

Memorandum of Understanding

between

the Commerce Commission
and
the Serious Fraud Office



Memorandum of Understanding dated 23 March 2026

Between the Commerce Commission (the Commission)

And the Serious Fraud Office (SFO)

together, the “Parties”

Background

1. The Commission is an independent Crown entity established under section 8 of the Commerce Act 1986 (Commerce Act) with statutory functions under that and other statutes including the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Telecommunications Act 2001, the Fuel Industry Act 2020, the Dairy Industry Restructuring Act 2001, the Fuel Industry Act 2020, the Retail Payment System Act 2022, and the Grocery Industry Competition Act 2023 (Commission Statutes).
2. The SFO was established under the Serious Fraud Act 1990 for the purpose of detecting, investigating and prosecuting serious or complex fraud, including bribery and corruption. The SFO is the lead law enforcement agency for investigating and prosecuting serious financial crime in New Zealand.
3. Both Parties collect a wide range of information in order to give effect to their statutory responsibilities and functions.
4. The Parties may work together where they are considering matters where they have a mutual interest. The Parties wish to record the operational protocols in regards to cooperation and information sharing.
5. The Parties understand that how they collect and share information is fundamental to fostering trust and confidence in each Party and in the public service generally. Each Party’s policy on the collection use and sharing of information is in accordance with the “Information Gathering and Public Trust” Model Standards issued by the Public Service Commission on 18 December 2018 (as may be updated from time to time). This memorandum will be published on the Parties’ websites.
6. In this memorandum, “protected information” means information that is protected from disclosure as that term is defined in section 2 of the Serious Fraud Office Act 1990 (SFO Act).

Purpose

7. The purpose of this Memorandum of Understanding (MOU) is to provide a framework for a formal relationship of cooperation and information sharing between the Commission and SFO, to enable effective and efficient performance of each agency’s functions particularly in respect of matters where the Parties have a mutual interest.
8. This MOU sets out the framework for cooperation and information sharing. Schedules that accompany this MOU set out the protocols relating to specific activities.
9. The Parties recognise the existing *Agreement relating to the provision of Electronic Forensic Services* entered into in August 2021 between the Parties and others (Agreement). In the event of a conflict between the terms of this MOU and the terms of the Agreement, the terms of the Agreement shall prevail.

Limitations on information sharing by the SFO Act and Commerce Act

10. The SFO is subject to the SFO Act. Information obtained in connection with (i) the exercise of any power conferred by section 5 or section 9 of the SFO Act or in the course of executing any search warrant, or (ii) information derived or based upon such information, or (iii) information relating to the possible exercise or possible exercise of any power conferred by Part 2 of the SFO Act is “protected information” and subject to the secrecy provisions of section 36 of the SFO Act.
11. Any information sharing arrangement will not derogate from the secrecy provisions of the SFO Act and the duty on the Director to protect certain information. Any request to share “protected information” will be considered by the SFO on a case-by-case basis and with consideration to the secrecy obligations under the SFO Act.
12. Information that is “protected information” may not be released to any other party unless that release is in accordance with the requirements of the SFO Act.
13. Any “protected information” released under section 36 of the SFO Act requires the consent of the Director of the SFO before any subsequent release, including under the Criminal Disclosure Act, Official Information Act and Privacy Act. The protections of section 36 SFO Act remain in force until those protections are lifted, for example when the information is lawfully released in open court (section 43 SFO Act).
14. Information that is not “protected information”, for example, complaint material, remains subject to the Privacy Act 2020 and any other relevant legislation.
15. The Parties will comply with the obligations under the Privacy Act 2020, including principle 11(1)(e) of that Act, Section 36 of the SFO Act 1990, and other relevant legislation and published guidelines, when seeking to share information.
16. The Parties acknowledge that the Commission is subject to the information sharing provisions in sections 99AA and 99AB of the Commerce Act, and any information sharing will be subject to these provisions.
17. Notwithstanding the above paragraphs, the Parties acknowledge the importance of sharing information where practicable, and to the extent permitted by law.

Co-operation principles

18. Where, and to the extent appropriate, practicable and permitted by law the Parties will:
 - 18.1 Communicate in an open, honest and timely manner.
 - 18.2 Raise issues promptly and respond as soon as reasonably practicable, to requests by or other contact from the other.
 - 18.3 Identify and consider opportunities to implement shared staff training and development and provide mutual operational support.
 - 18.4 Work together to avoid duplication of expenditure of taxpayer-funded resources so far as it is practicable to do so.
 - 18.5 Advise each other in advance of actions to be taken, or proposed to be taken, of which the other might reasonably expect to be advised.

