

Frequently Asked Questions

Code of Conduct for requests for information under Section 11 of the Social Security Act

From 3 September 2012 operational changes have been made to amend the Code of Conduct for requests of information under Section 11 of the Social Security Act. The amendment to the Code of Conduct increases the effectiveness of fraud investigations.

Question	Answer
What is the change?	The definition of ' <i>Prejudice the maintenance of the law</i> ' provision within the Code of Conduct has been simplified to mean that cases under a fraud investigation do not need to go through the current process.
What is the new definition of ' <i>prejudice the maintenance of the law</i> '?	The new definition is: '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.
Which areas of the Ministry can use the new definition?	The new definition may only be used by fraud investigation staff in the National Fraud Investigation Unit and Intelligence Unit.
Why was the definition amended?	In 95% of fraud investigation cases, the client does not provide the information first requested, despite initially indicating they will. On average, this leads to a delay of 25 days before an investigation is started, because of the time frames stipulated in the Section 11 Code of Conduct.
What right does the Ministry have to go directly to an employer, landlord or other third parties about me?	s11 of the Social Security Act gives the Ministry authority to make inquiries to determine eligibility and ongoing entitlement to income support payments. The Office of the Privacy Commissioner has agreed that any change to the Code attached to s11 is an operational decision. The Ministry has made this decision and applied the changes from 3 September 2012.
How does the new definition work for Fraud Investigation Units?	Information can be requested directly from the source, without first notifying the client. This means that you will no longer be required to send Preliminary Letters. Clients will be advised that they are being investigated during the course of the fraud investigation at the investigators instigation.

Does this change mean that we can get any sort of information from anywhere?	No. All requests for information related to a benefit fraud investigation must still have cause and be specific .
What date does the new definition take effect from?	The new definition took effect from 1 August 2012. Implementation of the process to support the new definition will take effect from 3 September 2012.
What rights does the client have?	<p>Clients rights continue to be protected and issues relating to:</p> <ul style="list-style-type: none"> • possible breaches of the Privacy Act can still be referred to OPC • an employer using knowledge of the fraud investigation against a client are referred to the Employer Relations Authority.
What if the source/third parties refuse to comply with a Section 11 request?	Section 11 is a statutory requirement and therefore third parties are obligated to comply with the legislation. These are the existing compliance obligations required of third party requests.
What if the client already has the information we have requested from a third party or source?	Clients will have an opportunity to present and discuss information during the interview with the Fraud Investigator.
Who has been consulted about the change to the definition?	The Office of the Privacy Commissioner and Benefit Advocates were consulted about the changes to the new definition.
What are the impacts of the new definition and process on clients?	<ul style="list-style-type: none"> • Most clients will no longer be asked for information before the information is requested from third parties. • Clients will remain part of the investigation process and will always have the opportunity to respond to allegations against them and provide their own evidence before a decision is made to prosecute. • NFIU has a duty of care to ensure that the spirit of the change is used with integrity. We must still have cause to request information and our requests must still be specific.
What are the impacts of the new definition and process on NFIU Hubs?	<p>Technical Offices will be able to request information directly from third parties instead of requesting the information from clients first. The process for the new definition will increase the timeliness and overall efficiency of the fraud investigation process.</p> <p>There will still be a small number of cases where it is appropriate to issue Preliminary Section 11 Letters. For example, clients who have certain risk factors. These cases should be discussed with</p>

	FIM's, Operations Managers and SFIA's.
Does the new definition process apply to all clients?	<p>It depends on each client's circumstances. There may be certain risks either to the client or the Ministry, where approaching a third party directly for information may not be appropriate. For example, the third party source is the client's former partner who has gang affiliations.</p> <p>Where there is a potential that these risks may occur, talk to your Fraud Investigation Manager, Operational Manager and SFIA about whether the new definition process is used in that case.</p>
Does the new definition apply to investigations carried out by NPC, Collections and IFU?	The new definition only applies to investigations carried out by NFIU and Intel.

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OPC: Questions asked by whom? It is unclear who this document is written for – MSD staff, beneficiaries or the general public.

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From 3 September 2012 operational changes have been made to amend the Code of Conduct for requests of information under Section 11 of the Social Security Act. The amendment to the Code of Conduct increases the effectiveness of fraud investigations.

