

13 December 2011

The Hon Judith Collins
Minister of Justice
Parliament Buildings
Wellington

Dear Minister

Congratulations on your appointment to the Justice portfolio.

I am very much looking forward to working with you on the challenging issues arising in the field of privacy and data protection. The direction and focus of the Office is developing quickly as Government, business, civil society and private life are being revolutionised by technology change. I attach a short briefing on our work showing how we are responding to these developments.

“Moore’s Law” tells us that IT processing and storage capacity doubles every 18 months. Human ingenuity and the drive for innovation and efficiency means that new ways are being found to collect, use and manipulate people’s personal data. It is a global phenomenon - Facebook, Google, Twitter and the internet generally operate beyond national boundaries and constantly challenge the status and control of personal information.

There are significant business and government opportunities to exploit big data, but citizen and consumer trust must be part of the new equation. Guidelines for online data handling are pivotal to the future of emerging industries, such as cloud computing. Government also is developing inventive new uses of citizen data to combine efficiency and customer services.

Some of our responses to this new environment include:

- Encouraging and supporting an industry based initiative to develop self regulation for cloud computing. This will provide a stamp of credibility for an emerging New Zealand industry, which has great potential to enhance our business opportunities internationally;
- Vigorously pursuing an EU finding of “equivalence” for New Zealand privacy law which will open doors for New Zealand businesses to compete globally;
- Refining New Zealand’s privacy law to meet international standards and ensure a balance is struck between encouraging business and government efficiency and protecting individual New Zealanders in the digital world. This means working with the Ministry to pursue the passage of the information sharing bill currently in the House, and implementing Law Commission recommendations to make NZ law fit to handle the digital environment;

- Developing the international privacy environment so that global giants such as Facebook and Google are encouraged to provide safer online environments for their customers, but with global enforcement when people are harmed by global companies or online threats.
- Public-facing initiatives to raise awareness – e.g. the information cards we have recently issued to help people protect themselves in the internet and big data environment (see enclosed cards).
- Public education and implementation of the new comprehensive credit reporting industry code that aligns with responsible lending initiatives, and which will mean repayment history will be held about most New Zealanders.

On the more traditional front of our growing complaints jurisdiction, we have streamlined our processes to deliver a high quality service while freeing up resources for essential work in the digital environment.

We have a small staff working flexibly across varied areas. Many have significant expertise in legal, communications, policy, technology and dispute resolution. The challenging and fast evolving nature of the work has mostly enabled us to retain talented staff within a limited budget for staff rewards.

Demand is rising in public complaints, media and technology environment. The attachment to this letter gives a snapshot of how we have effectively managed this workload within finite resources.

I look forward to meeting you soon to discuss these issues.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marie Shroff', with a stylized, cursive script.

Marie Shroff
Privacy Commissioner

MINISTERIAL BRIEFING
ON THE OFFICE OF THE PRIVACY COMMISSIONER (OPC)

DECEMBER 2011

Summary

Protecting personal data has become a critical area for business and government as personal information has been recognised as a business asset with a pivotal role in business profitability. “Privacy” law today includes areas as diverse as social networking, cloud-computing, biometrics, credit reporting, surveillance technology, online fraud and safety. The global reach of online technologies mean that most of these issues have a cross-border and international angle. This aspect alone raises many challenging issues for information law.

Personal information has become a modern currency, and consumer and citizen confidence in both business and government is critically affected by their standards of information handling. As a small watchdog agency, OPC can provide independent oversight and reassurance. OPC works with government and business partners across a range of areas to enhance government efficiency and business opportunities while respecting personal information.

The uptake of technology by business and government is reflected in increasing demands for guidance and other regulatory assistance. OPC rigorously prioritises its work programme but, increasingly, has had to decline unanticipated requests for assistance in order to meet agreed deliverables. OPC recognises that there are some risks in very tightly prescribed work programmes, and tries to mitigate these wherever possible, including by strategies such as private sector sponsorship, or using external funding for some key positions.

