

Caution urged on DNA bank

Privacy Commissioner Marie Shroff has told the Justice and Electoral Select Committee that expanding New Zealand's DNA database to encompass potentially trivial lawbreaking was not warranted.

Giving her views on the Criminal Investigations (Bodily Samples) Amendment Bill, Ms Shroff said it was important to maintain the distinction between detecting serious criminal offences and detecting any law breaking at all. Each warranted a different level of intrusion on our rights and freedoms.

If passed, the Bill would allow Police to take DNA from anyone charged with an imprisonable offence. Currently, DNA can only be taken from people charged with serious offences leading to more than seven years in prison.

Changing to a wider collection of DNA could result in a greater likelihood of:

- a greater number of incidents where innocent individuals are incorrectly implicated in crimes;
- mistaken identification of individuals as a result of errors due to a greater demand on testing services; and
- a loss of general public faith in Police practices if samples are taken for trivial (but imprisonable) offences.

Marie Shroff called for an external oversight body for the DNA databank, and for a formal procedure for removing people's information from the databank when an appropriate length of time has passed and the offence is not of a serious nature.

The Committee is due to report back by 1 October 2009. To see the Commissioner's full and supplementary submissions go to www.privacy.org.nz



Te Reo video

To celebrate Māori Language Week, 27 July – 2 August 2009, the Privacy Commissioner launched Whakaarotia kātahi ka tuku atu ai – a privacy video aimed at young people.

“We thought it was important to translate this video into Te Reo Māori,” Privacy Commissioner Marie Shroff said. “We want to encourage everyone to be aware of the risks of putting their personal information online. Our version includes homegrown music – with thanks to local band *Hikoikoi* for letting us use their song.”

The video, produced by the Asia-Pacific privacy team, of which New Zealand is a part, has also been translated into Korean and Chinese. To view the video go to: www.privacy.org.nz

Can insurance companies collect full medical notes?

Insurance companies should not usually need to collect copies of full medical notes going back several years when they are deciding whether to insure a person or to pay on a claim, Privacy Commissioner Marie Shroff says.

The Commissioner was asked by the New Zealand Medical Association (NZMA) to look into the practice by some insurers.

“People need to be completely upfront and honest when insurers ask about their medical history,” Marie Shroff says. “But their full medical notes contain a great deal of information about them and possibly their family too. Not all of that is necessarily relevant to making insurance decisions. The law allows insurers to collect only the information they need to make those insurance decisions.”

“Occasionally, an insurer will have to get all the information on a person's medical file going back several years. However, those instances should be rare. Insurers should think twice about asking

for full notes. Usually, they should rely on asking specific questions about relevant health conditions, and getting specific answers from clients and/or their doctors. Some insurers do exactly this. Others, though, risk breaching the law by asking for full notes when they don't need all the information in those notes.”

Marie Shroff also recommends that insurers tell their customers more clearly if they are going to collect medical information about them.

“Currently, there's a lot of confusion. People aren't necessarily aware when they sign the form that they may be agreeing to the insurer getting their wider medical file. Many doctors are also uncertain whether their patient has properly authorised them to release full medical notes. This uncertainty doesn't suit anyone. The insurers have told us that they are willing to make sure their forms more clearly spell out what people are agreeing to.”

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BANK TELLER IMPROPERLY ACCESSES CUSTOMER ACCOUNT INFORMATION

A bank discovered a teller had accessed a couple's joint bank account without authorisation 58 times over two months. The teller also disclosed information about their accounts to a third party, a former partner of one of the couple.

The bank area manager met the couple to discuss the situation and appropriate compensation. However, they were unable to settle the matter.

Principle 5 of the Privacy Act provides that an agency must protect personal information by such security safeguards as are reasonable in the circumstances to take against loss, access, use, modification or disclosure, and other misuse.

Banks must therefore take reasonable steps to ensure that their employees do not inappropriately access customer information. These reasonable steps will include having good policies, procedures and training in place. Agencies should have systems that record when a person has accessed information.

