search warrant application disclose:</p> <ul style="list-style-type: none"> - functions and responsibilities of constables and assistants from the agency relating to entry, containment, search, seizure, and securing the scene and evidential material - how the search warrant is to be executed - if the search warrant is to be executed covertly, indicate this at paragraph 8 on the application and at the same time apply to postpone the notice and inventory requirements. (Use form POL SZ1 for application and order in Police Forms> Search and Surveillance> Seizure Forms). <p>Note: If to be executed covertly both the search warrant application and the postponement application must be made to a District Court Judge.</p>
5	<p>Print the search warrant or production order application, attach the agency's finalised and sworn affidavit as an annex and apply to an issuing officer.</p> <p>Note:</p> <ul style="list-style-type: none"> - The applicant must be a constable and the warrant or order made out to every constable. - The agency's investigator should be contactable when the application is lodged, so you can contact them about any queries raised by the issuing officer about the investigation.
6	<p>See these parts of the Search chapter relevant to applying for and the issuing of search warrants and production orders:</p> <ul style="list-style-type: none"> - Part 2 - Search warrants - Part 9 - Production orders.

Planning and risk assessment process

Assigned constables must plan the search or production and take into account:

- **In relation to both search warrant and production order planning** decide/consider:
 - whether a search warrant or production order should be sought for use in the given case
 - a [community impact assessment](#) to:
 - avoid compromising or undermining wider community support, confidence and reassurance, and
 - eliminate or minimise the adverse impact on vulnerable people, community and interest groups
 - assistant(s), case information and any equipment required from investigative agency to assist with planning and conducting the search or production
 - appropriate timing with executing the search warrant or receiving produced documents
 - operational and human resources required
 - any Police interest in the same target that may involve dual investigation.
- **In relation to search planning:**
 - prepare the 'Planned Action Risk Assessment and CARD Prompt'. See 'Risk assessment when planning searches' in 'Search Part 5 - Carrying out search powers with or without warrants' for risk assessment procedures when planning searches
 - consider tactical approach regarding entry (announced/unannounced), use of force, identification requirements, detaining people at the scene, securing scene, search method, seizing and securing evidential material, notice and inventory requirements).

Note: There must be at least one investigator from the requesting agency present during the search.

Related information

See also:

- 'About production orders' in [Part 9 - Production orders](#)
- 'Procedure for planning searches' in [Part 5 - Carrying out search powers with or without a warrant](#)
- [Community Impact Assessments \(CIAs\)](#) for information about completing a community impact assessment.

Minimise resource impact on Police

When planning the application for and execution of the warrants or orders for other agency investigations, and the storage, custody, management and disposal of evidential material, you must minimise the resource impact on Police. Where practicable, the agency's resources must be used (under Police supervision) ahead of Police resources. For example:

- use agency staff as assistants to assist with the search, rather than deploying constables for this function
- ensure sufficient agency staff assist so that the search is completed more quickly and enables the early release of Police resources.

Executing search warrant and receiving produced documents

(Applies to government agencies that do not have the ability to apply for a search warrant or production order)

Executing search warrant

The assigned officer exercising the search power must follow these steps:

Step	Action
1	Request the agency investigator and any other person from the agency to assist with undertaking the search.
2	<p>Hold a combined briefing for agency staff and police before executing the search warrant.</p> <p>Notes:</p> <ul style="list-style-type: none"> - Under the Act Police are responsible for the execution of the warrant and subsequent seizure, custody and disposal of evidential material - The agency retains responsibility for the ongoing investigation (interviews etc.) and any subsequent prosecution.
3	Execute search warrant at a time agreed with the requesting agency.
4	<p>Ensure statutory obligations under sections 131 and 133 are met by following standard Police procedures for:</p> <ul style="list-style-type: none"> - entry, announcement and identification (before or on initial entry) - giving notice and providing an inventory after search or seizure. - See Part 5 - Carrying out search powers with or without warrants in the Police Manual.
5	<p>Use the agency staff as assistants under section 113. In that capacity, they are subject to the control of the person in charge of the search and may:</p> <ul style="list-style-type: none"> - enter and search the place, vehicle or thing specified in the warrant - seize specified evidential material - while under direction of the assigned officer exercising the search power, use force in respect of property that is reasonable in the circumstances to enter and break open or access any area. <p>Note: The assigned officer exercising the power must accompany any assistant on the first occasion when the assistant enters the place, vehicle or other thing to be searched and provide supervision as is reasonable in the circumstances (s113).</p>
6	<p>Any person found or who arrives at the place, or stops at, or enters, or tries to enter or get into or onto the vehicle being searched may:</p> <ul style="list-style-type: none"> - be detained by police for the purposes of determining their connection with the object of the search while the search is being carried out (s118) - be searched by a constable who has reasonable grounds to believe that the specified evidential material is on that person (s119).

