

Protocol for the management of material believed to be obtained or created in contravention of s 7 of the *Surveillance Devices Act 2007*

Section 6A was inserted into the Surveillance Devices Regulation 2022 (“the SD Regulation”) by the Surveillance Devices Amendment (ICAC) Regulation 2023.

Section 59(3) of the *Surveillance Devices Act 2007* (“the SD Act”) provides that any regulation made for the purposes of exempting compliance with any provision of the SD Act takes effect on and from the date of expiry of the period during which either House of Parliament may, under s 41 of the *Interpretation Act 1987* disallow the regulation. The SD Regulation took effect on 23 November 2023.

Section 6A(2) of the SD Regulation exempts the ICAC from Part 2 of the SD Act in relation to the ICAC (including an officer of the ICAC) obtaining, possessing, publishing or communicating “relevant material” in accordance with the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). The term “relevant material” is defined in section 6A(1) of the SD Regulation as a private conversation, a record or report of a private conversation or a record or report of the carrying on of an activity that is obtained by the use of a surveillance device in contravention of Part 2 of the SD Act by a person other than the ICAC.

The exemption is in effect until 31 December 2025.

Section 6A(3) of the SD Regulation requires that, if the ICAC relies on the exemption in s 6A(2) in the course of an investigation under the ICAC Act, any report relating to the investigation prepared by the ICAC under s 74 of the ICAC Act must include a statement to that effect. Section 6A(3) does not require the ICAC to otherwise report publicly on any reliance on the exemption.

However, in the interests of transparency and accountability, the Chief Commissioner of the ICAC may report to the Parliament, through the Parliamentary Committee on the ICAC and/or the ICAC Inspector, additional detail as to the review, use and communication of material obtained by the ICAC, which appears to have come into existence in contravention of Part 2 of the SD Act.

This protocol sets out how the ICAC will deal with material covered by s 6A(2) of the SD Regulation.

Application

This protocol applies to “relevant material” obtained by or produced to the ICAC.

Storage

All “relevant material” is to be saved into a dedicated TRIM container within the ICAC’s records management system.

Access to this container is restricted to the Commissioners, the Executive Directors of the Legal and Investigation Divisions, the case lawyer(s) for the investigation to which the “relevant material” relates and other investigation team members assigned to the investigation.

The TRIM container and its contents are fully auditable. This means that the identity of anyone who has accessed, revised, saved, or printed the “relevant material” can be readily ascertained.

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Naming

Any “relevant material” that is considered to be of evidentiary value is to be named as per the ICAC’s document naming policy.

Evidence already obtained by the ICAC should be reviewed to assist in determining any relevant identities and locations. If the individual who recorded or produced the “relevant material” can be identified, their name should be included as part of the naming policy.

Each item is a restricted record and should be created as a restricted item in TRIM with an associated “R” prefix. This indicates heightened security should be exercised in dealing with the information. Information obtained under the *Telecommunications (Interception and Access) Act 1979* is dealt with in the same way.

Management

Access to and the use/communication of “relevant material” is to be strictly monitored and recorded.

A Review, Use and Communication log (RUC log) has been created and is stored within the restricted TRIM container.

- The RUC log is to be updated by the ICAC officer on each occasion “relevant material” is located or reviewed by the ICAC officer.
- The RUC log has numerous that which relate to a particular property reference number (PRN). All “relevant material” is to be recorded under the PRN assigned to it. The person who initially finds an item of “relevant material” is responsible for the initial entry on the RUC log.
- After the first entry, each time an ICAC officer reviews an item, the RUC log should be updated by the ICAC officer to reflect that the item has been reviewed.
- The RUC log has a number of pre-defined columns:
 - Summary – a precis of what the “relevant material” relates to
 - Document reference – the TRIM “R” number for the item
 - Date and time – the date and time the “relevant material” was created
 - Location – the location where the “relevant material” was created
 - Reviewed by – name of Commission officer
 - Date of review/time of review – self explanatory
 - Use – What the item was used for, for example, review for relevance, inclusion in an examination brief of evidence.
- The pre-defined columns should be populated where possible. Where a column cannot be populated, please use “Unknown”.

The RUC log is a living document that will be completed by the ICAC officer accessing it on every occasion “relevant material” is found, reviewed or used by the ICAC officer.

On each occasion “relevant material” is used for the purposes of an interview, compulsory examination, public inquiry, or in an application for the use of formal powers (for example, an application for a search warrant), the use will be recorded on the RUC log.

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