

## **Is it lawful?**

The SFO has a Memorandum of Understanding (MOU) with the New Zealand Police which sets out how the two organisations will work together on matters of common interest or joint responsibility. The MOU explicitly provides that the SFO can request the Police place a border arrest alert on an individual who is subject to an investigation by the SFO where that investigation has determined there is sufficient evidence to file at least one charge.

Notwithstanding such a request, under section 315(2)(b) of the Crimes Act, a Police officer may only arrest someone if he or she has good cause to suspect that person has committed an offence punishable by imprisonment. Accordingly, the MOU goes on to provide that any SFO request for an arrest alert must be accompanied by supporting information that demonstrates there is sufficient evidence to reach this threshold. It is only if that evidential standard is met that Police will enter an alert and (if required) make an arrest.

It is also worth noting that the MOU simply formalises a process that would be lawful in any event. There could be no legal objection to any law enforcement agency (not just the SFO) providing information to the Police to justify the entry of a border arrest alert in circumstances where there is good cause to suspect that an offence punishable by imprisonment has been committed.

## **Why doesn't the SFO arrest people under investigation prior to them attempting to leave the country if it is able to do so?**

Each investigation is assessed on a case by case basis and there are various factors that could support the decision to hold off on arresting an individual even if at that time there is evidence to support a charge.

For example, where there are multiple suspects who may have worked together as a joint enterprise, it is logical for any prosecution to be brought against all parties in a single proceeding. Proceeding against one individual separately and then seeking to join others later when the investigation is complete would be an extremely inefficient use of resources both for the SFO and the Courts.

Similarly, while there may be evidence to support some charges against an individual, the full scope of offending will likely not be known until the investigation is complete. This is particularly relevant in SFO cases which by their nature will typically involve a series of complex transactions over an extended period involving several parties. Given this context, again, it is preferable that all charges be brought before the Court in a single proceeding once all the facts are known rather than seeking to add others subsequently in a piecemeal fashion.

Both of the above examples represent a valid exercise of the SFO's power to lay charges.

Also, in a number of instances the SFO will file charging documents with the Court, but there will be a short period of delay (typically only a few days) while they are processed by the Court before they are able to be served on the individual. An arrest alert may be put in place to cover the period before the charging documents can be served.

**Is it fair that people are placed in this “legal limbo” where they are not charged with anything yet are not allowed to leave the country?**

As noted above, while the person may not yet have been charged, the presence of an arrest alert means the SFO considers (and the Police agree) that there is sufficient evidence to support a charge punishable by imprisonment against that person. The placing of an alert is therefore not arbitrary or unfair.

Also, the SFO does not request border arrest alerts in every such case. Generally speaking, it will only do so where that person also represents a potential flight risk. This risk may be because of previous conduct, the presence of overseas assets, potential co-offenders who are based overseas, or other ties to an overseas jurisdiction such as family, dual citizenship or residency.

Where the SFO considers there is a risk that a subject of its investigation will leave the jurisdiction before they are formally served with charging documents and therefore avoid having their conduct placed before the Courts, that will weigh in favour of requesting a border arrest alert.

**How many arrest alerts have been placed on people under SFO investigation at the point where no charges have been laid (present and past cases)?**

The SFO is withholding the information requested in relation to current cases pursuant to s6(c) of the Official Information Act as making the information available would be likely to prejudice the maintenance of the law. You are entitled to make a complaint about this decision to the Office of the Ombudsmen. They can be contacted at P O Box 10152, Wellington 6143 or at [office@ombudsmen.parliament.nz](mailto:office@ombudsmen.parliament.nz).

With respect to non-current matters, in the period since 1 January 2014 our records indicate that 11 arrest alerts have been in place on people under SFO investigation who at the time had not been served with charging documents. This includes cases where charges had been filed, but not yet served.