

Targeting serious crime: extending information sharing

A Government discussion document

Hon Stuart Nash
Minister of Revenue
Minister Responsible for
the Serious Fraud Office

Hon Kris Faafoi
Minister of Customs



First published in September 2018 by Policy and Strategy, Inland Revenue, PO Box 2198, Wellington 6140.

Targeting serious crime: extending information sharing – a Government discussion document
ISBN 978-1-98-857300-7 (Online)



© Crown Copyright

This work is licensed under the Creative Commons Attribution 4.0 International Licence. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to the Crown and abide by the other licence terms.

The document is available at <http://taxpolicy.ird.govt.nz/publications/2018-dd-tsc-extending/overview>

CONTENTS

CHAPTER 1	Introduction	1
	Summary of proposals	1
	How to make a submission	2
CHAPTER 2	The main proposal	3
	The ‘test for sharing’ framework	3
	Information flows	4
	Information to be shared	5
	Safeguards	6
	Example scenarios	7
	Questions for submitters	8
CHAPTER 3	Information sharing	9
	The AISA framework	9
	The Serious Crimes Information Sharing Agreement	10
	Previous research and public consultation on sharing information for targeting serious crime	10

CHAPTER 1

Introduction

- 1.1 Government agencies share specified information as a means of improving the effectiveness and efficiency of the services they provide.
- 1.2 An existing information sharing agreement implemented in 2014 between Inland Revenue and the New Zealand Police enables Inland Revenue to provide information, under certain criteria, to the New Zealand Police to detect, prevent and prosecute serious crime. In the existing agreement, serious crime is defined as an offence punishable by a term of imprisonment of four years or more. The information exchanged since the agreement's implementation has delivered significant benefits in tackling serious crime.
- 1.3 This discussion document sets out proposals to extend the existing information sharing agreement to include the Serious Fraud Office and the New Zealand Customs Service, so Inland Revenue may share information with these agencies where it might be an advantage in dealing with serious crime.

Summary of proposals

- 1.4 The Government proposes allowing Inland Revenue to share information with the Serious Fraud Office and the New Zealand Customs Service, under the same framework currently used to share information with the New Zealand Police for targeting serious crime.
- 1.5 The existing framework and proposed model for sharing information with those agencies would allow an agency to request information, or for Inland Revenue to proactively provide information, when:
 - there are reasonable grounds, for the agency identifying the possible offence, for suspecting that a serious crime has been committed, is being committed, or will be committed;
 - the agency considers that there are reasonable grounds for suspecting the information is relevant to preventing, detecting, investigating, or providing evidence of a serious crime; and
 - Inland Revenue is satisfied that:
 - any statutory criteria relating to the release of protected information are met;
 - the information is readily available within Inland Revenue;
 - it is reasonable and practicable to communicate the information; and
 - it is in the public interest to communicate it.

- 1.6 These proposals do not alter the existing information sharing agreement with the New Zealand Police. They build on that activity to allow the New Zealand Customs Service and the Serious Fraud Office to provide services more efficiently, while maintaining the privacy protections provided by the Privacy Act 1993 and the Tax Administration Act 1994.
- 1.7 The proposals are discussed in detail in chapter 2. Details about information sharing and the existing information sharing agreement with the New Zealand Police are set out in chapter 3.
- 1.8 The Government welcomes feedback on all aspects of these proposals, including whether additional controls should be put in place.

How to make a submission

- 1.9 Submissions are invited on the proposals in this discussion document.
- 1.10 The closing date for submissions is **30 October 2018**.
- 1.11 Submissions can be made:
 - by completing the submission form at <https://taxpolicy.ird.govt.nz/tsc-submission>;
 - by email to policy.webmaster@ird.govt.nz with “Targeting serious crime: extending information sharing” in the subject line; or
 - by post to:
Targeting serious crime: extending information sharing
C/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
PO Box 2198
Wellington 6140
- 1.12 Submissions should include a brief summary of the major points and recommendations. They should also indicate whether it is acceptable for officials from Inland Revenue, the New Zealand Customs Service and the Serious Fraud Office to contact submitters to discuss the points raised, if required.
- 1.13 Submissions may be the subject of a request under the Official Information Act 1982, which may result in their release. The withholding of particular submissions, or parts thereof, on the grounds of privacy, commercial sensitivity, or for any other reason, will be determined in accordance with that Act. Those making a submission should clearly indicate if they consider any part of their submission should be withheld under the Act.

