

## Report by the Privacy Commissioner into Profile Engine's process for deleting personal information on request

11 June 2014

### Introduction

Profile Engine is an online platform created by Profile Technology Ltd (a New Zealand company) originally as a back-end search engine for Facebook. Profile Engine lawfully acquired and now holds the user data of around 450 million individuals. In 2011, Profile Engine also launched a social networking platform independent of Facebook, using the Facebook user data it had earlier acquired.

As a result of a number of local and international enquiries from individuals whose profiles are included in Profile Engine's database, the Privacy Commissioner has conducted an investigation into Profile Engine's process for deleting personal information on request.

The investigation has concluded that the process is satisfactory, complies with the requirements of the Privacy Act, and should be followed by individuals seeking to delete their profiles. However, as a result of the Commissioner's investigation, Profile Engine has made a number of changes to the process designed to make it clearer and simpler for individuals to use.

### Background

In 2012, the Privacy Commissioner investigated the collection of personal information from Facebook by Profile Engine. The Commissioner was satisfied that Profile Engine had collected personal information from Facebook lawfully, and had not breached the collection principles contained in the Privacy Act. Our report on this investigation can be viewed at Appendix One below.

The current investigation was therefore not concerned with the collection of personal information by Profile Engine but focused on whether the deletion process it provides is satisfactory and complies with the requirements of the Privacy Act.

### The deletion process

Profile Engine provides individuals with two paths to follow to delete an unwanted profile. Both paths can be initiated from Profile Engine's helpdesk at <https://profileengine.deskpro.com/>.

### Path 1: Claim the profile

If an individual still uses the email address that was associated with their Facebook profile at the time Profile Engine collected their information (between April 2008 and October 2010), then they can “claim” their profile by following the steps set out at <https://profileengine.deskpro.com/kb/articles/16-how-do-i-delete-my-profile-completely>.

Once claimed, an individual can delete their profile directly, without making a request to Profile Engine and without providing any further personal information.

### Path 2: Request deletion

However, if an individual is unable to claim their profile, or does not want to, then they can make a request to Profile Engine for deletion by following the steps set out at <https://profileengine.deskpro.com/kb/articles/17-i-have-been-unable-to-claim-or-delete-my-profile-because-it-doesn-t-include-my-email-address-or-my-e>.

To use this path, Profile Engine requires individuals to provide a copy of an official identity document in order to verify that they are the genuine owner of the profile. Importantly, Profile Engine has made it clear that:

1. Profile Engine only needs to see the name and photograph on the identity document. Individuals may redact all the other information, including contact details or document numbers; and
2. Profile Engine does not retain a copy of an identity document once a profile has been deleted.

Profile Engine endeavours to delete profiles within 28 calendar days, which broadly equates to 20 working days, the timeframe required by the Privacy Act.

### Does this comply with the NZ Privacy Act?

Principle 7 of the Privacy Act gives individuals the right to request the correction (which includes the deletion) of personal information. Section 40 of the Privacy Act requires that an agency responds to such a request within 20 working days. The above process provides this right.

However, a number of correspondents have advised the Commissioner that they are uncomfortable with the requirement to provide a copy of an identity document in order to exercise their principle 7 right.

Principle 8 of the Privacy Act requires agencies to take reasonable steps to ensure that information is accurate before using it. For this reason, an agency must be sure that a request for deletion (or correction) is genuine. In particular, an agency must ensure that the request is being made by the individual to whom the information relates.

Profile Engine has been careful to collect only the information it needs to verify identity – an individual's name and photograph. Profile Engine does not seek to collect unique identifiers – the numbers on identity documents that can in some circumstances be used for identity theft.

The Commissioner considers that the above process strikes an appropriate balance between the need to verify a requester's identity and the obligation to collect only the information necessary for this purpose. Any potential risk associated with the collection of identity documents is mitigated by Profile Engine's assurance that it does not retain these documents once a profile has been deleted.

## Conclusion

The Commissioner has concluded that Profile Engine's deletion process is satisfactory and complies with the NZ Privacy Act.

For this reason, the Commissioner will not accept complaints about the deletion of profiles by Profile Engine unless an individual has first followed one of the two paths for deletion set out above, including the provision of an identity document where required.

John Edwards  
**Privacy Commissioner**

11 June 2014

## Appendix One: Excerpts of Privacy Commissioner's 2012 Report on Collection and Use of Personal Information by Profile Engine

April 2012

The Privacy Commissioner has recently completed an investigation into the actions of Profile Technology Ltd, and its website Profile Engine. You made an enquiry about this company and I outline the outcome of our investigation below.

### **Privacy Act 1993**

The Privacy Act sets out 12 principles that deal with how personal information is collected, used and disclosed, and allows an individual to request access to their own personal information held by an agency.

