

TERMS OF REFERENCE

Independent Police Conduct Authority & Office of the Privacy Commissioner

Joint Inquiry into Police photographing of members of the public

PURPOSE

Joint Inquiry by the Independent Police Conduct Authority (IPCA) and the Office of the Privacy Commissioner (OPC) into New Zealand Police's conduct, practice, policies and procedures as they relate to the photographing of members of the New Zealand public who are not being detained for or suspected of committing an offence, including whether Police action, policy or procedure has resulted in the privacy of individuals being infringed. The Inquiry will incorporate the investigation of reported incidents of Police photographing Māori youth in Wairarapa in August 2020 who had not committed or been suspected of committing an offence and who had not provided informed consent.

RATIONALE

This Inquiry is being undertaken following substantial media publicity in December 2020 about Police taking photographs of Māori young people in the Wairarapa in August 2020, in the circumstances noted above. After IPCA made direct enquiries with Police, they formally notified IPCA of the incidents on 24 December 2020. Police have subsequently provided information to IPCA about similar matters where Whanganui Police staff were photographing Māori young people in 2014. IPCA has also recently concluded an investigation into a complaint about Northland Police staff taking photographs of other members of the public without the necessary lawful grounds to do so.

Rationale for a Joint ICPC/OPC Review

Police photographing of members of the public who are not being detained for or suspected of committing an offence raises significant Police conduct, policy, practice and procedure and privacy issues. As such this Inquiry falls into the jurisdiction of both IPCA and OPC and both agencies had decided to inquire into the reported issues.

Given this, it has been agreed that the Inquiry is to be a joint project conducted under the powers and authorities of both IPCA and OPC, with the scope and terms of reference for undertaking the Inquiry confirmed following an initial scoping and issue identification exercise.

IPCA and OPC bring different powers and authorities to the Joint Inquiry:

- IPCA brings its powers to investigate complaints under s12(1)(c) of the Independent Police Conduct Authority Act 1988. Additionally, section 12(2) broadens the power to investigate to any Police practice, policy or procedure which relates to the complaint. Following an investigation, IPCA can make recommendations pursuant to s27(2) of the Act.
- OPC brings both powers of inquiry under s17(1)(m) of the Privacy Act 2020 and the new regulatory action powers prescribed in the Privacy Act 2020. These powers include the ability to issue compliance notices should the Inquiry find a relevant breach of the Privacy Act.

KEY ISSUES FOR CONSIDERATION

1. To determine whether Police actions with respect to the Wairarapa incidents complied with Police policy, the Privacy Act 1993, and any other legislation.
2. To determine if any compliance and enforcement action is required if it is found that Police breached the privacy of the individuals involved.
3. To identify the extent to which, and the reasons why, Police are photographing members of the public in public places.
4. To identify variations in practices in this respect across Police Districts.
5. To determine the extent to which any or all of these practices are consistent with the Privacy Act or any other legislation.
6. To identify what Police policy and practice in this area ought to be, including the extent to which any specific restriction or requirement ought to govern the photography of children and young people.

SCOPE/METHODOLOGY

1. Request and review material obtained from Police
2. Conduct interviews with youth involved in the Wairarapa Police photographing activities and any other relevant contacts of the young people including members of their whānau, hāpu or iwi, caregivers and youth aid workers.
3. Conduct interviews with officers involved in the Wairarapa Police photographing activities
4. To the extent necessary, obtain further information about, and if necessary conduct interviews, about Police policy and practice in other Districts
5. Critically examine Police's review and findings
6. Determine preliminary findings and recommendations
7. Draft public report for Police comment.
8. Finalise report in light of submissions received.

Initial scoping exercise

- Review relevant legislation (and subsequently Police's compliance with same):
 - Privacy Act 1993 & 2020
 - Policing Act 2008
 - Land Transport Act
 - Search & Surveillance Act
 - Oranga Tamariki Act 1989
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- Bill of Rights Act 1990
- Confirm extent of Police policy relating to photographing members of the public
- Review current Police policy (and that which was applicable at the time of the incidents) in relation to the photographing of children and young people.
- Request further information from Police about Wairarapa/Whanganui/Northland incidents and, if necessary, conduct joint interviews with officers to establish what they did and why.
- Request information from Police about all known instances where officers have taken photographs 'for the purpose of their function'.
- Request information from Police about relevant district practices.
- Determine quality assurance processes within the Police in terms of relevant work practices
- Review documentation relating to requirements re informed consent.

TIMEFRAMES

Draft report completed by end of September 2021

OUTCOMES

The Inquiry will result in a joint report for Police and the public, providing an assessment of Police's compliance with relevant legislation and policy, and any recommendations for remedial measures that should be taken to improve policy and practice.

To the extent that relevant breaches of the Privacy Act 1993 or 2020 by the Police are identified and confirmed, the Inquiry could also result in compliance and enforcement action being undertaken by OPC.

Neither of these outcomes precludes the ability of individuals who feel that their individual privacy has been infringed to make a complaint under the Privacy Act 2020.

COMMUNICATION

All communication or engagement activity including with the media will be approved through the business owners.

No formal comment on the Inquiry or its findings should be made public without consultation with the other agency.
