

October 2024

Guidelines on information gathering powers under the Electricity Industry Act 2010

1. Introduction

- 1.1. These guidelines are for the information of industry participants and other stakeholders and relate to the information gathering powers of the Electricity Authority Te Mana Hiko (Authority) under the Electricity Industry Act 2010 (Act).
- 1.2. For the purposes of carrying out its functions, the Authority will obtain data from publicly available sources, from service provider agreements, from sources requiring the consent of industry participants or stakeholders and also from sources where it needs to use its information gathering powers, including under section 46 and section 47 of the Act. Under the section 46 information gathering powers the Authority may require industry participants to provide certain information, to permit officers or employees to be interviewed, and to give all other assistance that may be reasonable and necessary to enable the Authority to carry out its functions and exercise its powers.
- 1.3. These guidelines set out:
 - (a) an overview of the Authority's information gathering powers under section 46 of the Act for the purposes contained in section 45 and under section 47 of the Act for a section 45(b) purpose; and
 - (b) the general principles and procedures that the Authority will have regard to when using its information gathering powers.
- 1.4. These guidelines only apply to requests for information under the Act and not to requests or information provided either voluntarily or pursuant to any other power.

2. Overview of information gathering powers

Information that the Authority may require

- 2.2. Under section 46 of the Act, the Authority may require an industry participant to:
 - (a) provide, within any reasonable time specified by the Authority, any information, papers, recordings, and documents that are in the possession, or under the control, of the participant and that are requested for the purpose;
 - (b) permit its officers or employees to be interviewed (which interview may be recorded) and ensure as far as possible that they are made available for interview and answer truthfully and fully any questions put to them; and
 - (c) give all other assistance that may be reasonable and necessary to enable the Authority to carry out its functions and exercise its powers.

Purposes for which the Authority may require information

- 2.3. The Authority may exercise the above section 46 powers for the following purposes (set out in section 45 of the Act):
 - (a) carrying out the Authority's monitoring functions, which are to:
 - (i) monitor compliance with the Act (including Part 3), the regulations, and the Code; and
 - (ii) undertake and monitor the operation and effectiveness of market-facilitation measures under section 16(1)(f); and

- (iii) undertake industry and market monitoring and carry out any other function referred to in section 16(1)(g) (i.e. carrying out reviews, studies, and inquiries into any matter relating to the electricity industry).
- (b) carrying out the Authority's function of investigating breaches or possible breaches of, and enforcing compliance with, Part 2 and Part 4 of the Act, the regulations, and the Code; and
- (c) carrying out a review and producing a report in response to a request by the Minister under section 18 of the Act.

3. Use of powers to require information

- 3.1. The Authority must only use its powers to require information under section 46 for a purpose set out in section 45. Therefore, before requesting any information, the Authority must be satisfied that the information requested relates to a purpose set out in section 45.

Nature of information that the Authority can request

- 3.2. The Authority may require an industry participant to provide any information, papers, recordings and documents that are in the possession, or under the control, of the industry participant. As with equivalent powers under the Commerce Act 1986, the Authority can require information regardless of the form in which it is held.
- 3.3. The Authority may also require all other assistance that may be reasonable and necessary to enable the Authority to carry out its functions and exercise its powers. This could include, for example, requiring an industry participant to collect and provide information that it does not currently have or to provide information at a future date, once it is available.

Request for information under section 46

- 3.4. When the Authority requires any information, papers, recordings and documents from an industry participant, the Authority will set out the requirements in writing, and will:
- (a) set out details of the information, papers, recordings and documents required;
 - (b) explain the reasons for the request (including the purpose for which the Authority is requesting the information and enough information to enable the participant to be satisfied that the request relates to one of the purposes under section 45);
 - (c) specify the statutory provision under which the requirement is made;
 - (d) specify the time and date by which the Authority requires the information; and
 - (e) specify the place to which the information must be delivered.
- 3.5. The Authority will generally require industry participants who provide information to the Authority to identify any information that the industry participant considers is confidential and the reasons why the industry participant considers that the information is confidential.
- 3.6. The Authority will send the request to the relevant industry participant's place of business as recorded in the Participant Register, which can include an email address.

Timeframe for responding to requirement to provide information

- 3.7. The Authority must provide a reasonable timeframe for a participant to provide the information. In urgent cases a reasonable timeframe may be short. The length of time specified by the Authority is likely to depend on the nature of the information sought and the

resources likely to be required to process the notice (for example, where the information is likely to require substantial collation, the Authority should allow a longer period).

- 3.8. The Authority will consider requests from participants for extensions of time on a case-by-case basis. Requests for extensions should be in writing and include the participant's reasons for seeking the extension. Requests for extensions should be submitted to the Authority before the specified deadline in the request for information.

4. Use of information provided to the Authority under section 46

- 4.1. The Authority will use information provided to it under section 46 of the Act, only for a purpose set out in section 45 of the Act, and in accordance with other applicable law and the Authority's Information Management Policy.
- 4.2. This may include using information for secondary purposes not set out in the original request for information, provided the secondary purpose is one of the purposes set out in section 45 of the Act. Where the Authority proposes to do so, the Authority will reasonably endeavour to notify the industry participant of such secondary use, particularly where the secondary use may be averse to the participant's interests.
- 4.3. Please also refer to paragraphs 3.13 to 3.17 of the Authority's Information Management Policy, which set out further details on how the Authority uses information. The Information Management Policy can be accessed at [Information Management policy \(ea.govt.nz\)](https://www.ea.govt.nz/information-management-policy).

