



24 May 2024

Tēnā koe

## Official Information Act Request

Thank you for your email of 3 April 2024 requesting information about on MSD's implementation of the Algorithm Charter for Aotearoa. I have considered your request under the Official Information Act 1982 (the Act). Please find my decision set out below.

### Background to the Algorithm Charter

An Algorithm Charter Community of Practice (CoP) was established in 2023 to facilitate knowledge and information sharing between Charter signatories. It held its fourth gathering in April 2024. Its establishment responds to an Independent Review of the Charter carried out in 2021 which found that, while there was 'almost universal support for the Charter amongst Government agencies and subject matter experts who participated' and while some progress has been made in implementing Charter commitments, there was a strong desire for a community of practice for knowledge and information sharing.

The Community of Practice also responds to the [Open Government Partnership of New Zealand's Fourth Action Plan](#) (led by Te Kawa Mataaho – The Public Service Commission) which commits to making government more accessible, responsive and accountable to its citizens. Commitment 8 under the Action Plan undertakes to "Improve transparency and accountability of algorithm use across government".

In its role as [Government Chief Data Steward](#), Stats NZ led the development of the Algorithm Charter and is the agency that convenes the Community of Practice. Following consultation across the public sector, Stats NZ has also developed the [Algorithm Impact Assessment toolkit](#) (published in December 2023) with resources designed to help agencies understand and assess the potential impacts of the algorithms they create or use.

As you will be aware, the Algorithm Charter for Aotearoa New Zealand is an evolving piece of work that needs to respond to emerging technologies and also be fit-for-purpose for government agencies. It does not specify a technical definition of an algorithm and instead commits signatories to take a particular focus on those algorithms that have a high risk of unintended consequences and/or have a significant impact if things do go wrong, particularly for vulnerable communities.

## MSD and the Algorithm Charter

As part of its focus on algorithms with these kinds of risks and impacts, MSD's implementation of the Algorithm Charter has focused on complex algorithms and automated decision-making. We have interpreted your request as being concerned with MSD's approach to complex algorithms and our response reflects that interpretation.

MSD has several complementary frameworks and corresponding guidance that it applies to the development of complex algorithms that it uses to meet the commitments of the Algorithm Charter, and which are additional to other guidance such as the Data Protection and Use Policy.

While all the documents referenced below have overlap between your requests, I have outlined each documents particular relevance to your requests.

**Model Development Lifecycle:** [www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/phrae/model-development-lifecycle.html](http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/phrae/model-development-lifecycle.html)

This is a practical guide to help manage new and emerging uses of data in an operational setting (operational complex algorithms). You will see this link gives access to a User Guide, Governance Guide and Data Science Guide which is essentially internal guidance designed to assist Ministry staff with different roles understand their responsibilities.

I consider this information addresses parts 1 and 2 of your request.

**Privacy, Human Rights and Ethics Framework (PHRaE):** [www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/phrae/index.html](http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/phrae/index.html)

This Framework supports and works with the Model Development Lifecycle to identify and address risks associated with the collection, use and disclosure of personal information, and to ensure that we use that information in a responsible, transparent, and trustworthy way.

We have identified three specific pieces of guidance used in the application of this Framework to the Model Development Lifecycle that come within scope of your request, and these are included alongside this response.

- *PHRaE Guidance on Openness and Transparency (relevant to questions 1 and 2 and 4).*
- *PHRaE Guidance: Te Tiriti o Waitangi (relevant to questions 3 and 4).*
- *PHRaE Guidance on Bias and Discrimination (relevant to questions 5 and 6).*

A specific example of information provided for a complex algorithm is for the Youth Service NEET model here: [www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/phrae/youth-service-for-neet.html](http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/phrae/youth-service-for-neet.html).

This is also reflected in the Ministries privacy notice for clients: [www.workandincome.govt.nz/about-work-and-income/privacy-notice/index.html](http://www.workandincome.govt.nz/about-work-and-income/privacy-notice/index.html)

I consider this information addressed parts 1 to 6 of your request.

