



NEW ZEALAND
CUSTOMS SERVICE
TE MANA ĀRAI O AOTEAROA



Information Disclosure Agreement (COVID-19 response)

between

New Zealand Customs Service

and

Ministry of Health

(Section 316, Customs and Excise Act 2018)

1 Parties

- 1.1 This Information Disclosure Agreement (**Agreement**) is entered into by:
 - 1.1.1 the Minister of Customs;
 - 1.1.2 the Minister of Health.
- 1.2 The Agreement sets out the terms and conditions on which Information described in this Agreement is disclosed by the Chief Executive of the New Zealand Customs Service (**Customs**) to the Chief Executive of the Ministry of Health (**Health**) (**the parties**).

2 Background and Purpose of the Agreement

- 2.1 Health plays a key role in the Government's health response to prevent, and limit the risk of, the outbreak or spread of COVID-19. Customs provides information, including personal information, to Health in support of this role.
- 2.2 Customs initially relied on the Civil Defence National Emergency (Information Sharing) Code 2013 and the Privacy Act 1993 (since repealed and replaced by the Privacy Act 2020). As the Civil Defence National Emergency (Information Sharing) Code 2013 expired on 11 June 2020, Customs entered into a joint information disclosure agreement with Health and New Zealand Police. That agreement was signed on 29 June 2020 (**Joint Section 316 Agreement**). The agreement was made pursuant to section 316 of the Customs and Excise Act 2018 (the **Act**).
- 2.3 Section 316 of the Act facilitates the regular disclosure of information by the chief executive of Customs to the chief executive of another government agency for certain purposes.
- 2.4 The Ministers of Customs, Health and Police revoked the Joint Section 316 Agreement in 2021 and partially replaced it with a separate new section 316 agreement with New Zealand Police. This Section 316 Agreement with Health completes the revocation and replacement process.
- 2.5 This Agreement facilitates the regular disclosure of Customs' information to Health in order to continue assisting Health in carrying out its functions under the Health Act 1956 and any powers and obligations under the COVID-19 Public Health Response Act 2020 and associated orders, and associated operational requirements.
- 2.6 The functions of Health in relation to public health are set out in section 3A of the Health Act 1956: to improve, promote, and protect public health. Furthermore, Part 3A of the Health Act provides for the management of infectious diseases, which includes COVID-19.
- 2.7 The purpose of the COVID-19 Public Health Response Act is to support a public health response to COVID-19 that:

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- 2.7.1 prevents and limits the risk of, the outbreak or spread of COVID-19 (taking into account the infectious nature and potential for asymptomatic transmission of COVID-19); and
 - 2.7.2 avoids, mitigates, or remedies the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect); and
 - 2.7.3 is co-ordinated, orderly, and proportionate; and
 - 2.7.4 allows social, economic, and other factors to be taken into account where it is relevant to do so; and
 - 2.7.5 is economically sustainable and allows for recovery of Managed Isolation and Quarantine Facility costs; and
 - 2.7.4 has enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also support that response.
- 2.8 The objectives of this Agreement are to set out the detail required by section 316(5) concerning:
- 2.8.1 the particular type or class of information to be disclosed; and
 - 2.8.2 the particular purpose or purposes for which the information is accessed; and
 - 2.8.3 the particular function (or functions) being, or to be, carried out by the government agency for which the information is required; and
 - 2.8.4 how the information is to be used by the government agency to assist with the carrying out of those functions; and
 - 2.8.5 the form in which the information is to be disclosed; and
 - 2.8.6 the positions or designations of the persons in the government agencies to whom the information may be disclosed; and
 - 2.8.7 the safeguards that are applied for protecting personal information that is disclosed; and
 - 2.8.8 the requirements relating to storage and disposal of the disclosed information; and
 - 2.8.9 the circumstances (if any) in which the information may be disclosed by the agency to another agency, and how that disclosure may be made; and
 - 2.8.10 the requirements for reviewing the Agreement.
- 2.9 This Agreement contains the following schedules:
- 2.9.1 Schedule 1 contains the technical standard report in relation to the Information disclosed to Health, including details about the information being disclosed, the form and methods of disclosure, security protocols,

