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**From:** [REDACTED]  
**Sent:** Tuesday, 11 August 2020 9:23 pm  
**To:** Privacy Code; editor@consumeraffairswriter.com; The National Alternative  
**Subject:** submissions on the revocation of the Health Information Privacy Code 1994 and its replacement under the Privacy Act 2020

Office of the Privacy Commissioner

**Hello/Kiaora to all those present today to hear submissions.**

**My name is** [REDACTED]

**My submission on the revocation of the Health Information Privacy Code 1994 and its replacement under the Privacy Act 2020 is as follows;**

Rule 11

(2) Compliance with sub-rule (1)(b) is not necessary if the health agency believes on reasonable grounds, that it is either not desirable or not practicable to obtain authorisation from the individual concerned and—

(d) that the disclosure of the information is necessary to prevent or lessen a serious threat to—

(i) public health or public safety; or

(ii) the life or health of the individual concerned or another individual; or

(e) the disclosure of the information is necessary to enable an intelligence and security agency to perform any of its functions; or

(f) that the disclosure of the information is essential to facilitate the sale or other disposition of a business as a going concern; or

(j) that non-compliance is necessary— (i) to avoid prejudice to the maintenance of the law by any public sector agency, including prejudice to the prevention, detection, investigation, prosecution and punishment of offences; or

(ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or

Rule 12

Disclosure of health information outside New Zealand

(1) A health agency (A) may disclose health information to a foreign person or entity (B) in reliance on Rule 11(1)(b) or (c) or 11(2)(a), (c), (d), (f) or (j) only if—

(a) the individual concerned or that individual's representative where the individual is dead or is unable to exercise their rights under these rules, authorises the disclosure to B after being expressly informed by A that B may not be required to protect the information in a way that, overall, provides comparable safeguards to those in this code; or

(b) B is carrying on business in New Zealand and, in relation to the information, A believes on reasonable grounds that B is subject to this code; or

(c) A believes on reasonable grounds that B is subject to privacy laws that, overall, provide comparable safeguards to those in this code; or

(d) A believes on reasonable grounds that B is a participant in a prescribed binding scheme; or

(e) A believes on reasonable grounds that B is subject to privacy laws of a prescribed country; or

(f) A otherwise believes on reasonable grounds that B is required to protect the information in a way that, overall, provides comparable safeguards to those in this code (for example, pursuant to an agreement entered into between A and B).

(2) However, subrule (1) does not apply if the health information is to be disclosed to B in reliance on Rule 11(2)(d) or (j) and it is not reasonably practicable in the circumstances for A to comply with the requirements of subrule (1).

### **I will put this in context as I see it...**

**Rule 12(2) However, sub-rule (1) does not apply if the health information is to be disclosed to B in reliance on Rule 11(2)(d) or (j) and it is not reasonably practicable in the circumstances for A to comply with the requirements of sub-rule (1).**

**11(2) Compliance with sub-rule (1)(b) is not necessary if the health agency believes on reasonable grounds, that it is either not desirable or not practicable to obtain authorisation from the individual concerned and—**

**(d) that the disclosure of the information is necessary to prevent or lessen a serious threat to—**

**(i) public health or public safety; or**

**(ii) the life or health of the individual concerned or another individual; or**

**(j) that non-compliance is necessary— (i) to avoid prejudice to the maintenance of the law by any public sector agency, including prejudice to the prevention, detection, investigation, prosecution and punishment of offences; or (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or**

**To me Rule 12(2) appears to make it possible that health information may be shared with a “Foreign person or entity” under NZ pandemic regulations. A pandemic threat has always been present in the past, present and future. The only thing that has changed is the introduction of new laws this year (2020) Every country on Earth has a flu season at a different time and any flu could be a pandemic. Potentially the new pandemic laws the Labour party are putting in place will become permanent laws as the pandemic threat will always be present like it always has been in the past.**

**To follow this logic a step further...Under Rule 12 a digital tracking/information bearing chips whether in a card, bracelet or under our skin can contain our continually updated private health information that can be accessed and monitored in real time by a foreign Person or Entity forever using “pandemic threat” as a valid reason.**