In regard to part 7 of your request, for the nominated point of contact for public inquiries about algorithms, this is refused under section 18(e) of the Act as this information does not exist. The Ministry has not yet appointed a nominated point of contact for public inquiries into algorithms.

## **Further information that may be helpful**

MSD uses automated electronic systems to make automated decisions. Sections 363A-D of the Social Security Act 2018 includes a requirement for an Automated Decision Making Standard, found here [www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/phrae/adm-standard.html](http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/phrae/adm-standard.html).

This standard seeks to ensure that when MSD implements a process which contains an automated decision, there are sufficient safeguards suited to the particular circumstances and also show that the relevant law and facts are taken into account. MSD's child support payment process is an example of this, found here [www.workandincome.govt.nz/about-work-and-income/automated-decision-making-for-child-support.html](http://www.workandincome.govt.nz/about-work-and-income/automated-decision-making-for-child-support.html).

I will be publishing this decision letter, with your personal details deleted, on MSD's website in due course.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with my decision on your request for information on the implementation of the Algorithm Charter for Aotearoa, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi



Magnus O'Neill  
**General Manager**  
**Ministerial and Executive Services**

# Privacy, Human Rights & Ethics Framework

## Guidance: Discrimination and bias

### Introduction

**Purpose** To provide good practice guidance on assessing a proposal for ethical risks related to discrimination and bias.

**When to use** Use this guidance once you have fully understood the objectives of a proposal, what it is looking to achieve through the proposed use of information, and how it is linked to the Ministry's strategic objectives.

**Who is it for** Privacy Advisors

**Pre-work** Listen, read or review:

- [PHRaE Guidance: Key considerations](#)
- [PHRaE Guidance: An introduction](#)
- Response to questions asked around potential benefits and adverse consequences and, if applicable, operational analytics and automation

**See:**

- [PHRaE guidance: Potential benefits and adverse consequences](#)
- [PHRaE guidance: Operational analytics and automation](#)

Be enrolled in or previously have completed:

- University of Auckland course: Data Ethics in the Public Service Sector

Optional:

- Human Rights Commission online courses ([www.learn.hrc.co.nz](http://www.learn.hrc.co.nz))

**How to use** You can refer to the guidance material:

- if they have completed the [PHRaE Prompts for the business - response form](#)
- during an assessment to check that you have asked all the right questions, and
- to make use of the commentary, explanations, examples and warnings provided.

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## Overview

Processes and systems may discriminate when information goes into them, or when it comes out. At the input stage, this could be because information going into data sets is biased against some individuals or groups, or the system collects information in ways that are more intrusive for some individuals or groups than others (without good cause). Alternatively, recommendations of a system or process may discriminate without cause at the output stage.

### Focus

The questions in this guidance will help us consider how a proposal might affect human rights and understand any ethical implications, including unjustified discrimination and bias.

### Your role

As a Privacy Advisor, you will support the business through the PHRaE process including completing the PHRaE assessment, engaging expertise when required, and providing advice on how to mitigate risks identified. Generally, you will work alongside an Information Security Advisor and an Information Management Advisor who are assigned to the same portfolio.

**See:** [PHRaE process](#)

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## Why this is important

In moral and legal contexts, when we draw distinctions between individuals or groups without good cause and in ways that impose burdens upon those we discriminate against, the discrimination is inappropriate.

Section 19 of the New Zealand Bill of Rights Act 1990 (NZBORA) provides that “everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993”.

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## Human Rights Act 1993

The prohibited grounds of discrimination are set out in the Human Rights Act (section 21): sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.

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## NZBORA

Discrimination on the grounds above can be justified under Section 5 of this act, but if discrimination on one of these grounds occurs, a justification is required.

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## Unlawful discrimination

- A person or group is treated differently from others in comparable circumstances, or
- They are treated differently on the basis of a prohibited ground of discrimination, or
- The different treatment results in that person or group suffering a material disadvantage, and
- the different treatment cannot be justified (s.5 of NZBORA).

These are the elements which this guideline is designed to explore.