CHAPTER 2

The main proposal

- 2.1 The Government recognises that confidentiality is an important aspect of taxpayers' trust in the tax system. Therefore, when considering information sharing between Inland Revenue and other agencies, strict processes are involved and the benefits to society must be clear.
- 2.2 Unlike most government agencies that may be allowed to share information under the Privacy Act 1983's exceptions, Inland Revenue is limited by a secrecy rule, and is only allowed to share information with other agencies in accordance with an exception specified in the Tax Administration Act 1994.
- 2.3 One of the exceptions to Inland Revenue's general secrecy rule allows disclosure of information under an approved information sharing agreement (AISA) made under section 96J of the Privacy Act 1993. An AISA provides a flexible and robust framework for information sharing between agencies, while maintaining the protections provided by the Privacy Act 1993 and the Tax Administration Act 1994.
- 2.4 The Government is proposing that the existing AISA between Inland Revenue and the New Zealand Police, the *Serious Crimes Information Sharing Agreement*,¹ is extended to include two additional agencies, the Serious Fraud Office and the New Zealand Customs Service. These agencies have an interest in the efficient and effective reduction of serious crime. The extension to the agreement will assist them in identifying, investigating and prosecuting fraud, corruption, and cross-border crime.
- 2.5 Extending the existing agreement, rather than using other legislative mechanisms to share information, is considered the best option to enable these agencies to work together and provide an all-of-government response to serious crime. The proposed extension to the AISA would enable:
- information sharing from Inland Revenue to the Serious Fraud Office; and
 - information sharing from Inland Revenue to the New Zealand Customs Service.

The 'test for sharing' framework

- 2.6 It is proposed that the same framework that Inland Revenue and the New Zealand Police use to share information for serious crime should be applied to information sharing between Inland Revenue and the Serious Fraud Office, and between Inland Revenue and the New Zealand Customs Service.

¹ The AISA is available at <https://www.ird.govt.nz/aboutir/agreements/agreement-police/>.

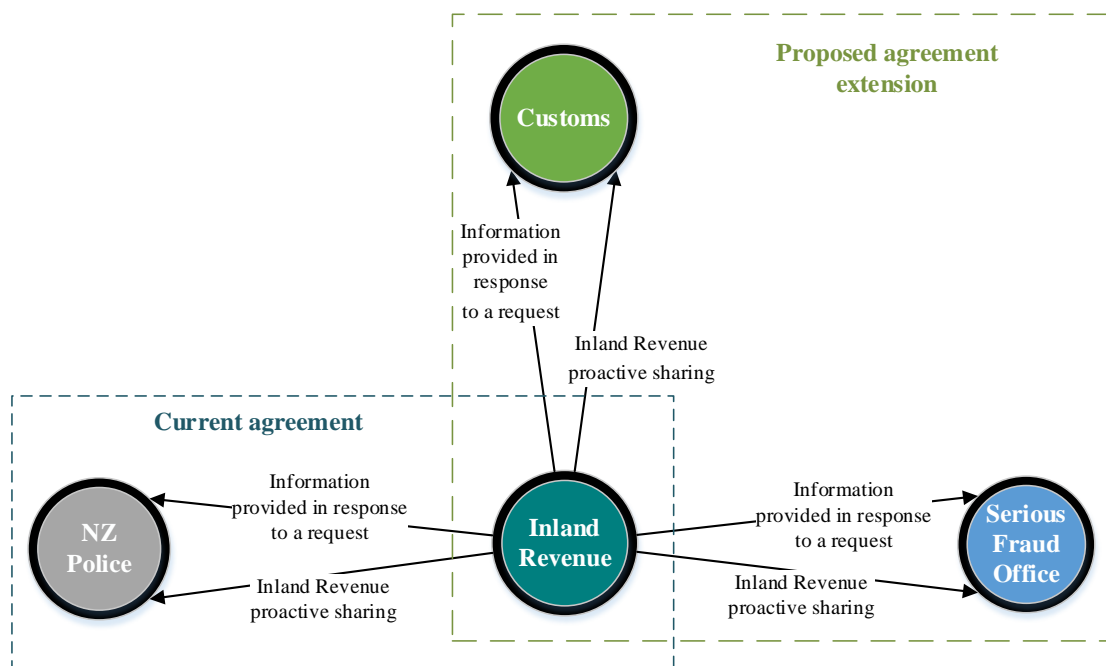
- 2.7 The information to be released from an agency must fit certain criteria. The first one is the ‘serious crime’ test, which requires that information must relate to a ‘serious crime’. Serious crime is defined as an offence punishable by imprisonment of four years or more (committed by an individual, or a similarly serious offence committed by a body corporate which would be punishable by imprisonment of four years or more if it had been committed by an individual).
- 2.8 The second test is the ‘reasonable grounds and relevance’ test, where the agency identifying the possible offence must also consider whether there are reasonable grounds for suspecting that a serious crime has been committed, is being committed, or will be committed; and that the information is relevant in the prevention, detection or investigation of, or there is evidence of, the serious crime. In the case of requests for information, when determining whether the information Inland Revenue holds is relevant, it may be necessary for Inland Revenue to seek further details from the requesting agency. In addition, sufficient information will need to have been provided to ensure that a match is made to the correct individual or entity for which information is sought.
- 2.9 The final test ensures the appropriate use of Inland Revenue’s resources. The test is essentially one of balancing the benefits of releasing information and the costs of preparing that information for release. Information would be provided only when:
- any statutory criteria relating to the release of protected information are met;
 - the information is readily available within Inland Revenue;
 - it is reasonable and practicable to communicate the information; and
 - it is in the public interest to communicate it.

