

**CODE OF CONDUCT ISSUED UNDER SECTION 138 OF
THE HOUSING RESTRUCTURING AND TENANCY
MATTERS ACT 1992 FOR OBTAINING INFORMATION
UNDER SECTION 125 OF THAT ACT**

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I, Brendan Boyle, Chief Executive of the department that is, with the authority of the Prime Minister, for the time being appointed as the agency under section 100 of the Housing Restructuring and Tenancy Matters Act 1992, having consulted with the Privacy Commissioner, issue the following Code of Conduct under section 138 of the Housing Restructuring and Tenancy Matters Act 1992 to take effect on 1 July 2014.

Every officer of the department must, on and after 1 July 2014, comply with this Code of Conduct when obtaining information under section 125 of the Housing Restructuring and Tenancy Matters Act 1992.

Dated this 9 day of July 2014



Brendan Boyle
Chief Executive
Ministry of Social Development

Code of Conduct

[Note: Terms that are underlined are explained further in Appendix A]

1 Interpretation

In this Code, unless the context requires a different interpretation:

Act means the Housing Restructuring and Tenancy Matters Act 1992

agency has the same meaning as in section 2(1) of the Act

Code or code of conduct has the same meaning as paragraph in section 2(1) of the Act

income-related rent, in relation to a tenant, means a rent calculated for the tenant under or in accordance with the Act

lawyer has the same meaning as in section 125(9) of the Act

officer means an officer or employee of the agency with the delegated authority of the Chief Executive, or any other person with authority to give a section 125 notice pursuant to section 139 of the Act

prejudice the maintenance of the law includes an action that would, or would be likely to, prejudice the prevention, detection, investigation, prosecution or punishment of an

offence; or the imposition of a pecuniary penalty

relevant person for the purposes of this Code means:

- (a) a tenant as defined in section 2(1) of the Act;
- (b) a prospective tenant as defined in section 2(1) of the Act;
- (c) any person who was formerly a tenant or prospective tenant;
- (d) any person who is or was the spouse or partner of any of those persons listed in (a) to (c) above, at the relevant time.

reasonable cause includes—

- (a) cause to suspect that the relevant person—
 - (i) has committed an offence under the Act; or
 - (ii) has obtained by fraud any income-related rent or social housing; or
 - (iii) as a result of committing fraud, pays or continues to pay an income-related rent or remains a tenant of social housing or particular social housing;
- (b) the fact that the relevant person has failed, within a reasonable time, or has refused to provide information in accordance with a section 125 notice requirement made to that person under clause 5 of this code;
- (c) where a relevant person has been identified on the basis of a discrepancy produced by an authorised information matching programme (as those terms are defined in Part 10 of the Privacy Act 1993) conducted by the agency;
- (d) where the officer concerned knows that the relevant person does not reside at the address held by the agency and cannot be contacted through that address;
- (e) being unable to satisfactorily ascertain the financial circumstances of any relevant person.

section 125 notice means a written notice issued under section 125 of the Act for the purposes set out in section 125(1) of the Act

tenant, for the purposes of this Code, means every person to whom any social housing is let or to be let, and includes a prospective tenant

working day means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (c) a day in the period commencing on 25 December in any year and ending with 15 January in the following year; and
- (d) the day observed as the anniversary day in the province where the

relevant person resides according to the agency's records.

2 Application and scope of Code

- 2.1 This Code is issued under section 138 of the Act and applies to section 125 notices to produce information or documents for any of the purposes set out in section 125(1) and (3) of the Act (refer to Appendix B).
- 2.2 All section 125 notices must be given in accordance with this Code.
- 2.3 Any person who has received, or who is the subject of, a section 125 notice may complain to the Privacy Commissioner about a breach of this Code and Part 8 of the Privacy Act 1993 applies to such complaints as if this Code were a Code of Practice under Part 6 of the Privacy Act 1993.
- 2.4 This Code may be reviewed, amended, or revoked from time to time, in consultation with the Privacy Commissioner.

3 Who must comply with the Code

- 3.1 Pursuant to section 139 of the Act, the following persons must comply with the code of conduct when exercising the power to require information under s125 of the Act:
- (a) the agency, the chief executive of the agency, and every employee of the agency;
 - (b) every person to whom the power to require such information has been delegated under s137 of the Act;
 - (c) every person or body corporate engaged by the agency under a contract for services providing for the person to exercise the power to require such information;
 - (d) every employee of a person or body corporate referred to in paragraph (c).