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## Justified discrimination

In some cases, discrimination that would otherwise be unlawful might be justified. Section 5 of NZBORA provides that rights contained in NZBORA, such as the right to be free from discrimination, may be subject to reasonable limits that are "prescribed by law" and can be "demonstrably justified in a free and democratic society".

Important considerations that must be considered in assessing whether different treatment on a prohibited ground that results in a material disadvantage might nonetheless be justified include:

- whether the different treatment is prescribed by law, for example, it is provided for in legislation; or
  - whether the infringing provision, policy, practice, or service in question serves a purpose that is sufficiently important to justify the differential treatment; or
  - whether the infringing provision, policy, practice or service in question is rationally connected to the purpose, does not limit the right more than is necessary, and is in proportion to the importance of the objective.
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The information gathered through this guidance material is intended to inform a decision about the possibility that discrimination under a service or process might be justified.

**Note:** whether an ostensibly discriminatory practice is justified will often be a difficult legal decision. If you are in any doubt you should check with your manager, a senior, or a subject matter expert.

**See:** [Service Effectiveness Model \(SEM\) case study](#)

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## Questions to ask

The following questions can or should be asked during your assessment. Click on the link for further guidance and advice about why these questions are important to ask.

1. [Considering the group who are affected by the proposal, is there potential for it to result in some members of this group, or persons or groups in comparable circumstances, being treated differently to one another \(either negatively or positively\)?](#)
2. [Will the different treatment be based on any of the prohibited grounds or, could people affected by the proposal perceive the different treatment to be based on any of these grounds?](#)
3. [Will any different treatment result in any member of the group, or persons or groups in comparable circumstances, being materially disadvantaged?](#)
4. [Have you considered whether the objective\(s\) could be achieved without treating the affected people differently?](#)
5. [Will the proposal assist or advance people who have been disadvantaged by discrimination in the past?](#)

## What your PHRaE assessment summary should cover

Summarise:

1. Whether the proposal may treat some members of a group differently to others.
2. Whether the different treatment would be on the basis of a prohibited ground of discrimination.
3. Whether the different treatment could result in the discrimination against people being materially disadvantaged.

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4. If so, whether the limitation on the right to be free from discrimination (i.e., the discriminatory nature of the proposed service or process) can be seen as a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society. The last element here requires one to consider:
  - a. whether the proposed limit would be prescribed by law;
  - b. whether it would serve a purpose sufficiently important to justify curtailing the right to be free from discrimination;
  - c. whether the limiting measure is rationally connected with its purpose;
  - d. whether the limiting measure impairs the right no more than is reasonably necessary for sufficient achievement of its purpose; and
  - e. whether the limit is in due proportion to the importance of the objective.
5. Assess affirmative action/positive discrimination, if relevant.
6. Any specific comments from subject matter expertise, such as ethics or legal.

## Related information / Helpful resources

### Policies and standards

Privacy, Human Rights and Ethics Policy (in development)

[Data Protection and Use Policy](#)

### How to guide

[How to Guide: Consent Forms](#)

[How to Guide: Information Toolset for Portfolios](#)

[MSD's Ethics Toolkit \(research and analytics\)](#)

[PHRaE Guidance: Key considerations](#)

[PHRaE Guidance: An introduction](#)

[PHRaE Guidance: Potential benefits and adverse consequences](#)

[PHRaE Guidance: Te Tiriti o Waitangi](#)

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## Other

[PHRaE Prompts for the business](#)

[PHRaE Prompts for the business - response form](#)

[Risk and control catalogue](#)

[MSD Specific Legislative Authorities](#)

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## Document information

Owner	Manager Information Privacy and Security
Last reviewed	15 December 2021
Review period	Every second year

## Record of amendments

Date	Brief description of amendment
[Month Year]	[Enter description]

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## Appendix: Questions with guidance

### 1. Considering the group who are affected by the proposal, is there potential for it to result in some members of this group, or persons or groups in comparable circumstances, being treated differently to one another (either negatively or positively)?

