

# Private Word

News from the Office of  
the Privacy Commissioner

## Privacy Forum draws crowd

**More than 200 people from both public and private sector organisations attended the Privacy Commissioner's Privacy Issues Forum in Wellington at the end of March.**

The Forum was opened by Privacy Commissioner Marie Shroff, who outlined the results of a recent public opinion survey that showed a high level of concern about individual privacy (*see page 2*).

"The survey demonstrates that New Zealanders are well aware of privacy practices that create privacy pollution; hold surprisingly consistent concerns over the business issues surveyed; and hold similar views across the urban and rural divide, different age groups, and lifestyles," she said.

Associate Minister of Justice Clayton Cosgrove told the Forum that updating the Privacy Act was a priority for the Government.

Delivering a speech on behalf of Justice Minister Mark Burton, Mr Cosgrove said work to modernise the Privacy Act was well advanced. Proposals included arrangements for information transfers between countries (particularly the European Union) and reforms to ensure that personal information was not misused.

Mr Cosgrove said that in the "digital age", good privacy legislation that balanced the needs of business, government and the private citizen had become more important than ever.

"The balancing of business advantage and individual privacy is often the challenge when assessing the desirability of new technologies. Properly designed privacy law can achieve that balance."

The Forum's keynote speaker was Australian Federal Privacy Commissioner Karen Curtis, who spoke on the subject

"Good Privacy is Good Business".

"Privacy is not rocket science," she said. "It really is a simple notion about respect, choice and common sense. It is about balance - balance between the right of an individual and collective society needs."

Ms Curtis said there were three compelling reasons why good privacy was good business: risk of brand damage, prevention of customer and business partner attrition, and the high value of information to business.

"Good privacy" was not just about complying with the relevant privacy laws," she said. "It is about best practice, and ensuring the business goals are met in a way that respects the personal information the business collects, uses and discloses. Awareness of privacy should be built into the culture of an organisation."

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## New website launched

The Privacy Commissioner's new website has just been launched, making it easier for New Zealanders to find out about their rights and responsibilities under the Privacy Act.

Privacy Commissioner Marie Shroff says the new site is designed to be user friendly for consumers, as well as businesses and specialist privacy officers and lawyers.

"The new website is far easier to use and navigate around than our old site," Mrs Shroff says. "It is designed to be flexible and manageable as it grows over time, as well as being

easy to use for people with both older and newer computers. It includes plain English information for people who have no knowledge of the Privacy Act and privacy codes, as well as much more detailed information for those who work with privacy issues every day."

The homepage includes RSS (really simple syndication) feeds from other websites to create a constantly updating column of international privacy news.

**Visit the new site: [www.privacy.org.nz](http://www.privacy.org.nz) and let us know what you think. Please send your comments to [enquiries@privacy.org.nz](mailto:enquiries@privacy.org.nz)**

# Opinion survey shows deep concern

Potential invasion of privacy, particularly by businesses, is a serious concern for many New Zealanders, a public opinion survey commissioned by Privacy Commissioner Marie Shroff shows.

The UMR Research telephone survey of 750 New Zealanders found that, in relation to the handling of information by businesses, 93 percent of people thought respect for and protection of personal information was important.

Fifty-six percent of people surveyed said they were concerned about individual privacy generally. This is up from 47 percent in a similar survey five years ago.

"It is easy to take privacy for granted in a democratic country that has been relatively free of the serious human rights abuses experienced elsewhere," Mrs Shroff says. "But we should recognise that people do have significant concerns about threats to privacy, particularly those that are made possible by modern technology."

The UMR survey showed that individual privacy rated sixth on the level of public concern out of nine major issues tested, compared with seventh place in the similar survey five years ago.

As in the 2001 survey, education, crime and violence, and health were the major concerns. Concern about unemployment slipped, and ranked lower than privacy. The only issue in the latest survey to show a larger increase in the level of concern than privacy was "the environment generally".

Blue collar occupational groups had higher levels of concern about individual privacy than did white collar groups. Concern was also higher amongst Maori.

The areas generating the highest level of concerns were: security of personal details on the internet (84% concerned), confidentiality of medical records (78% concerned), and government interception of phone calls or emails (72% concerned).

Asked about the handling of information by businesses, respondents had high levels of concern about potential breaches of privacy. For example, 89 percent of people said they would be concerned (73 percent very concerned) if a business they supplied personal information to for a specific purpose used it for another purpose.

