

# Ministry of Health Memorandum of Understanding

## Schedule 2: Disclosure of newborn blood spot samples and related information

### 1. Introduction

#### 1.1 Parties

The parties to this Schedule 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 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 Schedule is intended to override or displace any other legal obligations or rights.

#### 1.3 Purpose

This Schedule:

- 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 details (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.

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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 LMCs), hospital details (place of birth), and sample collection details<sup>1</sup> (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.

**2.2** The Police may request access to a specified card:

- a) where 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; or
- b) where biological material requires a match to identify a specific person who is deceased or missing, and there are no practical alternative means of making the identification; or
- c) as part of, or in anticipation of, Coronial inquiries which require analysis of samples; or
- 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 Schedule.

## **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) Ensure the request is made by the National Manager: National Criminal Investigations Group;

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<sup>1</sup> 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, mother's name, GP or midwife name and place of birth.

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- d) In respect of requests of the sort referred to in clause 2.2(a) or (b) 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: National Criminal Investigations Group, 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: National Criminal Investigations Group to proceed with an application for a Search Warrant;
- 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 the appropriate issuing officer, where practicable, during normal working hours;
- e) Accompany the application for a warrant with the statement set out in [Appendix 5](#) of this Schedule.

### **3.1.3 Sample acceptance**

In accepting a Sample the Police will:

- a) Ensure the National Manager: National Criminal Investigations Group requesting the sample and/or information is responsible for maintaining the security of the Sample(s) and/or Information provided by LabPLUS;
- b) 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;
- c) Certify that the Sample(s) and/or Information required will be used solely for the purpose for which it was given, and not for any other purpose, and will not be disclosed to any other person or agency except for those purposes;
- d) Where any part of the sample remains after DNA profiling, that part shall be returned to the Director of the Newborn Metabolic Screening Programme at LabPlus as soon as practicable after a DNA sample has been obtained;
- e) 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);
- f) 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;

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- g) Inform the Director of the Newborn Metabolic Screening Programme at LabPLUS as soon as reasonably practicable whether DNA was able to be extracted from the sample adequately for the Police purpose;
- h) If DNA was unable to be extracted from the sample supplied, Police may request from the Director of the Newborn Metabolic Screening Programme, an additional sample for further DNA analysis.

### **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 Schedule 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 Schedule;
- 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 Schedule 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 Schedule 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 LabPLUS, disclose Sample(s) and/or other Information supplied by LabPLUS to:

- 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;

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e) As otherwise authorised or required by law.

**4.2** If Police receive a request for Sample(s) or Information supplied by LabPLUS under this Schedule 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 LabPLUS under those Acts.

**4.3** If LabPLUS 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 Schedule, they will immediately consult the National Manager: National Criminal Investigations Group 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, LabPLUS or the Ministry will transfer a request to Police under those Acts.

**4.4** Neither party to this Schedule shall make comment in the media or any public forum about any Sample(s) and/or Information provided to Police under this Schedule, or any other matter relating to this Schedule, 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 Schedule shall be settled in the first instance by the Group Manager of the NSU and the National Manager: National Criminal Investigations Group and in the second instance by a forum mutually agreed to between the parties.

### **6. Variation**

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

### **7. Review**

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

### **8. Duration**

This Schedule will stand until either party informs the other in writing about their intention to withdraw from the Agreement. The party intending to withdraw will give 3 months notice.

### **9. Effective Date**

This Schedule will come into force on 22<sup>nd</sup> of May 2014.

Rod Drew  
National Manager:  
National Criminal Investigations Group  
New Zealand Police

Jill Lane  
Director  
National Services Purchasing  
Ministry of Health

Dated: 22 May 2014

Dated 5 May 2014

**Schedule 2 has been reviewed in May 2019**

## **Ministry of Health (Memorandum of Understanding) Schedule 2, Continued...**

### **Appendices to Schedule 2**

#### **Appendix 1: Contact details of all Parties**

<b>Title</b>	<b>Contact details</b>
Group Manager National Screening Unit	Ministry of Health 133 Molesworth Street PO Box 5013 Wellington 6140 Phone: 04 816 4356
Programme Lead Newborn Metabolic Screening Programme, National Screening Unit	Ministry of Health 650 Great South Road Penrose Private Bag 92522 Auckland 1141 Phone: 09 580 9086
Director, Newborn Metabolic Screening Programme	Auckland District Health Board LabPLUS Building 31 Auckland City Hospital, Grafton Rd, Auckland P O Box 872, Shortland St Mail Centre, Auckland 1140 Phone: 09 307 4949 ex 23019 Phone: 021 720 705
National Manager: National Criminal Investigations Group, NZ Police	National Criminal Investigations Group Police National Headquarters 180 Molesworth Street PO Box 3017 Wellington 6011 Phone 04 474 9499
Manager: National Forensic Services, NZ Police	National Forensic Services Police National Headquarters 180 Molesworth Street PO Box 3017 Wellington 6011 Phone 04 474 9499 Phone 027 247 9873