4 Steps to be taken prior to giving a section 125 notice

- 4.1 When seeking information or documents about a relevant person and/or any other person, the officer must, as the case may require,—
- (a) first request the information or documents from the relevant person and/or that other person; and
 - (b) give the relevant person and/or that other person reasonable time to provide the information or documents and inform the relevant person and/or that other person of that time
- except where the officer has reasonable grounds to believe that compliance would prejudice the maintenance of the law.
- 4.2 Notwithstanding clause 4.1, an officer may give a section 125 notice to a

relevant person requiring that relevant person to produce information or documents about him or her.

5 Giving of section 125 notices

5.1 Section 125 notices must be for an authorised purpose.

Section 125 notices may only be given for one or more of the purposes listed in section 125(1) and 125(3) (refer to Appendix B).

5.2 Subject to clauses 6 and 7 of this Code, an officer may give a section 125 notice to any person (except to an officer of the Court) if, after having complied with clause 5.1, he or she has reasonable cause

provided that reasonable cause is not required before giving a section 125 notice in respect of a relevant person to:

- (a) a lawyer;
- (b) an employer or former employer of the relevant person; or
- (c) a department, departmental agency, Crown entity or financial institution.

5.3 Form and content of section 125 notice

Every section 125 notice must—

- (a) be in writing; and
- (b) advise of the existence of this Code and notify the person to whom the notice is given how that person can view or obtain a copy; and
- (c) specify that the notice is given under section 125 of the Act; and
- (d) specify the information or documents sought; and
- (e) specify the date by or period within which the recipient must provide the required information or documents and the form in which they are to be provided; and
- (f) notify the recipient of their right to complain to the Privacy Commissioner that the notice breaches the Code; and
- (g) comply with Information Privacy Principle 3 of the Privacy Act.

5.4 The date or period specified in clause 5.3(e) must not be less than 5 working days after the notice is given.

6 Limitations on what may be requested from specified groups

6.1 Restriction on type of information sought from employers or former employers

Any section 125 notice given under clause 5 to an employer or former employer must—

- (a) require only information or documents relating to the employment and

- address of an employee or former employee; and
- (b) not require employers or former employers to provide information, documents or any part of a document that relates solely to the marital status of an employee or former employee.

6.2 Restriction on type of information sought from the Education Sector

No section 125 notice may be given to any early childhood centre within the meaning of section 308(1) of the Education Act 1989 (including any kindergarten, crèche, playcentre, or kohanga reo), or any school, requiring it or any member of its staff to—

- (a) give an opinion about whether a child's parents or caregivers are married or in a relationship in the nature of marriage; or
- (b) provide any information concerning any confidential communication made by a relevant person or any other person to a staff member of any early childhood centre or school in the course of a child's education.
- 6.3 In clause 6.2(b) "confidential communication" does not include any standard information provided by the relevant person and required for the purpose of enrolling or re-enrolling a child in any such educational establishment and that is recorded on any form or record.

6.4 Restriction on type of information sought from the Health and Disability Sector

No section 125 notice may be given to any hospital, medical clinic, registered medical practitioner, nurse, midwife, or clinical psychologist, or any person that a hospital, clinic, registered medical practitioner, nurse, midwife, or clinical psychologist employs, requiring it or them to—

- (a) give an opinion about whether a relevant person is married or in a relationship in the nature of marriage; or
- (b) provide any information concerning any confidential communication made by a relevant person or any other person to a registered medical practitioner, nurse, midwife, or clinical psychologist for the purpose of diagnosis or treatment.
- 6.5 In clause 6.4(b) "confidential communication" does not include any standard administrative details provided by the relevant person and required for the purpose of pre-admission or administration that is recorded on any form.
- 6.6 The limitations under this clause are pursuant to section 138(2)(b) of the Act.

7 Further limitations on what may be requested

- 7.1 No person is required to provide any information or produce any document that would be privileged in a court of law, except as provided in

clause 7.2.

- 7.2 No person is required to provide any information or to produce any document that is legally professionally privileged:

provided that this subclause does not apply to information or any document that consists wholly or partly of, or relates wholly or partly to, —

- (a) the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person); or
- (b) investment receipts (being receipts arising or accruing from any money lodged at any time with a lawyer for investment) of any person or persons (whether the lawyer, his or her clients, or any other person or persons)

and is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared by or kept in connection with a trust account of the lawyer.

