

Policy	Information gathering at Crown Law
Summary of Crown Law information gathering activities	<p>Information gathering is a broad term. For the purpose of Crown Law’s legal work it may include:</p> <ul style="list-style-type: none"><li>(i) Information provided by clients when instructing Crown Law, or in the course of civil litigation, or passed to Crown Law by Crown Solicitors or public prosecutors;</li><li>(ii) Court processes for information gathering/sharing between each party to a litigation (e.g. discovery);</li><li>(iii) Information provided voluntarily by the person who is the subject of the information (or their counsel);</li><li>(iv) Information from public sources such as public records – e.g. the register of companies;</li><li>(v) Information provided by third parties such as witnesses;</li><li>(vi) Information gathered by any other means.</li></ul> <p>These are the activities covered by this policy and for which Crown Law and the Solicitor-General are responsible.</p> <p>Crown Law may, from time to time, engage external security consultants (private investigators) for operational reasons. This will generally be for routine tasks (such as serving documents) or tasks requiring contact/location of third parties such as witnesses but may also require information gathering on behalf of Crown Law. All instructions to external security consultants or private investigators for information gathering or to locate third parties, as opposed to business as usual service of documents to known addresses, must be authorised by a Deputy Solicitor-General or the Deputy Chief Executive as set out in this Policy.</p>

### Policy statement for information gathering by Crown Law

All information gathering by Crown Law will be carried out in compliance with: relevant legal requirements; SSC code of conduct, and the SSC model standards.

The majority of information gathered by Crown Law is likely to be from publicly available sources or gathered with the consent of the person who is the information subject. Gathering information in the form of witness statements is also a standard part of Crown Law's litigation work. Such information gathering is unlikely to raise contentious privacy, ethical or legal issues.

Crown Law does not have any specific statutory powers in relation to information gathering. This means that information gathering (including about individuals) is subject to standard legal limits relating to privacy, access to private property, and the privacy/security of communications by individuals, among other things.

Crown Law acts for a wide range of government agencies in a wide range of circumstances. The rules applying to information gathering will therefore vary depending on the specific context. This policy is designed to be applied flexibly depending on the particular circumstances and the relevant statutory and regulatory frameworks available. Crown Law staff must seek advice from a Senior Crown Counsel if clarification about the applicable legal position or the application of this policy is required in a particular matter.

Information gathering by Crown Law staff or external contractors must also meet all applicable ethical requirements. In particular, information will not be gathered using deceptive techniques. Once it is identified that a method of information gathering is lawful, consideration must also be given to whether the Crown *should*, in the particular circumstances, gather information by this method.

Information gathering from social media and other online sources must be approached with caution and restricted to what is publicly available (e.g. by using search engines or through subscription to a lawful data base) or available to all logged in users of a particular social media platform. Guidance from a Deputy Solicitor-General or the Deputy Chief Executive should be sought if there is any uncertainty about whether using an online source of information is suitable. In particular guidance should be sought if a 'friend' request or similar is necessary. For the avoidance of doubt, creation of accounts in false names, contact with third parties using a false social media account, or using other deceptive approaches is never acceptable. When using social media messaging applications counsel should be transparent about their identity, role and purpose in communicating with prospective witnesses or other members of the public.

### Procedure for exceptional information gathering

Information gathering by Crown Law staff which is beyond the scope of the activities listed at (i) to (v) above and which may compromise privacy interests is treated as exceptional and must be authorised on a case-by-case basis by a Deputy Solicitor-General or the Deputy Chief Executive as well as the client department.

Considerations that the Deputy Solicitor-General or Deputy Chief Executive may take into account include the extent to which the information is required, the techniques proposed for the information gathering, whether the information can be obtained from using less intrusive techniques, whether the proposed technique is legal and, if legal, whether the use of the proposed technique is proportionate given the importance of the information needed and the privacy and other interests engaged.

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### Procedure for instructing external security contractors

Any external security consultant services required for a Crown Law file should, if possible, be obtained from a provider which is included in the All-of-Government panel for these services. Instructions must clearly and fully specify the activities to be carried out by the external consultant.

Any instructions to an external security consultant must be authorised by a Deputy Solicitor-General or the Deputy Chief Executive as well as the client department. A copy of the instructions and the related authorisation should be recorded on both the file for the work and the Crown Law Contracts Register.<sup>1</sup>

Where external contractors are to be used for information gathering, this purpose must be specifically included in the authorisation by the Deputy Solicitor-General or Deputy Chief Executive. Instructions for information gathering must be clear as to the purpose and type of activity to be undertaken. In particular, external security consultants will generally be used where necessary for operational reasons, and never in order to undertake information gathering activities which could not be lawfully or ethically carried out by directly employed Crown Law staff.

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### Surveillance

In exceptional circumstances, in the context of civil litigation conducted by Crown Law, there may be a requirement for information to be gathered by means of surveillance. Surveillance includes gathering information by close observation of people, places, things or information, in either public or private places. Information gathering of this sort requires specific justification, management, and oversight at a senior level.

Any proposed surveillance or infringement of privacy interests must be specifically authorised by a Deputy Solicitor-General or the Deputy Chief Executive. In considering whether to authorise such activities, the Deputy Solicitor-General or Deputy Chief Executive will consider, in particular, whether they meet a standard of necessity which justifies the potential interference. The purpose, nature and limits on those activities, and the arrangements for oversight by Crown Law of the external contractors involved, must be specifically outlined as part of the documentation of the contract.

Surveillance activities instructed by Crown Law must not include any unlawful conduct.

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### Complaints, review and referrals

A complaint, concern or question about Crown Law information gathering activity will be referred to Crown Law's privacy officers in the first instance ([privacy.officers@crownlaw.govt.nz](mailto:privacy.officers@crownlaw.govt.nz)).

This policy will be reviewed by the Professional Standards Committee in line with their standard review process. Additional reviews in response to a complaint or concern may be required by the Solicitor-General at any time.

If a member of Crown Law staff becomes aware of information gathered illegally or unethically by a client department, the client should be alerted to the issues so that they can apply their internal processes to investigate or resolve it. If this does not resolve the concerns, a reference should be made to a Deputy Solicitor-General, the Deputy Chief Executive or the Solicitor-General to determine what further action is appropriate.

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<sup>1</sup> Contact the Crown Law Finance Procurement Specialist for assistance with recording information on the Contracts Register.

## INFORMATION GATHERING – POLICY

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**Further  
information**

- [SSC code of conduct](#)
- [SSC model standards \(pdf\)](#)
- [Crown Law transparency statement](#)

**Policy  
Information**

**Policy Owner** – Convenor, Professional Standards Committee  
Policy published on 30 April 2019. Reviewed in September 2020.  
Next review date 30 April 2024

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