



Ministerial Policy Statement

False or misleading representations about employment

Summary

It is lawful for employees of GCSB or NZSIS to make false or misleading representations about their employment for the purpose of keeping secret the fact they are an employee of GCSB or NZSIS. This MPS provides guidance on such activity. In making decisions related to making false or misleading representations about being employed with GCSB or NZSIS, employees must have regard to the following principles: necessity, appropriateness, good faith, consistency, and oversight. The MPS also specifies certain matters to be included in internal policy and procedures.

Definitions

The Act means the *Intelligence and Security Act 2017*.

Cover department or agency means a government department or agency that is said by employees to be their employer in the course of keeping secret the fact they are an employee of GCSB or NZSIS.

Department means a department as defined in section 5 of the *Public Service Act 2020*; and includes a departmental agency (as defined in that section) hosted by the department; and an interdepartmental executive board (as defined in that section) serviced by the department.

Employee, in relation to GCSB and NZSIS, means a person employed in any capacity in that agency.

GCSB means the *Government Communications Security Bureau*.

NZSIS means the *New Zealand Security Intelligence Service*.

Context

1. Employees of GCSB or NZSIS may need to keep their employment secret to preserve the ability of GCSB or NZSIS to carry out their activities, now and in the future. Specifically, an employee may need to limit the people who know of their employment. In addition to protecting the ability to conduct covert activities, this protection is in place to:
 - ensure the safety, security and privacy of employees and their families
 - ensure the safety, security and privacy of sources and their families
 - protect the classified information employees have access to
 - avoid the risk of an employee being identified by their association with another employee or because of the indiscretion of others.
2. Section 228 of the Act allows a GCSB or NZSIS employee to make a false or misleading representation about their employment for the purpose of keeping secret the fact they are an employee of GCSB or NZSIS. This may include stating they work for a different organisation, in a different area of work, or omitting information about their employment. A false or misleading representation under section 228 is restricted to employees hiding their employment only.
3. The need to make a false or misleading representation could arise during official business activities or in an employee's personal life. For example, an employee may make a false or misleading representation when attending a work conference where the other attendees are not known in advance. This may include omitting their employer's name and/or using a cover department or agency. In their personal capacity, an employee may make a false or misleading representation on a mortgage application by providing a cover department or agency as their employer.
4. In most circumstances GCSB and NZSIS employees will not need to make false or misleading representations about their employment when conducting official business with other New Zealand government departments or agencies.
5. Section 229 of the Act gives employees immunity from civil and criminal liability for acts or omissions made while making a false or misleading representation in accordance with section 228, provided it is done or omitted in good faith and with reasonable care. This provision is necessary to ensure that employees do not face prosecution as a result of keeping their involvement with GCSB or NZSIS a secret. For example, making a false or misleading representation in border documentation may amount to a criminal offence under the Immigration Act 2009 and a false or misleading representation made in contract documentation could result in civil liability. It is not feasible to expect employees to be open to these kinds of offences or liabilities when taking steps to protect their safety and the safety of the agencies' classified information and operational methods.
6. False or misleading representations about employment must only be made in accordance with any requirements of the Director-General of the relevant agency (section 228(1)(b)). In addition, false or misleading representations may not be made to certain parties listed in section 228(3) of the Act. The listed parties mostly relate to ensuring there is sufficient transparency during legal and Parliamentary proceedings, or when dealing with statutory oversight mechanisms.

7. Section 227 of the Act makes it a criminal offence to publish or broadcast the fact that any person (other than the Directors-General or with written Ministerial consent to publish or broadcast) is an employee of GCSB or NZSIS or connected in any way with an employee of GCSB or NZSIS.

Guidance for GCSB and NZSIS

Scope

8. This MPS applies to lawful false or misleading representations made by an employee of GCSB or NZSIS about their employment, under section 228 of the Act, for the purpose of keeping secret the fact that they are an employee of GCSB or NZSIS. These representations are made using the employee's real identity and are restricted to employees hiding their employment only.
9. This MPS does not apply to any representations about employment made using an assumed identity under Part 3 of the Act, which requires specific approvals and training and separate immunities apply. This is covered by the *Assumed Identities MPS*.