- 18.6 Share information and provide assistance in relation to Joint Interest Matters (as that term is defined and as more fully described in Schedule 1).
- 18.7 Request advice or assistance on matters that are not of joint interest, but where the requesting party considers it would benefit from the expertise the other party could bring to bear on that matter.
- 18.8 Where either party identifies a harm or potential harm falling within the jurisdiction of the other, pass relevant information to the other party.
- 18.9 Work together to ensure that the most appropriate party, recognising the relative statutory and structural issues of each party, responds to a regulatory or law enforcement issue.
- 18.10 Advise each other's Relationship Manager of any operational or policy concerns.
- 18.11 Implement policies, procedures and systems as appropriate to support the operation of this MOU.
- 18.12 Co-ordinate in the event that one party intends making a public statement that may impact upon or refer to the other party.

Information sharing protocols

- 19. Subject to Paragraph 20, where a party (the "Receiving Party") wishes to make a request for information, advice or assistance (referred to collectively as "requests for information") from the other party (the "Disclosing Party"), it will make a written request to the Disclosing Party's Relationship Manager specifying the information in Paragraph 21. Oral requests must be followed up by a written request as soon as practicable, or as agreed at the time of the request.
- 20. If "protected information" is sought by the Commission, the relevant case leads for the Commission and SFO will prepare the request in the first instance, including the information in Paragraph 21, and the SFO Director will consider any written request against the provisions set out in section 36 of the SFO Act.
- 21. Requests for information will specify:
 - 21.1 the information requested (identifying the type of documents or information sought, including whether the Receiving Party expects that personal information has been requested);
 - 21.2 which of the Receiving Party's teams or people will have access to the information;
 - 21.3 the purpose for which the information is sought;
 - 21.4 the timeframe in which the information is needed, and the reasons for any urgency requested;
 - 21.5 a description of how the requesting party plans to use the information, and any outputs for the information;
 - 21.6 any risks identified as part of any risk assessment, and any risk mitigation measures to be adopted; and
 - 21.7 any other relevant matters.

22. The Disclosing Party will respond to a request for information as soon as is practicable or within the timeframe requested. In the case of an urgent request, the Parties will endeavour to consult to ensure a response to the request is expedited if possible. Note if section 36 of the SFO Act is engaged (because “protected information” is requested) additional time may be required and, in those cases, the Parties will keep each other updated on anticipated timeframes.
23. Where the Disclosing Party holds the information requested but declines to provide it to the Receiving Party, it will (to the extent it is able to do so) inform the Receiving Party of the reason for declining the request.
24. Obligations regarding the use, storage and retention of any information shared between the Parties are set out in Schedule 2 to this MOU.
25. The Parties may add further Schedules to the MOU from time to time as they develop further specific procedures or joint activities.
26. Joint investigations will have a bespoke information sharing arrangement, set out in a terms of reference at the commencement of that investigation, which will include information sharing provisions and any relevant legislation provisions that may apply to that investigation.
27. Before requesting information, a party should consider whether the information is already in the public domain and can be obtained without the need for a formal request.

Unsolicited information

28. Where a Party has information that it considers will assist the other Party in the performance or exercise of its functions, powers, or duties, the former may provide such information, or arrange for such information to be provided, even though no request has been made by the other Party, subject to any legal limits. The terms and conditions of this memorandum will apply as if the information had been requested by the Receiving Party if the Disclosing Party specifies that the information is provided under this memorandum.

Changes in legislation, regulatory policy, guidance and decisions on regulation

29. Where, and to the extent appropriate, practicable and permitted by law, having regard to regulatory policy and legislative development, the Parties will:
 - 29.1 Advise the other of any material proposed changes in legislation, regulatory policy, guidance, or decisions on regulation that may materially impact on the objectives and/or functions of the other.
 - 29.2 Notify the other if the implementation of legislation, regulatory policy, guidance, or decisions on regulation by one party may impact on the objectives and/or functions of the other.