Step	Action
7	<p>Ensure that all activity undertaken during the search is reasonable and can withstand judicial scrutiny. For example, if offences other than those being investigated by the agency and specified in the warrant are discovered, use your discretion when deciding whether or not to exercise other search powers, e.g. seizure of items in plain view (s123) during the agency's search and to initiate a separate Police investigation.</p> <p>Do not:</p> <ul style="list-style-type: none"> - use the agency's search to circumvent the rules or obligations required for Police searches under the Search and Surveillance Act 2012 - extend Police enforcement practices to the point where the activity may be considered as being unreasonable.
8	<p>If a plain view seizure is undertaken by Police during the search under the warrant (i.e. outside of the specified scope of the warrant) you must:</p> <ul style="list-style-type: none"> - appoint a separate O/C Exhibits if more than one Police officer is present - notify the occupier, owner or person present of the reason for the seizure and your authority for exercising the seizure power - make it clear to that occupier, owner or person present that a separate Police investigation is underway as a result of the plain view seizure.
9	Update the search and surveillance system with the outcome of executed search warrant and of any warrantless search powers exercised during the search (e.g. plain view seizure).
10	Submit a search warrant report if required by issuing officer.
11	<p>Debrief the execution of the search warrant with the agency, with a particular focus towards lessons learned for future search warrant operations.</p> <p>Note: Provide feedback to the District Manager Criminal Investigations about any issues identified at the debrief. Issues of national significance must be notified to the Director: National Criminal Investigations Group.</p>

Note: Be aware of conflicts of interest of Police staff and agency staff assisting before executing the search warrant. See the [Managing conflicts of interest](#) chapter and references to conflicts of interest in the [Code of Conduct](#).

Executing production order

The assigned officer exercising the production power must follow these steps:

Step	Action
1	See ' Executing production orders ' in Part 9 - Production orders and follow the guidance for execution.
2	<p>Debrief the execution of the production order with the agency, with a particular focus towards lessons learned for future production order operations.</p> <p>Note: Provide feedback to the District Manager Criminal Investigations about any issues identified at the debrief. Issues of national significance must be notified to the Director: National Criminal Investigations Group.</p>

Procedures applying to seized or produced things

(Applies to searches being undertaken with government agencies that do not have the ability to apply for a search warrant or production order)

Introduction

The Act imposes obligations on Police in relation to things seized or produced, including in relation to custody ([s150](#)), retention and return (ss [150](#) & [153](#)), and disposal (ss [149](#), [160](#) & [161](#), [163](#)). In addition, Police have to deal with privilege claims (ss [142](#) - [147](#)), applications for access or release (ss [156](#) - [159](#)), or disputes over ownership ([s154](#)).

If an item that has been seized or produced is transferred to a law enforcement agency or officer engaged by that agency, those obligations must then be carried out by the agency or officer the items were transferred to ([s90](#)).

The position is different if seized or produced items are transferred to an agency that is **not** a law enforcement agency. If seized or produced items were to be transferred to an agency that is not a law enforcement agency, Police would still be subject to the same obligations in respect of those items. For this reason, original exhibits will remain with Police and only copies will be provided to the other agency for investigative purposes.

Law enforcement agencies

A “law enforcement agency” is defined by the Act as a department of State, Crown entity, local authority, or other body that employs or engages enforcement officers as part of its functions.

An “enforcement officer” is a constable or any person authorised by an enactment specified in column 2 of the Act’s [Schedule](#), or by any other enactment that expressly applies any provision in Part [4](#) of the Act, to exercise a power of entry, search, inspection, examination, or seizure.

An example of a law enforcement agency is Customs which employs Customs officers who have a number of powers listed in the Schedule.

An example of an agency that is not a law enforcement agency is ACC.

Uncertain status of some agencies

These section 3 definitions of “law enforcement agency” and “enforcement officer” raise doubt whether MSD and MoH, both agencies with investigative and prosecutorial functions, are law enforcement agencies. While those agencies might have enforcement officers, they are enforcement officers for unrelated purposes. For example, Medical Officers of Health appointed under the Health Act 1956 have a variety of special enforcement powers that do not appear to extend to making application for and executing search warrants for matters that Police might be asked to seek a search warrant for.

Until the legislation is amended or a court judgement clarifies the narrow definitions in the Act, those agencies will not be treated as law enforcement agencies when they request assistance with search warrants and production orders. The practice will be that Police will carry out the functions of seizure, production, forensic copying in the case of electronic data, custody, storage and disposal of seized things.