*It is important to consider and find out whether the proposed service or process might result in some members of the group or people in comparable circumstances being treated differently to others. If there is a chance of that happening, you will need to assess whether that different treatment could be discriminatory and unlawful and/or whether the different treatment is unethical or open to challenge on administrative law grounds.*

*For example, members of the group or other people in comparable situations may not be eligible for a benefit or service. Alternatively, a proposed process might result in the people it targets receiving reduced levels of service or a lower benefit. In considering this question, consider both the means by which people are treated, e.g. the process or criteria, and the outcomes for people.*

*You should note the following (if applicable):*

- what members of the group, or the persons or groups in comparable circumstances, will be treated differently;*
- what will be different about the way they are treated or the outcomes they'll experience, in comparison to the others; and*
- what will determine the different treatment of, or the different outcomes experienced by these people.*

**Note:** *discrimination can be direct or indirect. Indirect discrimination concerns policies, practices and actions that appear on their face to be neutral, but that have the effect of disadvantaging one of the groups against whom it is unlawful to discriminate.*

### 2. Will the different treatment be based on any of the prohibited grounds or, could people affected by the proposal perceive the different treatment to be based on any of these grounds?

*Prohibited grounds being sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.*

*This may be direct (e.g., the use of a business rule to intentionally target a person with particular characteristics) or indirect (e.g., a consequence of*

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targeting a particular cohort of people who also happen to be more likely to be a different age, etc. to others).

If the process or system involves operational analytics or automated business rules, the model might use one or more of the prohibited grounds as inputs or produce outputs which discriminate on the basis of one of those grounds, whether intentionally or unintentionally, directly or indirectly. You will need to ensure this is considered when the question is answered.

**See:** [PHRaE Guidance: Operational analytics and automation](#)

Where different treatment will or might be based on a prohibited ground of discrimination, this may or may not be unlawful depending on the resolution of other issues. Subsequent questions will explore the other issues that need to be considered.

**Note:** there may be discrimination within these groups, that is, people with one disability may be treated differently from those who have another disability. Whether such 'intra-group' discrimination is lawful will depend upon the factors examined through this guidance.

### 3. Will any different treatment result in any member of the group, or persons or groups in comparable circumstances, being materially disadvantaged?

This could be people the proposal is for, or people in comparable circumstances. In order for the different treatment to be unlawful, it must result in any member of the group, or persons or groups in comparable circumstances, being disadvantaged in a way that is "material". This means a disadvantage that it is more than trivial.

You should note the following (if applicable):

- what the material disadvantage is and who will experience it;
- how this different treatment will support the objectives of the proposal and how we will know if this is successful; and
- if the different treatment will be authorised by legislation, court ruling, Ministry policy or rules, or a specific Ministry decision (and if so what)

**Note:** whether a disadvantage is material may be a difficult legal decision. If the different treatment is based on a prohibited ground of discrimination and might materially disadvantage certain people, and if there is no legal basis for the different treatment, then it might be unlawful under the Human Rights Act.

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*You should check with your manager, a senior, or a subject matter expert if you are in any doubt.*

## **4. Have you considered whether the objective(s) could be achieved without treating the affected people differently?**

*If this has not been considered, you need to recommend that it is and ask them to come back to you with their response and why it could or could not be achieved without treating the affected people differently. If it could be done, but isn't, you need to understand why this is not being proposed and whether this will be lawful.*

**Note:** *If you are unsure where to go from here, you should check with your manager, a senior, or a subject matter expert.*

## **5. Will the proposal assist or advance people who have been disadvantaged by discrimination in the past?**

*Section 19(2) of the New Zealand Bill of Rights Act states that: "Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful ... do not constitute discrimination." The section recognises that sometimes specific, targeted, processes or services are required to address the effects of discrimination – for example, where discrimination has resulted in one group being under-represented in education out of proportion to their relative population in New Zealand as a whole or in the particular local community. These are sometimes referred to as "affirmative action", or "positive discrimination" services or processes.*

*You should note the following (if applicable):*

- *the nature of the disadvantage suffered by the group in the past;*
- *any evidence to support the existence of that disadvantage and how it was caused by discrimination; and*
- *how the proposal will assist in addressing that disadvantage.*

