



MEMORANDUM OF UNDERSTANDING

RELATING TO

**THE DISCLOSURE OF NEWBORN BLOOD SPOT SAMPLES AND
RELATED INFORMATION**

BY

THE MINISTRY OF HEALTH

TO

THE NEW ZEALAND POLICE

2009

1. Introduction

1.1 Parties

The parties to this Memorandum of Understanding are the Ministry of Health (“the Ministry”) and the New Zealand Police (“Police”).

1.2 Background

Heel prick tests on newborns commenced in the 1960s for the purpose of identifying specific metabolic diseases, which have high rates of morbidity and mortality. Heel prick tests continue to be used today and the testing, reporting and treatment for metabolic diseases is run as a national programme (the Newborn Metabolic Screening Programme), screening over 60,000 newborns each year. The heel prick blood is placed on a collection card and sent to the National Testing Centre – a unit within LabPlus at the Auckland District Health Board (ADHB) - for analysis. The card with the residual blood spot sample and identifying details is then stored indefinitely by LabPlus (unless returned to families at their request). The National Screening Unit (NSU) is responsible for the funding and strategic direction of the national programme.

In the course of carrying out inquiries, the Police from time to time locate biological material. In some cases it is necessary to subject such material to analysis to identify where it came from. The blood spot cards and other information held by ADHB may assist with such analysis and therefore with the investigation and prosecution of offences and identification of human remains.

The Police, the Ministry and their agents are required to act at all times in accordance with all relevant laws including the Privacy Act 1993, the Official Information Act 1982, the Health Information Privacy Code 1994, the Code of Health and Disability Services Consumers’ Rights 1996, and the Human Tissue Act 2008 (and any relevant Standards made under that Act). Nothing in this Memorandum of Understanding is intended to override or displace any other legal obligations or rights.

1.3 Purpose

This Memorandum of Understanding:

- a) Regulates requests from the Police to the Ministry for access to blood samples and other information relating to those samples and

- b) Clarifies the circumstances in which such requests may be granted, with particular reference to the overarching interests of the individual concerned and the wider public interest in law enforcement and public safety.

1.4 Definitions

- a) Blood spot card:

The card (commonly referred to as the "Guthrie" card), which is distributed by ADHB for the collection of blood. The card also holds identifying details¹ (name, date of birth, place of birth, birth mothers name, National Health Index number, sex, birth weight, lead maternity carer's (LMC) name, registration number and contact details) of the newborn from whom the sample is taken, and includes the Sample.

- b) Information:

Information includes that information held by ADHB a) with the blood spot card and b) in information systems. The types of information held identify individuals (names, NHI numbers, registration details for LMC's), hospital details (place of birth), and sample collection details (date and time of sample taken). The information supplied to the Police on acceptance of a request will include identifying details of the person from whom the sample was originally taken.

- c) Sample:

Sample refers to the blood taken by the heel prick and stored on four rings on the absorbent panel at the top of the blood spot card. It is noted that only a portion of the Sample will be provided to the Police if the request is accepted.

2. Principles

Overriding principle

- 2.1 The blood spot card and Information associated with it is collected for health purposes only. Any use of the blood spot card for any non-health related purpose is exceptional. The Police should have recourse to the blood spot cards and associated Information only rarely, and as a last resort.

¹ many of the details on blood spot cards which date back to the 60's and 70's do not have all this information on them. The older cards often have minimal identifying information such as baby's name, mothers name, GP or midwife name and place of birth.

- 2.2 The Police may request access to a specified card where:
- a) A body or body part is found and all other avenues for identifying the person (visual identification by next of kin, dental records, other biological samples etc) are either not practicable, or have failed;
 - b) Biological material is available and requires a match to identify a specific person who is deceased or missing, and there are no practical alternative means of making the identification;
 - c) Coronial inquiries which require analysis of samples;
 - d) Where (a), (b), or (c) of this paragraph do not apply, and the Police have obtained a search warrant in accordance with clause 3.1.2 of this Memorandum of Understanding.

3. Responsibilities of the Parties

3.1 Police responsibilities

3.1.1 Sample request

In requesting a Sample the Police will:

- a) Make an initial phone call to the Group Manager, National Screening Unit (NSU), Ministry of Health, (see Appendix 1);
- b) Make a written request to the Group Manager, NSU, for a Sample using the standard form (see Appendix 2);
- c) Copy the written request to the Director of the National Testing Centre (see Appendix 1 for contact details);
- d) Ensure the request is made by a District Crime Manager to the National Manager:Crime;
- e) In respect of requests of the sort referred to in clause 2.2(a), (b) or (c) above, include with the written request, written consent from a person entitled to give consent on behalf of the person

(A "Request").