Information flows

- 2.10 The flow of information in the existing AISA between Inland Revenue and the New Zealand Police is a one-way flow from Inland Revenue to the New Zealand Police either in response to a request or proactively. However, in the course of making a request, a limited amount of information is shared by the New Zealand Police to Inland Revenue to enable Inland Revenue to assess whether the request meets the ‘test for sharing’ criteria.
- 2.11 The proposed information flows for sharing between Inland Revenue and the Serious Fraud Office, and between Inland Revenue and the New Zealand Customs Service, would follow the same model, where information may be shared by Inland Revenue either in response to a request or proactively, provided the information fits the ‘test for sharing’ criteria outlined previously.
- 2.12 Figure 1 provides an overview of the proactive and reactive sharing that is in scope for the extended AISA. Information sharing between Inland Revenue and the New Zealand Police is already in place and will continue unchanged.

Information sharing with the New Zealand Customs Service and the Serious Fraud Office would be included under the AISA extension.

Figure 1: Overview of the current agreement and the proposed extension



Information to be shared

2.13 The financial focus of Inland Revenue’s activities reflects the types of investigations which Inland Revenue’s information would be useful for. This means it is more likely that Inland Revenue would have information that would assist with investigating financial crime, such as serious fraud or money laundering, rather than information that would assist in cases of serious physical offences. However, in the course of the department’s activities, Inland Revenue may also come across non-financial crimes, such as smuggling or drug offences.

2.14 Information to be shared should be broadly defined to include information about organisations, entities, and individuals that may be involved in, or otherwise connected to, a serious crime or individuals with whom they have a relationship.

2.15 For the purposes of illustrating the type of information to be shared, the information may relate to offending such as investor fraud, money laundering, drug manufacturing or distribution.

2.16 Examples of the information that Inland Revenue may share with the other agencies include:

- ***Information Inland Revenue holds on a specified person***

This may include their IRD number, entity information, the taxes for which they are registered, income history, tax payment history

(including any compliance issues), types of income, expenses, asset and liability information, and actions taken or planned to be taken in relation to the specified person. The information provided may relate to a victim of a serious offence rather than the perpetrator of the offence in order to identify a person who may have had a motive to harm the victim.

- ***Information Inland Revenue holds on other persons or entities that are associated with, or related to, the specified person***

This may include information necessary to understand beneficial ownership, or the nature of the structures the specified person is involved with.