Current OPC priorities are to:

- progress and implement key modernising recommendations from the Law Commission’s review of privacy law, particularly: -
 - streamline compliance processes and dispute resolution, through compliance notices, access determinations and “class actions” to tackle systemic harm;
 - introduce innovations, such as the ability to audit with good reason, privacy breach notification and a statutory “do-not-call” register;
 - Better protections for people, by closing-off offensive internet postings and more protections for victims.
- work with industry to formulate expert guidance on cloud-computing offshore ICT options;
- work with industry and other agencies to ensure adequate public education on new credit reporting changes affecting all adult New Zealanders
- ensure a data protection framework exists that enables uptake of commercial opportunities arising from technology developments.

Context

Personal information a key business asset

New Zealand business needs to be in a position to compete globally and take advantage of new opportunities arising from technology. We are living and transacting in an information-rich society where personal data has become a business asset that is valued and tradeable. Details about individuals are collected, sorted and disclosed on an unprecedented scale. Technology is an enabler, and means there is a greatly enhanced ability to analyse and combine huge data sets. Some commentators have described this phenomenon as “big data”.

There are countless business opportunities in this environment. New Zealand businesses are well placed to compete internationally in terms of time-zones, skill-base and labour costs. New Zealand-based datacentres (newly opened in East Tamaki by IBM for instance), are competitive and are increasingly building a local and international client base. However, the supporting infrastructure and regulatory framework must also be right.

Personal information must be managed well if high-tech business of this nature is to grow. Local providers are keenly aware they need to be able to give assurances about data protection to offshore and local clients. Clients may specify the geographic location of data storage for legal and strategic reasons. Equally, they may opt to store highly sensitive data locally, under high security, and send low-risk data offshore. Protecting business assets today means protecting customer data. New Zealand’s data protection framework is a key consideration for international clients, many of whom must also meet demanding European laws.

Modernising the law: Law Commission review

The Law Commission’s 4½ year review of privacy has been a major focus for the Office. The review endorsed the principle-based and technology-neutral approach of the Privacy Act, while also making numerous recommendations for change to ensure New Zealand law is better equipped to deal with technological challenges.

The Law Commission’s approach has been carefully measured and justifiable, both in the current business and economic environment and into the foreseeable future. It has been careful to preserve and enhance the best features of the Act, such as its ability to resolve large numbers of disputes at low cost, while making it more effective in key areas – particularly by tackling the Act’s key weaknesses in relation to enforcement and dealing with systemic (rather than complaint driven) issues.

The Law Commission has been cautious in its approach. It has not suggested change for change’s sake. Where it has proposed amendments to current law and arrangements, it has carefully looked at the costs of regulation and suggested solutions that are appropriate to the risks and justifiable in today’s environment. This includes recommendations about development of guidance, rather than changing the law, where legal rules would impose unnecessary costs on business, or be too inflexible.

What do New Zealanders think?

Public opinion results give some clear messages to both business and government about protecting information in order to retain customer confidence (UMR, March 2010). New Zealanders are increasingly concerned about the collection and misuse of their personal information and invasion of their privacy by new technology. A third of people surveyed (35%) reported that they had become *more* concerned about issues of individual privacy and personal information in the last few years. Education is still needed, with 57% of people

using social networking sites believing the sites to be private spaces. Concern about safety of children on the internet (88%), and security of personal information on the internet (83%) is high. OPC plans to repeat the public opinion survey in the first quarter of 2012.

International Regulation

Privacy and data protection law is shaped by international regulatory standards. New Zealand is actively involved in various international initiatives.

One key work area has been to secure the formal confirmation of New Zealand's "EU adequacy" status (likely to be in the next 6 months). The benefit of an EU adequacy finding is that it will enable New Zealand businesses to take up commercial opportunities that are currently unavailable to us, such as for locating datacentres or call centres in New Zealand. (The Privacy Act was amended in a relatively minor way in September 2010 to help secure recognition from the EU that our data protection law meets European standards.)