There were also high levels of concern about businesses getting hold of personal information they had not been given directly; asking for personal information that didn't seem relevant; and surreptitious monitoring of activities on the internet to record information on sites visited.

Mrs Shroff says "I am keen to raise the awareness of business in New Zealand about the benefits of good handling of personal information. These survey results strongly support that."

The UMR survey found 72 percent of people thought a Privacy Commissioner was needed.

## Case studies: complaints not upheld

### Market research questioned

A woman complained to the Privacy Commissioner about being asked questions by a market research interviewer about her age, income and whether she was the main income-earner in the household.

The woman was assured by the firm that the information would be kept strictly confidential and used only for statistical purposes. However, she was concerned that the firm did not make any statement informing individuals of their right to access personal information held by the firm.

In response, the Privacy Commissioner said privacy principle 3 provided that an organisation collecting personal information should tell the person they have the right to access and correct their information.

However, that requirement does not apply when the information is being used only for statistical or research purposes and the individual concerned cannot be identified.

### Caught on camera

A man complained to the Privacy Commissioner after he was photographed in a shopping mall and the photos were published in a business directory.

The Commissioner formed the opinion that the shopping mall management had breached privacy principle 3, by failing to take reasonable steps to inform the man that personal information was being collected and what it would be used for. Although there had been a breach of principle 3, the Commissioner found the man had not suffered harm from the breach.

As a result of the complaint the mall changed its policies and placed signage at the entrances alerting shoppers to the presence of publicity photographers on site, altered the contract it used for photographers, and ensured photographers wore identifying signage.

*To read the full case note, see [www.privacy.org.nz](http://www.privacy.org.nz), case note 60017 [2006].*

Human Rights Review Tribunal (HRRT) decisions are now available online at: [www.nzlii.org](http://www.nzlii.org)

# Privacy issues under the spotlight

New Zealand and Australian privacy experts covered a wide range of topics - including health, employment, media, technology, business, and identity crime - at the Privacy Commissioner's one-day *Privacy Issues Forum* in Wellington on 30 March. The following items are summaries of some of the papers presented. For more information go to [www.privacy.org.nz](http://www.privacy.org.nz)

## Understanding doctor-patient confidentiality

It is a basic tenet of medical practice that information provided to a doctor by a patient must be held in confidence, New Zealand Medical Association Chairman Ross Boswell told the Forum's *Health and privacy* session.

But he said the advent of the Office of the Privacy Commissioner, based on a legal understanding of confidentiality, seemed to have brought different understandings of confidentiality to the fore.

In the medical profession, and because a great deal of medical learning was case-based, patient confidentiality had traditionally been interpreted as a requirement to keep information safe within the medical community, rather than safe with one particular doctor.

"I find I am sometimes surprised by the restrictions proposed and imposed by the legally-trained privacy officers with whom I work in a District Health Board (DHB) environment," Dr Boswell said.

"One clear example of this is the medical expectation that an 'interesting' case, perhaps an x-ray and the brief medical

details accompanying it, can and perhaps should be shared informally with other practitioners if there are lessons to be learned from it. The viewpoint taken by privacy officers seems to be that this is equivalent to gossip and should be discouraged if not prohibited."

The differences were less marked in situations where the sharing of information was for the patient's direct benefit. Here, doctors had not only a right but a duty to share information with another practitioner providing treatment to the patient, he said.

Dr Boswell said a clear example of this was the sharing of laboratory test results. A project by the three Auckland metropolitan DHBs to have the results of all lab tests they funded available electronically to accredited hospital clinicians and GPs had uncovered some interesting privacy issues, he said.

"It is not possible to predict what test information a patient may consider confidential." For example, a patient may not wish his or her GP to know about a visit to a sexual health clinic, even though

important clues to subsequent illness might be obscured.

Dr Boswell said the Auckland DHBs proposed that all test results be made available unless patients had phoned an 0800 number to have particular results suppressed.

## RFID in the workplace

RFID (radio frequency identification) tags - used to identify and track objects and livestock - were now beginning to be implanted in humans, Paul Roth, barrister and Professor of Law at Otago University, told the Forum's *Workplace privacy* session.

