



30 September 2024

Ref: DOIA 2425-0149 and DOIA 2425-0358

Phil Pennington
Reporter
Radio New Zealand
Email: Phil.Pennington@rnz.co.nz

Tēnā koe Phil Pennington

Thank you for your email of 5 August 2024 to the Ministry of Business, Innovation and Employment (MBIE) requesting information relating to MBIE's use of false personas under the Official Information Act 1982 (the Act).

MBIE's information gathering activities

MBIE gathers information for regulatory compliance, law enforcement and protective security purposes in order to keep people in New Zealand safe and prevent harm by:

- detecting, investigating and prosecuting criminal offending (e.g. fraud, migrant exploitation, breaches of the law such as the Immigration Act 2009, and Crimes Act 1961)
- preventing, investigating and responding to regulatory non-compliance (e.g. breaches relating to vulnerable tenants, employers' breaches of the Employment Relations Act 2000); and
- taking appropriate steps to respond to and mitigate threats to the physical security of staff, or the security of information or places (e.g. a physical security breach, web-hacking).

Information gathering must be authorised according to our internal authorisation processes. These processes may vary within various teams in MBIE according to their regulatory function and the severity of the potential harm caused by the non-compliance, offending or threat.

In addition to MBIE's internal authorisation processes, we take care to exercise our information gathering powers lawfully and appropriately, and meet our obligations under the Privacy Act 2020, Search and Surveillance Act 2012, New Zealand Bill of Rights Act 1990, MBIE Code of Conduct, State Sector Code of Conduct, and relevant MBIE policies and procedures.

False personas are separate from Mass Arrivals

While we note your present request follows a number of earlier requests under the Act for information regarding MBIE Intelligence (MI) and its use of the Cobwebs tools in support of MBIE's responsibility as lead agency under National Security System Architecture for managing the risk of a maritime mass arrival, false persona use as described below is a completely separate and unrelated matter. False personas are used by a range of business areas across MBIE, including but not limited to MI, to support regulatory compliance, law enforcement and protective security activities.



Use of false personas

A false persona is when an MBIE staff member creates an account on social media using false details, to collect information for verification and/or investigation purposes. There are four levels of information gathering under the Procedures for MBIE staff using social media for verification and investigation purposes to support regulatory compliance and law enforcement work (the Procedures) The Procedures are publicly available online here: www.mbie.govt.nz/dmsdocument/14003-procedures-for-mbie-staff-using-social-media-for-verification-and-investigation-purposes-to-support-regulatory-compliance-and-law-enforcement-work-july-2019:

- **Level 1 Open unregistered searching** – Accessing social media information using a generic search engine where no account registration or logging in is required, on an MBIE network,
- **Level 2 Overt passive membership** - To access and confirm or validate information that may be considered publicly available but is subject to personalised privacy settings that require an account login to view. This level uses an MBIE account.
- **Level 3 Discreet searching (false persona)** - To investigate and/or verify a specific individual in relation to a specific task or case, when the risk is mitigated by a false persona to protect the MBIE staff member's identity.
- **Level Discreet active engagement (false persona)** - To directly engage a specific individual in relation to a specific case, when the risk is mitigated by a false persona to protect the MBIE staff member's identity.

A use of false personas only relates to searches under levels 3 & 4.

We collect information from a wide variety of sources in both physical and digital environments, including information from online sources such as websites, social media, and public registers. Where necessary, we may collect information by means in which an MBIE staff member is not immediately identifiable i.e. through the use of a false persona account to prevent attribution to MBIE, including to protect the MBIE staff member's identity. This can be necessary where other means of information collection would prejudice the purposes of collection, including an ongoing investigation, or otherwise prevent MBIE from fulfilling its responsibilities.

Examples of how MBIE may use false personas include:

- At the New Zealand border, when assessing whether travellers coming to New Zealand on a temporary visa have genuine reasons for travelling that match what they tell us in their applications.
- When investigating allegations of criminal offending under the Immigration Act 2009 and the Crimes Act 1961, including migrant exploitation, trafficking in persons, smuggling of migrants, aiding and abetting, and other suspected offences.
- As part of the production of Country of Origin Information research and open-source intelligence products to support refugee and protection status claim decision making.
- Monitoring serious offending under the Radio communications Act 1989, and the Radio communications Regulations 2001.
- In the context of migrant exploitation, false personas are used to help investigate allegations and help combat the rising risk. Investigations can be complex and false personas are a tool that help identify and prevent exploitation.

