

12 August 2024



Information management policy

1 Why this policy is important

- 1.1 This *Information management policy* supports the Electricity Authority Te Mana Hiko (Authority) to be well-informed to further its statutory objectives and perform its statutory functions effectively, and to achieve its strategic ambitions.
- 1.2 In particular, the policy supports the Authority's strategic ambition of actively building consumers' and industry stakeholders' trust and confidence in the electricity industry and regulation through greater transparency, understanding and improved behaviours.
- 1.3 The policy supports and reinforces evidence-based decision making by the Authority.
- 1.4 To promote a competitive, reliable, and efficient electricity industry for New Zealand, the Authority needs people who are clear on what is expected of them and who are empowered to fulfil their respective roles. A robust and effective suite of Authority policies helps support good judgment and decision making by the Authority, thereby better enabling it to promote its statutory objectives and to perform its statutory functions.

2 Application

- 2.1 This policy sets out, at a high level, the Authority's general policy on its management of information.
- 2.2 Information management is the application of processes and methods to collect, manage, store, preserve, use, and communicate or provide access to information in all formats to internal and external stakeholders.
- 2.3 Information is created when data are processed, organised, or structured to provide context and meaning. This policy applies to all the Authority's information assets – documents and files, whether electronic or paper-based; artefacts derived from information such as analytical models or charts; and the technology used to create, store, and access information. For the avoidance of doubt, the term 'information' should be interpreted to encompass data.
- 2.4 The policy applies to:
 - a) all Authority personnel, including permanent and temporary staff, contractors and consultants, staff on secondments from other agencies, and suppliers of services
 - b) all business activities performed by or on behalf of the Authority
 - c) all information created or received in the conduct of the Authority's affairs regardless of the media on which the information is stored or the mechanism by which it is captured.

3 Policy statement

- 3.1 This policy explains how the Authority collects, uses, and shares information when fulfilling its statutory functions under the Electricity Industry Act 2010 (Act).
- 3.2 The Act empowers the Authority to collect, use and share information for certain purposes. The Authority must protect that information and only disclose what it considers necessary to give effect to its legislated responsibilities.
- 3.3 This policy covers the following topics:
 - a) transparency statement
 - b) collection of information
 - c) use of information

- d) disclosure or publication of information (including, in particular, the treatment of confidential information)
- e) preservation, storage, and disposal of information.

Transparency statement

- 3.4 This policy is published on the Authority's website and serves as its transparency statement for the purpose of Te Kawa Mataaho | the Public Service Commission information gathering and public trust model standards. This is to enable New Zealanders to understand the kinds of information gathering activities the Authority undertakes and the purpose of these activities.
- 3.5 If a member of the public has any concerns or queries about the information the Authority is collecting, they may contact the Authority at info@ea.govt.nz.

Collection of information

- 3.6 The Authority needs to be well informed to perform its statutory functions effectively. To fulfil its monitoring and compliance functions, to inform the making and administering of the Electricity Industry Participation Code 2010 (Code) and for other reasons related to its functions, the Authority collects information using several approaches:
 - a) **Information in the public domain:** The Authority collects information from publicly available sources. This includes information made publicly available by industry participants in accordance with the Code.
 - b) **Voluntary provision of information:** Information is provided voluntarily to the Authority, including in response to Authority requests, in submissions on Authority consultation papers, and where industry participants are making applications to the Authority or seeking actions from the Authority.
 - c) **Obligations in service provider agreements:** The Authority receives information from market operation service providers under the terms of their service provider agreements with the Authority, including functional specifications that form part of the agreements.
 - d) **Obligations under the Code:** The Code contains various provisions that require industry participants, including industry service providers, to make information available to the Authority as specified in the Code or specified or required by the Authority. The Code also requires information to be published through particular industry platforms, such as the wholesale information trading system, that the Authority has access to.
 - e) **Obligations under the Enforcement Regulations:** The Authority obtains information via the Electricity Industry (Enforcement) Regulations 2010 for the purpose of its compliance, monitoring, investigation, and enforcement powers, including to enable the function of the Rulings Panel.
 - f) **Obligations under the Act:** For example, the Act grants the Authority the power to collect information from industry participants. Under section 46 of the Act, the Authority may require an industry participant to provide information to the Authority for the purpose of:
 - i. carrying out the Authority's monitoring functions
 - ii. carrying out the Authority's function of investigating breaches, or possible breaches, of and enforcing compliance with Parts 2 and 4 of the Act, regulations made under the Act, and the Code

- iii. carrying out a review and producing a report in response to a request by the Minister under section 18 of the Act.