We investigated this matter under principles 1 and 2 of the Privacy Act.

Principle 1 is about the purpose of collection. It provides that personal information should not be collected by an agency unless the information is collected for a lawful purpose connected with a function or activity of the agency, and the collection of the information is necessary for that purpose.

Principle 2 relates to the source of personal information. It provides that when agencies collect personal information about an individual they should collect that information directly from the individual concerned, unless one of the listed exceptions applies.

### **Background**

Profile Technology says that the Profile Engine began as a dedicated search engine for Facebook and provided a search tool for Facebook users. Originally it was called 'Advanced Search'. In 2011 that back-end function was redesigned to include a social network.

### **Facebook collection**

Most of the profiles on Profile Engine were copied from Facebook. Some users of Profile Engine have chosen to also join the site separately.

Profile Technology had an agreement with Facebook permitting it to index, in its search engine, any information displayed on the publicly accessible parts of the Facebook site. Information was collected continually from Facebook from April 2008 until October 2010 under this agreement. Profile Technology says that it is not currently collecting any new information from Facebook and has advised us that it has no plans to collect further information from Facebook at this time.

In order for a Facebook user's information to appear on the public parts of the Facebook site they must have consented to make the information public and consented for search engines to index it. This is included in Facebook's privacy policy and Facebook is responsible for enforcing these privacy settings.

I understand that Facebook has chosen to change its settings a number of times over recent years and sometimes without advising users beforehand, or seeking their feedback. When Facebook first began, it was possible to have a completely private profile but this is no longer possible. In agreeing to be a Facebook user, individuals also agree that some parts of their profile will now be public.

We acknowledge unease by some people over companies being able to index information that is on the internet, including Facebook user information. This is one of the inevitable consequences of people putting personal information online. The growth of blog sites, Facebook, Twitter and social networking in general is increasing and many people do not realise information posted online may be available to anyone.

According to Facebook terms and conditions information that is always publicly available are a user's name, profile pictures, network, and username and user ID. Sometimes friends, group memberships, or social groups will also be public. Public search settings on Facebook control whether people who enter a name on a public search engine can see a public profile. If you turn your public search setting off and then search for yourself on a public search engine, you may still see a preview of your profile as some search engines, like Profile Engine, cache information.

Profile Technology cannot detail the exact process used by Facebook to obtain permissions from users as this is Facebook's responsibility and has changed over time. Profile Technology said that it indexed only information which Facebook made public and it relied on Facebook assurances that it had obtained the appropriate permissions to make this information public.

Typically the type of consent process used by Facebook involved ticking a box under privacy settings with an explanation that by ticking the box, users allowed third-party search engines to index parts of a profile which are public. As Profile Engine is a search engine, a user who ticked this box on Facebook should have been aware that search engines were able to collect the information. I understand this operated in combination with various settings which made specific profile fields public.

This particular scenario seems to be connected with changes to Facebook policy and settings over the last few years. Facebook do not notify Profile Technology if the privacy settings on a profile later change. Changes to Facebook privacy settings apply only to the sharing of new information, not to information previously shared. Once information has been put in the public domain it cannot be made private. Profile Technology said when it copied Facebook user's information all of the profiles collected were publically available.

## **Principle 2 – Source of personal information**

Principle 2 of the Privacy Act states where an agency collects personal information it should collect information directly from the individual concerned. It is not necessary for an agency to comply with principle 2 if the agency believes, on reasonable grounds, that the information is publically available.

Profile Technology said that it only collected data from Facebook that was open to the public, in accordance with Facebook privacy settings, and Facebook allowed it to do so. Facebook make it technically impossible to access any data which had not been made public.

Any information on the Internet is considered to be generally available to the public and can be copied or re-used by others. Profile Technology understood in agreeing to use Facebook users consented to search engines indexing parts of a profile which are public. In this case, it appears to be Facebook's settings, or terms and conditions, which were changed to permit parts of a user's profile be open to the public. This was done between 2008 and 2010 when Profile Technology had an agreement with Facebook to collect publically available information. Anyone who had a Facebook profile during that time, and when the settings were changed, also agreed to this policy and some of their information became public. Once information is made public it can be picked up by search engines and copied.

A wider concern by individuals may be how Facebook communicated this change to users but this is not something we can look at. By using Facebook individuals agree to accept its terms and conditions which includes part of a user's profile being publically accessible. Any change in Facebook policy is not a Privacy Act issue that we have jurisdiction to investigate.

However, in terms of Profile Technology collecting profile information from Facebook, it is our view that Profile Technology has not breached principle 2 of the Privacy Act. At the time Profile Technology copied profiles the information was publically available and able to be indexed.