OPC: The proposed change to the definition in the Code does not change what MSD can legally do, it merely simplifies the wording of the provision. It is misleading and inaccurate to imply a change in the Code would impact investigation effectiveness.

Question	Answer
<p>What is the change?</p>	<p>The definition of '<i>Prejudice the maintenance of the law</i>' provision within the Code of Conduct has been simplified to mean that cases under a fraud investigation do not need to go through the current process.</p> <p>OPC: The comment addresses two distinct points which could be separated. The first point addresses what the change is, namely, the definition has been simplified. The second point addresses the effect of the change. The change won't <u>mean</u> the law would enable a different process to legally be followed, but MSD <u>could</u> elect to follow a different process to implement its existing (unchanged) legal obligations.</p> <p>Changing the word "mean" to "clarify" would be more accurate.</p> <p>Also, MSD still needs to demonstrate that application of the provision would be likely to prejudice the prevention, detection, investigation, prosecution or punishment of an offence. It is not sufficient to argue that the prevention, detection etc. is taking place.</p>
<p>What is the new definition of '<i>prejudice the maintenance of the law</i>'?</p>	<p>The new definition is:</p> <p><i>'Prejudice the maintenance of the law</i> includes an action that would, or would be likely, to prejudice the prevention, detection, investigation,</p>

	<p>prosecution or punishment of an offence; or the imposition of a pecuniary penalty.</p> <p>OPC: It would be useful for the reader if this was expanded to include a section on “what was removed” and why it isn’t needed. This would clarify that the amendment simplifies the definition but doesn’t change the legal scope.</p>
<p>Which areas of the Ministry can use the new definition?</p>	<p>The new definition may only be used by fraud investigation staff in the National Fraud Investigation Unit and Intelligence Unit.</p> <p>OPC: This should refer to what areas of the Ministry can use the <u>exception</u>, not the definition.</p> <p>Also, it would be useful to clarify that the reason this is the only Unit in MSD that can use the exemption is because they are the only ones actively involved in “the prevention, detection, investigation, prosecution or punishment of an offence; or the imposition of a pecuniary penalty”.</p> <p>Our understanding is that restricting application of the ‘prejudice’ provision to the work of the NFIU and IU sets a threshold or bar relating to the seriousness and status of the investigations it applies to. That is, it does not apply to routine and minor cases involving the majority of beneficiaries.</p>
<p>Why was the definition amended?</p>	<p>In 95% of fraud investigation cases, the client does not provide the information first requested, despite initially indicating they will.</p> <p>On average, this leads to a delay of 25 days before an investigation is started, because of the time frames stipulated in the Section 11 Code of Conduct.</p> <p>OPC: This explanation misrepresents the <u>legal effect</u> of changing the Code. Our understanding is that the rationale for the change is to remove confusion arising from the current non-exclusive list of applications, rather than to change any legal obligation MSD may be under.</p> <p>This section could perhaps be split into two separate sections:</p> <ol style="list-style-type: none"> 1. the need for clarity and the problem

	<p>caused by the current wording</p> <p>2. how MSD will change it's practices to reflect its legal obligations but improve efficiency/effectiveness.</p>
<p>What right does the Ministry have to go directly to an employer, landlord or other third parties about me?</p> <p>It is not completely clear whether this document is intended as guidance for MSD staff or as information for beneficiaries/the public.</p> <p>From the use of terms such as "you will no longer be required" and "talk to your Fraud Investigation Manager" we take it that it is designed as an in-house guidance paper only. However, "what right does the Ministry have to go to <u>about me</u>?" implies a third party reader. Some passages of the FAQ should be reworded to more clearly reflect the focus of the intended audience.</p>	<p>s11 of the Social Security Act gives the Ministry authority to make inquiries to determine eligibility and ongoing entitlement to income support payments. The Office of the Privacy Commissioner has agreed that any change to the Code attached to s11 is an operational decision. The Ministry has made this decision and applied the changes from 3 September 2012.</p> <p>OPC: Please remove the sentence that reads "The Office of the Privacy Commissioner has agreed that any change to the Code attached to s11 is an operational decision" as it does not accurately reflect our position. This is also not an appropriate context to quote this office.</p>
<p>How does the new definition work for Fraud Investigation Units?</p>	<p>Information can be requested directly from the source, without first notifying the client.</p> <p>OPC: This does not apply to <u>all clients</u> and the explanation therefore needs to be limited explicitly to investigations etc where action otherwise would be prejudicial.</p> <p>This means that you will no longer be required to send Preliminary Letters. Clients will be advised that they are being investigated during the course of the fraud investigation at the investigators instigation.</p>
<p>Does this change mean that we can get any sort of information from anywhere?</p>	<p>No. All requests for information related to a benefit fraud investigation must still have cause and be specific.</p>
<p>What date does the new definition take effect from?</p>	<p>The new definition took effect from 1 August 2012. Implementation of the process to support the new definition will take effect from 3 September 2012.</p>