5. Interaction between the Authority's monitoring and compliance functions

- 5.1. Generally, information obtained under the Authority's information gathering powers for the purpose of industry and market monitoring will only be used in relation to the purpose(s) for which the information was required and collected (i.e., industry and market monitoring). However, the Authority may use the information for secondary purposes, if the secondary purpose is a purpose specified in section 45, including a purpose related to the Authority's compliance function. If the Authority proposes to use for its compliance function any information that was originally obtained for industry and market monitoring purposes, the Authority will reasonably endeavour to notify the relevant participant, particularly where this use may be averse to the participant's interests.

6. Privileges protected

- 6.1. Section 46 of the Act does not limit any claim of legal professional privilege over any information covered by a request for information or search warrant.
- 6.2. If the Authority requires an industry participant to do anything under section 46, neither the industry participant nor any officer or employee of the industry participant is excused from answering a question or giving any information or documents on the ground that to do so may incriminate or tend to incriminate the participant or the officer or employee. However, any self-incriminating statement or document made or given by an officer or employee, or an industry participant as an individual, is not admissible as evidence in any criminal or civil proceedings against that person (section 48 of the Act).

7. Interviews of industry participants

- 7.1. For the purposes of carrying out the Authority's monitoring, investigation and enforcement functions outlined above, the Authority may require an industry participant to permit its officers or employees to be interviewed under section 46(2)(b) of the Act.
- 7.2. Any questions put to industry participants (or their officers or employees) in such interviews must relate to the purpose for which the Authority has required the person to attend the interview.

Request for industry participant to attend interview

- 7.3. When the Authority requires a person to attend an interview, the Authority must set out the request in writing and will endeavour to include the following information:
 - (a) an outline of the subject matter of the interview and the topics likely to be canvassed during the interview;
 - (b) specify the person who is requested to attend the interview;
 - (c) explain the reasons for the request (including the purpose for which the Authority is requesting the interview and enough information to enable the participant to be satisfied that the request relates to one of the purposes under section 45);
 - (d) specify the statutory provision under which the request is made;
 - (e) specify a suggested time and date for the interview; and
 - (f) specify a suggested place for the interview
- 7.4. The Authority must send the request to the relevant industry participant's place of business, as recorded in the Participant Register, which may include an email address.

Recording of interviews

- 7.5. An interview under section 46(2)(b) may be recorded.
- 7.6. The person conducting the interview must explain to the interviewee that the interview is to be recorded before the interview starts to be recorded.

Transcripts of interviews

- 7.7. If a transcript of the interview is created, the Authority must provide a transcript to the interviewee as soon as practicable and provide the opportunity for the interviewee to correct any mistakes in the transcript.

Attendance at interviews

- 7.8. Industry participants are required to ensure, as far as possible, that its officers or employees are made available for interview and that they answer truthfully and fully any questions put to them.
- 7.9. The Authority must allow a person who is required to attend an interview to have a legal representative accompany him or her to the interview.
- 7.10. The Authority must conduct interviews during usual business hours, unless there are exceptional circumstances that mean that the interviewee is unable to attend during usual business hours. The Authority must allow reasonable breaks during the interview.

8. Compliance with a requirement under section 46

- 8.1. If an industry participant fails to comply with a requirement of the Authority under section 46, the failure is treated as if it was a breach of the Code, and the Authority may apply to the Rulings Panel for any order under section 54. The orders that the Rulings Panel may make under section 54 include (but are not limited to) private warnings, pecuniary penalties of up to \$ 2 million and a further amount not exceeding \$10,000 for every day or part day during which the breach continues and compliance orders.

9. Search powers

- 9.1. The Authority may authorise an employee of the Authority to search, any place named in a warrant issued under the Act, for the purpose of ascertaining whether an industry participant has breached, or may breach, Parts 2 or 4 of the Act, the regulations, or the Code.
- 9.2. The Authority may only authorise an employee to search a place for the purpose of carrying out the Authority's function of investigating breaches or possible breaches of, and enforcing compliance with, Parts 2 and 4 of the Act, the regulations, and the Code.
- 9.3. For an authorised employee to obtain a warrant, a District Court Judge, Justice, Community Magistrate, or a Court Registrar (not being a constable) must authorise that person to search a place specified in the warrant. To obtain such authorisation, there must be reasonable grounds to believe that it is necessary, for the purpose of ascertaining whether an industry participant has breached, or may breach, Parts 2 or 4, the regulations, or the Code, for an authorised person to search the particular place (section 47 of the Act).
- 9.4. The provisions of Part 4 of the Search and Surveillance Act 2012 (except for sections 118 and 119) apply, with any necessary modifications.

Use of information obtained in search

- 9.5. The Authority, or any person authorised by the Authority for the purpose, may inspect and take copies of any documents or extracts from them obtained pursuant to a warrant issued under section 47.
- 9.6. Please also refer to the Authority's Information Management Policy, which sets out further details on how the Authority uses information. The Information Management Policy can be accessed at [Information Management policy \(ea.govt.nz\)](http://ea.govt.nz).

10. Powers of investigators appointed to investigate breaches of the Code

- 10.1. Under regulation 13 of the Electricity Industry (Enforcement) Regulations 2010, an investigator appointed by the Authority to investigate allegations of breaches of the Code may exercise the powers of the Authority under sections 46 and the powers of an authorised person under 47 of the Act.