In the context of our use of false personas at the border, having confidence about temporary visa holders identity and travel intention is fundamental to managing border security and this cannot be determined from airline and booking systems alone. Open source data is vital to building a picture of the risk that some passengers pose by enabling border staff to cross reference information from INZ holdings with other publicly available data sources.

The majority of temporary visa holders visiting New Zealand won't need a risk review but for those who Immigration New Zealand identify as needing to have one based on risk, further investigation is needed and that's where a false persona may be one of the investigative techniques used.

Relevant policies and procedures

Use of false personas at MBIE is governed by the Procedures. The Procedures are currently owned by Data Strategy and Knowledge Branch (DSK), led by the Chief Data Officer, within the Digital, Data and Insights Group. Responsibility was transferred to DSK in July 2023, having previously sat with Protective Security in MBIE's Corporate Services, Finance and Enablement Group.

In addition to the Procedures for MBIE staff using social media, MBIE is subject to the Te Kawa Maataho Public Service Commission's *Information Gathering and Public Trust: Model Standards for Information Gathering associated with Regulatory Compliance, Law Enforcement and Security Functions*. MBIE has internal policy and procedures that set out how we will meet those Model Standards for all information gathering activity (whether involving false personas or not) that is within scope. The Information Gathering Policy is owned by the General Manager Regulatory Stewardship in MBIE's Te Waka Pūtahitanga Group

You may be interested in the following information:

- MBIE's transparency statement on information gathering for regulatory compliance, law enforcement and protective security purposes: <https://www.mbie.govt.nz/about/open-government-and-official-information/transparency-statement>

Our responses to your questions

Please find responses to your questions below:

DOIA 2425-0149

1. Copies of the exemption process for MI getting exemption for renewing false personas

We have interpreted this question as asking about the process to obtain an exemption from meeting a requirement of the Procedures. The process that MI followed to get its exemption is the standard exemption process described in the Procedures, which I have linked above. There is no separate process document, and I am therefore refusing this part of your request under section 18(e) of the Act, as the document alleged to contain the information does not exist.

Under the Procedures, where an individual and/or a team has an operational or policy justification for an exemption from meeting a requirement of the Procedures, they must obtain approval for an exemption and/or an appropriate alternative. Exemptions are typically recorded through a formal memo.

The Procedures currently specify that exemptions need to be approved by the Head of Protective Security in the Corporate Services, Finance and Enablement Group (formally known as the Corporate Governance

and Information Group). With the change of ownership of the Procedures in 2023, however, this now occurs via the relevant General Manager, the Chief Data Officer, and Chief Information Security Officer, in recognition of the information management and information security responsibilities held by the latter two roles.

2. *Copies of records in the format MBIE keeps them, and for the time periods as MBIE keeps them, on all use of false personas (or similar) in whatever way and in any and all parts of MBIE that figures are kept for*
 - *Pls identify which part of MBIE was using it*
3. *Copies of records as above, that break this use down per Level and per sector:*
 - *if those Levels 1-4 are used as before, or by whatever other gauge MBIE may have introduced since – and if there is a new gauge, pls explain how it works and why and why MBIE introduced it*
 - *break down of in which sectors (or similar, like on p2 of the OIA) false personas were used per period*

In the course of answering your request, we have carried an 'all-of-MBIE' collation exercise to confirm what units across MBIE were using false personas, the record keeping practices, and the extent of use over the time frame of your request. Information in scope of your request is being provided via a table, attached as Annex One. Note we have interpreted your use of 'sector' as referring to 'branches', which at MBIE means functional areas led by General Managers reporting directly to Deputy Secretaries.

Records of the individual false personas used by MBIE are being withheld as the release of this information contains the details of each of the false personas. Releasing this information would impact of the effectiveness of using these false personas. In addition these records also contain details relating to private individuals who have been under investigation while using the false personas. As such, we are withholding the records under the following sections of the Act:

- section 6(a), where release of the information would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand;
- section 6(c), where release of the information would be likely to prejudice the maintenance of law, including the prevention, investigation, and detection of offences, and the right to a fair trial;
- section 9(2)(a), where withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons. In particular, we reference MBIE staff names undertaking the searches, and the names of the people that the search is about. In making this decision we have considered the principle of availability and transparency. In weighing the two, we do not consider the public interest outweighs withholding the information.

The Procedures link above contains a record keeping template for business units to keep records of false personas and usage.

From the collation exercise, we have identified that business units using false personas have all kept internal records of their usage. In general, there is compliance with most aspects of the Procedures, that allow MBIE to give a broad assurance that our processes are appropriate, with some room to improve.

