

CONSULTATION ON PROPOSED AMENDMENT TO JUSTICE SECTOR UNIQUE IDENTIFIER CODE 1998

INFORMATION PAPER

The Privacy Commissioner proposes to amend the Justice Sector Unique Identifier Code 1998, at the request of the Ministry of Social Development.

THE JUSTICE SECTOR UNIQUE IDENTIFIER CODE 1998

The Justice Sector Unique Identifier Code (the Code) was issued in 1998 by the then Privacy Commissioner, Bruce Slane.

The Code modifies principle 12 (section 6 of the Privacy Act 1993 refers) to allow justice sector agencies (as specified in the Code) to issue and share a unique identifier for individuals being processed through the justice system. Principle 12 governs how "unique identifiers" – such as IRD numbers, bank client numbers, driver's licence and passport numbers – can be used. The issue and sharing of a unique identifier by justice sector agencies can only be done for certain purposes, as specified in the Schedule to the Code.

The unique identifier, and associated justice sector information, is stored in the justice sector data warehouse.

A copy of the Justice Sector Unique Identifier Code 1998 is attached as Appendix A.

PROPOSED AMENDMENT

The Privacy Commissioner proposes to amend the Code to:

- 1) add the Ministry of Social Development (the Ministry) to the agencies specified as justice sector agencies in the Code; and
- 2) permit the Ministry to assign a unique identifier originally assigned by Police for the purposes of:
 - a) the management and review of family group conferences under Part 4 of the Children, Young Persons, and their Families Act 1989;
 - b) communication with other justice sector agencies where it is necessary for the efficient conduct of family group conferences and Court proceedings;
 - c) providing information on the outcome of family group conferences, the imposition of orders and sentences and the efficient administration of orders and sentences; and
 - d) statistical and other research in which the resulting reports or compilations will not be in a form that could reasonably be expected to identify any individual concerned.

A copy of the proposed amendment to the Code is attached as Appendix B.

REASONS FOR THE PROPOSED AMENDMENT

Family Group Conferences: Management, Review, Efficient Conduct and Outcomes

The enactment of the Children, Young Persons and their Families Act 1989 (the Act) introduced the Family Group Conference system. The Act moved the emphasis, for how New Zealand deals with youth offending, from an approach based on the criminal law model to one based on a care and welfare model. The Family Group Conference system was central to this new approach.

The Act sets out the various powers and procedures for youth justice cases and powers of Police in respect of young persons. Care and Protection Co-ordinators and Youth Justice Co-ordinators (appointed with the Ministry of Social Development under Part 10 of the Act) play important statutory roles in all of these procedures.

Family Group Conferences, run by the Ministry-based Co-ordinators, are a necessary step in many of the proceedings of the Youth Court. In addition, some of the orders that may be made by the Youth Court include various forms of supervision of the young person by the Ministry of Social Development.

All of these functions are central to New Zealand's youth justice system. **All require that the Co-ordinators (or, on occasion, social workers to whom Co-ordinators may delegate some of their powers) maintain close and detailed liaison with Police and the Ministry of Justice (Courts) about individual cases.**

Statistical and Other Research

The Report of the Ministerial Taskforce on Youth Offending in April 2002 highlighted a need to improve the quality and robustness of information about offending by children and young people in New Zealand to support effective interventions, policy and practice. To address this issue, the Taskforce recommended development of an Integrated Youth Justice Dataset incorporated into the justice sector data warehouse.

In 2002, the government approved and promulgated a "Youth Offending Strategy" which endorsed this recommendation from the Report.

Initially the Integrated Youth Justice Dataset collected and analysed Youth Court records. Now the Dataset is taking in and integrating data from other agencies. The object of the Dataset is to produce statistics that would be available to the Ministry of Justice, Police, the Ministry of Social Development and potentially other agencies, to monitor what is happening in the youth justice sector, measure effectiveness, and guide policy development.

A particular need is to evaluate the effectiveness of different interventions, ranging from Police warnings to formal prosecutions. Several types of intervention involve the Ministry of Social Development, which arranges and conducts Family Group conference procedures.

The Ministry also oversees other measures, including programmes that work with young people to equip them with skills, attitudes and support designed to avoid further offending. In order to produce statistics to measure and evaluate the effectiveness of different approaches, it will be necessary to collate data about identifiable individuals over time, based on data from Police, the Ministry of Social Development, the Ministry of Justice and possibly Corrections.

Experience has demonstrated that identifying individual youth from the records of separate agencies poses particular difficulties without common identifiers. People can be known by different names in the respective records of the Ministry of Justice and the Ministry of Social Development; records of date of birth are not always reliable; and addresses change sufficiently often that they are little help in matching records.