- ***Information Inland Revenue holds that is aggregated, derived or inferred that is relevant to the specified person (or associated or related persons)***

This may include judgements about compliance behaviour and judgements on possible approaches by the specified person to compliance with tax and other legal obligations. Information shared would include documents Inland Revenue may have that would support another agency's enforcement action.

Safeguards

- 2.17 The Government takes the protection of personal information seriously. The proposed AISA would include controls and processes to minimise any risk of a privacy or secrecy breach occurring.
- 2.18 The sharing of information would only occur for the purpose set out in the AISA, which is for identification, investigation and prosecution of serious crime.
- 2.19 Memoranda of understanding agreed by the agencies involved would need to be in place before any information sharing could occur, and would provide:
- details on how the information exchanges would occur, such as what information can be exchanged and the safeguards to ensure the privacy of the information shared; and
 - the designated senior personnel of each agency responsible for the information sharing.
- 2.20 Information would be available only to authorised staff in each agency to ensure that information is treated appropriately under the proposed AISA. Staff who knowingly disclose information outside what is legally permitted would face potential criminal liability for breaching taxpayer secrecy.²
- 2.21 In the event of a privacy breach, despite the safeguards, measures will be in place to ensure that any affected individuals are identified as quickly as

² Staff would be breaching taxpayer secrecy under section 81 of the Tax Administration Act 1994. On conviction they could be liable to a fine of up to \$15,000 and/or term of imprisonment of up to six months under section 143E of the Tax Administration Act 1994.

possible. The necessary steps taken to minimise and mitigate any risk to those individuals are that:

- designated senior personnel in the relevant agencies would meet immediately to assess the issue and manage the response;
- information sharing would be immediately suspended if there was any risk of on-going breaches; and
- the Office of the Privacy Commissioner would be notified and involved where appropriate.

Example scenarios

2.22 The following examples illustrate scenarios where the ability to share information between Inland Revenue and other agencies would be of value.

Example scenario 1: Investigation into PAYE offending

An investigation, where there was suspicion of tax offending, provided evidence that suggested a businessman had set up complex business and tax structures, with appropriate cut-offs through a professional trustee company, to orchestrate tax evasion. This tax evasion was addressed as part of Inland Revenue's enforcement activities. However, the investigation also disclosed probable and significant fraud against a trustee. Because of Inland Revenue's secrecy rule, Inland Revenue was unable to advise the Serious Fraud Office about the suspected fraudulent activity. This meant the businessman could not be stopped and the suspected fraudulent transactions could not be raised with the Serious Fraud Office.

With the proposed AISA extension, Inland Revenue would be able to advise the Serious Fraud Office of the suspected fraud, and the case could be evaluated and investigated to avoid further impact to possible victims and public confidence.

Example scenario 2: Income suppression resulting in identifying suspected drug smuggling

During a tax audit investigation it becomes obvious that significant funds flowing through a taxpayer's bank account, on which tax has been paid, are not related to the core business activities. Further investigation reveals the potential for this taxpayer to be involved in smuggling drugs into New Zealand.

Under the proposed rules in the AISA, Inland Revenue could inform the New Zealand Customs Service of a suspected offence. Inland Revenue could then provide bank account information and records of statements made by the taxpayer in interviews to assist with an investigation into the suspected offence.

Example scenario 3: Investigation into a controlled drug importation across the border

In a New Zealand Customs Service investigation of a controlled drug importation, the offender claimed to have a legitimate business. However, Customs was unable to identify any business accounts at all, only a cash account. Since Customs could not prove the origin of the cash deposits, they were unable to confirm the cash came from the proceeds of the controlled drug sales, and the charges available to be laid against the individual were limited.

In this scenario, the proposed AISA extension would allow Inland Revenue to provide Customs with data that would have opened a number of new lines of enquiry, as well as enabling a better picture of the proceeds from the controlled drug sales. The offender would likely have received a sentence more suited to the offending.

