

Operational Guidance

Order to Produce (business records) Requests

Covid-19 State of Emergency

26 February 2021

Personal information obtained pursuant to the *Emergency Management Act 2005 (WA)* (EMA) is stored by the WA Police Force and other agencies. That information may assist criminal investigations in Western Australia. Legislation provides for a process to obtain information by way of an "Order to Produce" (OTP) to assist a criminal investigation.

The following provides guidance to lawfully and practically comply with legislation.

Key Points

The following is a summary of the key points:

- The EMA and the *Criminal Investigation Act 2006 (WA)* (CIA) authorises the release and use of information in certain circumstances.
- Information obtained pursuant to the EMA will only be released following service of an OTP.
- The State Emergency Coordinator's Directorate (SECD) will facilitate all OTP requests for EMA stored information.
- The OTP for records held by WA Police must be served on the SECD, as a representative of the State Emergency Coordinator (SEC) (Commissioner of Police).
- A prospective OTP for records held by another agency will be initially assessed by SECD.
- SECD will maintain records for the SEC when an OTP request has been completed.

Legislation and Legal Opinion:

The WA Police Force holds information, obtained in the exercise of powers under the *Emergency Management Act (EMA) 2005 (WA)*.

S.95(b) EMA allows for the release of information pursuant to another written law. The information held by the WA Police Force, in particular traveller's details, is considered a Business Record (CIA) and may be relevant to a criminal investigation.

Part 6 CIA provides for the lawful obtaining of Business Records relevant to a criminal investigation by way of an OTP. It is an offence to fail to obey an OTP without reasonable excuse.

State Solicitors Office legal opinion 4366-20 refers.

Non-Police Stored Information

Other government agencies or businesses may also hold information obtained under the EMA. I.E. Department of Health SafeWA application. The primary purpose of those records is to achieve current emergency objectives. The intention to obtain records for other purposes by investigators will be assessed by SECD prior to application for OTP.

Limitations

EMA information obtained by way of an OTP must only be used for the investigation outlined in the grounds to issue that OTP.

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Service of OTP and Facilitation

WA Police Stored Information

- The Investigating Officer (IO) will initially consult with SECD prior to issuance of an OTP to determine the nature and availability of the business records.
- The information requested by the IO should be in the form an electronic copy extracted from the G2GPass, G2GNow or the Border Control Application.
- OTP data requests are to be issued to the "State Emergency Coordinator" and the required data should be particularised where possible.
- [REDACTED]
- SECD will maintain records on behalf of the SEC.

Non-WA Police Stored Information

- Information obtained under the EMA that may be stored by another agency or business will only be released upon service of an OTP.
- Prior to an OTP being obtained, the investigating officer is to consult with SECD to determine the likely availability and necessity of the record.

FURTHER INFORMATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]