**Note:** *If you are unsure, you should discuss with your manager, a senior, or a subject matter expert.*

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## Appendix: Service Effectiveness Model (SEM) case study

*Warning - SEM is currently not operational following a decision made during 2020 to allow for an increase in case manager resourcing/capacity so they could process the expected increase in people applying for benefit as a result of COVID-19.*

The SEM was designed to stream some clients into intensive services. The extra demands of the more intensive services (WFCM-HCD, WFCM-GEN, WSS) means that clients in those services face an increased prospect of failing to meet the requirements of their benefit and being sanctioned as a result.

By contrast with similarly situated clients placed in less intensive services the increased risk of obligation failure and sanction may seem like a material disadvantage to clients streamed into these services relative to the position of their similarly situated counterparts placed in less intensive services. However, this disadvantage seems relatively minor because:

- case managers have a discretion as to whether to impose sanctions and are required to consider all the relevant (so personalised) factors before doing so;
- clients are given the opportunity to re-comply with their obligations before a sanction is imposed and may challenge a sanction if they feel it is inappropriate; and
- the imposition of sanctions on clients in intensive services is rare.

*Whether the infringing provision, policy, practice, or service in question serves an important and significant objective*

1. The Service Effectiveness Model (SEM) is a component of the Ministry's overarching goal of reducing long-term welfare dependence. The aim of service matching is to ensure that clients receive support appropriate to their needs to find employment as quickly as possible.
2. Helping people find work is important both for them and their communities:

**For individuals**, work is an important feature in structuring personal and social identity; family and social bonds; ways of making money, and thereby accessing a number of essential and non-essential goods, services and activities; daily routines; level of activity; physical and mental well-being; self-confidence and self-esteem; a sense of self-worth provided by the feeling of contributing to society or the common good"

**For societies**, work is an important feature in promoting community cohesion and safety; increasing civic participation; reducing public spending in a range of welfare benefits (provided, of course, that work is

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performed in a decently paid job); promoting social and economic development; organising social life at a macro level.”

3. Public service targets, for which MSD has lead responsibility, will be a key measure of MSD’s progress toward the goal of reducing long-term welfare dependence.
4. These objectives and the broader social wellbeing approach which underpins them are recognised in multiple Cabinet papers and legislation. See for instance Social Security (Youth Support and Work Focus) Amendment Act 2012.

*Whether there is a rational and proportionate connection between that objective and the infringing provision, policy, practice, or service, or whether the objective may be achieved in another way that interferes less with the right or freedom affected*

## Proportionate connection

The disadvantages imposed by SEM seem negligible. Furthermore, they may be mitigated by case managers or avoided by clients meeting reasonable service requirements. Given the extent of the disadvantage and the significance of the objectives, the disadvantages potentially arising from the SEM do not seem disproportionate.

## Rational connection

SEM is a component of MSD’s overarching goal of reducing long-term welfare dependence and reducing lifetime benefit liability. There is good but indirect evidence of a rational connection between the SEM and those objectives. The evidence is indirect because SEM is not in operation, i.e., there is no evidence yet of the effects of the specific client matching recommendations that will flow from the model.

There is good evidence, however, of the effects of client service matching more generally. There is good evidence, for instance, of the effects of prioritising clients younger than 35 years to WFCM-HCD (a work focused case management service) and of excluding clients aged over 60 from WFCM-Gen, WFCM-HCD or Work Service Support (WSS). Although we cannot yet be certain that SEM will replicate those recommendations, they – and other similar examples – give a good sense of the rational connection between client service matching decisions of the sort likely to emerge from the SEM.

The rational connection between SEM and those objectives consists in the reasons to believe that such discrimination as there is on those grounds will further those objectives.

# Privacy, Human Rights & Ethics Framework

## Guidance: Openness and transparency

### Introduction

**Purpose** To provide good practice guidance on how take an open and transparent approach to the collection and use of personal information.