The Authority's general approach to collecting information

- 3.7 The Authority's general approach to collecting information is to use a method fit for the purpose at hand.
- 3.8 Where the Authority can exercise discretion over whether to collect information voluntarily or to use its statutory powers, the Authority may prefer the approach with lower transaction costs for the information provider and the Authority.
- 3.9 Sometimes the Authority may consider it appropriate to use the discretionary statutory information gathering powers, even if this does not have the lowest transaction costs. There may be several reasons for this, including where:
 - a) the statutory information gathering power has been established particularly for that purpose
 - b) the Authority considers there is a risk the person from whom the Authority is collecting information will not provide all or part of the information to the Authority voluntarily or within the required timeframe
 - c) the Authority considers that the person from whom the Authority is collecting information may seek to attach conditions that could constrain the Authority in performing its functions or otherwise seek to constrain the Authority's use of the information
 - d) the Authority considers that the use of the statutory information gathering powers protects the information provider (for example, from breaching any duties of confidence).

Providing information to the Authority

- 3.10 There are no standard means by which information is to be provided to the Authority. The Authority receives information in different formats and via different interfaces.
- 3.11 Over time the Authority is looking to introduce greater standardisation in the formats and interfaces used to provide information to it, where it is appropriate and efficient to do so.
- 3.12 Where the Authority believes information provided to it has been obtained illegally, the matter may be reported to the New Zealand Police.

Use of information

The Authority's general approach to using information

- 3.13 The Authority has many statutory functions. The Authority may hold information required or collected for the purpose of or in performing one function that is relevant to a matter the Authority is considering under a different function. There are also linkages between the Authority's functions with, for example, one of the underlying purposes of monitoring being to inform Authority decisions under other functions, such as making Code amendments.

- 3.14 Generally, the Authority will use information only for the purpose(s) for which it was required or collected. However, if the Authority has obtained information in connection with one of its functions that is relevant to another of its functions or could be useful in informing the Authority's decisions under another function, the Authority may use that information in performing the other function, where this is in accordance with law or with the consent of the person who provided the information. For example, where the Authority has obtained information under section 46 of the Act for a purpose described in section 45, the Authority may use that information for a different purpose also described in section 45.
- 3.15 The Authority may also exercise internal controls on information in order to preserve the independence of particular functions (eg, its investigation of breaches of the Act, regulations made under the Act, and the Code). Where the Authority proposes to use information for a secondary purpose that is not related to the primary or original purpose for which it obtained the information, the Authority will reasonably endeavour to notify the person who provided the information of such secondary use, particularly where the secondary use may be adverse to the person's interests (eg, if information obtained for the purposes of the Authority's monitoring functions set out in section 45(1)(a) of the Act is intended to be used for the purpose of the Authority's compliance functions set out in section 45(1)(b)).
- 3.16 Authority staff and contractors will generally be able to view information collected by the Authority. Generally, consultants to the Authority (eg, economic and legal) will also be able to view information collected by the Authority, where such information is necessary for the consultant to perform a service to the Authority (and subject to the consultant's confidentiality obligations).
- 3.17 Information collected by the Authority must be:
- a) managed in accordance with applicable law and this policy
 - b) retained or disposed of in accordance with the Public Records Act 2005 (Public Records Act).

Disclosure or publication of information

Confidential information

- 3.18 When requesting information from an industry participant, the Authority will generally request that the participant identify any information the participant considers to be confidential and the reasons why the participant considers the information to be confidential.

The Authority's publication of non-confidential information

- 3.19 Generally, the Authority's default position with information provided to it or created by it is that this information may be made publicly available, if it considers the information to not be confidential and there are no other reasons for withholding it (eg, under the Official Information Act 1982 (OIA) or where the information is subject to the Privacy Act 2020 (Privacy Act)).

The Authority's disclosure or publication of confidential information

- 3.20 Generally, the Authority's default position is to keep confidential any information provided to it or created by it that the Authority considers to be confidential.

- 3.21 However, there are circumstances when the Authority may or must disclose or make publicly available confidential information. These include:
- a) where disclosure is required to enable the Authority or another person or body (such as the Rulings Panel) to carry out their obligations, functions, and duties under the Act, regulations made under the Act, or under the Code
 - b) where disclosure is permitted or required by law, for example:
 - i. under section 47A of the Act (in relation to the sharing of information and documents with public service agencies, statutory entities, the gas industry body and overseas regulators)
 - ii. the OIA
 - iii. during legal proceedings (eg, disclosure to parties to an investigation or a complaint with the Rulings Panel)
 - iv. when required by agencies with the power to require the Authority to disclose confidential information
 - v. providing information requested by a responsible Minister to assist the Minister to fulfil the Minister's obligations to answer questions in Parliament, in accordance with the Crown Entities Act 2004
 - vi. in answering Parliamentary questions, if the Authority is called to appear before a Select Committee.
- 3.22 In all cases set out above, the Authority will consider whether there is any basis on which it may withhold the confidential information from disclosure (eg, whether any OIA withholding grounds apply).
- 3.23 Where the Authority intends to disclose or make publicly available confidential information, where appropriate staff will endeavour to advise the person who provided the information of its proposed release. For example, the Authority will endeavour to do so where the Authority considers that providing the confidential information to another government agency is permitted under section 47A of the Act and advising the information provider of this is not inconsistent with that provision or otherwise inappropriate.
- 3.24 If, at the time of requiring an industry participant to provide the Authority with information, the Authority anticipates that confidential information may be shared with others, including another government agency, the Authority will endeavour to include this possible disclosure in its original request for information.