O/C Exhibits

The O/C Exhibits must follow these steps when seizing or receiving produced evidential material for non-law enforcement agencies:

Step	Action
1	<p>Liaise with the agency's investigator to establish:</p> <ul style="list-style-type: none"> - contact point - ongoing progress of investigation - when seized or produced things should be disposed of.
2	<p>Record what was seized or produced (inventory of items) in the Police Register of Property (PROP). See the 'Exhibit and property management' chapter for procedures for handling and managing exhibits coming into Police possession.</p> <p>If a substantial number of items are seized or produced, use an assistant from the agency to assist with labelling, PROP recording and subsequent securing of exhibits into Police custody.</p>
3	<p>In the case of executed search warrants:</p> <ul style="list-style-type: none"> - See 'Procedure when exhibit is received' in the part 'Receiving property and exhibits' of the 'Exhibit and property management' chapter - Prepare '2Z' file with reference to PROP and exhibits - If required, apply to the District Court to further postpone notice and inventory requirements, using POL SZ2 (includes application and order) located on Police Forms. (s135)
4	<p>Receive claims of privilege in relation to any thing seized or produced and inform the agency of the claim.</p> <p>Apply to the court for determination of the claim using the appropriate application for determination of status or claim of privilege under section 145 or 146 liaising with the agency. (Forms located in Police Forms POL PR1, PR2, PR3 and PR4)</p>
5	<p>Secure and retain custody of seized or produced evidential material (exhibits).</p> <p>See also procedures for evidential material that includes electronic data below.</p>
6	<p>With the assistance of the agency, review the evidential material seized or produced and supply copies of documents and photographs of evidential material that will enable the agency to continue their investigation, decide the outcome and if required, prepare their prosecution case.</p> <p>Keep a record of all copies provided to whom and why by following the POL SZ19 (form) request process (see steps 5 and 6 in the table below).</p> <p>The original evidential material including forensic copies of electronic data must remain with Police.</p>
7	<p>Organise expert examination of retained evidential material on behalf of the agency if required, e.g.:</p> <ul style="list-style-type: none"> - document examination for handwriting etc. - fingerprint examination - electronic searches and forensic copying data (see evidential material that includes electronic data below).
8	<p>Ensure inventory of items, receipts, storage, chain of custody and disposal are fully documented.</p> <p>Note: The O/C Exhibits will be required as a witness for the agency's prosecution.</p>
9	<p>Communicate with and consider advice from the agency's investigator if any application for access to or release of seized or produced thing(s) is made.</p> <p>Note: Police are responsible for dealing with the application and corresponding with the applicant, not the agency.</p>
10	<p>If required, apply for extensions of time for holding thing(s) seized or produced and directions as to ownership or holding of seized things.</p>
11	<p>Instigate PROP record and "2Z" file closure when final disposal of seized or produced thing(s) has been effected.</p>

Evidential material that includes electronic data

In addition to following the steps outlined in the table under [O/C Exhibits](#), follow these steps if the warrant or order applies to evidential material that includes electronic data.

Step	Action
1	<p>See the 'Searching for and seizing computer material' in the 'Carrying out search powers with or without warrants' Search chapter for information about:</p> <ul style="list-style-type: none"> - what computer material can be searched for and seized under the Act - requirements when searching computers with or without a warrant - procedures for remote access searches - the principles that must be applied to all data evidence gathering. <p>Note: All remote access search warrant applications and searches must be forwarded to the Police Digital Forensic Unit (DFU) within the High Tech Crime Group at PNHQ. Specialist knowledge with remote access searches in this process is required to ensure national and international laws are observed.</p>
2	<p>Use the digital first responder (DFR) from your district as an assistant to identify and search for the electronic data. The DFR may provide an onsite (search warrant) or station (search warrant or production order) preview (if achievable) with the agency's investigator and preserve electronic evidence.</p>
3	<p>The DFR may arrange an achievable preview (to view and determine what is to be copied into a master and working copy) of electronic data by the agency's investigator to:</p> <ul style="list-style-type: none"> - copy only data believed to be evidential material of the suspected offence for which the warrant was issued: <ul style="list-style-type: none"> - at the scene, or - at station, or - seize (under search warrant) the electronic device for submitting to the DFU to have electronic data copied.
4	<p>If the DFR arranges a preview and forensic copying of electronic data either at the scene or at the station, then the master copy and working copy(s) of electronic data are to be sent to the O/C Exhibits for:</p> <ul style="list-style-type: none"> - storage - responding to any requests (POL SZ19, see steps 5 and 6 below) for a working copy from the requesting agency - evidential purposes - subsequent disposal.
5	<p>Requesting agency must prepare original and two copies, and sign Police form 'Request to transfer things from Police to other agencies' (POL SZ19) for working copies of electronic evidence. (POL SZ19 located in Police Forms> Search and Surveillance> Seizure Forms)</p>
6	<p>O/C Exhibits:</p> <ul style="list-style-type: none"> - ensures the form is correctly completed - checks those conditions listed in POL SZ19, and those that are not: <ul style="list-style-type: none"> - applicable, identified for deletion - shown on the form, but in the circumstances are required to be added under paragraph 4 - signs the original and two copies of the POL SZ19 with the decision: <ul style="list-style-type: none"> - 'approved' - (arrange secure delivery of working copy to requesting agency) - 'returned' (must outline what needs to be amended and/or conditions acceptable to Police in writing) - 'declined' (must outline the reasons for declining the request in writing). <p>Note: Original signed POL SZ19 to file, one copy to property record sheet exhibit records and a second copy returned to the requesting agency advising the decision of the request.</p>