- 7.3 Where any person refuses to disclose any information or document on the ground that it is privileged under this clause, the agency or that person or any other person to whom the information or document relates may apply to a District Court Judge for an order determining whether or not the claim of privilege is valid; and, for the purpose of determining any such application, the Judge may require the information or document to be produced to the Court.

8 Enforcing compliance with section 125 notices

- 8.1 No enforcement proceedings under section 130 of the Act are to be commenced unless the officer has advised the recipient of a section 125 notice that—

- (a) no person will be required to provide any information or documents that would be privileged in a court of law except as provided in clause 7.2 of this Code; and
- (b) a person who is required to provide information under section 125 commits an offence if the person—
 - (i) fails or refuses to provide, without reasonable excuse, the information required;
 - (ii) provides false or misleading information in response to the requirement.
- (c) a person who is required under section 125(3) to advise whether the information provided under section 125(1) is accurate commits an offence if the person—
 - (i) fails or refuses to provide that advice, without reasonable excuse;
 - (ii) provides false or misleading information in response to the requirement.

(d) a person who commits an offence against section 130 of the Act is liable on conviction to a fine not exceeding \$2,000.

8.2 No enforcement proceedings under section 131 of the Act are to be commenced unless the officer has advised the recipient of a section 125 notice that—

(a) no person will be required to provide any information or documents that would be privileged in a court of law except as provided in clause 7.2 of this Code; and

(b) any person who, for the purposes described in section 131(2) or with the result described in section 131(3) of the Act, —

(i) makes any statement knowing it to be false in any material particular; or

(ii) deliberately does or says anything for the purpose of misleading or attempting to mislead the agency; or

(iii) when required to advise the agency under section 125, deliberately omits to do or say anything for the purpose of misleading or attempting to mislead the agency

commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both.

(c) The officer must advise the recipient of the section 125 notice of the purposes under section 131(2), and the results under section 131(3) of the Act (refer to Appendix C).

9 Application of Information Privacy Principles

9.1 Except where expressly overridden by this Code or by the Act, the Information Privacy Principles set out in section 6 of the Privacy Act 1993 apply to all information collected, stored or used by the department under this Code.

APPENDIX A

Explanatory Notes

Why have a Code?

Parliament has recognised that the powers given to MSD to compulsorily obtain information can be intrusive and should be balanced with a Code that governs the way in which those powers are to be exercised. The Code provides important safeguards to protect confidential relationships and to ensure fair procedures are followed.

Section 138 of the Act requires the Chief Executive to issue the Code after consultation with the Privacy Commissioner and to publish it in a form that is accessible to the public. Copies can be obtained free of charge from any office of the Ministry of Social Development or from the MSD website at www.msd.govt.nz.

Information collecting powers

MSD collects personal information about its clients in several different ways and for a variety of purposes. Sometimes the information is collected directly from the client on application forms or during interviews. Sometimes informal inquiries are made of clients or of other people with authorisation from the client. Occasionally, personal information is collected using statutory powers.

Where MSD is given special statutory powers to obtain information, these powers override the Privacy Act.

Section 125 of the Housing Restructuring and Tenancy Matters Act permits authorised staff to require any person to provide information or documents for any of the purposes set out in section 125(1) and (3) of the Housing Restructuring and Tenancy Matters Act (see Appendix B).

The Code deals only with the exercise of powers to obtain information under section 125(1). It does not apply to requests for information made under other statutory or non-statutory powers. It does not affect the rights that officers have, like all individuals, to ask for information from any person. However, 'informal' requests for information, without any statutory backing or sanction for non-production of information, should not imply that the request is made with statutory authority, or that any penalty will apply if the holder of the information does not comply with the request.

'Informal' requests, like statutory notices, must comply with other laws such as Information Privacy Principles 1, 3, and 4 of the Privacy Act 1993.

1. Interpretation

"agency"

The agency that is for the time being appointed by the Governor General as the

social housing agency under section 100 of the Act is the Ministry of Social Development (MSD).

"prejudice the maintenance of the law"

The definition of the term "prejudice the maintenance of the law" includes situations where the Ministry believes that asking the individual for their information before going to a third party would prejudice our investigation. This can be on the basis of the delay it would cause, the risk of alterations to documents, or the risk of colluding with other parties.

"reasonable cause"

The definitions of the term "reasonable cause" includes situations where the officer "knows" the person does not reside at their last known address.