Dr Roth gave the examples of the Mexican Attorney-General and 160 of his employees having rice-sized RFID tags implanted in their arms in 2004 to regulate access to restricted areas, and this year of two US video surveillance company employees having implants to control access to where security video footage was held for the government and police.

He said the technology could be indirectly used to compile a profile of an individual's workplace performance. For example, electronic access cards could be used not only to open doors, but also to monitor employee movements.

"RFID technology is going to be used increasingly in New Zealand, as it has been overseas, for workplace monitoring purposes," Dr Roth said.

RFID technology would pose new challenges to privacy rights and expectations in the workplace, he said. While the technology would in the end have to be accommodated under employment and privacy law, some special provision under privacy law might be needed to take account of its unique characteristics and implications.

## Media freedom "should be treasured"

Journalism and privacy did not generally go hand in hand, but the news media had the responsibility to report the news truthfully and comprehensively, *The Press* editor Paul Thompson told the Forum's *Media and privacy* session.

New Zealanders should be concerned about the subtle threat of the "privacy movement" that would like to strengthen privacy protection and make it more difficult for the media to do its job, he said.

"What is curious is that the mainstream New Zealand media tend to be responsible and certainly do not invade people's private lives in the manner of the British

tabloids. Yet some critics fail to make this distinction."

Mr Thompson said the 2005 Court of Appeal majority decision (*Hosking v Runting*) decided that a tort for invasion of privacy did exist in New Zealand, but he described the ruling as "vague and open to interpretation" and representing "an attempt by activist judges to plug what they saw as a gap in the law".

"Media freedom is not a device invented by journalists to make their job easier; rather it is a fundamental tenet of our society and should be treasured by all," he said.

# News around the world

□ The European Union has said new legislation may be required to regulate the widespread use of RFID (radio frequency identification) tags, announcing the beginning of a public inquiry to identify citizens' concerns about the technology. "RFID is very important to businesses and it is very important to citizens, but it also raises concerns about trust," said Viviane Reding, European Commissioner for information society and media. *Source: [www.computerworld.com](http://www.computerworld.com)*

□ Future US Government-issued travel documents, such as proposed wallet-size identity cards for US citizens travelling to Canada and Mexico, may feature RFID embedded computer chips that can be read at a distance of up to 30 feet, creating what some fear would be a threat to privacy. RFID chips are scheduled to appear in US passports from October this year. *Source: CNET News <http://news.com.com>*

□ In an effort to protect users of its Google.cn (China) website, Google is moving search records out of China and into the US. The company has decided to store search records from the site outside of China in order to prevent that government from being able to access the data without Google's consent. *Source: <http://tinyurl.com>*

□ The US Justice Department said a Bush administration demand to examine millions of Google users' search requests would not violate privacy rights because the data would not identify or be traceable to specific users. The department believes the information will help revive an online child protection law that has been blocked by the Supreme Court. *Source: <http://online.wsj.com>*

□ Hong Kong authorities said that they would set up a register of data-collection companies after details of 20,000 people who complained about the police were leaked on to the Internet. Roderick Woo, Privacy Commissioner for Personal Data, said the companies would have to provide information on what kind of data they collected and why, and who would access to it. *Source: <http://tinyurl.com>*

□ Three US academics researching why phishing scams are still finding success, found that 90 percent of subjects were unable to pick out a highly effective phishing email when simply judging whether or not it was genuine. Equally, a large number of subjects were unable to pick out genuine emails. *Source: CNET News <http://news.com.com>*

□ For more international privacy stories see [www.privacy.org.nz](http://www.privacy.org.nz)

## OPC investigation staff changes



Phillipa Ballard

Office of the Privacy Commissioner Manager Investigations Phillipa Ballard was farewelled in late April. Mrs Ballard has been with the Office for about five years, and now plans to work part-time, including some privacy-related project work.

The new Manager Investigations is Mike Flahive, who has recently returned to New Zealand after a year of backpacking around the world. Prior to that he was a legal adviser with Environment Waikato.



Mike Flahive

Mr Flahive spent 23 years as a police officer before gaining his law degree from Waikato University. He worked for private law firm McCaw Lewis Chapman before moving to Environment Waikato.

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### Private Word - Not "The Word"

*Private Word* is a newsletter, not legal advice. Individual privacy cases differ, so please contact the Office of the Privacy Commissioner or a lawyer for advice. Do not simply rely on material in these pages.