retention, and Authorised Persons for the purpose of this Agreement;
and

2.9.2 Schedule 2 contains the contact details of departmental representatives in relation to this Agreement.

3 Definitions

3.1 Unless the context otherwise requires, the following terms have been defined as follows:

Term	Definition
Act	Customs and Excise Act 2018
Agreement	This agreement together with all of the Schedules
Authorised Person	A person described in Schedule 1 of this Agreement to whom the information may be disclosed
Contact Tracers	Those individuals identified as contact tracers under section 92ZZA of the Health Act 1956
Customs	The New Zealand Customs Service
Category 1 information	As defined in section 304 of the Act.
Category 2 information	As defined in section 304 of the Act.
Health	The Ministry of Health
Information	The information specified in clause 2 of Schedule 1
NZISM	New Zealand Information Security Manual which can be found at https://www.nzism.gcsb.govt.nz/ism-document/
Parties	The Chief Executive of the New Zealand Customs Service and the Chief Executive of the Ministry of Health
PSR	Protective Security Requirements which can be found at https://www.protectivesecurity.govt.nz/

3.2 All other definitions in this Agreement have the meaning defined in the Act, unless otherwise noted.

4 Particular type or class of information that may be disclosed

4.1 Customs may disclose to Health the Information set out in Schedule 1 relating to individuals that have arrived in New Zealand.

4.2 The Information is a mixture of Category 1 and Category 2 information.

5 Particular purpose(s) for which information is disclosed

5.1 The purpose for which the Information is disclosed is to assist Health in supporting the Government's health response to prevent, and limit the risk of, the outbreak or spread of COVID-19, and to avoid, mitigate or remedy the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect).

5.2 The parties will undertake audits at 12 month intervals to ensure that Health are adhering to the provisions of this Agreement, in particular regarding the use of the Information in accordance with clause 7.

6 Particular function being carried out for which information is required

- 6.1 Health is the lead agency for the public health response to COVID-19 and supports the Government's public health strategy of elimination, with border controls, disease surveillance, physical distancing and hygiene measures, testing for and tracing all potential cases, isolating cases and their close contacts, and broader public health controls depending on the alert level New Zealand is in.
- 6.2 This includes putting in place appropriate health measures such as managed isolation and quarantine facilities for individuals arriving in New Zealand and contact tracing, and enforcing those measures, as well as working with other government agencies directly involved in the COVID-19 response.
- 6.3 In relation to Category 1 information, the Information will be disclosed to Health to assist Health in carrying out its function to improve, promote, and protect public health, and manage infectious diseases, in relation to the COVID-19 response.
- 6.4 In relation to Category 2 information, the Information will be disclosed to Health to assist Health in carrying out its function to improve, promote, and protect public health, and manage infectious diseases, in relation to the COVID-19 as it relates to:
 - 6.4.1 the protection of public health and safety;
 - 6.4.2 the processing of international passengers;
 - 6.4.3 the prevention, detection, investigation, prosecution, or punishment of offences;
 - 6.4.4 the protection of public revenue.

7 How the information will assist in the carrying out of the particular function

- 7.1 The disclosed Information will:
 - 7.1.1 assist Health with its New Zealand COVID-19 Surveillance Strategy to collect, collate and analyse data on COVID-19 and the effectiveness of the public health response;
 - 7.1.2 assist Health to contact individuals who have arrived in New Zealand to assess their health status, provide health and isolation information, and ensure individuals have access to health advice in relation to COVID-19, and where required, manage their progress through a managed isolation and quarantine facility;
 - 7.1.2 if necessary for the purpose of contact tracing, assist Health to carry out contact tracing, including further disclosing any necessary information, in accordance with clause 12, to other agencies that are involved in managing, and assisting with the COVID-19 response;
 - 7.1.3 assist Health to manage individuals arriving in New Zealand in accordance with health measures and processes that are in place at the relevant time as part of the Government's COVID-19 response, including

disclosing any necessary information, in accordance with clause 12, to other agencies that are involved in managing, and assisting with the COVID-19 response; and

- 7.1.4 assist Health to assess the public health risk associated with different arrival cohorts and to evaluate the effectiveness of border-related public health measures applied to these cohorts, which requires both accurate counts of the size of the cohort and knowledge of how many of the cohort left New Zealand within the potentially infectious time frame; and
- 7.1.5 assist Health in enforcing any rules, regulations or other laws relating to the Government COVID-19 response and ensuring these rules, regulations and laws are being complied with.