"Knowledge" of a state of affairs is a very high threshold to prove. For example, it would require more than merely receiving a returned letter marked "Gone – No address" from an earlier attempt at correspondence. The officer relying on this part of the definition would need to be aware of some extrinsic facts before he or she could say they "knew" the person did not reside at, and could not be contacted through the last known address.

2. Steps to be taken prior to giving a section 125 notice

Preliminary requests

Before giving a section 125 notice to any person other than the relevant person, the information or documents must first be sought from him or her personally.

If the information or document is about someone other than the relevant person, it must first be sought from the relevant person, and also from that other person (in compliance with the Information Privacy Principle 2 of the Privacy Act 1993).

These steps to obtain the information directly from the subjects themselves must be taken on every occasion, even in cases where it is unlikely that the subject will be able to provide the information, for example where the relevant person does not have custody or control of the documents, or the information is not "about" the relevant person. The only exception is when compliance would prejudice the maintenance of the law in which case the section 125 notice may be given without the need for any preliminary requests.

This is an informal process which provides the individual with the opportunity to provide the information themselves rather than having it sought from others. This provides some measure of privacy protection as well as ensuring that they are kept informed about the nature of the enquiries being made about them. There is no legal obligation to comply with this preliminary request and no penalty provisions apply. The request need not be in writing - it can be made in person or by phone and there is no fixed time period for response apart from it being a reasonable time.

When the request is made, the agency must comply with Information Privacy Principle 3, which requires that the person from whom the information is being collected is advised of the purpose of the collection, the fact that giving the information is (at this stage) voluntary, the consequences of not providing the information, who will hold it, and that the person has a right to request access to, and correction of, their information. These matters can only be omitted if the officer believes on reasonable grounds that one of the exceptions to Information Privacy Principle 3 applies. If the relevant person does not provide the information after a reasonable time, the officer can give a section 125 notice to a third party who holds the information.

3. Giving of section 125 notices

The purposes for which a section 125 notice may be given are set out in section 125(1) and (3) of the Act. Section 125(1) and (3) is reproduced in Appendix B of the Code.

For the purposes of this Code, where a notice is posted, it is deemed to have been received by the addressee on the fourth day after the day on which it is posted.

The time period for complying with a section 125 notice can be extended from the minimum of 5 working days at the discretion of the department having regard to the circumstances of the case, including the volume of information requested and the manner in which it is stored or held.

The notice might specify the manner in which the information is to be produced. For example, it may require copies of documents to be produced, or original documents to be sent or shown to the department.

Apart from notices given to relevant persons themselves, lawyers, employers or former employers of the relevant person, or departments, departmental agencies, Crown entities or financial institutions, no one can be required to provide information unless there is "reasonable cause" to give a notice.

The circumstances that might give an officer reasonable cause to give a notice cannot be listed exhaustively, although examples such as the fact that the relevant person has not given the information are specified in the statute and repeated in the interpretation section of the Code.

There may be other statutory prohibitions on the release of information which are relevant in certain circumstances.

4. Limitations on what may be requested from specified groups

An officer seeking information will not necessarily be aware of the nature of that information, or the circumstances in which it has been obtained. For this reason, it is possible that a request for information, or a section 125 notice might encompass information in respect of which, if sought in court, the

holder could claim a privilege to prevent them from disclosing it.

The Act makes it clear that a person who receives a section 125 notice requesting privileged information is not required to provide that information. It is not always clear whether a privilege will apply, and the grounds are quite limited. Some of the privilege grounds are reflected, and enhanced by clause 7 of the Code.

If there is a dispute about whether the information can properly be considered to be privileged, the matter can be decided by a District Court Judge.

Any recipient of a notice who believes that such a privilege might apply to the information that has been required of them should immediately advise the officer concerned of the nature of the privilege they are claiming.

5. Further limitations on what may be requested

Limitations on enforcement of section 125 notices

As discussed above, the Code imposes a number of restrictions on the types of information and documents that may be required from certain persons. As a general rule, no one is required to provide any information or documents that are legally professionally privileged or would be privileged in a court of law. This includes the privilege against self-incrimination and may include the privilege relating to special relationships of confidence, such as between doctor or psychologist and patient, priest and penitent and others. See Evidence Act 2006.

What are the safeguards against misuse of the powers?

Authorised staff may obtain information only where they are permitted to do so by law, and they are obliged to maintain the security and confidentiality of all information that they receive as a result of their duties. Information cannot be disclosed to other agencies except where required or permitted by law and any staff making unauthorised requests or disclosures of information would be subject to disciplinary action and possible criminal prosecution.