Other current international regulatory work includes:

- OPC's ongoing involvement in newly established international initiatives:
 - GPEN: Global Privacy Enforcement Network
(<https://www.privacyenforcement.net/>)
 - APEC - CPEA: Cross-Border Privacy Enforcement Arrangement
- the APEC Pathfinder project to establish cross-border rules for handling information;
- a promising (and potentially ground-breaking) initiative to develop worldwide standards for data protection, arising from the recent international privacy commissioners meeting;
- EU and OECD initiatives.

Policy work across business and government

The Privacy Commissioner is mandated to give independent advice on policy and legislative proposals. In addition, government departments constantly request assistance with operational policies, such as information sharing projects for children and families at risk. Current resources within the Office to carry out policy and legislative work are tightly managed (192 legal and policy projects dealt with in 2010/11).

The Ministry of Health provides funding towards a position within OPC to respond to the wide ranging privacy issues arising in the health sector, such as the development of electronic health records and regional clinical data repositories.

Technology

The phenomenal growth in technology and its impact on individuals and business mean this is one of the areas where the Office is subject to pressing and growing demands. The State Services Commission currently funds one position in this team to work on the i-Govt initiative.

The Privacy Commissioner has an oversight and monitoring role for all government data matching programmes (there are currently 47 active programmes). Data matching programmes between government agencies can deliver cost efficiencies and recover overpayments. We expect that new proposals in the Privacy (Information Sharing) Bill 2011 (No.318-1) will absorb much of the growth that would otherwise have occurred in authorised data matching programmes. The Bill is awaiting its first reading.

Industry codes of practice

The Privacy Commissioner can independently issue statutory codes to regulate personal information handling. Major industry codes include the Health Information Privacy Code, the Telecommunications Information Privacy Code, and the Credit Reporting Privacy Code.

OPC recently amended the credit reporting code, in response to industry requests, to introduce a more comprehensive credit reporting regime for New Zealand. These developments are aimed at supporting a more responsible lending environment. Major credit reporters and lenders recognise that there is an urgent need for public education about the credit reporting system and particularly the new monthly repayment recording that will affect almost all adult New Zealanders.

Codes can be useful in adapting the law to specific circumstances. Very shortly after the February 2011 Christchurch earthquake, the Privacy Commissioner issued an urgent code of practice to remove any uncertainty about the handling of personal information. The Code was aimed at helping emergency services and others dealing with the emergency to share personal information as necessary to assist victims of the earthquake and their families. Although the Privacy Act does allow for collection and disclosure of information in emergencies and for public safety, OPC thought greater certainty would be helpful.

“Cloud computing” code of practice

A current industry initiative, headed by Xero and the Computer Society, aims to develop an industry code of practice on use of cloud computing services. This is a pleasing development and OPC is fulfilling an independent observer role. This industry initiative supports work done by OPC in surveying use of offshore ICT by New Zealand agencies.

Public comment, guidance and outreach

Privacy and data protection are a ‘hot topic’ for media, business, the health sector and government. We respond to around 250 media enquiries each year for comment on privacy and technology issues and provide specialist briefings.

The 0800 line is a key service, receiving over 7,000 enquiries per year. The 0800 line helps people to resolve problems quickly and informally and, increasingly, we are able to track trends in public concern.

The Office carries out regular training seminars on information handling, largely on a cost recovery basis. The Commissioner and senior staff are active in speaking engagements for business, government and community groups (44 in the last year).

Continuing to produce high-quality guidance resources for individuals and business is a priority activity, and is the subject of a number of Law Commission recommendations. Recent work has included a set of anti-fraud leaflets, targeted at senior citizens and the wider community. The Office is active in Asia-Pacific Privacy Awareness Week.