Principles

10. The following principles constitute a framework for good decision making and set out best practice conduct. They must be taken into account by the relevant Director-General of the GCSB or NZSIS when any requirements for employees making false or misleading representations about their employment are set and when policies and procedures are developed. The policies and procedures should be subject to periodic review as to whether the practice of making false or misleading representations about employment continues to be consistent with these principles, as well as all the other requirements set out in this MPS.
11. When appropriate or unclear, legal advice should be sought to ensure that employees making a false or misleading representation about their employment do so in accordance with the law and the restrictions contained within the Act.

Necessity

12. It may be necessary for employees of GCSB or NZSIS to make false or misleading representations about their employment for the reasons set out above. Making such representations is considered an appropriate "business as usual" activity for employees, however, those representations should only be made when it is necessary to keep the fact of employment from the person in the circumstances at the time, or where there is no good reason to provide that information to the person. For example, it may be necessary to make a false or misleading representation when signing an official visitor book for a work meeting, however, the employee may disclose employment information upon meeting with the person.
13. Necessity in this context is generally judged against the need to protect the secrecy and safety of GCSB's and NZSIS's employees, capabilities, and lawful activities.

Appropriateness

14. An employee of GCSB or NZSIS may only make a false or misleading representation about their employment for the purpose of keeping secret the fact that they are employed by GCSB

or NZSIS, and in accordance with any requirements of the Director-General of their agency. In setting those requirements, the Directors-General should at all times consider whether those requirements are appropriate within the context of the agency's functions and other obligations, such as the [Standards of Integrity and Conduct](#).

15. False or misleading representations must not deliberately be used for personal gain (for example, to obtain discounts or other concessions that might be available to employees of cover departments or agencies).

Good faith

16. Section 229 of the Act protects employees from civil and criminal liability for any act the employee does, or omits to do, in good faith and with reasonable care in the course of making a false or misleading representation about their employment.
17. False or misleading representations about employment will generally be considered to have been made in good faith and with reasonable care if they are (as applicable):
 - in accordance with statutory obligations, authorisations and any agreement in place with a cover department or agency;
 - in accordance with this MPS and any internal policies, guidelines and procedures which reflect this MPS;
 - consistent with managerial expectations;
 - part of a legitimate function of the role the employee is undertaking or the agency they are employed by.

Consistency

18. GCSB and NZSIS should ensure there are common practices for employees making a false or misleading representation about their employment. This requires consistent policies and guidelines, and that all employees are advised when recommended practices change. To the extent possible, guidelines, policies and procedures should be consistent between GCSB and NZSIS. This does not preclude employees from having the ability to tailor their use of representations about their employment for their own circumstances, in order to maintain protections for all employees.

Oversight

19. GCSB and NZSIS must carry out all activities in a manner that facilitates effective oversight, including through keeping appropriate records about the ability of employees to make false or misleading statements about their employment. This includes maintaining up-to-date policies and procedures about, and providing training on, the use of false or misleading representations. As it would not be feasible to require all instances of false or misleading representations about employment to be recorded, it is particularly important in this context that employees are aware of their obligation to be able to explain how they had regard to this MPS when making a false or misleading representation.

Matters to be reflected in internal policies and procedures

20. As public service agencies, GCSB and NZSIS must comply with policies and procedures common to all New Zealand public service agencies.¹
21. In addition, GCSB and NZSIS must have, and act in compliance with, internal policies and procedures that are consistent with the requirements and principles of this MPS and have systems in place to support and monitor compliance. These policies and procedures must also address the following additional matters:

Representations in particular circumstances

22. GCSB and NZSIS must issue clear guidelines to assist staff to determine whether to make a false or misleading representation about employment including, but not limited to, the following types of circumstances:
 - during official circumstances (such as meetings with officials from other departments or uncleared foreign nationals in New Zealand Government premises, or completing visa applications for official travel overseas) where there are specific operational reasons for concealing one's employment;
 - on official forms and documents in the employee's personal capacity (such as census forms, IRD forms and bank documents); and
 - in personal circumstances (such as telling close relatives, flatmates, friends and acquaintances in social settings, and private overseas travel).
23. Those guidelines should describe the circumstances in which it is appropriate for an employee to reveal their employer, and how to do so in a way that manages the risk of the employee's place of employment becoming more widely known.
24. In addition, GCSB and NZSIS must have procedures in place for communicating to the Commissioner of Police, any circumstances in which it was necessary for an employee to make a false or misleading representation about their employment to a police officer.