8 The form in which the information will be disclosed

- 8.1 The form in which the Information is disclosed is specified in Schedule 1.

9 Positions or designations of persons to whom information may be disclosed

- 9.1 The disclosure of Information will be limited to Authorised Persons working directly on the functions specified in clause 6 of this Agreement, where access is required to carry out that function.

10 Safeguards to be applied for protecting particular information

Security

- 10.1 Both parties will take reasonable steps to maintain the security of Information disclosed under this Agreement, by protecting it against risks such as loss, unauthorised access, use, disclosure and other misuse.
- 10.2 Both parties will at all times adhere to the Protective Security Requirements (PSR) and New Zealand Information Security Manual (NZISM).

Privacy

- 10.3 Each party will be responsible for ensuring that it complies with the Privacy Act 2020 in respect of the use and disclosure of the Information. Both parties agree to manage the information disclosed to it in accordance with the Privacy Act 2020, and if applicable the Health Information Privacy Code 1994.
- 10.4 Each party will immediately notify the other party of:
 - 10.4.1 any circumstances, incidents or events that have jeopardised (or may in the future jeopardise) the security of any computer system in its custody that is used to store information disclosed under this Agreement:
 - 10.4.2 any security or privacy complaint made by a person to that party in relation to the information disclosed under this Agreement.
- 10.5 Health must immediately notify Customs if:

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- 10.5.1 Health knows or suspects it has breached the Privacy Act 2020, or breached the privacy of individuals in relation to Information disclosed under this Agreement; or
 - 10.5.2 Health knows of or suspects any loss, unauthorised use, disclosure or misuse of the Information; or
 - 10.5.3 Health becomes aware that a disclosure (except under clause 12) may be required by law in relation to the Information; or
 - 10.5.4 any legislation prevents or may prevent Health from performing its obligations under this Agreement.
- 10.6 If either party reasonably believes that the privacy of individuals subject to this Agreement has been or may be breached, then that party, after appropriate discussions with the other party, may suspend the process where necessary to give the party the opportunity to remedy the breach or possible breach, recognising that time is of the essence.
- 10.7 Any privacy incident is to be subject to appropriate action by the party responsible for the breach (the **Responsible Party**) in accordance with that party's policies, processes and code of conduct and the requirements of the Privacy Act 2020. The other party will provide the Responsible Party with reasonable assistance if required, and the Responsible Party will keep the other party informed.
- 10.8 Where an internal investigation confirms a privacy breach, and it is considered necessary or required by law, the Office of the Privacy Commissioner will be notified as soon as possible by the Responsible Party.
- 10.9 Health agrees, unless specifically authorised in writing by Customs, or required or authorised by law to not:
- 10.9.1 modify the Information;
 - 10.9.2 transfer or store the Information outside of New Zealand (provided that both parties acknowledge and agree that the National Contact Tracing Solution and National Border Solution both securely hold information on an Australian based cloud platform).
- 10.10 Health will conduct and complete a privacy impact assessment (PIA) on the information transfers by the time of the first audit and provide the final copy to Customs.
- 10.11 Before the PIA is finalised, Health will make the PIA available to Customs to comment. Customs will respond as soon as practicable and Health will consider any such comments and amend the PIA accordingly.
- 10.12 Customs will use best endeavours to assist Health in relation to any elements of a PIA that relate solely to Customs.

11 Requirements relating to the storage and disposal of disclosed information

- 11.1 All Information disclosed pursuant to this Agreement will be handled and stored strictly in accordance with any security endorsement or caveat including any Government Security Classification, and the requirements set out in the PSR and NZISM.
- 11.2 Any Information that is copied pursuant to this agreement will be retained by Health for as long as required for the purposes it was obtained under this Agreement but no later than the period specified in Schedule 1.
- 11.3 Disposal is subject to the requirements of the Public Records Act 2005 and any applicable disposal authorities under that Act, or the Health (Retention of Health Information) Regulations 1996 if that information has become part of a person's health record.