Within the Ministry, access to personal information is limited to those staff that need it to carry out their work. Audits are conducted periodically to ensure that access rights are not misused and information is not retained by the Ministry for longer than is necessary.

Complaints

Complaints about the use of these powers may be made to the manager of the National Fraud Investigation Unit or to the local office manager. Complaints about a breach of the Code may be made to the Privacy Commissioner, who deals with them as if they were complaints about a Code of Practice under Part 6 of the Privacy Act. The Code may be amended at any time after consultation with the Privacy Commissioner, and is subject to periodic public review.

6. Application of Information Privacy Principles

The Information Privacy Principles (IPPs) apply to almost all agencies and their handling of personal information. The department must comply with these principles.

This means, for example, that information must not be collected by unfair or unlawful means (IPP4), must be stored safely and securely (IPP5), must be accurate and up to date (IPP8).

However, some aspects of the code override the IPPs. For example, the power to obtain information from a third party overrides IPP 2. The power to seek information from a third party also involves disclosing certain information. For example, a request for financial information from a bank will coincidentally disclose that the department may be investigating that person. Such an incidental disclosure will not be in breach of IPP 11, because the department is expressly authorised to take actions that will result in such disclosures.

Nothing in the Code or the Act affects an individual's right to seek access to or correction of personal information held about them by the department in accordance with IPPs 6 and 7.

APPENDIX B

Purposes for which section 125 requests can be made

Section 125 Housing Restructuring and Tenancy Matters Act 1992:

The purposes specified in subsection (1) and (3) of this section are-

- (a) the purpose of ascertaining the housing needs of a prospective tenant:
 - (b) the purpose of ascertaining the eligibility of a tenant to be allocated social housing:
 - (c) the purpose of calculating an appropriate income-related rent:
 - (d) the purpose of a review under section 116, 117, or 118 of the Act:
 - (e) the purpose of any investigation under section 119, 120, or 121 of the Act:
 - (f) the purpose of detecting whether a person has committed an offence under section 130 or 131 of the Act:
 - (g) the purpose of determining and detecting the cost of fraud under section 130 or 131 of the Act:
 - (h) the purpose of ascertaining whether a person has failed or refused to answer fully, or has deliberately given a false or misleading answer, to any question asked under section 122(a) of the Act.
- (3) The agency may in writing require any person to advise whether any

information provided under subsection (1) is accurate.

APPENDIX C

Offence provisions relating to section 125 requests

Section 130 Housing Restructuring and Tenancy Matters Act 1992:

- (1) A person who is required to provide information under section 125(1) commits an offence if the person-
 - (a) fails or refuses to provide, without reasonable excuse, the information required;
 - (b) provides false or misleading information in response to the requirement.
- (2) A person who is required under section 125(3) to advise whether the information provided under section 125(1) is accurate commits an offence if the person-
 - (a) fails or refuses to provide that advice, without reasonable excuse;
 - (b) provides false or misleading information in response to the requirement.
- (3) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000.00.

Section 131 Housing Restructuring and Tenancy Matters Act 1992:

- (1) A person commits an offence who, for the purpose described in subsection (2) or with the result described in subsection (3),—
 - (a) makes any statement knowing it to be false in any material particular; or
 - (b) deliberately does or says anything for the purpose of misleading or attempting to mislead the agency; or
 - (c) when required to advise the agency under section 115 or provide information under section 125, deliberately omits to do or say anything for the purpose of misleading or attempting to mislead the agency.
- (2) The purpose is—
 - (a) for that person or another person to be eligible or continue to be eligible to be allocated social housing;
 - (b) for that person or another person to be eligible or continue to be eligible to be allocated, assigned, or let particular social housing, or to be allocated, assigned, or let some other social housing;

- (c) for that person or another person to have calculated for them, or to pay or continue to pay as rent for social housing, an income-related rent or lower income-related rent than they would otherwise be entitled to under this Act or an income-related rent that they are not entitled to under this Act.
- (3) The result is that that person or another person, whether or not entitled to it under this Act,—
- (a) is or continues to be assessed as eligible to be allocated social housing:
 - (b) is or continues to be allocated or assigned to a particular social housing provider:
 - (c) is or continues to be allocated, assigned, or let particular social housing:
 - (d) is allocated, assigned, or let some other social housing:
 - (e) is let social housing at an income-related rent or lower income-related rent.
- (4) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000, or both