Representations by prospective and former employees

25. GCSB and NZSIS should provide guidance to prospective and former employees on the representations they may have to make or have made about their possible or former employment with GCSB or NZSIS.
26. While non-employees do not enjoy the legal protections offered under section 229 of the Act (a false or misleading representation about employment made by a non-employee would not be made under section 228 and therefore section 229 protections would not apply), there may still be risks to covert activities by not ensuring guidelines are in place in these circumstances. For example, a candidate in an employment selection process may have told friends and family that they have had an interview to work at GCSB or NZSIS. This immediately compromises the individual's ability to later conceal their employer if required. Alternatively, a former employee revealing they used to work at GCSB or NZSIS may inadvertently reveal that same information about other former colleagues, if their associations are known by others.

¹ This includes the *Public Service Act 2020* and the *Health and Safety at Work Act 2015*.

Consent from cover departments and agencies

27. Employees may use other government departments or Crown agencies as cover when keeping the fact of their employment secret. When employees are advised as a matter of course to use a particular department or agency on official personal documents or in official circumstances, a written agreement to do so must be in place between the Director-General of the GCSB or NZSIS and the chief executive of the cover department or agency.
28. This agreement must include the circumstances under which the cover arrangement may be used, and under which true employees of the cover department or agency will be made aware that the agreement exists, and the training to be provided to allow those employees to manage situations where they may come across a person they know not to be employed by their department or agency. These considerations will assist in avoiding inadvertent disclosure of an employee's true employer. The agreement should also consider how the parties will collectively respond to a significant break of cover or other detrimental situation. The agreement should be made available to all staff.
29. Employees of GCSB and NZSIS should not be directed to routinely or regularly use another department or agency unless such an agreement is in place. This is not intended to preclude those unexpected social situations when an employee may need to use a department or agency where an agreement is not in place and time does not allow for permission to be sought (for example, when an employee from an agreed cover department or agency they do not know is present, and they would like to avoid questioning about their employment).
30. On choosing such cover departments or agencies, GCSB and NZSIS must consider whether the totality of employees using that department or agency could have undue consequences for true employees of cover departments or agencies. For example, if all employees of GCSB and/or NZSIS were instructed to use the cover of a relatively small department or agency, then the employees of that department or agency would be outnumbered by cover employees, which could cause significant difficulties for their employees.
31. Employees using a cover department or agency must not act in any way which would damage the reputation of that department or agency.

Training

32. All employees of GCSB and NZSIS must be provided training on all relevant law, policies and procedures in relation to making false or misleading representations about their employment. This training should be provided to all existing employees and to new employees at induction, and whenever there are changes or updates to the policies and procedures, to ensure that employees are aware of current practices. The training should include guidance for when employees leave employment with the GCSB or NZSIS.

Consultation with Te Kawa Mataaho Public Service Commission

33. GCSB and NZSIS should consult with Te Kawa Mataaho Public Service Commission when developing internal policies and procedures that guide the use of making false or misleading representations about employment with GCSB and NZSIS, as required.

Authorisation procedures

34. The Directors-General of GCSB and NZSIS must issue policies and procedures to guide employees' use of false or misleading representations about their employment. No further authorisation is required before employees make such representations (provided all training has been completed).

Duration of Ministerial Policy Statement

35. This MPS will take effect from 01 March 2022 for a period of three years. The Minister who issued an MPS may, at any time, amend, revoke or replace the MPS.

Ministerial Policy Statement issued by:

A handwritten signature in blue ink that reads "Andrew Little". The signature is written in a cursive, flowing style.

Hon Andrew Little

Minister Responsible for the Government Communications Security Bureau
Minister Responsible for the New Zealand Security Intelligence Service

01 March 2022