Representatives and reviews

30. Each party will appoint a “**Senior Representative**” and a “**Relationship Manager**” to assist with the implementation of this MOU and continued relationship between the Parties. The initial Senior Representative and Relationship Manager for each Party are:

Commerce Commission	Serious Fraud Office
Senior Representative General Manager, Competition, Fair Trading and Credit Branch 44 The Terrace Wellington Telephone: [REDACTED]	Senior Representative Deputy Chief Executive, Operations Level 8/188 Quay Street Auckland Central Telephone: (09) 303 0121
Relationship Manager: Head of Cartels 44 The Terrace Wellington Telephone: [REDACTED]	Relationship Manager: Manager Investigations and Prosecution Level 8/188 Quay Street Auckland Central Telephone: (09) 303 0121

31. The Relationship Managers will:
- 31.1 be the first point of contact between the Parties with respect to the day-to-day implementation of this MOU;
 - 31.2 meet, in a timeframe agreed between the parties to discuss the progress of activities undertaken pursuant to this MOU, activity that could constitute current or future Joint Interest Matters (as that term is defined and as more fully described in Schedule 1), and any other matters relevant to the relationship between the Parties;
 - 31.3 develop or amend protocols relating to specific procedures and activities, as required; and
 - 31.4 notify each other of any changes to their representatives under this MOU.
32. The Parties’ Senior Representatives will meet every three years, or as otherwise agreed by the Parties, to review this MOU and schedules.
33. Either party may terminate the MOU by giving three months’ notice in writing to the other party.
34. Any modification of this MOU, including modification or termination of the Schedules, shall first be discussed by the Senior Representatives, and then agreed in writing between the Parties.

Training

35. The Parties support the development of joint training opportunities involving both Commission and SFO staff.
36. The Parties will support where possible, opportunities to second personnel with the other Party, where this would benefit one or both Parties.

Issue or dispute resolution

37. All issues, disputes and differences between the Parties about the interpretation or performance of this MOU will be resolved at the earliest opportunity between the Relationship Managers themselves, wherever possible.
38. Only when matters remain unresolved or require further adjudication should they be referred to the Parties' Senior Representatives.

Costs

39. Unless the Parties mutually determine otherwise, the cost of meeting the commitments of this MOU shall be met by the party incurring the cost.

Legal

40. Nothing in this MOU shall make either party liable for the actions of the other or constitute any legal relationship between the Parties.
41. The provisions in this MOU are to be read subject to any Chief Executive, Public Service Commission or Cabinet directives, and any enactment, regulations, rules or applicable case-law. For the avoidance of doubt, nothing in this MOU should be interpreted or applied inconsistently with either Party's statutory functions, powers or obligations.
42. Where there are changes to Government policy or legislation which affect the purpose and functions of this MOU, each party agrees to inform the other of those changes at the earliest possible time thereafter and both Parties agree to meet to re-negotiate, if necessary, any aspects of the MOU.
43. A reference to any legislation includes that legislation as amended or replaced from time to time.

Signed by the Commerce Commission



Date: 23/March/2026

Raj Krishnan
Acting Chief Executive
Commerce Commission

Signed by the Serious Fraud Office



Date: 23/3/26

Karen Chang
Director
Serious Fraud Office

Schedule 1: Joint Interest Matters

Purpose

1. The purpose of Schedule 1 is to facilitate the sharing of information to enable the Parties to achieve the objectives of the MOU and in particular the assessment of Joint Interest Matters. This Schedule should be read together with, and does not supersede, the more general obligations regarding sharing of information that are set out in the main body of the MOU.

Joint Interest Matters

2. For the purposes of this MOU, a Joint Interest Matter is a matter where both Parties would have the ability to investigate, or take proceedings or other enforcement action, against the same person, company or other entity, for the same conduct, for possible breaches of the statutes enforced by the Parties, or where each party has a shared interest in a matter.

Interaction in relation to Joint Interest Matters

3. The Parties commit to, where appropriate and practicable:
 - 3.1 Making sure that the other party is promptly made aware of a Joint Interest Matter after the Party receives notice or becomes aware of that matter (if notification is confidential or is protected under the SFO Act, then as soon as practicable after the Joint Interest Matter can be released under a relevant statutory provision, is made public, or is released under the SFO Act) or the Party determines that it may be a Joint Interest Matter.
 - 3.2 As soon as reasonably practicable after the Parties become aware of a Joint Interest Matter, the Parties will meet to discuss the most appropriate way to proceed with the Joint Interest Matter. This might include, but is not limited to:
 - 3.2.1 Determining which of the Parties is best placed to be the primary agency dealing with the Joint Interest Matter, or if the Parties should work together or in parallel; and
 - 3.2.2 If it is decided that one Party will be the primary agency, determining how and if the other Party can assist with, and continue to be informed regarding, the Joint Interest Matter.
4. Any agreement between the Parties regarding privacy, information sharing, coordination or any other decision concerning Joint Interest Matters will be recorded in writing.
5. If a Party working as the primary agency on a Joint Interest Matter decides that it no longer wishes to pursue that matter, it will advise the other party as soon as possible so that the other Party can determine whether they wish to pursue it.
6. The Relationship Manager of the Party receiving the information may advise the other Party of the designated person(s) that are authorised to make and receive requests for information for a particular Joint Interest Matter.
7. When undertaking a Joint Interest Matter, each party will:
 - 7.1 where and to the extent appropriate and practicable, consult with the other before publishing information, and before providing information or comment to the media on the Joint Interest Matter; and

- 7.2 raise any operational or policy concerns about the Joint Interest Matter through appropriate internal channels at the other Party, rather than through the media.