Principle 11 provides that an agency that holds personal information must not disclose the information unless the agency believes on reasonable grounds that one of the exceptions contained within principle 11 applies.

Because the bank accepted that it had breached the Privacy Act, the Office did not need to investigate whether principles 5 or 11 had been breached. The Office worked with the parties to find a satisfactory resolution to the complaint.

The level of harm the couple had suffered as a result of the situation was the major consideration. The couple had to change bank accounts and had suffered considerable stress. But it appeared that the teller had not looked at their account details in depth, and the couple had not been contacted by the former partner.

The Office helped the parties to reach a settlement of a one-off cash payment of several thousand dollars. Both parties were happy with this result.

Case Note 203856 [2009] NZ PrivCmr 12

HEALTH CENTRE USED PHOTOGRAPHS IN PROMOTIONAL MATERIAL

A health centre asked one of its employees whether it could take photographs of her and her daughter to use in a health promotion campaign. After the photographs were taken, the woman told the health centre that she did not want it to use any of the photographs of her. However, she allowed her daughter's photograph to be used on a poster for a year.

Several years later, the health centre used the daughter's photograph on an invitation to an event at the health centre. The photograph was also used on a postcard promoting the health centre within the community. In addition, the woman discovered that the health centre had produced a book that contained a photograph of her and her daughter, including their names, in conjunction with a discussion about health problems within the community.

The woman was very distressed about these events and upset that her daughter's photograph had been used and disclosed more widely than she anticipated. The woman complained to the Privacy Commissioner.

The Office suggested that mediation between the woman and the health centre might resolve the problem. Both parties agreed to mediation, which was conducted by the Office. The woman and the health centre settled their dispute amicably on terms that were completely satisfactory to both parties.

Case note 204040 [2009] NZ PrivCmr 13

Insurance companies

Following initial discussions with interested parties, the Privacy Commissioner organised a forum at the end of last year with representatives from the insurance industry and the medical profession.

"As a result, insurers have been working with us to produce guidelines for the public and we hope to finalise these soon," Marie Shroff says. The NZMA has also produced guidelines for medical professionals, reflecting the results of the Commissioner's inquiry.

The report on insurers' access to medical notes is available at: www.privacy.org.nz

Insurance information: Tips for health consumers

Always tell the truth

If you lie to an insurer, this could be a criminal offence. Also, your insurance could be cancelled.

Answer questions as fully as you can

If you don't disclose something that might affect your premium, your coverage or payment of a claim, this can lead to hassles and delays. At worst, the insurer might be able to cancel your insurance or refuse your claim.

If you don't know the answer to a question about your health, say so

Your insurer will then need to get the information from your doctor. You'll be asked for consent.

Know what you're consenting to

Read the application form carefully. Know what it is that you're signing up to. If in doubt, ask the insurer or the insurance agent to explain.

Know what's in your medical notes

You can ask your doctor to show you, or give you a copy.

Work with your doctor to send information to the insurer

It can be useful to make an appointment so that you and your doctor can work together to fill out any additional information that the insurer has asked for. That way, you'll know exactly what's going on. Plus it'll be much quicker and easier for your doctor and for you. It may not even cost you anything. Your insurer may pay the bill for the appointment to fill in the form – check if you're not sure.

Don't be afraid to ask – particularly if an insurer is asking for full notes

If you're applying for insurance and the insurer says it needs full notes, ask why. If you're not satisfied with the answer, go to another company. Or if you're making a claim on your insurance, again, ask the insurer why it needs full notes in your case. It may have a good reason. If you think the insurer has collected information that it did not need, ask the insurer to explain. If you're not satisfied, you can make a complaint to the Privacy Commissioner.

PSD survey – the results

In May 2009, the Privacy Commissioner surveyed government use of 'portable storage devices' (PSDs), and has developed guidelines on their use.