**When to use** Use this guidance once you have fully understood what the objectives of a proposal, what it is looking to achieve through the proposed use of information, and how it is linked to the Ministry's strategic objectives.

**Who is it for** Privacy Advisors

**Pre-work** Listen, read or review:

- [PHRaE Guidance: Key considerations](#)
- [PHRaE Guidance: An introduction](#)
- [Data Protection and Use Policy: Transparency and Choice Guideline Summary](#)

**How to use** You can refer to the guidance material:

- if they have completed the [PHRaE Prompts for the business - response form](#)
- during an assessment to check that you have asked all the right questions, and
- to make use of the commentary, explanations, examples and warnings provided.

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## Overview

The Ministry is committed to being as open as possible with clients about the information it collects and the ways in which it uses that information. The PHRaE is one aspect of a network of initiatives to improve and sustain such openness, allowing the Ministry to improve its oversight of the use of client information and how it relates to the purpose for which it was collected, and to identify and respond to privacy, human rights, and ethical risks, associated with information use.

### Focus

The questions in this guidance challenge the use of personal information to meet the objectives of the proposed service or process and helps us to consider whether an objective could be met another way that doesn't involve the use of personal information.

### Your role

As a Privacy Advisor, you will support the business through the PHRaE process including completing the PHRaE assessment, engaging expertise when required, and providing advice on how to mitigate risks identified. Generally, you will work alongside an Information Security Advisor and an Information Management Advisor who are assigned to the same portfolio.

**See:** [PHRaE process](#)

## Why this is important

The Data Protection and Use Policy (DPUP) notes that people who use social services want a good understanding of why their information is needed and want government agencies to be open and transparent about why they need their information. When they're unclear about it, this can cause anxiety, especially if their current situation is already a difficult one.

### Openness vs. transparency

Transparency is a more specific element of openness. A process or system is transparent if it is possible to discover and explain how and why a system made a particular decision.

### Applying the right method

DPUP helps us to consider the range of methods by which information may be communicated to service users in a manner that works for them by considering a range of methods for explaining matters to service users. For example:

- one to one conversation;



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- brochures, fact sheets or FAQs to take home;
  - posters in offices;
  - website information at different levels of detail;
  - information on forms they are asked to sign and copies they can take away;
  - presentations to groups of people.

While a range of different approaches could work, ultimately it's important to ensure that understanding is achieved, by checking with people from time to time, and by respecting cultural and language considerations.

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## Questions to ask

The following questions can or should be asked during your assessment. Click on the link for further guidance and advice about why these questions are important to ask.

1. [What, how and when will people be told about the use of their information, including \(if relevant\) the use of operational analytics?](#)
2. [Will people have consented or be asked to consent to the use\(s\) of their personal information, and if not, why not?](#)
3. [Will the way in which consent has or will be obtained:](#)
  - [lead to people having a genuine choice about whether their information is used in this way?](#)
  - [mean that people understand how their information will be used?](#)
4. [Do the proposed use\(s\) of personal information include using information belonging to children or other people who are not able to understand and provide consent?](#)

## What your PHRaE assessment summary should cover

Summarise:

1. What people will know about the uses of their personal information.
2. What they'll be told and how they'll be told or proposals not to tell people and issues of consent (noting that consent is not always required).
3. Any specific comments from subject matter expertise, such as ethics or legal.

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## Related information / Helpful resources

### Policies and standards

Privacy, Human Rights and Ethics Policy (in development)

[Data Protection and Use Policy](#)

### How to guide

[How to Guide: Consent Forms](#)

[How to Guide: Information Toolset for Portfolios](#)

[PHRaE Guidance: Key considerations](#)

[PHRaE Guidance: An introduction](#)

[PHRaE Guidance: Potential benefits and adverse consequences](#)

[PHRaE Guidance: Te Tiriti o Waitangi](#)

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### Other

[PHRaE Prompts for the business](#)

[PHRaE Prompts for the business - response form](#)

[Risk and control catalogue](#)

[MSD Specific Legislative Authorities](#)

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# Privacy, Human Rights & Ethics Framework