The use of a common identifier, or at least an easy cross-indexing of separate identifiers, can allow for more accurate statistical information. It can also avoid the work involved in the correlation of (sometimes unreliable records in bulk required for statistical analysis).

CONSULTATION

If you wish to make a submission on the proposed amendment to the Code, please send it either by email to code@privacy.org.nz, or by mail to:

Sarah Oliver
Office of the Privacy Commissioner
PO Box 10094
The Terrace
Wellington 6143

The closing date for receipt of submissions is **Friday 14 November 2008**.

Appendix A

Justice Sector Unique Identifier Code 1998

Title

1. This code of practice may be referred to as the Justice Sector Unique Identifier Code 1998.

Commencement

2. This code is to come into force on **30 June 1998**.

Note: The code has been amended by Amendment No. 1, which commences on 2 March 2006. A full version of Amendment No. 1 is available at www.privacy.org.nz.

Interpretation

3. (1) In this code:

justice sector agency means an agency referred to in clause 4(1);

[**offence** means an indictable offence, a summary offence, or an infringement offence as those terms are defined in section 2 of the Summary Proceedings Act 1957, and includes any action other than an indictable offence, a summary offence or an infringement offence, in respect of which a warrant for imprisonment, order for community work, or warrant to arrest is imposed against an individual by any New Zealand court];

Note: Amendment No. 1 added the definition of offence.

rule means the rule set out in clause 5;

the Act means the Privacy Act 1993.

Note: Amendment No. 1 removed the definitions of Law Enforcement Agency Record Number and major traffic offence.

- (2) Terms and expressions used in this code and defined in the Privacy Act 1993 or Acts Interpretation Act 1924 have the same meanings respectively as in those Acts.

Application of code and subrules

4. (1) This code applies to the following agencies and to agents exercising any of the functions of any such agency under delegated or other authority.

(a) ...

Note: Amendment No. 1 removed the reference to the Department of Courts.

(b) the Department of Corrections;

[(c) Land Transport New Zealand];

Note: Amendment No. 1 substituted Land Transport New Zealand for the Land Transport Safety Authority.

(d) the Ministry of Justice;

(e) the Ministry of Transport; and

(f) the Police.

- (2) Subrules (1), (2)(a) and (4) apply only in relation to the assignment of unique identifiers after the commencement of the Act.

- (3) Subrules (2)(b) and (3) apply only in relation to the assignment of unique identifiers after the commencement of this code.

- (4) Subrule (5) applies to any unique identifier whether assigned before or after the commencement of the code.

Rule modifying the application of information privacy principle 12

5. Information privacy principle 12 is modified in accordance with the Act by the following rule which applies to the justice sector agencies referred to in clause(4)(1):

Rule 12
Unique Identifiers

- (1) A justice sector agency must not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable to agency to carry out any one or more of its functions efficiently.
- (2) A justice sector agency must not assign to an individual a unique identifier that, to that agency's knowledge, has been assigned to that individual by another justice sector agency, unless:
- (a) those two agencies are associated persons within the meaning of section OD7 of the Income Tax Act 1994;
 - or
 - (b) subrule (3) applies.

- [(3) A justice sector agency may assign to an individual being processed through the justice system a unique identifier previously assigned by another justice sector agency in the circumstances set out in the Schedule.]

Note: Amendment No. 1 substituted the new subrule (5)(3).

- (4) A justice sector agency that assigns unique identifiers to individuals must take all reasonable steps to ensure that unique identifiers are assigned only to individuals whose identity is clearly established.

Note: A justice sector agency will only assign a unique identifier to an individual whose identity has been verified using a protocol developed specially for this purpose by the justice sector. The protocol in question relies on data such as the name, address and date of birth of an individual, and in some instances on fingerprint records held by the Police.

- (5) A justice sector agency must not require an individual to disclose any unique identifier assigned to that individual unless the disclosure is for one of the purposes in connection with which that unique identifier was assigned or for a purpose that is directly related to one of those purposes.

Schedule

Agency originally assigning the unique identifier	Circumstances in which unique identifier is originally assigned	Circumstances in which unique identifier may be re-assigned by other justice sector agencies
Police	Assigned to an individual as a result of the alleged commission by that individual of an offence.	Ministry of Justice – may assign for the purposes of (a) management of proceedings, enforcement of fines and other orders, and communication with other law enforcement agencies where this is necessary for the efficient conduct of proceedings, including the administration of resulting sentences and the enforcement of fines and other orders; and (b) statistical and other research in which resulting reports or compilations will not be in a form that could reasonably be expected to identify any individual concerned.