The guidelines are aimed at government agencies but will be equally useful for businesses and other private sector organisations. To see the guidelines go to: www.privacy.org.nz/guidance-note-on-the-use-of-portable-storage-devices

Key findings from the survey:

- Thirty-five out of the 37 agencies (95 percent) that responded to the survey made PSDs available to staff – most commonly USB sticks.
- Nearly two-thirds of agencies also allowed staff to use their own personal PSDs for work purposes.
- Just nine agencies made PSD encryption mandatory, while 43 percent did not provide encryption solutions of any sort.
- Sixty-two percent kept a PSD register but only 22 percent said they would be able to track transfers of data to PSDs.

To see the full results of the survey go to: www.privacy.org.nz/privacy-awareness-week/#results

New audit privacy guidelines

IT auditors and security professionals welcomed the release of new IT Audit Privacy Guidelines, published in May by Information Systems Audit and Control Association (ISACA), Wellington.

The guidelines are intended to help auditors interpret the Privacy Act principles relating to storing and communicating personal data. To see the guidelines go to: www.isaca-wellington.org/privacy/wiki

Better practice by marketers

New Zealand marketers are now able to subscribe to the Deaths Index – allowing them to suppress names of the deceased from marketing data lists.

The Department of Internal Affairs (Births, Deaths and Marriages) recently signed an agreement giving the New Zealand Marketing Association (NZMA) permission to provide the Deaths Index to marketers as a separate list.

The NZMA now administers three name suppression services: Do Not Mail, Do Not Call and Deaths Index.

Law Commission seeks your views online

Are you concerned about the spread of surveillance technologies in modern society? Are there any invasions of privacy that you think should be criminal offences?

The Law Commission has created an online consultation site to encourage feedback about its current law reform projects. The review of privacy law is the first topic open for discussion.

The Commission wants to hear your views. Go to: www.talklaw.co.nz

Closing gaps in legal framework around privacy

The Privacy Commissioner made a submission to the Law Commission's Stage 3 issues paper *Invasion of Privacy: Penalties and Remedies*, which looks at changes needed to criminal and civil law to deal with invasions of privacy. She has supported closing gaps in the current legal framework around privacy.

One central consideration was the privacy tort, and whether New Zealanders should continue to be able to sue in the courts when a person's privacy was breached.

Commissioner Marie Shroff supported having a privacy tort, saying that it was an important right for New Zealanders. "The tort has a particular value in areas beyond the Privacy Act's reach, such as the media, or where the Act's mechanisms are less suitable than those of the tort," she said.

"The courts also have the power to grant an injunction against publication of material, where there is a serious and urgent privacy risk." The Commissioner noted that the Privacy Act's processes do not allow for injunctions to prevent publication of information.

The Law Commission's paper also looked at changes to surveillance laws. Marie Shroff said she saw a need for better redress for victims of harassment and intrusion – including, for instance, where there was intrusive surveillance by neighbours. She also supported the development of a tort of intrusion into personal or private space, and said there was now a need to better regulate surveillance by state and private investigators.

The Privacy Commissioner's submission called for gaps in the criminal law to be plugged in the use of spyware and Radio Frequency Identification (RFID) skimming. Among the range of other issues covered, she also supported the concept of making it an offence to use tracking devices. The submission is available at: www.privacy.org.nz

Privacy Bill important for trade and consumer protection

The Privacy Commissioner has called for the Privacy (Cross-border Information) Amendment Bill be passed at the earliest opportunity.

"This Bill is important for two principal reasons relating, first, to international trade, and second, to effective consumer protection in a global economy," Privacy Commissioner Marie Shroff told the Justice and Electoral Select Committee.

"The importance to trade is that this amendment is needed to satisfy the expectations of a major trading bloc, the European Union, so that European businesses may more freely send data to New Zealand for processing. Obtaining a formal finding from the EU that our laws meet their data protection requirements may give New Zealand businesses a competitive edge over businesses based in other countries," she said.