Please note that there was one record of Level 4 (Discreet active engagement) use of false personas which was by Radio Spectrum Management. Under the Procedures Radio Spectrum Management has approval to utilise level 4. There is only one use of a level 4 search. Please note as of 2022 Radio Spectrum Management have ceased to use false personas.

4. *Copies of any audit or monitoring report/s that MBIE primarily relies on (e.g. it may be an annual one, or 6-monthly) to try to ensure use of false personas is following its rules and policies*

I am refusing this part of your request under section 18(e) of the Act, as the document alleged to contain the information does not exist. MBIE has not undertaken an audit of its use of false personas in the time frame of your request.

In general, oversight of the use of false personas is a combination of first line assurance, that is, Branch General Managers, and/or Group Deputy Secretaries who approve information gathering activities, including the use of false personas. The next level is the Procedure's owner who provides second line assurance. Finally, MBIE's Internal Assurance functions also provides a third line of oversight that is impartial to the first two levels where non-compliance has been identified.

5. *Copies of details of any breach in implementation of false personas including of when and how, what the breach was, and any remedy*

As part of the all-of-MBIE collation exercise, we have identified one business area, the Immigration Compliance and Investigations (ICI) Branch within the Te Whakatairanga Service Delivery Group, that has misapplied the procedures' levels, and corresponding approval requirements, in respect of its information gathering process for Level 1 and Level 3. This business area has therefore been unable to demonstrate full compliance with the Procedures.

The ICI Leadership Team has conducted a rapid review of the Branch's use of false personas, finding that while there has been non-compliance, staff acted in good faith in their application of the Procedures and generally maintained acceptable records of false persona use. The misapplication occurred specifically within the Investigations area where staff investigate allegations of criminal offending. There was no use of false personas in the Compliance area where staff manage immigration clients who are unlawfully in New Zealand.

As of 2 September 2024, the ICI Leadership Team has instructed staff to stop using false personas. This halt will remain in place until such time as MBIE's Senior Leadership Team, and the Chief Data Officer as the owner of the Procedures, can be satisfied that ICI's practices are fully compliant. The information collected by Investigations staff misapplying the Procedures will not be used as part of any prosecution into criminal offending.

General Issues

The collation exercise also identified some issues in relation to record keeping and monitoring of compliance the Procedures at the central level, that have arisen during the transfer of responsibility for the Procedures from Protective Security to the Digital, Data and Insights Group. We have also identified annual review of approvals have not occurred consistently.

In light of the issues raised above, MBIE's Senior Leadership Team has commissioned Internal Assurance to conduct an expedited review into the Procedures, to remedy some of the gaps into the centralised record keeping of false persona usage outside of business unit records, and the annual approvals process to use false personas.

6. *Copies of any risk assessment/s done on using false personas*

MBIE does not hold any information in scope of this question, therefore I am refusing this part of your request under section 18(e) of the Act.

While no risk assessments on the use of false personas were undertaken in the time frame of your request, it should be noted that the approval process described in the Procedures inherently involves a risk assessment for each individual case as part of taking the decision to approve use (or not). In particular, the approval template requires consideration of the rationale for accessing and using social media, the plan for collecting information (including how the information will be verified, and how the rights of the public will be considered and protected), whether all staff members to whom the approval relates have completed the necessary training, and how the information will be safely and securely stored.

7. Copies of any concerns raised by parties external to MBIE and communicated to any part of MBIE about its use of false personas

MBIE does not hold any information in scope of this question, therefore I am refusing this part of your request under section 18(e) of the Act.

As you will be aware, MBIE's use of social media as a source for information collection, including via the use of false personas, has been publicly known for a several years, with MBIE having disclosed this in its transparency statement on information gathering for regulatory compliance, law enforcement and protective security purposes, and through the release of Policies and other documentation on the MBIE website and in response to requests under the Act. MBIE's transparency statement also contains a contact channel for the public to raise questions or concerns. To date, we are not aware of any concerns being raised about MBIE's use of false personas.

8. Copies of any ministerial briefings re use of false personas

MBIE does not hold any information in scope of this question, therefore I am refusing this part of your request under section 18(e) of the Act.

9. A copy of any update to this <https://www.mbie.govt.nz/dmsdocument/14003-procedures-for-mbie-staff-using-social-media-for-verification-and-investigation-purposes-to-support-regulatory-compliance-and-law-enforcement-work-july-2019>

I am refusing this part of your request under section 18(e) of the Act as publicly available copy is the most up to date version. We are currently in the process of reviewing and updating the Procedures as part of the transfer of ownership to DSK.

