Making the Future

Working with business to create a smarter, brighter future for privacy
Commissioner’s foreword

Technology is re-engineering the way we work and the way we live. Cloud storage, big data, and the Internet of Things are examples of the enormous potential of technological innovation, and each causes us to reassess the way we think about personal information.

Innovators and businesses need to be able develop and deploy emerging technologies in ways which realise the benefits without unwittingly compromising privacy values. This is where we can help. We don’t expect engineers and entrepreneurs to necessarily be privacy experts as well, but we want to be able make it easy for them to recognise and resolve privacy issues associated with their innovations. I want businesses to talk to me and my Office when they’re doing something new to see how we can help them. I want to be able to showcase examples of companies who ‘get it right’ and help develop privacy-friendly solutions for others to use.

This document sets out how my office will approach technology over the next three to five years. It outlines our strategy for how we will engage with innovators, adopters and influencers over that time.

We have consulted with a wide range of stakeholders to seek their help in deciding how we can deploy our available resources to best effect in the tech sector, and I am grateful for their help and engagement.

Over the next three to five years we will have to make decisions at different times about how we can meet the sector’s needs, whether we provide guidance materials, re-usable tools or modular privacy policies. Tell us what you need to make privacy easy and we’ll do our best to help make the future with you.

John Edwards
Privacy Commissioner
December 2014
Privacy enables people to preserve control over their information in the face of rapid technological developments. Our Office works to develop and promote a culture in which personal information is protected and respected in a world careening from one new technology to the next.

Without a clear idea of our priorities and what we want to achieve, we are driven to be responsive rather than proactive. We risk reacting to issues that come through the door without being certain that they are worth our time, or we risk being driven to produce something because it seems like a good idea at the time.

Our Office currently approaches technology work with a mixture of individual and organisation focused education or guidance material supported by ad-hoc use of our regulatory powers. We aim to strike a balance between informing and enabling individuals, the private sector and government and using our more formal legislative powers to effect change.

Putting a solid framework behind our office’s work will improve our ability to provide the right information to both individuals and agencies when they make decisions about technology and personal information. Privacy needs to remain present and relevant when these decisions are made so that New Zealanders’ privacy remains protected.

The more confident we are with what we are doing, the faster we will be able to move. To be effective and influential, we need to identify the key issues to focus on in the short to medium term, and have adequate information to support our views.
Our Office outlines its goals every few years in our Statement of Intent. In the 2014-18 Statement of Intent, we identified five ‘strategic initiatives’:

- Public sector privacy practices
- Private sector privacy practices
- Government information sharing
- Outreach
- Law reform

While government departments have an obligation to consult us when undertaking projects that affect the personal information of New Zealanders, the private sector doesn’t. Because innovation is largely driven by the private sector, we think it’s important that we’re as involved with the New Zealand private sector agencies as we are the government.

To define the outcomes for our technology work, and to ensure they line up with our office’s existing priorities, we have structured our strategy around the outcome of ‘improved private sector privacy practices’.

Most private sector agencies want to do right by their customers and we need it to be easy for them to do so. This means we need tools that do some of the heavy lifting and hard thinking for them.

In the short term, the best way to achieve change is through encouraging agencies – by carrot, stick or both – to incorporate privacy values in their products and business models.
How are we going to improve private sector practices?

We want to make sure that:

- private sector agencies are capable and accountable
- individuals are empowered and privacy literate
- good privacy practices encourage technology adoption

To get the effect we want to achieve within the next three to five years it is better for us to focus on one of these outcomes. We need to achieve a critical mass – putting consistent, sustained effort towards our goal. It is unlikely that we can achieve this if we spread our attention too thinly. Choosing to focus on one of these outcomes doesn’t stop us achieving results in the others. They are mutually supporting and we need elements of all three - working towards one will benefit the other two.

<table>
<thead>
<tr>
<th>Improve private sector privacy practices</th>
<th>Outcome</th>
<th>Description</th>
<th>How does it achieve the goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agencies are capable and accountable</td>
<td>Supporting the private sector by providing tools and resources that ‘make privacy easy’. Applying consistent regulatory pressure to drive practice change.</td>
<td>With consistent, strategic use of our existing and likely new legislative powers – as well as tools like the new naming policy – we have the potential to drive privacy-aware practice in the private sector.</td>
<td></td>
</tr>
<tr>
<td>Individuals are empowered and privacy literate</td>
<td>Raising the profile of privacy in New Zealand, and putting knowledge in the hands of individuals. Telling our story more widely.</td>
<td>A market that is well versed in privacy will exert pressure on the private sector to deliver privacy-aware services.</td>
<td></td>
</tr>
<tr>
<td>Good privacy practices encourage technology adoption</td>
<td>Working directly with innovators to ensure privacy enhancing technology is created and used in New Zealand. Building our technical capacity and a stronger reputation for deep knowledge in the technology space.</td>
<td>The technology itself helps agencies get privacy right. Where privacy-enhancing technologies aren’t possible, agencies understand what the technology does, and what they need to do to be privacy aware.</td>
<td></td>
</tr>
</tbody>
</table>
We’re going to focus on helping agencies get privacy right

We will likely have the most effect on the overall goal of improving private sector practice if we deal directly with the private sector. If we consistently and coherently use the full range of our regulatory tools and functions we can create incentives for agencies to ‘get it right’.