Questions for submitters

- What do you think of extending Inland Revenue’s ability to share information about serious crimes with the Serious Fraud Office and the New Zealand Customs Service?
- Should information sharing for serious offences be extended further to include other government agencies in addition to the New Zealand Police, the New Zealand Customs Service and the Serious Fraud Office?
- Are the proposed safeguards sufficient for the protection of the information shared? What else should be considered?
- Are there any other things that should be considered as part of the proposed extension to the current information sharing agreement?

CHAPTER 3

Information sharing

- 3.1 Information sharing agreements between government agencies require the privacy of individuals to be considered and balanced against the need for government agencies to provide efficient, high quality services.
- 3.2 In the case of organised criminal activity, the benefits to society of sharing the information outweigh the reduction in privacy of certain individuals and the risks to the voluntary compliance model on which our tax system is based.
- 3.3 For most government agencies, the Privacy Act 1993 regulates information sharing between agencies. Principle 11 of the Privacy Act 1993 limits the disclosure of personal information, but contains exceptions that permit disclosures when necessary “to avoid prejudice to the maintenance of the law” and “for the protection of the public revenue”. However, those exceptions do not apply to Inland Revenue. Section 81 of the Tax Administration Act 1994 provides a strict rule of taxpayer secrecy, where the secrecy of all matters relating to the various tax Acts administered by the Commissioner of Inland Revenue must be maintained. At the same time, the Tax Administration Act 1994 recognises that the duty to maintain secrecy cannot be absolute and so there is a list of targeted exceptions to the general secrecy rule.

The AISA framework

- 3.4 One of the exceptions to the general secrecy rule of the Tax Administration Act 1994 allows for information to be shared under an approved information sharing agreement (AISA). An AISA is a legal framework under the Privacy Act 1993 which authorises the sharing of information between or within agencies for the purpose of delivering efficient and effective public services. It provides certainty around the purpose of information sharing, the use of the information shared, and management of privacy risks. When justified, an AISA can authorise modification or exemption to the privacy principles set out in the Privacy Act 1993.
- 3.5 The development of an AISA includes consultation with the parties involved, including government agencies and persons or organisations representing the interests of individuals whose information will be shared. This process involves continuous oversight from, and consultation with, the Privacy Commissioner. An AISA ultimately requires an Order in Council, the associated Ministerial and Cabinet approvals, and regulatory impact analysis.
- 3.6 The AISA framework allows future amendments to be made when there is a need for including other agencies, new information and new purposes for sharing. However, any changes would still go through the same robust process undertaken for its development, to ensure the Privacy Act 1993

safeguards are maintained and consultation is undertaken within government, and with the public.

The Serious Crimes Information Sharing Agreement

- 3.7 In 2014, the *Serious Crimes Information Sharing Agreement* between Inland Revenue and the New Zealand Police was implemented to help reduce the level of serious crime and assist investigations into serious crime in New Zealand.
- 3.8 Under the information sharing agreement, the New Zealand Police can request a range of information from Inland Revenue when investigating a serious crime. There can be multiple information requests associated with the same case or prosecution. Inland Revenue can also proactively provide information to the New Zealand Police. This includes information about individuals and their tax returns, debt and audit history, and information about individuals who are linked to them. Non-individual information is also included in the current agreement and Inland Revenue provides this information when it is clearly relevant to the serious offence being investigated.
- 3.9 In the 12 months to 30 June 2017, Inland Revenue received over 200 requests for information from the Police.³ At the time of reporting these requests had resulted in 34 prosecutions, with 96 cases still under investigation. The estimated cost of the information sharing agreement for Inland Revenue was \$19,995 for the year.

Previous research and public consultation on sharing information for targeting serious crime

- 3.10 In 2014, Inland Revenue partnered with an external research firm to conduct interviews and an online survey on sharing information for targeting serious crime. The purpose of the research was to better understand how Inland Revenue's involvement in information sharing to support the Government's response to serious crime could affect perceptions of the integrity of the tax system.
- 3.11 Overall, the research found that Inland Revenue's participation in information sharing actions to address serious crime was considered to be acceptable if it was "fit-for-purpose". The concerns raised by the research participants included balancing the:
- individual's right to privacy with the social benefits to society;
 - nature of the serious crime with the type and breadth of information requested; and
 - intended and potential use of the information with the risk of error and its misuse.