## Document information

Owner	Manager Information Privacy and Security
Last reviewed	15 December 2021
Review period	Every second year

## Record of amendments

Date	Brief description of amendment
[Month Year]	[Enter description]

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

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## Appendix: Questions with guidance

1. **What, how and when will people be told about the use of their information, including (if relevant) the use of operational analytics?**

*If people will not, or cannot, be told about the use of their information, you will need to find out why.*

2. **Will people have consented or be asked to consent to the use(s) of their personal information, and if not, why not?**

*One important way to show respect for people and their information is to obtain their consent for the proposed use. Consent serves this important function but only if it is **informed** and **voluntary**.*

*There may be cases in which it is ethically appropriate to collect and use information without consent. Although cases will need to be considered individually, typical examples excusing a requirement for consent may include demonstration that the collection and use of the information is important, or that obtaining consent is impracticable or would cause harm, or that the collection and use poses minimal risk to those whose information is being used.*

*The law may impose distinct duties or permissions, and so the questions in this section on consent are not intended to imply that consent will always be required. Whether the law requires consent depends on the circumstances. Often consent is not required.*

**Note:** *often in the social sector, people have little real choice about providing their information in order to obtain support, so 'consent' or a 'declaration of understanding' given on forms should not be assumed to be free and informed.*

3. **Will the way in which consent has or will be obtained:**

- **lead to people having a genuine choice about whether their information is used in this way?**
- **mean that people understand how their information will be used?**

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*For example, can people still receive services if they don't consent to this use, or a visual representation is shown on how it is used.*

**See:** Youth Service for NEET

- <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/phrae/youth-service-for-neet.pdf>
- <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/phrae/youth-service-neet-model-data-and-analytics.pdf>

#### **4. Do the proposed use(s) of personal information include using information belonging to children or other people who are not able to understand and provide consent?**

*If the answer is yes, you will need to find out how they will be supported to understand how their information is being used.*

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## Guidance: Te Tiriti o Waitangi

### Introduction

**Purpose** To help identify and provide good practice guidance on the information-related impacts of a proposal on Māori in relation to the Ministry's commitment to Te Tiriti o Waitangi / the Treaty of Waitangi.

**When to use** Use this guidance once you have fully understood what the objectives of a proposal, what it is looking to achieve through the proposed use of information, and how it is linked to the Ministry's strategic objectives.

**Who is it for** Privacy Advisors

**Pre-work** Listen, read or review:

- [PHRaE Guidance: Key considerations](#)
- [PHRaE Guidance: An introduction](#)
- [Te Pae Tata](#)
- [Department of the Prime Minister and Cabinet: Te Tiriti o Waitangi / Treaty of Waitangi Guidance](#)

**How to use** You can refer to the guidance material:

- after the Portfolio has completed a [PHRaE Prompts for the business - response form](#)
- during an assessment to check that you have asked all the right questions, and
- to make use of the commentary, explanations, examples and warnings provided.

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# Privacy, Human Rights & Ethics Framework

## Overview

The Ministry's commitment to improving outcomes for Māori means endeavouring to ensure that its systems and processes promote such outcomes and that they identify, address, and limit potential disadvantage and unjust discrimination.

### Focus

The questions in this guidance will help you to consider the information-related impacts of a proposal on Māori in relation to the Ministry's commitment to Te Tiriti o Waitangi / the Treaty of Waitangi.

It is **not** intended to be used to understand whether the overall proposal meets all of our obligations (if any) from a Treaty or Te Ao Māori perspective. Proposals should seek further advice through [Te Pātaka Korero a Rua](#)

### Your role

As a Privacy Adviser, you will support the business through the PHRaE process including completing the PHRaE assessment, engaging expertise when required, and providing advice on how to mitigate risks identified. Generally, you will work alongside an Information Security Adviser and an Information Management Adviser who are assigned to the same portfolio.

**See:** [PHRaE process](#)

## Why this is important

As a Crown agency we are a Treaty partner committed to supporting and enabling Māori, whānau, hapū, iwi and communities to realise their own potential and aspirations. The Ministry's Māori strategy and action plan, [Te Pae Tata](#), guides us in strengthening our accountability and responsiveness to Māori and helps to embed a Te Ao Māori world view into the DNA of the Ministry.

