

Spotlight on privacy breaches

Colossal privacy breaches reported internationally in recent weeks highlight the need for extra care by New Zealand data holders, says Privacy Commissioner Marie Shroff.

"Many people will have heard about the loss in the UK of all child benefit personal information, involving 25 million people and 7.25 million families. The details - including name, address, date of birth, National Insurance and bank account numbers - were lost when two CDs were sent from the Revenue and Customs Department to the National Audit Office. One aspect that emerged was that the Audit Office had asked for sensitive details to be stripped from the files before sending, but this had not been done, apparently for reasons of cost. The data was unencrypted. The head of the department has resigned in the wake of this incident.

"Closer to home, I commend the actions of the Auckland DHB in identifying and following through instances where staff had browsed celebrity medical records. In that case, footprinting technology helped to trace the individuals involved. I also note a recent report about Wellington hospital patient records left on corridor trolleys.

"Regardless of whether it is held by government or business, personal information needs to be handled with care and respect. Simple measures can go a long way to protect against loss or misuse. I hope New Zealand agencies are alive to the fact that these incidents are avoidable."

Meanwhile, the Privacy Commissioner's annual report notes that in New Zealand there has been a phenomenal growth in both the number and range of data matching programmes being conducted by government.

Key points in the 2006/07 annual report include:

- There were 76 authorised government data matching programmes, of which 46 were operating. They involved tens of millions of personal records, and led to the recovery of \$45 million.
- While most information matching programmes operated satisfactorily, the Office has ongoing concerns at the margin about the operation of a small number of programmes. Those concerns centre on the quality of the matching process and its impact upon innocent individuals.
- The Office received 640 privacy complaints, of which about two-thirds were about access to, or disclosure of, personal information. Of the 701 complaints closed, 75 percent were settled without needing a final opinion.
- The Office is achieving a faster turnaround on complaints, with the average 'age' of complaints dropping.
- The Office received over 6000 telephone and email enquiries. Topics of enquiry ranged widely, and included the use of driver's licence and passport identification details, fingerprint scanning, website privacy statements and insurance companies' access to medical records.
- The Office successfully dealt with 228 legal and policy related projects.

See www.privacy.org.nz for the full annual report.



Privacy Week winners

Year 13 Carmel College student Briony Bennett was the New Zealand winner of the Asia Pacific Privacy Authorities' secondary schools writing competition, and took third place internationally.

The 17-year-old North Shore student's essay considered the benefits of technology versus the threats to privacy.

Privacy Commissioner Marie Shroff said Briony's entry focused on the potential use of microchips, and that she showed a mature understanding of privacy issues.

The writing competition was open to all secondary school students in New Zealand, Australia and Hong Kong as part of Privacy Awareness Week.

Two other New Zealand entrants were highly commended in the international competition: Kate McQuinn, 14, of Kamo High School, Whangarei (fifth internationally), and Emily Watson, 14, of Craighead Diocesan School in Timaru.

Pictured above are Privacy Commissioner Marie Shroff and writing competition winner Briony Bennett (front), with Year 13 Nelson College students Jared McIntosh, Mark Cleghorn, Willem Ikink and Elijah Burton. The boys won second place in this year's World Future Problem Solving Championships in the United States, where the theme was privacy. As part of the competition, the boys put together a four-minute 'boy band' skit to illustrate how algorithm computer programs could help solve the problem of personal information being leaked. The boys repeated their performance for a Wellington audience during Privacy Awareness Week.

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Case studies

COLLEAGUES' EVALUATIONS WITHHELD

A pilot complained to the Privacy Commissioner that he had been unfairly treated during the selection process for a new position within the airline, and that the process had been used to address performance issues in his current job.

The pilot had applied for access to personal information about himself, particularly copies of the 360 degree feedback forms with his colleagues' responses to questions about his strengths and competencies. He believed that the information about him was collected in an unfair manner and that it was used for a purpose other than that for which it was collected.

The airline had already provided the pilot with a copy of the cumulative results from the feedback forms. It argued that it could withhold copies of the actual forms under section 29(1) (b) of the Privacy Act, which allows evaluative material provided in confidence to be withheld in some situations.

The Privacy Commissioner concluded that the material concerned was clearly evaluative, was 'supplied' to the airline, and that the airline had expressly promised the other pilots that their responses would be kept confidential.

She accepted that while feedback collected confidentially raised the potential for misuse, in these circumstances there was value in obtaining feedback in this manner to ensure that the airline had the best possible information about applicants for the job. In addition, the pilots' union had agreed to this kind of collection and the complainant was aware of the process before he made his application.

The Privacy Commissioner was satisfied that the information had been collected in order to assess the pilot's competency and had been used for that purpose. To the limited extent it had been used to evaluate his current performance, the exception at principle 10(e) applied, since the use was directly related to the purpose for which the information was collected.

She found the airline had not interfered with the pilot's privacy, and the file was closed.