**Appendix 1 of Schedule 2 has been reviewed in May 2019**

## **Ministry of Health (Memorandum of Understanding) Schedule 2, Continued...**

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### **Appendix 2: Request for a blood spot sample held by LabPLUS, 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 list reason(s) for requesting the sample (eg victim identification); and confirm:

1. All other avenues for identifying the person are either not practicable, or have failed;  
and
2. The request for the sample is made by the Police as a last resort.

Signature - National Manager: National Criminal Investigations Group,  
Detective Superintendent (add in name)

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, PO Box 5013, Wellington 6140. Please send a copy of this letter and accompanying consents/orders to The Director, Newborn Metabolic Screening Programme, LabPLUS, Auckland District Health Board, P O Box 872, Auckland.

**Appendix 2 of Schedule 2 has been reviewed in May 2019**



# **Ministry of Health (Memorandum of Understanding) Schedule 2, Continued...**

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## **Appendix 4: A. Acceptance Letter**



Date

[Name]

National Manager: National Criminal Investigations Group

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 Schedule between the NZ Police and the Ministry of Health, and therefore allow the release of a sample.

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

Please inform the Director of the Newborn Metabolic Screening Programme at LabPLUS on 021 720705 or 04 816 4356 of your requirements for the collection of the sample or details of where the sample is to be sent.

Yours sincerely,

Group Manager  
National Screening Unit

Cc Director, Newborn Metabolic Screening Programme, LabPLUS

## **Ministry of Health (Memorandum of Understanding) Schedule 2, Continued...**

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### **B. Rejection Letter**



Date

[Name]

National Manager: National Criminal Investigations Group

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 Schedule 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,

Group Manager  
National Screening Unit

Cc Director, Newborn Metabolic Screening Programme, LabPLUS

## **Ministry of Health (Memorandum of Understanding) Schedule 2, Continued...**

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### **Appendix 4**

#### **C. Details to be sent with sample**

ADHB/LabPLUS logo

Disclaimer:

"This [Sample/information] comes from LabPLUS, Auckland District Health Board (ADHB), and has been held by LabPLUS 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 4 of Schedule 2 has been reviewed in May 2019**

# **Ministry of Health (Memorandum of Understanding) Schedule 2, Continued...**

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## **Appendix 5: Statement to accompany warrant request**

Ministry of Health

**To: District Court Judge/ an authorised issuing officer<sup>2</sup> (select one)**  
**Re: Warrant request regarding a newborn screening blood sample to be retrieved from LabPLUS, Auckland District Health Board.**

LabPLUS (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 LabPLUS is set out in a written Agreement Schedule 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 Agreement Schedule. These include that these matters be brought to the attention of any Judge or authorised issuing officer from whom a warrant to obtain a sample is sought. Some extracts from the Schedule, 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.

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<sup>2</sup> Note: after section 6 of Search and Surveillance Act 2012 comes into force an issuing officer may be any Justice of the Peace, Community Magistrate, Registrar, or other person authorised under section 108 of the Act, as well as a Judge.

# **Ministry of Health (Memorandum of Understanding) Schedule 2, Continued...**

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Details within the Agreement Schedule include:

## **2. Principles**

### **Overriding principle**

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The Police may request access to a specified card:

- a) where 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; or
- b) where a biological material requires a match to identify a specific person who is deceased or missing, and there are no practical alternative means of making the identification; or
- c) as part of, or in anticipation of, Coronial inquiries which require analysis of samples; or
- 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 Schedule.

### **3.1.2 Warrant procedure**

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

- a) Provide in writing to the National Manager: National Criminal Investigations Group, 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: National Criminal Investigations Group to proceed with an application for a Search Warrant;
- 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 an appropriate issuing officer, where practicable, during normal working hours;
- e) Accompany the application for a warrant with the statement set out in Appendix 5 (ie this statement) of this Schedule.

If there are any queries regarding this letter, please contact the Group Manager, National Screening Unit, Ministry of Health, Wellington on Phone 04 816 4356 or the Manager; National Forensic Services New Zealand Police, Phone 04 470 7263.

**Appendix 5 of Schedule 2 has been reviewed in May 2019**