Investigations

The inflow of complaints to the Privacy Commissioner is close to 1,000 per year. The investigations team has a strong focus on the speedy mediation and conciliation of complaints. Currently, 96% of complaints are less than 12 months of age, and 80% are closed within six months of receipt. We actively work with business and government agencies across New Zealand to reduce the causes of complaints and target systemic issues.

In the 2010/11 year, 28% of complaints were closed by settlement or mediation. Special investigations are undertaken from time to time e.g. Google (unauthorised collection of Wi-Fi data) and Telecom / Wireline (security breach).

Priorities for action

Short / Medium term

- Advance and implement key recommendations from the Law Commission's privacy review including:
 - streamlining the resolution of personal access disputes by granting the Commissioner the ability to make determinations;
 - streamlining compliance processes by enabling the Commissioner to issue a compliance notice where there is persistent disregard for the law;
 - enabling the Commissioner to better respond to public concerns about systemic privacy issues by:
 - conducting or requiring privacy audits for good reason;
 - allowing "representative" complaints to be investigated;
 - setting up a statutory "do-not-call" register as a response to telemarketing, in line with strong public demand;
 - various technical, non-contentious amendments to the Privacy Act that are responses to technological challenges and will assist modern business and government objectives.
- Respond to demands for expert advice and guidance on data protection by delivering expert briefings, guidance materials and practical tools (such as self audit mechanisms) to assist business, government and civil society organisations.
- Continue to work to ensure New Zealand law gains a finding of EU adequacy, allowing the capture of associated trade benefits.

Longer term / ongoing

- Pursue New Zealand's leading contribution to the APEC Privacy Pathfinder to ensure New Zealand's global competitiveness, and protect the rights of New Zealanders;
- Continue to work multi-laterally to develop international data protection initiatives in response to ongoing technological change.

Budget

The Office operates within budget by tight prioritisation and, increasingly, by seeking external funding for core activities. Budget has remained at levels set in 2006. There has been a small reduction in FTE staff. Rapid growth in ICT and online activity is placing pressure on our regulatory, policy and communications capabilities.

Snapshot

Performance Indicators over past five years

Performance Indicators	Year Ending				
	Jun 07	Jun 08	Jun 09	Jun 10	Jun 11
Operating Grant (\$000)	3,091	3,109	3,148	3,148	3,148
Total Income (\$000)	3,456	3,523	3,861	3,486	3,448
Total Expenditure (\$000)	3,251	3,751	3,849	3,623	3,496
Total Staff Expenditure (\$000)	2,071	2,337	2,620	2,483	2,441
Staff Numbers (FTE's)	31.48	31.48	30.39	30.69	29.69
Complaints Received	640	662	806	978	968
Complaints Closed	701	767	822	961	999
Percentage of complaints closed within 6 months	48%	61%	83%	80%	80%
Percentage of complaints under 12 months of age	81%	88%	95%	97%	96%
Public Enquiries Received	5,884	5,416	6,632	7,151	7,000
Media Enquiries Received	137	128	216	323	212
Information Matching Programmes Monitored	46	46	46	49	47

The Office of the Privacy Commissioner (OPC) is an Independent Crown Entity, with business, civil society and government jurisdiction. OPC has a budget of \$3,449 million (excl GST) which includes an appropriation from the Crown of \$3,148 million (excl GST). We have a staff of 29.7 FTEs, a gradual reduction from 31.5 FTEs over the past 4 years.

Marie Shroff took up office as Privacy Commissioner in late 2003, succeeding the long serving first Commissioner, Bruce Slane. Marie Shroff was re-appointed in 2008, until September 2013.

The Privacy Act was passed by unanimous vote of Parliament in 1993. Key issues at the time were to meet OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data to protect our international trade; and to allow the government to match databases to detect fraud (eg benefits and employment) while monitoring and providing reassurance to the public in general. Principal functions are to:

- advise on the risks and benefits of new technologies, policy proposals or initiatives;
- comment on proposed legislation;
- oversee authorised government data matching programmes;
- educate and communicate on privacy and personal information protection issues;
- deal with complaints from the public about breaches of privacy in both private and public sectors;
- issue codes of practice for industry.