³ See page 171 of Inland Revenue's 2017 Annual Report, available at <https://www.ird.govt.nz/aboutir/reports/annual-report/annual-report-2017/>.

- 3.12 The research results also indicated that cross-government information sharing to address serious offending is an all-of-government issue and is not specific to Inland Revenue. Tax secrecy does not appear to be a significant concern when considering Inland Revenue's involvement in cross-government information sharing to address serious crime. However, the potential impact on citizens' trust in Inland Revenue and the subsequent impact on the integrity of the tax system would need to be considered. Provided the Government communicates that Inland Revenue will share specific taxpayer information only under specific circumstances, both trust and integrity will be maintained despite selectively relaxing tax secrecy regulations to identify and stop serious crime.
- 3.13 Submissions on the 2013 discussion document *Targeting serious crime*⁴ indicated more support than opposition to sharing tax information to prevent serious crime. In general, submissions in favour of the proposals noted that information should flow freely across government departments; that serious criminals should not be protected by privacy laws; and that a greater ability to share information across the government would result in more resources being freed up and improve government agencies' ability to detect people committing serious crimes.
- 3.14 Table 1 sets out the key concerns raised in submissions from the previous public consultation, and the officials' responses to these.

Table 1: Key concerns raised in submissions from previous public consultation

Topic	Area of concern	Officials' response
Integrity of the tax system	Whether the proposals would have a more than a minor effect on the integrity of the tax system and consequently on revenue collection.	Officials noted that although sharing information may negatively impact the integrity of the tax system, not sharing information to assist in combatting serious crime may also have a negative impact as it may be perceived as negligence.
Resources	Whether the proposals would significantly impact Inland Revenue resources, and whether Inland Revenue staff are sufficiently experienced or resourced to make the required judgments to authorise the release of information.	This has been addressed by having a small dedicated team with specialised training to handle such requests.

⁴ *Targeting serious crime: a government discussion document about the sharing of tax information to prevent serious crime*, April 2013, available at <http://taxpolicy.ird.govt.nz/publications/2013-dd-targeting-serious-crime/overview>.

Topic	Area of concern	Officials' response
Security	How secure the information would be, and whether information shared about a suspected serious crime would be used for the prosecution of a lesser crime (in place of the original suspected serious crime).	<p>Inland Revenue is generally recognised as having good information security, alongside the protections of the strict secrecy requirements imposed on staff and anyone who receives tax information.</p> <p>However, officials noted a privacy breach is clearly one of the risks associated with any information sharing proposal and requires careful management.</p> <p>Agencies must also enter into a memorandum of understanding before any information sharing can take place. This is a formal agreement that details how information will be handled and sets out a process to be followed, should a breach occur, despite the protections in place. If there is considered to be a risk of on-going breaches, information sharing will be immediately suspended.</p> <p>On using information for the appropriate purpose (serious crime), if there are concerns that an agency is not meeting the terms and requirements of the information sharing agreement, the agreement could potentially be suspended or cancelled.</p>
Undue inhibition of rights and privileges	Whether the proposals unduly infringe taxpayers' rights against unreasonable search and seizure, and privilege against self-incrimination.	Officials noted that the proposed information sharing would not alter the way in which the Commissioner of Inland Revenue will be exercising her statutory powers, and therefore officials do not consider that there is any undue imposition on an individual's rights.
Impact on Inland Revenue's existing powers	Whether the proposals might result in challenges to the exercise of Inland Revenue's search and seizure powers in tax cases, due to the possibility of the information being used in other criminal proceedings.	Officials noted that the Commissioner would not, in any circumstances, be using her information-gathering powers to look for information on behalf of other agencies. It seems unlikely that the Commissioner would be barred from exercising her statutory powers if a taxpayer was concerned about that information possibly being used in an unrelated prosecution.
Transparency and notification	Whether the proposals provided sufficient transparency and notification of those affected.	Although officials appreciated the concern raised, notification is not appropriate given the purposes of the proposal. Notifying someone that their information has been shared, for example with the Police, would serve to put the person on notice that they were subject to a criminal investigation and render the proposal largely ineffective. Similar exclusions from notification are included in the Privacy Act 1993.