

STANDARD OPERATING PROCEDURE 6 INSPECTION OF FINANCIAL RECORDS

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APPROVED


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COMMISSIONER

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PURPOSE

The purpose of this Standard Operating Procedure (SOP) is to provide direction to investigators when exercising the power under section 29A of the *Independent Commission Against Corruption Act 2012* (the ICAC Act), and to provide appropriate information about the rights obligations and liabilities of persons in relation to whom the power under that section is exercised.

SCOPE

This SOP applies to all investigators seconded or appointed under section 14 of the ICAC Act.

INSPECTION OF FINANCIAL RECORDS

Section 29A of the ICAC Act empowers the Commissioner or delegate, for the purposes of an investigation into corruption, by written notice served on a deposit holder, to authorise an investigator to inspect and take copies of financial records.

The written notice must be served not less than 3 clear days before the inspection is to occur unless the Commissioner otherwise directs.

A deposit holder is defined in section 29A (4) of the ICAC Act:

Deposit holder means –

- a) an ADI- an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth) ; or
- b) a friendly society; or
- c) a person or an organisation that holds money in accounts on behalf of other persons; or
- d) a person who carries on business as a pawnbroker; or
- e) an institution of a kind declared by regulation to be a deposit holder.

The regulations extend the definition to include credit providers.

Section 29A further empowers an investigator, for the purpose of inspecting and taking copies of financial records in accordance with an authorisation under the section, to give directions to, or impose requirements on, the deposit holder or an officer or employee of the deposit holder.

INVESTIGATOR'S RESPONSIBILITIES

An investigator who requests the Commissioner or delegate to exercise the power under section 29A of the ICAC Act must present to the Commissioner or delegate a written application and draft notice in the approved form.

Although section 29A of the ICAC Act does not itself require an investigator to give directions or impose requirements, the written notice authorising the investigator to inspect and copy assumes that such directions or requirements will be given. The purpose of the directions or the requirements is to better inform the deposit holder of the financial records sought. The written notice should therefore be accompanied by a document listing any directions to or requirements upon the deposit holder made by the investigator.

Any further directions to deposit holders or the imposition of any requirements must be given in writing.

All directions and requirements to deposit holders must be for the purpose of inspecting and taking copies of financial records in accordance with the authorisation given by the Commissioner or delegate.

An ICAC approved pro forma 'authorisation to inspect financial records' and accompanying document that gives directions or imposes requirements on the recipient should be used. The pro forma is available to investigators in the investigations template folder. The authorisation and direction notice will be accompanied by an information sheet which outlines the obligations imposed on the recipient. A copy is attached as Appendix A to this SOP.

HOW SERVICE IS TO BE EFFECTED

- The notice must be served on the deposit holder by one of the methods prescribed in section 58 of the ICAC Act. Prior contact is to be made with the deposit holder's representative to identify the most appropriate person upon whom to serve the notice.
- In all cases the investigator responsible for serving the notice must, as soon as reasonably practicable, make an accurate note on a true copy of the notice that has been served setting out how, when and to whom the notice was served.
- That copy of the notice must be retained in the investigation file and an electronic copy retained on ICAC's Enterprise Content Management System (ECMS).
- The application for and issue of the notice must be recorded as an 'investigation task' in ICAC's case management system.

REFERENCES

Independent Commission Against Corruption Act 2012

DOCUMENT HISTORY

DATE	ACTION	PREPARED BY
23 Feb 2015	SOP created	Director Operations
05 Sep 2015	SOP reviewed and amended	Director Operations
19 Oct 2016	SOP reviewed and amended	Director Investigations
11 Aug 2017	SOP reviewed and amended	Director Investigations
20 Mar 2018	SOP name reviewed and amended	Director Investigations
09 Jun 2020	SOP reviewed and amended	Director Investigations
08 Oct 2021	SOP reviewed and amended	Director Investigations
27 Feb 2023	SOP reviewed and amended	Deputy Commissioner

APPENDIX A – INFORMATION SHEET

Information about this authorisation

What is this document?

This is an authorisation issued pursuant to the *Independent Commission Against Corruption Act 2012* (SA) ("the Act") that authorises an investigator to inspect and take copies of financial records for the purposes of an investigation into corruption in public administration.

Section 29A(4) of the Act provides that "financial records" means any of the following in the possession or control of a deposit holder:

- (a) books of account, accounts, and accounting records (including working papers and other documents necessary to explain the methods and calculations by which accounts are made up);
- (b) books, diaries, or other records used in the course of carrying on the business of a deposit holder;
- (c) cheques, bills of exchange, promissory notes, deposit slips, orders for the payment of money, invoices, receipts and vouchers
- (d) securities, and documents of title to securities

and includes such records kept in electronic form.

"Deposit holder" means—

- (a) an ADI - an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth);
or
- (b) a friendly society; or
- (c) a person or an organisation that holds money in accounts on behalf of other persons; or
- (d) a person who carries on business as a pawnbroker; or
- (e) an institution of a kind declared by regulation to be a deposit holder.

A copy of this authorisation must be served on the relevant deposit holder not less than 3 clear days before the inspection is to occur, unless the Commissioner otherwise directs.

What do you have to do?

An investigator may, for the purpose of inspecting and taking copies of financial records in accordance with this authorisation, give directions to, or impose requirements on, the deposit holder or an officer or employee of the deposit holder.

This notice places requirements on the deposit holder to comply with the directions given or the requirements imposed within the timeframe nominated in the notice.