This work will be defined by our use of regulatory mechanisms to work towards better private sector privacy. In our choice to focus on the private sector, we will be exerting consistent regulatory pressure on agencies supported by resources that ‘make privacy easy’.

Working towards organisational change also carries an aspect of raising the profile of our Office. We have generally switched-on people working as privacy officers in the private sector and much of the New Zealand IT Security sector ‘gets’ privacy – but an organisational focus would see us leverage these relationships to reach business managers, project leaders, directors and boardrooms.

If we are going to use our powers to influence behaviour, we need to make sure that people know how to comply with the Privacy Act. This will mean providing tools and resources that help agencies to either build privacy into existing processes or to design new ones with privacy in mind – particularly for small businesses who won’t always have the resources larger agencies do. With amendments to the Act in the works, it will also be important for us to get out ahead of the law reforms and help agencies prepare for those changes.

We’re going to work towards six key priorities

To help us work towards capable and accountable agencies, we’ve identified six key priorities:

• Key decision makers in private sector agencies are engaging with us
• New Zealand agencies are better equipped to reduce the risk of data breaches
• We engage with and influence global service providers to enable privacy
• We consistently use our regulatory tools to increase privacy maturity in the private sector
• New Zealand agencies can easily tell good privacy technology from bad
• Agencies use our resources when they implement new technology

These are not all exclusive to technology issues. Our research, particularly the workshops we ran as part of developing this strategy, showed us that there is a need to teach privacy basics. Many of the participants also recognised the technology-neutral nature of the Privacy Act and saw basic privacy literacy as equipping people with the skills to make the right calls about technology.
We definitely won’t stop doing everything else we already do

Technology is just part of the work our Office does. We’ve chosen to work with private sector agencies, but that doesn’t change the focus of our existing policy, investigations, education and outreach work. We still see educating individuals as a priority and we’ll continue to work towards that.

We will also need to keep on top of emerging technology so that we can provide informed opinions to the agencies that use them.

We won’t be able to do this alone

To get real change on a nationwide scale we will need help. We believe that multiple priority areas will benefit from collaboration with other agencies, organisations and individuals. If we’re providing tools, we need to be sure people know they’re available. If we’re providing advice, we need people to help spread the message.

More importantly, we also need to constantly monitor and review whether what we’re producing works. Each initiative will have some sort of evaluation built in, and we will need to go and talk to the people affected as part of that process.

We’ll have to walk the talk

Best practice is difficult to sell if you can’t provide good examples. We’re hoping that we can develop a whole host of them by working with agencies – but until then, we’ll aim to set the standard through our own work.
Key decision makers in private sector agencies are engaging with us

Boards, executives, leaders and influencers from significant private sector agencies are both aware of and engaged in conversation with our Office. We are in a position to influence thinking in the New Zealand private sector.

Facilitating change in the private sector relies on the support of business managers and their operational teams. To make it a priority for them, it has to be a priority for executives and boards. Privacy is relevant right across agencies that handle personal information so it’s important that we’re reaching everyone – not just privacy officers, CIOs or IT departments.

‘Privacy is just another item on a list of 101 priorities, it needs to move up the list and be put in front of the decision makers.’

Contribution to outcomes

Contributes to the outcome “agencies are capable and accountable” by:

Putting privacy ‘on the agenda’ for executive teams or boards.
Making business managers and operational teams more aware of the risks and opportunities associated with the use and management of their customers’ personal data.

Contributes to the outcome “Good privacy practices encourage technology adoption” by:

Providing decision makers with good information about privacy and privacy practices, so that privacy is no longer seen as a barrier for agencies considering adopting new technology solutions.

What success looks like

• We are asked to talk about privacy at private sector focused conferences and forums
• Boards, CEOs, COOs, CIOs, and CFOs are learning about privacy related risks and opportunities for their agencies
• Our engagement includes senior executives at ‘blue chip’ New Zealand companies that make extensive use of personal information – such as airlines, banks, insurers, utility providers and telcos
• Private sector agencies are approaching us for help.
New Zealand agencies are better equipped to reduce the risk of data breaches

Agencies across New Zealand have a plan that can be used if there is a data breach. The plan should be aimed at avoiding breaches, but providing rapid, effective treatment if a breach occurs. Together with agencies, we use breaches as an opportunity to both educate individuals and improve processes to avoid recurrence.

Data breaches are a risk to agencies, and that risk is only going to grow with their appetite for data. The more data agencies hold, the more chance there is of something going wrong – it’s important that their security and information governance maturity matches their data practices.

It is also important that in the worst case scenario, agencies know what they have to do to minimise harm to their users and customers.

‘A breach is both an opportunity and a threat. OPC needs to make firm statements on cause effect and response with a focus on improvement.’

Contribution to outcomes

Contributes to the outcome “agencies are capable and accountable” by:

Encouraging agencies to develop data breach policies that require them to be

- open with stakeholders about any data breaches that have occurred, and
- accountable to their customers for any harm done.

