



25 November 2022

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Ref: OIA-2022/23-0286

Dear [Redacted]

**Official Information Act request relating to scenario paper on grey area cases**

Thank you for your Official Information Act 1982 (the Act) request received on 31 October 2022. You requested:

- I have reviewed the document titled "COVID-19 Chief Executives Board Minutes" and dated 23 November 2021.  
(<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffyi.org.nz%2Frequest%2F17765%2Fresponse%2F78003%2Fattach%2F5%2Frelease%2520document%2520CCB%2520meetings.pdf&data=05%7C01%7Cinformation%40dpmc.govt.nz%7C2a7fc43cc4324f24903408dabac7aa87%7Ceea6053309ef4b7a94060f38551cc613%7C0%7C0%7C638027664858717848%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=Qx1cGFsGozsYKBqvRKkXLdx0eHn53zfVDsBu1q3ST3s%3D&reserved=0>)*
- In section 14 of the minutes paper under the heading of "Disinformation and Harmful Content", it states, "Rachel responded that the a virtual team would be established in the coming days, followed by the allocation of agency responsibilities and development of a scenario paper on grey area cases."*
- Under the Official Information Act 1982, I would like to request the scenario paper on grey area cases described in the document above, or any material created with a similar purpose.*
- I would also like to request any further additions to the body of material that describes, or contains, grey area cases of mis/disinformation following the publication date of the requested material at bullet point 3."*

In response to parts 3 and 4 of your request the Department of the Prime Minister and Cabinet (DPMC) holds a very early rudimentary draft document that is in scope of your request. This work was not progressed and so this is the only version held. As this paper was not developed, DPMC holds no further documents. I have decided to release the draft document in full. Please find the document attached.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on DPMC's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



Tony Lynch  
**Deputy Chief Executive**  
**National Security Group**

## Grey Areas in Disinformation

Background: The collation of grey areas below have been drawn from lessons learnt by the Interagency COVID-19 group for misinformation and online harms.



### Grey Areas fall broadly into:

1. Ability to detect content
2. Allocation of responsibility
3. Ability to remove content - Clear parameters and mandate to remove false /misleading information quickly
4. Ability to penalise, restrict and set precedent.
5. Ability to quantify action (if taken)

Balance of ability to respond is predicated on reactive rather than proactive. Currently, most areas of recourse require the public to report disinformation and misinformation. Proactive work is purely comms based and social media communications but the majority of work in this area is reactive work.

GREY AREA - Gap / Issue	Legislation / Policy	Agency / Mandate	Mitigation underway	Comment
<b>Content regulation legislation</b> has not been revised to modern technology.	Classification Act 1993/Amendment Act 2015 Broadcasting Act 1989	Department of Internal Affairs – Content Regulation	Content review expected end of 2022. Timing – this is a long-term initiative.	
<b>No clear exception to Freedom of Speech being disinformation and online harms.</b>	Freedom of Speech - section 14 of the New Zealand Bill of Rights Act 1990 (BORA)		Content Review will assist in this area.	Exceptions include obscenity, fraud, child pornography, speech integral to illegal conduct,

<p>Disinformation and Misinformation fall in between the spectrum of free speech and extremist material and objectional content.</p>				<p>speech that incites imminent lawless action, speech that violates intellectual property law, true threats, and commercial speech such as advertising. Defamation that causes harm to reputation is a tort and an exception to free speech. This does not adequately cover doxing.</p>
<p><b>Media systems/algorithm fasten on to the most controversial and polarising views and amplify the content</b></p>	<p>No requirement for social media platforms to regulate algorithm against this content</p>	<p>Government Social Media Platforms</p>	<p>Reliance on Social Media platforms to enact legislation which regulates their content and users.</p>	
<p><b>Advertising Standards Authority</b> has not been adapted to react to the speed of modern technology and online advertisement.</p>	<p>The ASA apply the ASA Advertising Codes</p>	<p>Advertising Standards Authority</p>	<p>Reactive – requires a complaint from the public Timeliness – review of complaint could take weeks whilst false / misleading information is circulated. Narrowly applied decision – only specific advert is banned. Not operational i.e., outcomes are not enforceable in a traditional sense. Often</p>	<p>ASA review of function and operation.</p>

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<p><b>Online Harm is non-traditional crime.</b> Police are not set up to deal with online harassment like they are to deal with in-person harassment</p>	<p>Any</p>	<p>Police</p>	<p>An example of this is doxing/online harassment not being a traditional crime. This does not fall clearly into their remit.</p> <p>Must have crossed the threshold of illegality for Police to be involved, which is problematic as the legislation does not cover online harms.</p>	
<p><b>Financial Regulation of Groups –</b> often dis/misinformation is a vehicle for other monetary ambitions.</p>		<p>IRD?</p>	<p>Most groups are run like charities, some are registered companies. There is not regulation around the money, who is funding and controlling the funding. No tax is being paid.</p>	<p>Legislation against Disinformation actors would have difficulties around proving Intention – there is no test. Difficulties around punishing someone who is detached from reality. Therefore, monetizing off disinformation could be a clear area.</p>
<p><b>No Agency mandate for the operational</b></p>				
<p><b>Current legislation does not support mass harassment</b></p>	<p>Nil</p>	<p>Netsafe</p>		<p>Nature of the people posting – mass harassment – our legislation does not support mass harassment.</p>

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				It is designed as a tool to measure individual.
<b>Use of Government Communications logos and branding is easy and enforcement is low</b>	Flags, Emblems, and Names Protection Act 1981		The communications team is responsible for monitoring use of branding. However, to date there has been no legal action against	
<b>Individual online harassment is a long process to prosecution</b>		Netsafe	S19 Civil sanctions that the one District court make rulings on. People have to get a report done by Netsafe under the HDC before they can gain recourse through the court system.	Long process with many hoops whilst person is generally under considerable emotional stress
<b>Inability for individual communications to monitor and screen government social media because of Freedom of Speech and Freedom of Expression</b>		Government Communications	Comms team screen comments and hide comments with key words or phrases. Blocking occurs rarely.	The paradox of wanting to remove or block someone for vile comments when they are voting, taxpayer and deserve access to information. Admin heavy work to review this information.

Why is it a problem?

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- Platforms increased in use. Harmful content is being seen on platforms as they become more popular e.g tik tok.
- Increased use of tech because people are employed.
- Increased confidence because of use of tech at work – it's a gateway into communities online that puts them in conversations that they would not have seen before.

**Freedom of Speech:** Article 19 of the Universal Declaration of Human Rights states that "everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The version of Article 19 in the ICCPR later amends this by stating that the exercise of these rights carries "special duties and responsibilities" and may "therefore be subject to certain restrictions" when necessary "[f]or respect of the rights or reputation of others" or "[f]or the protection of national security or of public order (order public), or of public health or morals".[3]

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