

STANDARD OPERATING PROCEDURE 4 SEIZURE AND RETENTION ORDERS

VERSION	#6
DATE OF ISSUE	1 JUN 2020
REVIEW DATE	01 JUN 2022
REVIEW RESPONSIBILITY ENQUIRIES TO	DIRECTOR INVESTIGATIONS
ASSOCIATED POLICY / PROCEDURE	INFORMATION SHEET – APPENDIX A

APPROVED

.....

COMMISSIONER

..... / /

CONTENTS

PURPOSE.....3

SCOPE.....3

SEIZURE AND RETENTION ORDERS.....3

 INVESTIGATOR’S RESPONSIBILITIES.....4

REFERENCES.....5

DOCUMENT HISTORY5

APPENDIX A – INFORMATION SHEET6

PURPOSE

The purpose of this Standard Operating Procedure (SOP) is to provide direction to investigators when exercising the power to seize things or issue a retention order pursuant to section 31 of the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act) and provide appropriate information about the rights, obligations and liabilities of persons in relation to whom powers under that section are exercised.

SCOPE

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

SEIZURE AND RETENTION ORDERS

The authority to seize things or issue a retention order is enlivened upon the issue of a warrant to enter and search places or vehicles pursuant to Section 31(1) and 31(2) of the ICAC Act.

Section 31(7)(c)(v) and (vi) of the ICAC Act provide an investigator or police officer with the authority to issue a retention order in the course of exercising the enter and search powers of a warrant issued under that section. An investigator or police officer is empowered to:

(v) to seize and retain anything that the investigator or police officer reasonably suspects has been used in, or may constitute evidence of, a prescribed offence, or issue a retention order in respect of such a thing requiring that it not be removed or interfered with without the approval of an investigator; and

(vi) to seize and retain anything that the investigator or police officer reasonably suspects has been used in, or may constitute evidence of, an offence other than a prescribed offence, or issue a retention order in respect of such a thing requiring that it not be removed or interfered with without the approval of an investigator, if the investigator reasonably believes that it is necessary to do so in order to prevent its concealment, loss, mutilation or destruction or its use in committing such an offence.

Section 32 of the ICAC Act details the procedures that must be followed when issuing, varying or discharging a retention order, including that the retention order must be in the form of a written notice.

Sub-sections 32(2) and (3) provide:

(2) If a retention order is issued, a person who, knowing of the order, removes or interferes with the thing to which the order relates without the approval of the Commissioner or an investigator before the thing is dealt with under this section or the retention order discharged is guilty of an offence.

Maximum penalty: \$5000.00

(3) Subject to this section if any thing has been made the subject of a retention order under section 31, the following provisions apply:

(a) if proceedings are not instituted for an offence relating to the thing within the designated period after the issuing of the retention order, the retention order is taken to have been discharged on the expiration of the designated period;

(b) *if proceedings for an offence relating to the thing are instituted within the designated period after the issuing of the retention order, the court dealing with the proceedings may order that it be forfeited to the Crown (but if no such order is made, the retention order is taken to have been discharged);*

(c) *if the Commissioner or an investigator subsequently determines that the thing should be seized, an investigator may, without warrant, enter and search and, if necessary, use reasonable force to break into or open-*

(i) *the place at which, or vehicle in which, the thing is reasonably suspected to be located; or*

(ii) *part of, or anything in or on, a place at which, or vehicle in which, the thing is reasonably suspected to be located,*

And may seize and retain the thing (and section 31(8) and (9) apply to the exercise of such powers as if the powers were being exercised pursuant to a warrant under that section).

The **designated period** means two years or such other longer period a Judge of the Supreme Court may, on application by the Commissioner, allow: section 32(4).

INVESTIGATOR'S RESPONSIBILITIES

When issuing a retention order the following requirements and considerations must be taken into account.