**I take this opportunity to point out that in this Health privacy act it is possible to be declined access to health information held by an agency. This in turn means individuals may not be able to check their health information held by an agency and have it corrected. I think the new Rule 12 is potentially dangerous and has the potential to take**

**away people’s rights and privacy to some extent. I do not consent to any changes to the privacy act that take away my ability to control any of my personal information and which agencies have access to it.**

**Under section 30(7) The Commissioner may not grant an authorisation under subsection (6) in respect of any specified personal information if the individual concerned objected. (previously section) 54(7)**

**I do hereby object to any of my personal information being shared with any other agency without my personal approval or in the case of my being incapacitated or dead the approval of my next of kin.**

(3) In this rule,— The wording of subrule 11(2)(g), and (2)(j)(i) has been updated to reflect the wording of the Privacy Act 2020. Subrule 11(8) is new and reflects the new cross-border disclosure rules set out in rule 12. Rule 12 has also been renumbered where it was no longer sequential after previous amendments. Previous subrule (2)(k), providing an exception to collection of information in accordance with an authority granted under section 54 (now section 30) of the Privacy Act has been removed. See the commentary relating to rule 2 above. Question for submitters: Would you prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rule 11, even though it has been removed from information privacy principle 11? 17 prescribed binding scheme means a binding scheme specified in regulations made under section 213 of the Act. prescribed country means a country specified in relations made under section 214 of the Act.

**I would prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rule 2, 10, and 11. I believe it is important that people have access to all the relevant information in each section when they are reading the privacy act.**

**Section 54 now section 30 is as follows Commissioner may authorise collection, use, storage, or disclosure of personal information otherwise in breach of IPP 2 or IPPs 9 to 12**

(1)

An agency may apply to the Commissioner for authorisation to do any of the following in the circumstances of a particular case:

(a)

collect personal information even if the collection of that information would otherwise be in breach of IPP 2:

(b)

keep personal information even if the keeping of that information would otherwise be in breach of IPP 9:

(c)

use personal information even if the use of that information would otherwise be in breach of IPP 10:

(d)

disclose personal information even if the disclosure of that information would otherwise be in breach of IPP 11 or 12.

(2)

An application under subsection (1) must be made in the manner required by the Commissioner.

(3)

If, on receiving an application, the Commissioner is not satisfied that the applicant has taken sufficient steps to give notice of the application to all individuals concerned, the Commissioner may require the applicant to give public notice of the application in a manner that the Commissioner specifies.

(4)

If, on receiving an application, the Commissioner is not satisfied that the applicant has given sufficient opportunity to individuals concerned to object to the application, the Commissioner may require the applicant to give any further opportunity that the Commissioner specifies.

(5)

In considering whether to grant an authorisation, the Commissioner must take into account any objections to the application received from individuals concerned.

(6)

The Commissioner may grant an authorisation sought by an applicant only if the Commissioner is satisfied that, in the special circumstances of the case,—

**(a)**

the public interest in granting the authorisation outweighs, to a substantial degree, the possibility of—

**(i)**

any loss, detriment, damage, or injury to the individuals concerned; or

**(ii)**

any adverse effect on the rights, benefits, privileges, obligations, or interests of the individuals concerned; or

**(iii)**

any significant humiliation, significant loss of dignity, or significant injury to the feelings of the individuals concerned; or

**(b)**

granting the authorisation would result in a clear benefit to the individuals concerned that outweighs the possibility of—

**(i)**

any loss, detriment, damage, or injury to the individuals concerned; or

**(ii)**

any adverse effect on the rights, benefits, privileges, obligations, or interests of the individuals concerned; or

**(iii)**

any significant humiliation, significant loss of dignity, or significant injury to the feelings of the individuals concerned.

**(7)**

**The Commissioner may not grant an authorisation under subsection (6) in respect of any specified personal information if the individual concerned objected.**

**(8)**

An authorisation granted under subsection (6) may be subject to any conditions that the Commissioner considers appropriate.

**(9)**

**The Commissioner must maintain on the Commissioner's Internet site a list of current authorisations granted under this section.**

Compare: 1993 No 28 [s 54](#)

**Thank you all for reading/hearing my submission and bearing witness to my non consent and objection also contained in this submission.**

**Yours sincerely**

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