Contributes to the outcome “empowered and privacy literate individuals” by:

Encouraging agencies to include education and learning opportunities for individuals both before and in the aftermath of data breaches.

What success looks like

- We are engaged with agencies across New Zealand and can see that they are:
- Developing data breach preparedness plans
- Actively taking steps to reduce risk of privacy breaches
- Our Office and the agencies involved share their lessons learned to help other agencies avoid risk
We engage with and influence global service providers to enable privacy

We recognise that global service providers offer a level of service and cost effectiveness that is attractive to New Zealand agencies and individuals. We will engage with these service providers to influence their product design so that New Zealand privacy standards are met.

New Zealand agencies are increasingly looking overseas for cost-effective solutions. It’s important that they can trust international providers to help them comply with New Zealand privacy legislation. We will need to work with global providers and local agencies to ensure both have the information they need.

‘The future of technology needs to be local and global, integrated and secure.’

Contribution to outcomes

Contributes to the outcome “agencies are capable and accountable” by:
Increasing the transparency and accountability of global service providers who provide the core infrastructure that New Zealand agencies use.

Contributes to the outcome “empowered and privacy literate individuals” by:
Maximising the chance that the advertising led “consumer as a product” services will meet New Zealand privacy standards and give individuals a level of control over their data.

Contributes to the outcome “Good privacy practices encourage technology adoption” by:
Allowing agencies to use services that meet New Zealand Privacy standards at the same time as leveraging the cost effectiveness of global service providers.

Reducing likelihood of systemic privacy issues for New Zealand individuals, leading to increased trust in the services being offered in New Zealand.

What success looks like

• We ‘set the tone’ as a leader and advocate for privacy internationally
• We are engaged with people at senior levels within the global service providers
• We collaborate and coordinate with other regulators.
We consistently use our regulatory tools to increase privacy maturity in the private sector

We have a range of powers and functions that can incentivise good privacy behaviour. We intend to use these powers more, and more consistently, in order to change privacy behaviour in the New Zealand private sector.

The private sector will need incentives to make changes. We can provide the tools and resources that agencies need to ‘get privacy right’, but we also need to provide a reason to use them. Concerted regulatory pressure helps send the message that privacy isn’t just a ‘nice to have’ or a commercial advantage, it’s also a legal obligation.

‘OPC needs to punish businesses that aren’t responsible custodians’

Contribution to outcomes

- Encouraging agencies to be open, transparent and accountable through use of our powers.
- Making an example of poor practice assists responsible agencies by clearly identifying areas of improvement.
- Restricting the activities of poor performers will allow agencies with good privacy practice to operate effectively.

What success looks like

- We have a published process and set of criteria for dealing with data breaches
- We are publicly highlighting good practice
- We are publishing reports or case notes on notable privacy breaches.
New Zealand agencies can easily tell good privacy technology from bad

It is our intention to actively recognise good privacy practice. Agencies and technology solutions that meet a robust set of privacy criteria will be highlighted.

Recognising good privacy practice is important. It not only makes it easier for people to make sound decisions about their privacy, it also creates examples for other agencies to follow.

‘The Commissioner has a role to play in telling people which services are OK.’

Contribution to outcomes

<table>
<thead>
<tr>
<th>Contributes to the outcome</th>
<th>Making it simple for agencies to include privacy standards compliance as a criteria when evaluating systems to purchase.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contributes to the outcome</strong></td>
<td>Showcasing good practice to get individuals thinking more about privacy; it becomes simple for individuals to consider privacy standards compliance when signing up for services.</td>
</tr>
<tr>
<td><strong>Contributes to the outcome</strong></td>
<td>Providing a mechanism which gives agencies and individuals a way of identifying technology solutions that they can trust.</td>
</tr>
</tbody>
</table>

What success looks like

- We have a means to convey good privacy practice simply to agencies and individuals
- Agencies want us to highlight their products.
Agencies use our resources when they implement new technology

To enable agencies to make the right choices, we need to provide tools that do some of the hard work for them. Our Office intends to market its existing resources more actively to the private sector to increase the use that is made of them and to be ready with new resources when they’re needed.

If agencies are going to improve their privacy practices or adopt new ones, we have to make it easy for them. Having a reliable set of resources that agencies can use is crucial to that simplicity.

‘Businesses want simple to re-use components that remove the legwork.’

Contribution to outcomes

Contributes to the outcome “agencies are capable and accountable” by: Making it easy for agencies to consider privacy and build privacy into any systems or products that they offer.

Contributes to the outcome “Good privacy practices encourage technology adoption” by: Encouraging adoption of robust privacy-aware solutions will create fewer privacy issues and risks for individuals and agencies. Demonstrating value will, in turn, drive more agencies to use them.

What success looks like

- We have a range of resources and tools freely available e.g. Privacy by Design guidance, boilerplate privacy policies and icons, good practice case studies
- The available resources are targeted at different audiences within the private sector e.g. data custodians, developers, vendors
- The resources and tools are being used by their target audiences
- The resources and tools are useful to, and respected by the people using them.