- A retention order can only be issued by an investigator or police officer who holds a reasonable suspicion that the thing that is to be the subject of the retention order:
 - has been used in or may constitute evidence of a prescribed offence; or
 - has been used in or may constitute evidence of an offence other than a prescribed offence, if the investigator or police officer reasonably believes that it is necessary to do so in order to prevent its concealment, loss, mutilation or destruction or its use in committing such an offence.
- Before issuing a retention order the investigator or police officer should be satisfied the thing ordered to be retained will be suitably preserved and secured.
- A retention order must be in the form of a written notice. Retention order books are issued for this purpose.
- The retention order must be given to the owner or person apparently in possession of or having control of the thing to which the order relates.
- The rear of the retention order notice must be brought to the attention of its recipient which explains the rights and obligations of that person, including the ongoing management of the exhibit to which the order relates. See Appendix A of this SOP.
- If the retention order is to be varied or discharged, then written notice, in the prescribed format must be given to the person who was served with the original retention order.

NOTE: Proceedings for an offence relating to the thing must be instituted within the 'designated period' or the order is discharged.

When seizing things the following requirements and considerations must be taken into account.

- To seize and retain anything the investigator or police officer must hold a reasonable suspicion that the thing to be seized has been used in, or may constitute evidence of:
 - a prescribed offence; or
 - an offence other than a prescribed offence, if the investigator or police officer reasonably believes that it is necessary to do so in order to prevent its concealment, loss, mutilation or destruction or its use in committing such an offence.
- The investigator or police officer must issue a field receipt to the owner or person in control listing the things that are being seized. For that purpose a printed list may be attached to a field receipt.

REFERENCES

Independent Commissioner Against Corruption Act 2012

SOP 3 Enter and search warrants

DOCUMENT HISTORY

DATE	ACTION	PREPARED BY
04 Jul 2013	SOP created	Director Operations
28 Aug 2014	SOP reviewed	Director Operations
24 Dec 2015	SOP reviewed and amendeded	Director Operations
18 Oct 2016	SOP reviewed and amendeded	Director Investigations
11 Aug 2017	SOP reviewed and amended	Director Investigations
20 Mar 2018	SOP table of contents and name amended	Director Investigations
1 Jun 2020	SOP reviewed and amended	Director Investigations

APPENDIX A – INFORMATION SHEET

Information about this document

What is this document?

This is a Retention Order issued pursuant to *the Independent Commissioner Against Corruption Act 2012* (SA) ('the Act'). An investigator or police officer has conducted a search pursuant to section 31 of the Act and, as a consequence of that search, has issued this order as a result of:

if this order relates to a prescribed offence—

- (i) locating property, the subject of this order, that the investigator reasonably suspects has been used in, or may constitute evidence of, a prescribed offence; or

if this order relates to an offence other than a prescribed offence—

- (ii) locating property, the subject of this order, that the investigator reasonably suspects has been used in, or may constitute evidence of, an offence other than a prescribed offence and the investigator reasonably believes that it is necessary to issue the order to prevent its concealment, loss, mutilation or destruction or its use in committing such an offence.

A prescribed offence means corruption in public administration or an offence against the Act.

Corruption is defined in section 5 of the Act.

What must I do with the thing(s) the subject of this order?

You must not remove or interfere with the thing to which the order relates without the approval of the Independent Commissioner Against Corruption or an investigator.

What can I do if I want to remove or interfere with the thing(s) the subject of this order?

All applications to remove or interfere with a thing(s) the subject of this Retention Order must be made by contacting the investigator whose name appears on the first page of this order. He or she can be contacted through the Office for Public Integrity on (08) 8207 7111.

What happens if the items listed in this order are removed or interfered with?

It is an offence to remove or interfere with the thing(s) the subject of this Retention Order, without the approval of the Independent Commissioner Against Corruption or an investigator.

Section 32(2) of the Act provides:

- (2) If a retention order is issued, a person who, knowing of the order, removes or interferes with the thing to which the order relates without the approval of the Commissioner or an investigator before the thing is dealt with under this section or the retention order discharged is guilty of an offence.

Maximum penalty: \$5 000.