12 Disclosure by Health to any other agency

- 12.1 Information provided to Health under this Agreement may be disclosed by Health to another agency that is involved in managing, and assisting with the COVID-19 response including, but not limited to:
 - 12.1.1 Ministry of Business, Innovation and Employment;
 - 12.1.2 District Health Boards;
 - 12.1.3 Public Health Units;
 - 12.1.4 New Zealand Defence Force;
 - 12.1.5 Aviation Security Service;
 - 12.1.6 New Zealand Police;
 - 12.1.7 Ministry of Foreign Affairs and Trade.
- 12.2 If Health is disclosing Information to another agency under this clause, it must do so in accordance with the Official Information Act 1982, Privacy Act 2020, or the COVID-19 Public Health Response Act 2020 (as applicable) and must comply with all caveats that have been placed on the information by Customs.
- 12.3 Health will consult Customs prior to:
 - 12.3.1 any disclosure being made to an agency that is not listed in clause 12.1; or
 - 12.3.2 any disclosure being made to an agency that is listed in clause 12.1 that does not fall within the scope of clause 7, with the aim to determine if this Agreement needs to be amended to capture the proposed disclosure or if the proposed disclosure can legally be made under the Privacy Act 2020 or any other legislation.

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- 12.4 In instances where Information is disclosed to an agency, where that agency holds the Information:
- 12.4.1 solely as an agent; or
 - 12.4.2 for the sole purpose of safe custody; or
 - 12.4.3 for the sole purpose of processing the Information on behalf of Health;
- the Information will be deemed to be held by Health.

13 Commencement, review and revocation

- 13.1 This Agreement will come into effect on the date that it is signed by the last signatory.
- 13.2 The Agreement will remain in effect until the COVID-19 Public Health Response Act 2020 is repealed under section 3 of that Act, unless revoked earlier in accordance with this provision.
- 13.3 The parties will review this agreement at intervals of no more than 12 months, with a view to:
- 13.3.1 make any necessary changes to enhance the effectiveness of the information disclosure process in light of the intended use of the information; and
 - 13.3.2 ensure that the Information being disclosed is proportionate and necessary.
- 13.4 Any changes resulting from a review will be made by varying the Agreement in accordance with clause 17.
- 13.5 The parties shall co-operate with each other in any review and will use their reasonable endeavours to make available the necessary resources, facilities and information to facilitate each joint review.
- 13.6 Each party has the right to initiate a review at any time on providing 10 working days' notice in writing.
- 13.7 All notices of review shall be in writing and sent to the agency contacts detailed in Schedule 2 to this Agreement.
- 13.8 This Agreement may be revoked by the Minister of Customs and the Minister of Health at any time.
- 13.9 If Health no longer requires Information disclosed under this Agreement, or requires limited or different information, it will give immediate notice to Customs of the date from which the Information is no longer required.
- 13.10 If a notice under clause 13.9 is received, Customs will cease to disclose the Information that is no longer required from the notified date and this Agreement will be:
- 13.10.1 revoked, if Health no longer requires any of the Information disclosed under this Agreement; or

13.10.2 otherwise amended to reflect the new requirements of Health, if such amendment is necessary.

13.11 Customs will acknowledge receipt of a notice received under clause 13.9 as soon as practicable and advise whether the agreement should be revoked or amended under clause 13.10.

14 Confidentiality

14.1 This Agreement will be published on the Customs website in accordance with section 321 of the Act.

14.2 The parties agree that subject to their obligations under the Privacy Act 2020 and/or Official Information Act 1982: neither party will release any information arising from this Agreement, that is not already publicly available, to the media or any member of the public without first obtaining an agreement to do so from the other party;

14.2.2 if there is a matter of concern, no party will discuss the matter in public without first engaging in a full discussion with the other party, and both parties will make a representative promptly available for such a discussion.

15 Signatories

15.1 The Agreement shall be signed by the Minister of Customs and the Minister of Health.

16 Department Representatives

16.1 The parties will each appoint a representative to oversee the operation of the information disclosure process, and will ensure that the person is familiar with the requirements of this Agreement and the Privacy Act 2020. The contact details are contained in Schedule 2 to this Agreement.