Case note 85552 [2007]

FAMILY LOAN DEFAULT

Two members of a man's family entered into a finance contract in his name to buy a car. They defaulted on the loan and a default was lodged against the man's credit file.

The man wanted to have the default removed from his credit file and complained to the Privacy Commissioner.

The Office of the Privacy Commissioner notified the finance company about the complaint. The finance company agreed to contact the credit reporting agency and have the default removed from the man's file. The finance company reserved the right to pursue criminal action against the family members who committed the fraud in relation to the complainant's identity.

The man was satisfied that this resolved the complaint, and the file was closed.

Case note 95224 [2007]

See www.privacy.org.nz for further details and case notes

Concerns in Australia

A national survey commissioned by the Office of the Australian Privacy Commissioner has found that technological developments have increased Australians' privacy concerns.

Among the findings:

- 90% of Australians are concerned about businesses sending their personal information overseas.
- 50% of Australians are more concerned about giving personal information over the internet than they were two years ago and 25% claim they provide false information in online forms as a way of protecting their privacy.
- On the subject of informing relatives about the presence of a genetic illness – a new area of investigation for this survey – 55% believe that this should be done even without the patient's consent. Of these, 36% believe this should be done only if there is a strong possibility that the relative may have the illness, and 19% think it should be done irrespective of the likelihood of the illness being inherited.
- Support for government departments being able to cross-reference or share information has increased from 71% in 2004 to 80%. Australians support sharing information most if it is for the purpose of solving fraud or other crime (77%), or for updating information (67%).
- Public trust in the ability of organisations to handle personal information appropriately has increased for health service providers and government departments. It has declined for financial institutions and has remained stable for charities, retailers, market research organisations and businesses selling over the internet.
- 9% of Australians claim to have been victims of identity theft and 60% are concerned about becoming a victim. 45% believe identity theft is likely to occur as a result of using the internet.
- Community support for a unique identifying number to be used by Australians accessing government services has increased in the past three years to 62% (53% in 2004).
- An increasing proportion of Australians are willing to provide a wide range of personal information to organisations. In 2004, 58% were reluctant to provide financial information (43% in 2007).
- Only 18% of Australians believe that it is acceptable for their ID to be copied or scanned when entering a pub or club, but 80% believe it is acceptable to show ID.
- 86% of Australians think employees should have access to information that employers keep about them. Most also believe that employers should be entitled to monitor employees in the workplace in certain situations.
- Most Australians are aware of CCTV and the majority is not concerned about its use.

For more detail see www.privacy.gov.au/business/research

Did you know ...

- You can ask for the return of your 'Guthrie' or 'blood spot' card.

Since the late 1960s, most New Zealand babies have had a small sample of blood taken from their heel. The blood is transferred onto a card and is used to test for a range of metabolic disorders. The cards are stored indefinitely by the National Testing Centre at Auckland City Hospital. For more information see www.nsu.govt.nz (the National Screening Unit website) and click on 'Newborn Metabolic Screening'.

International conference looks to the future

Privacy and data protection commissioners from around the globe gathered in Montreal in late September for their 29th international conference, 'Privacy Horizons: Terra Incognita'.

The focus was on anticipating and planning for the "unknowns" ahead in a shifting privacy landscape where technology and terrorism are transforming the world.

The conference passed a resolution calling for global standards for safeguarding passenger data used by governments for law enforcement and border security purposes.

Privacy Commissioner Marie Shroff, who attended the conference, co-sponsored a resolution on the development of international standards. The resolution encouraged data protection commissioners to further their efforts to support international cooperation, to work with international organisations to strengthen data protection worldwide, and to raise awareness of data protection and privacy. The resolution also called on governments to implement the June 2007 Organisation for Economic Co-operation and Development (OECD) Council Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy.

The keynote speaker was Michael Chertoff, secretary of the US Department of Homeland Security, who spoke about the threat posed by terrorism, and border security checks to combat it. The speech drew fire from a civil liberties speaker, who believed the airport security checks were ineffective, and that they were unnecessary intrusions into privacy.

Mrs Shroff said one particularly interesting session was about nanotechnology. The presentation described the staggering potential of nanotechnology, which uses the smallest particles of matter possible and has the potential to become an alternative to the silicon chip.

"The speaker very honestly said that research is going ahead to see what can be discovered without taking much account of risks or harms, and without any real knowledge of the consequences," Mrs Shroff said. "Before the technology comes on to the market, perhaps even in 10 years time, there will need to be a great deal of thought given to potential privacy issues."

Conference website: www.privacyconference2007.gc.ca

Emerging tech research

A New Zealand Law Foundation endowment has created a Chair in Emerging Technologies at the University of Otago. The Chair is based at the university's law faculty, and is a first for New Zealand.

The Chair will lead the Centre for Law and Policy in Emerging Technologies, guiding research that looks into the future and scans the horizon for emerging technologies that are likely to create significant changes and raise potential anxiety in society.

Research will range from biotechnology to other emerging technologies including nanotechnology, alternative bioenergy, information and communications technologies, robotics and artificial intelligence (cognitive science).