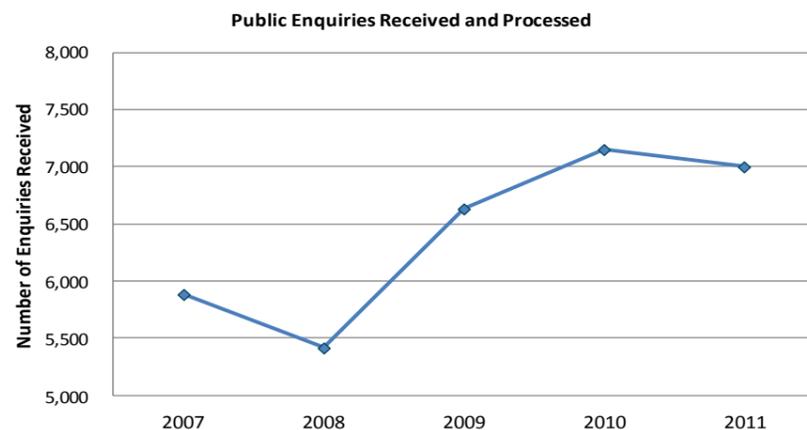
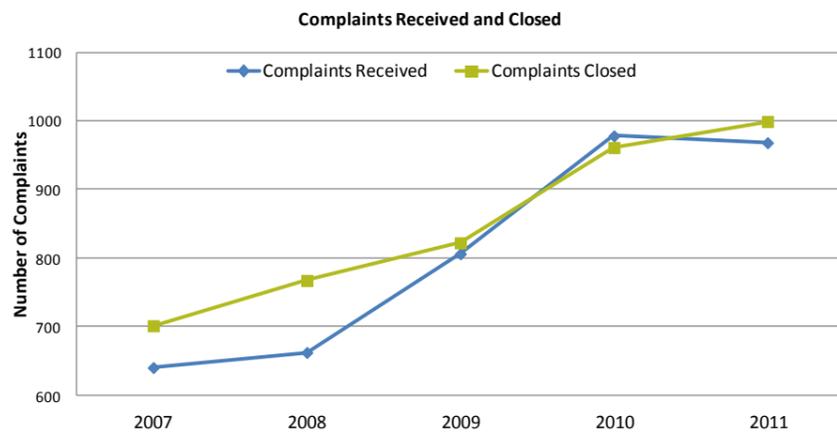
The Privacy Commissioner has offices in Auckland (10 staff) and Wellington (20 staff).

Attachments

- (a) *Organisational chart of the Office of the Privacy Commissioner*
- (b) *Statement of Intent of the Office of the Privacy Commissioner*

The past 5 years at a glance

Baseline increase	⊘	0%
Expenditure (since 2009)	↓	11%
Staff numbers (FTE's)	↓	6%
Complaints received	↑	51%
Complaints closed	↑	43%
Complaints closed within 6 months	↑	67%
Public enquiries	↑	19%
Media enquiries	↑	55%



With challenge comes opportunity



Performance Indicators	Year end 30-Jun-07	Year end 30-Jun-08	Year end 30-Jun-09	Year end 30-Jun-10	Year end 30-Jun-11
Operating Grant (\$000)	3,091	3,109	3,148	3,148	3,148
Total Income (\$000)	3,456	3,523	3,861	3,486	3,448
Total Expenditure (\$000)	3,251	3,751	3,849	3,623	3,496
Total Staff Expenditure (\$000)	2,071	2,337	2,620	2,483	2,441
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Complaints Received	640	662	806	978	968
Complaints Closed	701	767	822	961	999
Complaints closed within 6 months	307	404	669	782	774
Complaints under 12 months of age	568	675	781	932	959
Public Enquiries Received	5,884	5,416	6,632	7,151	7,000
Media Enquiries Received	137	128	216	323	212
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Office of the Privacy Commissioner

December 2011