7	<p>If the DFR or O/C Exhibits seizes an electronic device for forensic copying by the DFU, then follow the steps in the Preservation and recovery of electronic evidence chapter for locating, securing, packaging and submitting electronic evidence from:</p> <ul style="list-style-type: none"> - stand-alone computers - networked or business computers - cell phones - other electronic devices - non-electronic devices. <p>Note: Using the DFR will ensure the procedures outlined in the Preservation and recovery of electronic evidence chapter are satisfied.</p>
8	<p>Send the electronic devices (e.g. computer systems, data storage facilities, USB sticks, I-pads, smart phones) after being suitably packaged to the DFU at Auckland, Wellington or Dunedin for forensic copying evidential material.</p> <p>Note: Ensure a copy of the search warrant and contact details of the DFR, O/C Exhibits and agency's investigator are forwarded with the electronic device to the DFU.</p>
9	<p>Upon receipt of the electronic devices, an employee at the DFU may contact the O/C Exhibits or DFR to arrange a preview (if achievable) of electronic data contained in the electronic device with the agency's investigator. The preview is to:</p> <ul style="list-style-type: none"> - be conducted in a private viewing room at the DFU to determine what is evidential material - determine what is to be copied (note, only data believed to be evidential material of the suspected offence for which the warrant or order was issued is to be copied).
10	<p>DFU supervisor to ensure the master and working forensic copies of the electronic data is sent to the O/C Exhibits for:</p> <ul style="list-style-type: none"> - storage - responding to any requests (POL SZ19, see step 6) for a working copy from the requesting agency - evidential purposes - subsequent disposal.

Related information specific to O/C Exhibits

For more detailed procedures:

- applying to seized things, see [Part 12 - Procedures applying to seized and produced things](#)
- when searches involve privileged material, see [Part 13 - Privilege and immunities under the Act](#).

Assisting law enforcement agencies execute search powers

(Applies to searches and transfer of things being undertaken with law enforcement agencies that HAVE statutory search powers)

Law enforcement agencies with statutory search powers

Law enforcement agencies other than Police have statutory powers under various Acts permitting their enforcement officers to apply for and execute search warrants or to exercise warrantless search powers.

These agencies are responsible for providing the personnel and resources required for searches. However, where there is reasonable concern for the safety of those undertaking the search, or Police have a common interest in the process, you may be called on to assist. Do so only if operational requirements permit unless the search provision expressly requires a Police presence.

Approval of requests for assistance

A copy of the application for a search warrant and the actual signed search warrant must be attached to requests for Police assistance with searches.

The request must be considered and approved by a CIB supervisor of or above the position level of sergeant.

Before approving requests to assist with the execution of a search warrant, the supervisor must be satisfied that:

- the form and content of the warrant meets the requirements of section 103 (e.g. the warrant is signed and has not expired)
- risks associated with executing the search warrant have been assessed and measures necessary to mitigate the risk of harm to police and others identified. See [Risk assessment when planning searches](#) in “Part 5 - Carrying out search powers with or without warrants”.

Roles and responsibilities during searches

If the assessment reveals no risk with executing the warrant, the agency seeking assistance will take the lead with executing the search. Your primary role will be to maintain a presence and prevent any breach of the peace.

Should the assessment reveal a risk and unarmed tactical groups, AOS or STG be required to enter, secure and contain the scene for the search to be safely conducted, these tasks must be commanded by Police. When the search scene is secured and contained, the agency will take charge of the search and seizure elements.