10. Re 'social licence', I note OIA 2324-2637 p6 refers to "shifting calculations of 'social licence' " – pls provide copies of document/s showing what this means in relation to MBIE's practices with social media. Pls advise whose calculations are being referred to, and detail the sources by which those calculations have been arrived at.

Social license calculations is a term used in academic discourse, and in the public context can be loosely taken to mean the perceptions of the public sector, and how communities feel about its operations. MBIE can confirm in the context of this document, this phrase was used to describe a generic view of the shift in Government sentiment, and technological change over the past five years. The comment was general and was not intended to describe any specific function or product, or any specific calculations. I am refusing your request under section 18(e) of the Act requesting information about calculations, and the sources of these calculations as the information requested does not exist.

11. *Why it has set up an automated false persona register?*
12. *What will it do?'*

We note you have asked about the automatic false persona register in DOIA 2324-2637.. This reference noted MI's work to build a system to house digital records of their approved false persona usage. Please note this system's purpose was to capture digital records of false persona usage, and to link it to the corresponding work request into the Front Door system that the Data, Insights and Intelligence Branch, where MI sits, uses to manage workflow. This tool is currently only planned for MI and depending on its success could be rolled out to all users of false personas with the appropriate access restrictions.

13. *How will it help the public?*

This system will automate and improve some parts of the administration tasks needed to maintain the register. The benefit for the public is a reduction time spent on the administrative tasks to record false persona usage, and more time producing outcomes for regulatory systems and combatting regulatory offending.

14. *People might think you would need a register if your staff use of false personas is growing. Is that one or the primary reason for the register?*

The need for false persona usage is tied to regulatory need. If there is a growth in allegations of offending that require the use of false personas, usage may change. The automated register in itself does not equate to an increase in use of false personas, and means staff that can continue combatting regulatory offending while technology assist them to record their usage. MBIE considers this helps fulfil our requirements under the Procedures, and the wider Model Standards for Information Gathering requirements.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact OIA@mbie.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā



Puawai Wereta
Chief Data Officer, Data Strategy and Knowledge
Digital, Data and Insights

DOIA 2425-0149 and DOIA 2425-0358 Annex One

Group	Branch/Team	False Persona Use	Compliant with Procedures?
Corporate Services, Finance and Enablement	<p>Legal, Ethics and Privacy</p> <p>Integrity Team</p>	<p>Level 3 discreet social media searches 69 times since the beginning of 2021.</p> <p>Broken down year by year this has been:</p> <ul style="list-style-type: none"> - 2021: 25 - 2022: 17 - 2023: 21 - 2024 YTD: 6 	Yes
Digital, Data and Insights	<p>Data, Insights and Intelligence</p> <p>MBIE Intelligence</p>	<p>Level 3 discreet social media searches 218 times since the beginning of 2021.</p> <p>Broken down year by year this has been:</p> <ul style="list-style-type: none"> - 2021: 43 - 2022: 72 - 2023: 33 - 2024 YTD: 70 	Yes
Immigration New Zealand	Refugee Status Unit, Immigration Risk and Border	<p>The following figures are the combined by three teams in the Refugee Status Unit and the Immigration Risk and Border units.</p> <p>Due to the time restrictions they are under to complete their searches, Border Officers were granted a variation from the Procedures when approval was given for the use of false personas.</p> <p>As such, Border Officers are not required to record their false persona searches in the usage register but instead they are required to record information on the use of false personas when a person of interest is identified through open-source media while screening a flight. This only applies to temporary visa holders not the majority of travellers do not need to be screened.</p>	Yes

		<p>Broken down year by year INZ has used false personas:</p> <ul style="list-style-type: none"> - 2021: 155 - 2022: 160 - 2023: 166 - 2024 YTD: 152 	
Te Whakatairanga Service Delivery	Immigration Compliance and Investigations	<p>Between January 2022 and the end of August 2024, we estimate 7 Investigators have used a false persona 538 times in total.</p> <p>The ICI Leadership Team has instructed staff to stop using false personas following issues identified with the misapplication of the false persona levels, and corresponding approval requirements, by Investigators.</p>	Partially
Te Whakatairanga Service Delivery	Market Integrity Radio Spectrum Management	Radio Spectrum Management have used a false persona once in 2022 (Level 4 discreet active engagement). The team ceased the use of false personas in 2022.	Yes