3.1.2 Warrant procedure

In applying for a Warrant regarding a Sample the Police will:

- a) Provide in writing to the National Manager: Crime, background information on the investigation and the reasons why it is necessary to access the Sample;
- b) Gain the written approval of the National Manager: Crime to proceed with an application for a Search Warrant;

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- c) Apply for a warrant in the normal way, specifically if the Police require a Sample and/or Information for any criminal investigation other than one in which the request relates to a victim and is for the purpose of identification;
- d) Make applications for warrants to a District Court Judge, where practicable, during normal working hours;
- e) Accompany the application for a warrant with the statement set out in Appendix 5 of this Memorandum of Understanding.

3.1.3 Sample acceptance

In accepting a Sample the Police will:

- a) Indicate their preference to the despatch of the Sample from the National Testing Centre;
- b) Ensure the District Crime Manager or National Manager: Crime requesting the sample and/or information is responsible for maintaining the security of the Sample(s) and/or Information provided by the National Testing Centre;
- c) Treat the Sample(s) and/or Information supplied in strictest confidence and will take such steps as are reasonable in the circumstances to ensure the Sample(s) and/or Information is safeguarded against loss and unauthorised access, use, modification, disclosure and other misuse;
- d) Certify that the Sample(s) and/or Information required will be used solely for the purpose of the investigation and any subsequent criminal proceedings, and not for any other purpose, and will not be disclosed to any other person or agency except for those purposes;
- e) Return to the Director of the National Testing Centre, any residual/unused portion of the Sample(s) and/or Information provided no later than 30 days after the termination of the proceedings relating to the Sample(s) and or Information, including any period of appeal in respect of which it was requested;
- f) Apart from as may be necessary for the particular inquiry for which the sample was requested, not store any Information derived from the Sample(s) on any database or electronic device which is routinely available to other inquiries (eg DNA database);
- g) If the Sample(s) has been given to the Police with the consent of a person entitled to give consent on behalf of the individual, and that consent is withdrawn, or where a sample is required for health purposes, the Ministry may request the return of the Sample, and the Police will return the Sample and Information provided within 5 days;

- h) Inform the Director of the National Testing Centre whether DNA was able to be extracted from the sample adequately for the Police purpose no later than 30 days after the termination of the proceedings relating to the Sample(s) and or Information, including any period of appeal in respect of which it was requested.

3.2 Ministry of Health responsibilities

In response to a Request the Ministry of Health will:

- a) Not release a Sample until a written request has been received;
- b) Consider each Request on its own merits;
- c) Accept the Request, where the Request is accompanied by written consent under clause 2 of this Memorandum of Understanding unless it is aware of some compelling reason why it should not be accepted;
- d) Inform the Police in writing if the Request has been rejected;
- e) Inform the Police of any costs associated with retrieval of the Sample prior to retrieval;
- f) Ensure the security of information provided by Police in support of a Request made under this Memorandum of Understanding;
- g) Treat the Request in strictest confidence and take such steps as are reasonable in the circumstances to ensure that any information supplied by Police under this Memorandum of Understanding is held in the strictest confidence, disclosed only as necessary to assess whether the Request should be complied with and in any event not disclosed outside the Ministry or ADHB, and safeguarded against loss and unauthorised access, use, modification, disclosure and other misuse.

3.3 Joint responsibilities

The Ministry and the Police agree that any obligations of confidence on either party under this Memorandum of Understanding are subject to the Official Information Act 1982 and other legislation, or a court order, which may require the Ministry or Police to disclose information to any person.

4. Disclosure of Samples or Information

- 4.1 Police may, without further reference to the National Testing Centre, disclose Sample(s) and/or other Information supplied by the National Testing Centre to:

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- a) The Institute of Environmental Science and Research (ESR) or any other suitably equipped laboratory whose technical assistance is required;
 - b) A Crown Solicitor engaged to assist in a prosecution following from the investigation in connection with which the request is made;
 - c) A solicitor engaged by a defendant in such proceedings;
 - d) A coroner;
 - e) As otherwise authorised or required by law.
- 4.2 If Police receive a request for Sample(s) or Information supplied by the National Testing Centre under this Memorandum of Understanding in any other circumstances, Police will immediately consult the Group Manager of the NSU. The request will then be dealt with in terms of Information Privacy Principle 6 of the Privacy Act 1993 and/or Part II of the Official Information Act 1982, and the Health Information Privacy Code 1994. Where appropriate, the Police will transfer a request to the National Testing Centre under those Acts.
- 4.3 If the National Testing Centre or the Ministry receive a request from the individual concerned, or the person who consented on their behalf, or someone purporting to act on their behalf, for Information supplied by Police in support of a request made under this Memorandum of Understanding, they will immediately consult the National Manager: Crime for Police. The request will then be dealt with in terms of Information Privacy Principle 6 of the Privacy Act 1993 and/or Part II of the Official Information Act 1982. Where appropriate, the National Testing Centre or the Ministry will transfer a request to Police under those Acts.
- 4.4 Neither party to this Memorandum of Understanding shall make comment in the media or any public forum about any Sample(s) and/or Information provided to Police under this Memorandum of Understanding, or any other matter relating to this Memorandum of Understanding, without first having discussed it with the other party.

5. Problem Resolution

All disputes and differences between the two parties in relation to the interpretation or performance of this Memorandum of Understanding shall be settled in the first instance by the Group Manager of the NSU and the National Manager: Crime for Police and in the second instance by a forum mutually agreed to between the parties.

6. Variation

Memorandum of Understanding

This Memorandum of Understanding can only be modified by a written agreement duly signed by persons authorised to sign agreements on behalf of the parties hereto.

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7. Review

This Memorandum of Understanding shall be reviewed in five years or at such other time as may be agreed by the Director-General of Health and the Commissioner of Police.

8. Duration

This Memorandum of Understanding will stand until either party informs the other in writing about their intention to withdraw from the Agreement.

9. Effective Date

This Memorandum of Understanding will come into force on _____ of _____ 2009.

Howard Broad
Commissioner of Police

Stephen McKernan
Director-General of Health

Dated 2009

Dated 2009

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Appendix 1: Contact details of all Parties

Title	Name	Contact details
Group Manager (Acting), NSU	Jacqui Akuhata-Brown	Ministry of Health 133 Molesworth Street Wellington P O Box 5013 Wellington Phone: 04 816 4457 Fax: 04 816 4484
Programme Manager Newborn Metabolic Screening Programme, NSU	Kathy Bendikson	Ministry of Health 650 Great South Road Penrose Auckland Private Bag 92522 Wellesley Street Wellington Phone: 09 580 9180
Director, National Testing Centre	Dr Dianne Webster	Auckland District Health Board LabPlus Building 31 Level 3 Grafton Road Auckland P O Box 872 Auckland Phone: 09 307 4949 x 6570 Phone: 021 720 705 Fax: 09 307 4936

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Title	Name	Contact details
National Manager: Crime, NZ Police	Detective Superintendent Win van der Velde	National Crime Service Centre Police National Headquarters P O Box 3017 Wellington Phone: 04 474 9434 Fax: 04 498 7409
Manager: National Forensic Services , NZ Police	Inspector John Walker	National Crime Service Centre Police National Headquarters P O Box 3017 Wellington Phone: 04 470 7263 Phone: 027 247 9873 Fax: 04 498 7409

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Appendix 2: Request for a blood spot sample held by the National Testing Centre, Auckland District Health Board

Ministry of Health

Date _____

Phone call made to Group Manager, NSU date/time:

Sample request:

Name of person at time of birth for whom sample is requested

Mother's name at time of birth

NHI number

Date and place of birth

Family Doctor at time of birth (if known)

Birthweight (if known)

Any other identifying information

Please detail other means for obtaining a sample (eg dental records, visual identification by next of kin, other means of obtaining a sample)

Please list reason(s) for requesting the sample (eg victim identification)

Name, contact details and signature of National Manager: Crime making the request

National Manager: Crime, NZ Police (add in name)

Signature

Please attach a copy of next of kin/representative's consent or court order.

Send the original of this form (and accompanying consents/orders) to The Group Manager of the National Screening Unit, Ministry of Health, P O Box 5013, Wellington. Please send a copy of this letter and accompanying consents/orders to The Director, National Testing Centre, Auckland District Health Board, P O Box 872, Auckland.

**Appendix 4:
A. Acceptance letter**



Date

[Name]
National Manager: Crime
NZ Police
[Address]

Dear [name],

I am responding to your request dated [] for the release of a blood spot sample to the NZ Police for analysis.

I accept that this request is in line with the principles and requirements outlined in the Memorandum of Understanding between the NZ Police and the Ministry of Health, and therefore allow the release of a sample.

I have also attached the Memorandum of Understanding, which outlines the principles and processes regarding such a request.

