

## **STATEMENT ON THE TREATMENT OF SEIZED MATERIAL THAT IS THE SUBJECT OF PRIVACY OR LEGAL PROFESSIONAL PRIVILEGE CLAIMS**

### **Introduction**

1. This Statement sets out the principles the Competition and Consumer Protection Commission (the “CCPC”) applies when using its entry, search, seizure and retention powers under the Competition and Consumer Protection Act 2014 (the “2014 Act”) and other relevant legislation to investigate suspected infringements of competition, consumer protection and product safety law. Specifically, this statement focuses on search operations conducted on foot of a search warrant obtained under section 36 or 37 of the 2014 Act or other relevant legislation and how the CCPC may deal with any claims that it has seized material potentially subject to legal professional privilege and/or privacy rights.
2. The CCPC has a number of statutory powers available to it in order to gather information and evidence including the powers of entry, search, seizure and retention. The aim of a search operation is to seek out, obtain and preserve evidence relating to a matter under investigation. The CCPC ensures that effective and adequate steps are taken to identify, in a manner proportionate and necessary to the nature of the particular investigation, material which may be relevant or potentially relevant to the investigation. However, it is inevitable that some extraneous material may be gathered up and retained in the course of searches.
3. If the person(s)/undertaking(s)/entity(ies) under investigation (the “Search Target”) wishes to claim that material seized is subject to privacy rights, they must identify the particular material in question and explain their concerns. The CCPC will then communicate to those under investigation an effective mechanism in order to review the matter. If any material claimed to be covered by legal professional privilege is seized by the CCPC during a search it will be handled in accordance with section 33 of the 2014 Act.

### **Principles**

4. In order to ensure that the rights of the Search Target under investigation are safeguarded, the CCPC is guided by the following principles when planning and carrying out search operations and when dealing with material seized during those operations:
  - **Legality:** Search operations are conducted lawfully and fairly, in a manner consistent with the legal rights of those under investigation.
  - **Proportionality:** The CCPC conducts its search operations in a proportionate manner having regard to the duty to seek out, obtain and preserve evidence and having regard to the legal rights of those under investigation.
  - **Necessity:** The CCPC takes steps to ensure that the scope of a search operation is as focused as practicable in light of the particular circumstances of the matter, bearing in mind that extraneous material may nevertheless be seized and retained. In planning and carrying out search operations, the CCPC seeks to ensure that it limits the scope of a search operation to what is necessary to achieve the lawful objective in light of the particular circumstances of the matter.

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- **Fairness:** The CCPC recognises the right to fair procedures enjoyed by those under investigation, while also recognising the CCPC's legitimate interest in detecting and investigating potential breaches of the law.
- **Transparency:** The CCPC documents its procedures and can demonstrate due regard for the rights of the Search Target where it is appropriate to do so. However, in the interest of detecting and investigating breaches of the law and having particular regard to its duty to seek out, obtain and preserve evidence, the CCPC may be prevented from releasing information in relation to investigations.

### **Search Planning and Operations**

5. Where the CCPC considers it necessary to conduct a search operation on foot of a warrant under section 36 or section 37 of the 2014 Act or under other relevant legislation, it ensures that the search operation will be as focused as practicable. These are only undertaken following the granting of a warrant in the District Court.
6. Where the CCPC conducts a search operation, the CCPC authorised officer to whom the search warrant has been granted (the "Warrant Holder") will, at the outset of the search operation, show the original search warrant to the person in charge at the search site. The Search Target will be given an opportunity to review the search warrant. The Search Target may contact their legal representative(s). The search operation may however, for operational reasons, continue irrespective of whether the Search Target has contacted their legal representative(s) or whether legal representative(s) are present at the search site. The Warrant Holder will also confirm the purpose and nature of the search operation to the Search Target and is the point of contact for the Search Target and/or its legal representative(s).
7. The Warrant Holder will provide the Search Target with a **photocopy of the search warrant**, an **explanatory note** describing the powers of the CCPC, the purpose of the search (including the conduct/matter(s) being investigated by the CCPC) and the type of material that is being sought under the search warrant as well as a copy of this **Statement**.
8. However, the Warrant Holder may withhold the search warrant, the explanatory note and copy of this Statement if there are concerns that attempts may be made by anyone to interfere with potential evidence at the search site or to pass information to the targets of other searches being conducted by the CCPC at the same time, or for other operational reasons. The Warrant Holder will provide the documents to the Search Target as soon as practicable.
9. At the conclusion of the search operation, the Warrant Holder will provide a copy of the **Site Exhibits Chart** to the Search Target where practicable. The Site Exhibits Chart is a document containing a list of the items seized by the CCPC during the search operation.
10. If there is no one at the premises when the Warrant Holder arrives, reasonable steps will be taken to inform the occupier which may include leaving contact details, a copy of the search warrant,

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explanatory note, this Statement and where practicable, the Site Exhibits Chart in a prominent place on the premises following completion of the search operation.

### **Claims by the Search Target about privacy rights**

11. When raising privacy claims with the CCPC about seized material, the Search Target or their legal representatives must (a) identify, as far as is possible, the particular material in respect of which the claim is being made and (b) provide reasons as to why the material is considered to give rise to privacy rights.
12. The process to be followed in respect of any claims of privacy, will be decided on a case by case basis and will be carried out in line with the above principles.
13. If the Search Target raises any claims during the search operation, the Warrant Holder will determine whether it is practicable to deal with them onsite or after completion of the search operation.
14. If it is practicable to deal with the claims of privacy onsite, the Warrant Holder will deal with those claims in a manner which takes account of the nature of the investigation and in accordance with the principles outlined above.
15. If it is not practicable to deal with claims of privacy during the search operation, the CCPC will, after the search operation, communicate a method for reviewing claims to the Search Target and will carry out the review having regard to the circumstances of the investigation and the above principles.
16. The CCPC will not accept blanket privacy claims relating to a large volume of material in the absence of efforts by a Search Target or their legal representative(s) to identify and justify any concerns regarding seized material.

### **Material claimed to be subject to Legal Professional Privilege**

17. Any material seized that is claimed to be subject to legal professional privilege is handled in accordance with section 33 of the 2014 Act. The procedure to be followed will differ depending on whether the material seized is hard copy or electronic material/device(s).
18. If during the search operation, there is a dispute as to whether certain hard copy material, or parts thereof, is privileged, a CCPC authorised officer/Warrant Holder may request that the material is placed in a sealed envelope or package. The CCPC authorised officer/Warrant Holder will then explain the arrangements for the safe-keeping by the CCPC of these items to ensure the confidentiality of the material can be maintained pending a determination of its status.
19. If during the search operation, there is a dispute as to whether electronic material/device(s) or parts thereof, is privileged, a CCPC authorised officer/Warrant Holder may request that that the electronic material/device(s) in question is separately stored. If the electronic material/device(s) over which a claim of legal professional privilege is made cannot be separated from other electronic

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material/device(s) over which legal professional privilege has not been claimed, the entirety of the electronic material/device(s) will be stored separately. The CCPC authorised officer/Warrant Holder will then explain the arrangements for the safe-keeping by the CCPC of this electronic material/device(s) to ensure the confidentiality of the electronic material/device(s) can be maintained pending a determination of its status.

20. If, after the search operation, the Search Target wishes to make claims that certain seized material contains communications subject to legal professional privilege, it should do so as soon as practicable after the conclusion of the search operation. In any event, if the CCPC discovers any information within the seized material which may be potentially subject to legal professional privilege, steps will be taken to ensure the confidentiality of that information is maintained pending determination of its status.

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