The search warrants will have been issued under an enactment other than section 6 of the Search and Surveillance Act 2012, so police assisting the agency must familiarise themselves with

- the search powers that exist under that other enactment, and
- the limitations of search powers that may be specified in column 4 of the [Schedule](#) to the Search and Surveillance Act 2012 or the empowering enactment itself.

Plain view seizures by police during agency searches

If you undertake a plain view seizure, ensure:

- a constable is appointed as O/C Exhibits, being separate to the requesting agency’s appointment
- notify the occupier, owner or person present of the nature of the search power being exercised and the authority for it
- make it clear to that occupier, owner or person present that a separate Police investigation is underway as a result of the plain view seizure.

Transfer of things between law enforcement agencies

Things seized or produced to Police may be transferred to another [law enforcement agency](#). Use the ‘Transfer of things between law enforcement agencies’ form POL SZ18 found in Police Forms> Search and Surveillance> Seizure Forms.

Notes:

- The obligations under [Part 4](#) of the Search and Surveillance Act 2012 are transferred to the law enforcement agency after the transfer of the thing is carried out (s90).
- You may set conditions of the transfer on the POL SZ18.

Criminal disclosure and requests for information

Responsibility for criminal disclosure

The requesting agency is responsible for criminal disclosure under the [Criminal Disclosure Act 2008](#) during criminal proceedings brought by the agency.

Requests for official and personal information

Responding to requests for official information under the [Official Information Act 1982](#) and personal information under the [Privacy Act 2020](#) is the responsibility of:

	when the requested information relates to:
Police	<ul style="list-style-type: none"> - an application for a search warrant or production order made by Police - the briefing and execution of the search warrant or production order conducted by Police - the debrief of the Police execution of the search warrant or production order - the security and custody of seized or produced evidential material.
Requesting agency	<ul style="list-style-type: none"> - an application for a search warrant made by the agency - the briefing and execution of the search warrant, if led by the agency (limited to the execution, but does not include any investigation instigated by Police or any incident requiring a Police response during the execution) - the debrief, if the agency led the execution of the search warrant - the security and custody of seized evidential material by the agency - agency's investigation - agency's prosecution.

Managing media relating to agency requests for assistance

Releasing information about the agency's investigation

Enquiries from the media for information about the agency's investigation must be directed to that lead agency for reply.

Police employees must not comment on the agency's investigation, nor on matters that are sub-judice.

Releasing information about applications for and execution of search warrants

This table identifies the lead agency for responding to media requests for information in joint Police and agency operations.

Releasing information to the media about...	is the responsibility of:
applications for search warrants or production orders	<p>Police- when the application is signed by a constable</p> <p>Requesting agency- when the application is signed by a law enforcement officer from that requesting agency</p>
execution of search warrants	<p>Police -</p> <p>when a request has been made for police assistance to execute the warrant involving 1 or more of these activities:</p> <ul style="list-style-type: none"> - the application is signed by a constable - the place, vehicle or thing to be searched requires securing by police before the search can start (limited solely to securing and containing the search scene, when application is signed by requesting agency') - police presence is solely to prevent a breach of the peace, but an incident occurs involving police intervention (limited solely to the incident requiring police response when the application is signed by the requesting agency's investigator) - police instigating separate search powers from that authorised in the warrant and commencing a criminal investigation <p>Requesting agency-</p> <p>when a request has been made for police assistance to execute the warrant, and the search warrant application is signed by a law enforcement officer from that requesting agency, in which case, the agency will deal with the search of the place, vehicle or thing, except for that portion of the execution involving Police, which may have been, for example:</p> <ul style="list-style-type: none"> - being required to secure and contain the search scene - being present to prevent any breach of the peace and intervening to keep the peace - instigating separate search powers from that authorised in the warrant and commencing a criminal investigation.

Note: Never comment to the media before consulting with the agency. The same principle is expected to apply with the requesting agency.

Related information

For further guidance about the media, see:

- [Dealing with the media](#)
- [Releasing information to the media](#)

For further information about requests for official and personal information or about criminal disclosure, see these chapters in the Police Manual:

- [Privacy and official information](#)
- [Criminal disclosure](#)

Appendix 1 - Information required by Police for search warrant

Download the information to be included in the **draft agency affidavit to be provided to Police with request to apply for search warrant**:

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 [Draft agency affidavit for search warrants \(1\).doc](#)

62 KB

Appendix 2 - Information required by Police for production order

Download the information to be included in a **draft agency affidavit to be provided to Police with a request to apply for production order**.

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 [Draft agency affidavits for production orders \(1\).doc](#)

55 KB