The Centre will also carry out research on regulatory issues in the area of human genomics, such as bio-banking and direct-to-consumer advertising, and testing of genomic technologies. The endowment builds on the successful Human Genome Research Project being carried out at Otago, which is also sponsored by the Law Foundation.



Praise for privacy brochure

The Privacy Commissioner's 'Good Privacy is Good Business' brochure was a finalist in this year's WriteMark New Zealand Plain English Awards.

The recently published brochure was nominated by a member of the public for the People's Choice Best Plain English Document award and was one of three finalists.

Assistant Privacy Commissioner Katrine Evans said the judges praised the brochure's use of examples, outline of the privacy principles, and the layout.

The 'Good Privacy is Good Business' brochure is designed to provide information for the business sector, particularly small to medium sized business owners and managers, about how to handle personal information well and why this is important in today's business world.

See www.privacy.org.nz for an electronic copy of the brochure, or for printed copies, contact the privacy enquiries line, 09 302 8655 or 0800 803 909. For more information about the awards, see www.plainenglishconferenceandawards.org.nz

"Dual role" for police

Privacy Commissioner Marie Shroff has urged police not to become blind to either side of their dual roles of being guardians of others' personal and sometimes sensitive information, while on the other hand seeking respect for themselves and their families.

Speaking at the Police Association conference, she said: "The best protection in each case will come if there is a climate of respect".

Police were in the unenviable position of trying to meet high community expectations and respond to an increasingly complex technological environment, she said.

"... police officers themselves are facing unprecedented demands. Perhaps your public role as the arm of the law and guardian of community interests is slopping over into your personal lives, and encroaching on your equally important roles as a friend, partner, sibling or parent. But should a public role like yours mean sacrifices in your private life? I think not. If we don't already understand as a society that we must 'protect the protectors', I hope that that realisation will come soon.

"Part of that realisation involves recognising the importance of personal privacy. By that I don't mean keeping deep-dark secrets or withdrawing from the community. What I'm talking about is much more fundamental than that. It's about having personal space and some control over the information others hold about you."

Mrs Shroff said that in today's environment, privacy was emerging as a value that people prized. Good information handling in this 'information age' was becoming essential.

News around the world

- Email you want – but not right now – has been coined “bacn” (pronounced “bacon”) by US bloggers. Unlike spam, bacn is solicited email, such as newsletters, flight bargain alerts and social networking site messages. To minimise the annoyance of bacn, setting up filters to separate email folders and/or using separate accounts on free web-based email sites has been suggested. See www.podcampittsburgh.com or www.bacn2.com
- A study by the Pew Internet Project has found that the number of US teens who have been made uncomfortable by an online experience with someone they do not know is relatively small – seven percent of the 935 online teens surveyed. The study’s findings included: teens who have posted photos of themselves and created profiles on social networking sites (SNSs) are more likely to have been contacted online by people they do not know; girls are more likely than boys to report online contact that made them scared or uncomfortable; there is no statistically significant association between stranger contact and having a publicly visible SNS profile; internet monitoring software that allows parental supervision seems to be more effective than online filtering software in limiting contact with strangers. See www.pewinternet.org
- A US company is offering toll-free internet phone calls in exchange for displaying advertising related to what people are talking about. Customers must agree to let the company, Pudding Media, use voice recognition software to eavesdrop on calls and select ads related to the conversations. Source: *Privacy Times*
- Ontario’s Privacy Commissioner is launching an investigation into the installation of thousands of security cameras throughout Canada’s largest public transit network following a complaint by an international privacy watchdog that the system would violate the privacy of Toronto commuters. London-based Privacy International has disputed claims by the Toronto Transit Commission (TTC) that the \$21 million project would reduce crime levels and terrorism threats, and arguing that transit officials have shown contempt for Canadian privacy law. The TTC is in the process of installing up to 10,000 security cameras in its buses, streetcars and subway system, adding to its current network of about 1500 cameras. The system will be capable of taking photos, recording video, and in some cases audio. Source: *The Canadian Press*
- Police in India are reported to have wrongfully arrested and detained a Bangalore man for 50 days after his internet service provider mis-identified him as the person who posted images on social networking site Orkut that insulted a revered historical figure. Source: www.theregister.co.uk

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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.



Privacy veteran stays the course

Privacy Commissioner Marie Shroff took the opportunity while in Dunedin recently to meet *Invasion of Privacy*.

Trainer Brian O’Connor invited Mrs Shroff to meet the 13-year-old trotter, who was the most raced standardbred in New Zealand this season.

Invasion of Privacy takes her name from her sire *Ambro Invasion* and dam *Jodene Evander*.

Mr O’Connor says she was initially a difficult horse to control, but with training has become reliable, well behaved, a bit of a charmer and a real trier.

She has started 136 times, with several placings and one win (at Winton in 2005). However, Mr O’Connor says he has no plans to retire the mare, who is a “spirited racer despite her age” and a “stayer over the long-haul”.