The Ministry is committed to Te Tiriti o Waitangi / the Treaty of Waitangi through authentic consultation and engagement processes. When services are likely to have particular significance for Māori, involving iwi or Māori is especially important. Funding and timelines for a proposal should factor this in unless there is a compelling reason not to.

**See:** [Te Pātaka Korero a Rua](#) to seek further guidance.

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## Questions to ask

The following questions can or should be asked during the discovery phase. Click on the link for further guidance and advice about why these questions are important to ask.

1. [Is the proposed system or process likely to have a significant impact upon Māori, and if so how?](#)
2. [If the answer to question one was yes \(or even if you are unsure\), do you intend to consult with Māori, and if not why?](#)

**Note:** There is currently no confirmed direction for the Public Sector or the Ministry on Māori Data Governance. Until there is clear guidance, no advice should be provided in this area. You can talk to a senior adviser or your manager if this subject is raised by your Portfolio.

## What your PHRaE assessment summary should cover

Summarise:

1. What impacts to Māori have been identified.
2. Whether guidance has been obtained through Te Pātaka Korero a Rua and/or any plan to consult Māori.
3. Any specific comments from subject matter expertise, such as ethics or legal or received via Te Pātaka Korero a Rua.

## Related information / Helpful resources

### Policies and standards

Privacy, Human Rights and Ethics Policy (in development)

[Data Protection and Use Policy](#)

### How to guide

[How to Guide: Consent Forms](#)

[How to Guide: Information Toolset for Portfolios](#)

[PHRaE Guidance: Key considerations](#)

[PHRaE Guidance: An introduction](#)

[PHRaE Guidance: Potential benefits and adverse consequences](#)

[PHRaE Guidance: Te Tiriti o Waitangi](#)

[PHRaE Guidance: Using personal information](#)

[PHRaE Guidance: Unique identifiers](#)



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[PHRaE Guidance: Using personal information we already hold](#)

[PHRaE Guidance: New information](#)

[PHRaE Guidance: Openness and transparency](#)

[PHRaE Guidance: Accuracy, access and correction](#)

[PHRaE Guidance: Operational analytics and automation](#)

[PHRaE Guidance: Discrimination and bias](#)

[PHRaE Guidance: Information sharing \(including offshore\)](#)

[PHRaE Guidance: Sharing value](#)

[PHRaE Guidance: Keeping information safe and secure](#)

[PHRaE Guidance: Retention and disposal](#)

[PHRaE guidance: Full list of questions](#)

## Other

[PHRaE Prompts for the business](#)

[PHRaE Prompts for the business - response form](#)

[Risk and control catalogue](#)

[MSD Specific Legislative Authorities](#)

[Te Pātaka Korero a Rua](#)

## Document information

Owner	Manager Information Privacy and Security
Last reviewed	15 December 2021
Review period	Every second year

## Record of amendments

Date	Brief description of amendment
[Month Year]	[Enter description]

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## Appendix: Questions with guidance

### 1. Is the proposed system or process likely to have a significant impact upon Māori, and if so how?

*A proposed system or process is likely to have significant impact upon Māori where:*

- *Māori individuals, communities, organisations and/or programmes are the specific focus of a system or process,*
- *Māori are a significant subgroup of the population who will be affected by a system or process,*
- *a system or process is likely to use information which is regarded as important or sensitive by Māori, or*
- *a system or process is likely to lead to policy or practices which will influence matters regarded as important or sensitive by Māori.*

### 2. If the answer to question one was yes (or even if you are unsure), do you intend to consult with Māori, and if not why?

*If a consultation plan has been created, check that this has been discussed through a [Te Pātaka Korero a Rua](#) wānanga (or another relevant and suitable Māori body).*

*If consultation is not intended, or they have not yet engaged through Te Pātaka Korero a Rua, then this should be recommended, and a summary of the advice received provided back to you.*