Please inform the Director of the National Testing Centre on 09 307 4949 ext 6570 of your requirements for the collection of the sample or details of where the sample is to be sent.

Yours sincerely,

Jacqui Akuhata-Brown
Interim Group Manager
National Screening Unit

Cc Dr Dianne Webster, Director, NTC

**Appendix 4:
B. Rejection letter**



Date

[Name]
National Manager: Crime
NZ Police
[Address]

Dear [name],

I am responding to your request dated [] for the release of a blood spot sample to the NZ Police for analysis.

This request has been rejected as being outside the principles and requirements of the Memorandum of Understanding between the NZ Police and the Ministry of Health, because;

- a) The request was not accompanied by an authorisation or a search warrant: or
- b) [specify reason for rejection]

Please get in touch with me if you would like to discuss this matter. You are of course welcome to submit a further request with the abovementioned defects remedied.

Yours sincerely,

Jacqui Akuhata-Brown
Interim Group Manager
National Screening Unit

Cc Dr Dianne Webster, Director, NTC

Appendix 4:
C. Details to be sent with sample

ADHB/NTC logo

Disclaimer:

"This [Sample/information] comes from the National Testing Centre, Auckland District Health Board (ADHB), and has been held by the National Testing Centre since *[insert date sample obtained]*. While all due care has been taken by the Ministry of Health and ADHB in the maintenance, storage and security of the [Sample/information] the Ministry of Health and the ADHB expressly disclaim to the fullest extent permitted by law, any liability to the Police or to any other person or agency arising from the provision of the [Sample/information] to the Police, or any other matter associated with the Police request and Ministry of Health and/or ADHB response."

Identifying information for the attached sample:

Name

Date of Birth

Place of Birth

NHI

Appendix 5: Statement to accompany warrant request

Ministry of Health

To: District Court Judge

Re: Warrant request regarding a newborn screening blood sample to be retrieved from the National Testing Centre, Auckland District Health Board.

The National Testing Centre (part of the Auckland District Health Board) on behalf of the Ministry of Health holds cards containing drops of blood taken from newborns. These cards are known as "Guthrie" Cards. The Guthrie card has primarily been taken from a newborn for testing metabolic conditions, which are rare, but have high rates of morbidity and mortality if not detected within the first few weeks of life.

From time to time, the Police may request a warrant for the retrieval of a Guthrie Card and/or associated information. The process for requesting the samples from the National Testing Centre are set out in a Memorandum of Understanding between the New Zealand Police and the Ministry of Health (who fund and monitor the newborn metabolic screening programme).

Given the sensitive nature of health information generally, and of human biological material such as blood samples in particular and the risks to the newborn metabolic screening programme if there is widespread use of Guthrie Cards for non-health related purposes, the Ministry of Health and the New Zealand Police have agreed that recourse should be had to the cards only as a matter of last resort and in accordance with the principles and procedures set out in the Memorandum of Understanding. These include that these matters be brought to the attention of any Judge from whom a warrant to obtain a sample is sought. Some extracts from the Memorandum of Understanding, for the Court's assistance are set out below.

The Court's attention is also drawn to the treatment of biological treatment in the Code of Health and Disability Consumers' Rights 1996, in particular, to rights 7(9) and (10):

- (9) Every consumer has the right to make a decision about the return or disposal of any body parts or bodily substances removed or obtained in the course of a health care procedure.
- (10) No body part or bodily substance removed or obtained in the course of a health care procedure may be stored, preserved, or used otherwise than—
 - (a) with the informed consent of the consumer; or
 - (b) for the purposes of research that has received the approval of an ethics committee; or
 - (c) for the purposes of 1 or more of the following activities, being activities that are each undertaken to assure or improve the quality of services:—
 - (i) a professionally recognised quality assurance programme;
 - (ii) an external audit of services;
 - (iii) an external evaluation of services.]

While it is acknowledged that the Code cannot affect the Court's jurisdiction on the issue of warrants, the provisions do highlight the exceptional nature of secondary uses of biological material in the health sector.

Details within the Memorandum of Understanding include:

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- d) Make applications for warrants to a District Court Judge, where practicable, during normal working hours;

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- e) Accompany the application for a warrant with the statement set out in Appendix 5 (ie this statement) of this Memorandum of Understanding.

If there are any queries regarding this letter, please contact Jacqui Akuhata-Brown, Interim Group Manager, National Screening Unit, Ministry of Health, Wellington on Phone 04 816 4352 or Inspector John Walker, New Zealand Police, Phone 04 470 7263.