Enforcement action

8. Nothing in this MOU precludes either Party from taking proceedings or other enforcement action at any time they consider necessary. Both Parties will be cognisant of the Solicitor General's Prosecution Guidelines concerning coordination of prosecution decisions between agencies.¹ Where the Parties are both investigating a Joint Interest Matter, the Parties agree to advise each other where this action occurs, where possible, before that action is taken.
9. The Parties acknowledge the importance of co-ordinating enforcement action where both Parties have an interest in taking enforcement action arising from the same or related underlying facts. Where practicable, the Parties agree to consult before taking enforcement action in relation to a Joint Interest Matter under investigation by both Parties.
10. The Parties recognise that consultation is an important means of achieving consistency and maintaining effective relationships, and needs to occur within reasonable timeframes.
11. Each Party will meet the costs of any enforcement action initiated by that Party, unless covered by an alternative arrangement.
12. When determining which Party will take enforcement action, the Parties will take into consideration, where possible and subject to Crown legal privilege requirements:
- 12.1 the Solicitor General's Prosecution Guidelines;
 - 12.2 sections 46 and 47 of the Criminal Procedure Act 2011
 - 12.3 the Parties' prosecution and enforcement policies and guidelines, including any Commission leniency (including conditional immunity) and cooperation policies; and
 - 12.4 advice from the Parties' legal representatives.²
13. As a general rule, enforcement action against a more serious offence will take precedence over enforcement action against less serious offences and such decisions will be guided by the Solicitor General's Guidelines for Prosecutors.
14. Where a staff member from a Party is called to be a witness for the other Party in any proceedings, the Party taking the proceedings will ensure that:
- 14.1 a formal statement is completed by the witness, in consultation with the staff member in charge of the case; and
 - 14.2 a summons is served on the witness in accordance with the provisions of the Criminal Procedure Act 2011, and the member in charge of the case and the Crown will meet with the witness prior to trial to fully discuss the case in hand as it pertains to the witness's evidence.

¹ If more than one prosecuting agency is considering a prosecution or seeking civil or criminal sanctions, agencies should coordinate to determine what proceeding or proceedings best meet the public interest. Where two or more prosecuting agencies have signed a Memorandum of Understanding or other agreement, agencies are expected to act in accordance with that agreement.

² The SFO is a core Crown agency and is subject to the requirements of Crown legal privilege. The SFO cannot waive privilege over its legal advice without the consent of the Attorney-General.

Schedule 2: Use, storage and retention of information

1. Any information shared between the Parties will:
 - 1.1 be used and kept by the Receiving Party for legitimate purposes and in line with the law, including any conditions required by section 36 of the SFO Act, and that party's policies, processes and systems;
 - 1.2 be held in accordance with any stated sensitivity, terms or restrictions requested in writing by the party at the time that the information is shared; and
 - 1.3 be stored with appropriate security measures, whether the information is in electronic form, hard copy or otherwise.
2. Each Party will upon request by the other Party provide the first Party with the other Party's internal guidelines and policies relating to the use, storage and retention of information, together with any other information required to verify that the other party is meeting its obligation in Paragraph 1 above.
3. The Parties agree that shared information may be disclosed by the Receiving Party to a third party only where the Receiving Party has first obtained the consent of the other party.
4. Where a Party is legally required to disclose shared information, to the extent it is able given the nature of the request, before making any disclosure, that Party will consult with the other Party to inform them of the requirement, and allow the other Party to raise concerns about the potential disclosure.
5. The Parties will retain any information shared in accordance with this MOU as required by the Public Records Act 2005.
6. If the Receiving Party receives a request for information pursuant to the Official Information Act, and the request captures information obtained from the Disclosing Party, the Party actioning the request will consult with the Disclosing Party regarding release of the information or the grounds upon which release of the information should be refused, or transfer the request back to the Disclosing Party if the information more closely relates to the functions of the Disclosing Party.