	<p>OPC: Why 1 August? It seems unnecessary and inappropriate to back date the change. Please advise the rationale for this proposal.</p>
What rights does the client have?	<p>Clients rights continue to be protected and issues relating to:</p> <ul style="list-style-type: none"> • possible breaches of the Privacy Act can still be referred to OPC • an employer using knowledge of the fraud investigation against a client are referred to the Employer Relations Authority.
What if the source/third parties refuse to comply with a Section 11 request?	<p>Section 11 is a statutory requirement and therefore third parties are obligated to comply with the legislation. These are the existing compliance obligations required of third party requests.</p>
What if the client already has the information we have requested from a third party or source?	<p>Clients will have an opportunity to present and discuss information during the interview with the Fraud Investigator.</p>
Who has been consulted about the change to the definition?	<p>The Office of the Privacy Commissioner and Benefit Advocates were consulted about the changes to the new definition.</p>
What are the impacts of the new definition and process on clients?	<p>• Most clients will no longer be asked for information before the information is requested from third parties.</p> <p>OPC: <u>This should clearly explain that this only refers to clients dealt with by the NFIU and IU, not all clients.</u></p> <ul style="list-style-type: none"> • Clients will remain part of the investigation process and will always have the opportunity to respond to allegations against them and provide their own evidence before a decision is made to prosecute. • NFIU has a duty of care to ensure that the spirit of the change is used with integrity. We must still have cause to request information and our requests must still be specific. <p>OPC: As noted above, the change in definition will not impact the legal scope of the exemption.</p> <p>However, MSD will change its processes and provide guidance to increase in-house understanding of the application of the Code. These changes will have impacts on clients that</p>

	could then be described.
What are the impacts of the new definition and process on NFIU Hubs?	<p>Technical Offices will be able to request information directly from third parties instead of requesting the information from clients first. The process for the new definition will increase the timeliness and overall efficiency of the fraud investigation process.</p> <p>There will still be a small number of cases where it is appropriate to issue Preliminary Section 11 Letters. For example, clients who have certain risk factors. These cases should be discussed with FIM's, Operations Managers and SFIA's.</p>
Does the new definition process apply to all clients?	<p>It depends on each client's circumstances. There may be certain risks either to the client or the Ministry, where approaching a third party directly for information may not be appropriate. For example, the third party source is the client's former partner who has gang affiliations.</p> <p>Where there is a potential that these risks may occur, talk to your Fraud Investigation Manager, Operational Manager and SFIA about whether the new definition process is used in that case.</p> <p>OPC: Again, 'definition' and 'process' are two separate concepts. The explanation would imply the <u>process</u> is what is being discussed so this should be clarified.</p> <p>It appears the writer is trying to explain that even where the maintenance of the law exception applies (i.e. during an active investigation where seeking information directly from a beneficiary might adversely effect a pending prosecution), there is still discretion whether or not to contact third parties directly. As with section 11, MSD <u>may</u> (i.e. not <u>must</u>) seek further information from a, b and c (depending on circumstances). This could be expressed more explicitly.</p>
Does the new definition apply to investigations carried out by NPC, Collections and IFU?	<p>The new definition only applies to investigations carried out by NFIU and Intel.</p> <p>OPC: Again, it's the ability to use the <u>exemption</u>, not the definition that applies to the NFIU and Intel (and this is an MSD operational matter that clarifies who internally <u>may</u> use the exemption).</p>

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