How the Authority decides where information collected or created is confidential

- 3.25 In determining whether information the Authority collects or creates is confidential information, the Authority will consider in particular:
- a) whether the information has 'the necessary quality of confidence' about it¹, including whether the information is public property and public knowledge²
 - b) whether the information has been communicated to the Authority in circumstances importing an obligation of confidence³
 - c) where relevant, the tests under the OIA and the Privacy Act.

¹ See the Ombudsman's guide to confidentiality, p. 6; *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41.

² See *AB Consolidated Ltd v Europe Strength Food Co Pty Ltd* [1978] 2 NZLR 515 (CA) at 521 citing *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd* (1948) 65 RPC 203, 215; [1963] 3 All ER 413, 415.

³ See *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41.

How the Authority decides to make confidential information publicly available

- 3.26 Where the OIA applies, the Authority will consider the requirements of the OIA, including whether there are good reasons for withholding information.
- 3.27 In other situations where the Authority has discretion over whether to make publicly available any information it considers to be confidential the Authority will have regard to the requirements of applicable law and any other factors it considers relevant, including:
- a) the extent to which making the information publicly available or disclosing it is consistent with the Authority's statutory objectives and the performance of its functions
 - b) the nature of the reasons for:
 - i. keeping the information confidential or not disclosing it (including those given by the information provider)
 - ii. making the information publicly available (eg, where relevant, whether the public interest in disclosing the information outweighs the public interest in protecting the information)⁴
 - c) whether the form of the information can be changed so it is no longer confidential or otherwise is appropriate for release or disclosure (eg, by aggregating or making anonymous the confidential information).

The Authority's disclosure of personal information

- 3.28 The Privacy Act aims to promote and protect an individual's right to privacy of personal information, while recognising that other rights and interests may at times also need to be considered. The Authority is required to comply with the Privacy Act in respect of all personal information it holds.
- 3.29 In some circumstances, the Authority may disclose personal information to third parties, such as government agencies, provided this disclosure is permitted by the Privacy Act⁵. There could also be some situations where the Authority is required by other legislation to disclose personal information (eg, under the OIA).

Preservation, storage, and disposal of information

- 3.30 The Authority will ensure that its information, whether paper-based or digital, is:
- a) where appropriate, securely stored
 - b) preserved in accordance with the Public Records Act and the Authority's business continuity plans, where ongoing business need, legislative or policy requirement, or archival value exists
 - c) disposed of in accordance with:
 - i. the Public Records Act when it has ceased to have any value to the Authority
 - ii. the Privacy Act, where relevant.

⁴ See *Blum v ANZ Bank Limited* [2015] NZCA 335 at [55].

⁵ See for example, information privacy principle 11(1)(a) and 11(a)(h), and section 24(1)(a) of the Privacy Act.

4 Relevant policies, guidelines, and legislations

4.1 The Authority must ensure compliance with all relevant legislation, including:

- a) [Electricity Industry Act 2010](#)⁶
- b) [Electricity Industry Participation Code 2010](#)⁷
- c) [Electricity Industry \(Enforcement\) Regulations 2010](#)⁸
- d) [Crown Entities Act 2004](#)⁹
- e) [Privacy Act 2020](#)¹⁰
- f) [Official Information Act 1982](#)¹¹
- g) [Public Records Act 2005](#)¹²
- h) [Copyright Act 1994](#)¹³
- i) [New Zealand Bill of Rights Act 1990](#)¹⁴

4.2 The Authority must also ensure compliance with the following (as appropriate):

- a) Te Kawa Mataaho | Public Service Commission:
 - i. [Standards of Integrity and Conduct](#)¹⁵
 - ii. [Information gathering and public trust model standards](#)¹⁶
- b) [New Zealand Information Security Manual](#)¹⁷
- c) [Controlling sensitive expenditure: Guide for public organisations](#)¹⁸.

⁶ <https://www.legislation.govt.nz/act/public/2010/0116/latest/DLM2634233.html>

⁷ <https://www.ea.govt.nz/code-and-compliance/code/>

⁸ <https://www.legislation.govt.nz/regulation/public/2010/0362/latest/DLM3285301.html>

⁹ <https://www.legislation.govt.nz/act/public/2004/0115/latest/DLM329631.html>

¹⁰ <https://www.legislation.govt.nz/act/public/2020/0031/latest/LMS23223.html>

¹¹ <https://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

¹² <https://www.legislation.govt.nz/act/public/2005/0040/latest/DLM345529.html>

¹³ <https://www.legislation.govt.nz/act/public/1994/0143/latest/DLM345634.html>

¹⁴ <https://legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html>

¹⁵ <https://www.publicservice.govt.nz/guidance/integrity-and-conduct>

¹⁶ <https://www.publicservice.govt.nz/assets/DirectoryFile/Information-Gathering-and-Public-Trust-Model-Standards.pdf>

¹⁷ <https://www.nzism.gcsb.govt.nz/>

¹⁸ <https://oag.parliament.nz/2020/sensitive-expenditure>