		<p>Department of Corrections - may assign for the purposes of (a) providing information on the imposition of sentences, and the efficient administration of sentences and other orders, and the management of offenders subject to such sentences and orders; and (b) statistical and other research in which resulting reports or compilations will not be in a form that could reasonably be expected to identify any individual concerned.</p> <p>Land Transport New Zealand - may assign for the purposes of (a) recording notifications from Police of individuals forbidden to drive, and advising Police when those individuals have had valid licences issued; and (b) recording offence notifications from Police of individuals where identification was not confirmed, and advising Police of valid licence details when so determined; and (c) statistical and other research in which resulting reports or compilations will not be in a form that could reasonably be expected to identify any individual or commercial operator concerned.</p>
Ministry of Justice	Assigned to an individual as a result of the alleged commission by that individual of an offence.	Police - may assign for the purposes of the prevention, detection, investigation, and prosecution of offences and the

		<p>administration of sentences and the enforcement of fines and other orders.</p> <p>Department of Corrections - may assign for the purposes of (a) providing information on the imposition of sentences, and the efficient administration of sentences and other orders, and the management of offenders subject to such sentences and orders; and (b) statistical and other research in which resulting reports or compilations will not be in a form that could reasonably be expected to identify any individual concerned.</p>
Land Transport New Zealand	Assigned to an individual as a result of the issue of a driver licence.	<p>Police – may assign for the purposes of the prevention, detection, investigation, and prosecution of offences and the administration of sentences and the enforcement of fines and other orders.</p> <p>Ministry Justice – may assign for the purposes of (a) management of proceedings, enforcement of fines and other orders, and communication with other justice sector agencies where this is necessary for the efficient conduct of proceedings, including the administration of resulting sentences and the enforcement of fines and other orders; and (b) statistical and</p>

		<p>other research in which resulting reports or compilations will not be in a form that could reasonably be expected to identify any individual concerned.</p> <p>Department of Corrections - may assign for the purposes of (a) providing information on the imposition of sentences, and the efficient administration of sentences and other orders, and the management of offenders subject to such sentences and orders; and (b) statistical and other research in which resulting reports or compilations will not be in a form that could reasonably be expected to identify any individual concerned.</p> <p>Ministry of Transport - may assign for the purpose of verifying the identity of people who are, or apply to be, registered as owners of vehicles on the Motor Vehicle Register; or holders of licences issued under the Road User Charges Act 1977.</p>
Department of Corrections	Assigned for the purposes of providing information on the imposition of sentences, and the efficient administration of sentences and other orders, and the	<p>Ministry of Justice – may assign for the purposes of statistical and other research in which resulting reports or compilations will not be in a form that could reasonably be expected to identify any individual concerned.</p>

	management of offenders subject to such sentences and orders.	
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Note: Amendment No. 1 added the Schedule.

Legislative history

5 February 1998 – Proposed code released for public consultation

30 March 1998 – Closing date for public submissions

3 April 1998 – Code issued

16 April 1998 – Date of notification in the Gazette

30 June 1998 – Code commences

10 November 2005 – Proposed amendment released for public consultation

16 December 2005 – Closing date for public submissions

22 December 2005 – Amendment issued

19 January 2006 – Date of notification in the Gazette

2 March 2006 – Amendment commences

Appendix B

Justice Sector Unique Identifier Code 1998 – Proposed Amendment No. 2

I, MARIE SHROFF, Privacy Commissioner, now issue under section 51 of the Privacy Act 1993, this amendment to the Justice Sector Unique Identifier Code 1998.

1. Title

This amendment may be referred to as the Justice Sector Unique Identifier Code 1998 Amendment No. 2.

2. Commencement

This amendment will come into force on [date].

3. Amendment to clause 4

Subclause 4(1) is amended in the following manner:

Insert: (g) the Ministry of Social Development

4. Amendment to Schedule to code

The Schedule is amended in the following manner:

Agency originally assigning the unique identifier: Police

Circumstances in which unique identifier may be re-assigned by other justice sector agencies:

Insert:

Ministry of Social Development – may assign for the purposes of (a) the management and review of family group conferences under Part 4 of the Children, Young Persons, and their Families Act 1989; and (b) communication with other justice sector agencies where it is necessary for the efficient conduct of family group conferences and Court proceedings; and (c) providing information on the outcome of family group conferences, the imposition of orders and sentences and the efficient administration of orders and sentences; and (d) statistical and other research in which resulting reports or compilations will not be in a form that could reasonably be expected to identify any individual concerned.

Explanatory note

This is not part of the amendment, but is intended to indicate its general effect.

This amendment changes the Justice Sector Unique Identifier Code 1998 by:

- Adding the Ministry of Social Development to the list of “justice sector agencies” to which the code applies
- permitting the Ministry to assign a unique identifier originally assigned by Police for certain specified purposes.

The amendment is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989 – Privacy Act 1993, section 50.