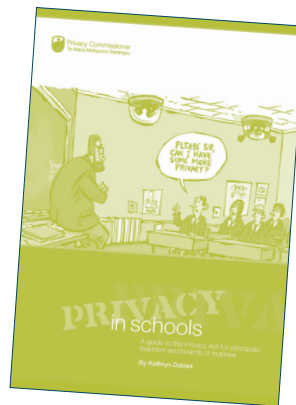
The second benefit was consumer protection and redress in a global economy. E-commerce and the Internet have brought many advantages for consumers but they have meant that the companies that hold New Zealanders' personal information are as likely to be based in Sydney, Texas or Singapore as in New Zealand. The Bill will facilitate cooperation with privacy enforcement authorities in other countries where a matter affecting a New Zealand consumer has cross-border aspects.

The Privacy Commissioner's submission on the Bill is available at: www.privacy.org.nz

Privacy guide for schools

This new book by Kathryn Dalziel aims to help principals, boards of trustees and teachers understand how the Privacy Act applies to the school environment and offers guidance in particular situations.

The A5 sized book will be available in September. To order a copy: email enquiries@privacy.org.nz, phone (in Auckland) 09 302 8680 or (outside Auckland) 0800 803 909, fax 09 302 2305, or write to the Office of the Privacy Commissioner, PO Box 466, Shortland Street, Auckland 1140. Price: \$20 per copy, \$15 per copy for orders of 10 or more, or \$15 per copy for advance orders, plus \$2 p&p.



Vehicle register to be restricted

The passing of the Land Transport Amendment Bill in June means that access to the motor vehicle register will be restricted. General information about the make and model of vehicles will still be available, but access to owners' address details will no longer be available.

Previous legislation obliged the Registrar of Motor Vehicles to release the name and address of the current and any previous registered owners to any person who quoted a vehicle's registration number (and paid the small fee). The information could be released over the counter at motor registration agents or in bulk electronically. This had led to complaints about the information being used for marketing mailing lists, and concerns about people being traced so they could be harassed or have their vehicles stolen. The law change will take effect by the end of the year.

iappANZ 2nd annual conference

The International Association of Privacy Professionals Australia and New Zealand (iappANZ) is holding its annual conference in Melbourne on 14 October 2009 with a video link-up to New Zealand. Keynote speakers are the Australian and New Zealand Privacy Commissioners, on the theme 'Privacy Proofing your Organisation: for Now and the Future'. PricewaterhouseCoopers is hosting the video link-up event in Wellington, 11am–2pm.

- For more details contact Sandra Kelman 04 903 3634 or sandra.kelman@bp.com
- To register for the conference go to www.iappANZ.org

News around the world

- A permanent privacy representative has been included on a leading International Standards Committee. Canada's Steven Johnston, has recently been appointed as liaison officer on identity management and privacy technologies to the International Standards Committee on information security. *Source: www.privacy.org.nz/international-privacy-standards-part-of-the-solution*
- Researchers at the University of Texas have developed an algorithm that can match up anonymised social networking profiles. Even when people have made separate and anonymous social network accounts, the various networks such as Facebook, MySpace, LinkedIn and Flickr can be connected to reveal a detailed account of a user's life. When the algorithm was tested on Twitter and Flickr users, it linked the accounts of 30 percent of people present on both networks. *Source: www.newscientist.com/article/dn16866*
- A June 2009 report by researchers at Berkeley's School of Information (University of California) says the most popular websites in the United States all share data with their corporate affiliates and allow third parties to collect information directly by using 'web bugs', despite stating the contrary. The researchers called for significant changes in internet privacy policies. *Source: http://berkeley.edu/news/media/releases/2009/06/02_webprivacy.shtml*
- Lady Shelley Sawers, wife of the new head of MI6, Sir John Sawers, posted pictures of her husband, family and friends on Facebook showing details of where they live and take their holidays, and who their friends and relatives are. The director of Buckingham University Centre for Security and Intelligence said the Sawers family would almost certainly need to be rehoused and the children may require protection. John Sawers, named in June as the new MI6 head, is a former spy, diplomat and foreign policy adviser to ex-Prime Minister Tony Blair. He is currently Britain's ambassador to the United Nations. The Facebook page has been removed. *Source: <http://uk.reuters.com/article/idUKTRE56402R20090705>*

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