16.2 In the first instance issues should be referred to this representative for clarification and resolution.

16.3 All notices and communication between the parties and under this Agreement shall be sent to the representatives at the addresses set out in Schedule 2.

17 Variations

17.1 The parties can agree to vary this Agreement. Each variation must be in writing and must be done in accordance with section 316 of the Act, which includes consultation with the Privacy Commissioner.

17.2 Any variation to this Agreement must be executed and signed by the Minister of Customs and the Minister of Health.

The Parties have executed this Agreement



Hon Meka Whaitiri
Minister of Customs

Date:

15/2/2022



Hon Andrew Little
Minister of Health

Date:

16/2/22

SCHEDULE 1

Ministry of Health

Technical Standards Report (TSR)

Introduction

1. This Schedule specifies the details of the Information to be provided by Customs to Health.

The Information

2. Customs may disclose to Health:
 - 2.1 information that can be used to establish the identity of a person arriving in or transiting through New Zealand including but not limited to full name, date of birth, sex¹, passport number, nationality, whether the person is passenger or crew member (**identity information**), if (the person left New Zealand within three weeks of arrival) their date of departure; and
 - 2.2 craft arrival information relating to a person who is arriving in or transiting through New Zealand including but not limited to flight name, the scheduled date and time of the flight, the actual date and time of arrival, the port of arrival, and (if the person left New Zealand within three weeks of arrival) their date of departure.
 - 2.3 Arrival card information completed by individuals arriving in New Zealand.

Form, transmission method, and security protocols

3. The Information in clauses 2.1 and 2.2 will be sent by Customs to Health in an electronic file via secure electronic means that comply with NZISM and PSR.
 - 3.1 If an electronic system used to provide the Information is not available, Customs will deliver the information to Health in a password-protected file on a Customs approved encrypted Iron Key or equivalent device (**manual process**).
 - 3.2 The manual process is intended to be used as an interim measure while the electronic system is not available.
4. In relation to the maritime border, Customs employees may input the Information directly in the National Border System operated by Health, provided Health has given the appropriate login access to authorised Customs employees to do this.
5. Information in clause 2.3 will be scanned and sent in an electronic file via secure electronic means that comply with NZISM and PSR.

¹ This is meant to capture gender or sex, depending on what is shown on a person's passport.

Retention

6. The data received will be retained until the COVID-19 Public Health Response Act 2020 is repealed under section 3 of that Act.
7. Health will, within 20 working days of that date, either:
 - 7.1 delete the Information; or
 - 7.2 anonymise any personal information (despite clause 10.9.1 of the Agreement).
8. Health will provide evidence satisfactory to Customs that it has deleted or anonymised the Information.
9. If any of the Information has become part of a person's health record then that information will be retained and disposed in accordance with the Health (Retention of Health Information) Regulations 1996.

Positions or designations of persons to whom information may be disclosed

10. The Authorised Persons to whom the information may be disclosed within and by Health are:
 - 10.1 Those individuals with authority to access the secure Ministry of Health National Contact Tracing Solution applications:
 - 10.1.1 The National Border Solution, used to manage managed isolation and quarantine facilities and border related issues; and
 - 10.1.2 The National Contact Tracing Solution, to identify arrivals to and departures from New Zealand, and conduct contact tracing and related activities.
 - 10.2 Contact Tracers.
 - 10.3 The Ministry COVID-19 Science and Insights Group members including, but not limited to:
 - 10.3.1 The Public Health Intelligence and Surveillance data analysts
 - 10.3.2 The Ministry team that manage and support the Ministry's Data Warehouse for COVID-19 data.
 - 10.4 Whakarongorau (formerly called Homecare Medical), when acting as Health's agent engaged to support Health in carrying out the functions set out in clause 6 of this Agreement.

SCHEDULE 2

Departmental representatives and contact details

New Zealand Customs Service

Group Manager, Intelligence, Investigations and Enforcement	New Zealand Customs Service PO Box 2218 Wellington 6140
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Ministry of Health

Deputy Director General for COVID-19 Health Systems Response	Ministry of Health Level 1 South, Red, 133 Molesworth Street, Wellington PO Box 5013 Wellington 6140
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