

**PRIVACY
AND
ONLINE PROPERTY
INFORMATION
REPORT
2016**



Privacy Commissioner
Te Mana Matapono Matatapu

This report is intended to provide guidance to local authorities wanting to balance the efficiencies and public benefits from wide access to council held online property and building records with the legitimate desire for some in the community for some degree of privacy in those records.

One of my functions as the Privacy Commissioner, under section 13(m) of the Privacy Act 1993, is to *'inquire generally into any matter'* if it appears to me *'that the privacy of the individual is being, or may be, infringed thereby'*

Council held online property and building records, in particular full property files, are a new development which have the potential to infringe on the privacy of members of the public.

Privacy complaints and enquiries

- The Office of the Privacy Commissioner has received over a hundred complaints and enquiries to date about the privacy implications of local government property and building information.
- Complaints about council information practices have highlighted privacy, safety and security risks associated with publicly accessible property and building information, such as aiding the activities of stalking, harassment and domestic violence.
- The vast majority of complaints reveal that the biggest issues for individuals in relation to online property and building information are:
 - a lack of public awareness about the fact that their personal information will be published online as a result of processes such as building consents and being involved in resource management consultations; and
 - the limited ability of individuals to opt-out of online publication (even if the information must legally remain publically accessible through council offices or on request).

History of council-held information

- Technological developments have allowed councils to present and disseminate property and building information in new ways. For example, pre-Internet Rating Information Databases were generally available in paper form and were usually searched in a council office during office hours. Now it is commonplace for these databases to be searchable online and accessible at any time.
- These developments have also introduced new privacy risks such as the ability for third parties to bulk collect individuals' information for purposes unconnected with the purpose for which it has been collected,

and is being published. Councils should ensure they take a cautious and deliberate approach towards the design and use of online and offline public registers.

Open information

- Open access to information held by local authorities improves efficiency and accountability.
- Open information projects in both the central and local government sectors have been supported by the work of the Open Information and Data Programme which was introduced in 2008. Open data initiatives that have no or insufficient regard for personal privacy can put people at risk of the corrupt use of their personal information, and can expose vulnerable people such as those fleeing domestic violence to real danger. The unscrupulous and dishonest can use public datasets to assist them to carry out in identity theft and fraud.
- Very often the objectives of open data/open government initiatives can be met without exposing the data subjects to these risks, by ensuring that data is effectively “de-identified”.

Data Futures Partnership

- The Data Futures Partnership (DFP) was established by central government in August 2015 to “drive change across New Zealand’s data use ecosystem”
- The DFP has established a measured approach for data sharing and use which is underpinned by four principles “for safely managing and optimising data use in New Zealand in the future”. These four principles are:
 1. Value – “New Zealand should use data to drive economic and social value and create a competitive advantage”.
 2. Inclusion – “All parts of New Zealand society should have the opportunity to benefit from data use”.
 3. Trust – “Data management in New Zealand should build trust and confidence in our institutions”.
 4. Control – “Individuals should have greater control over the use of their personal data”.
- Principles for data use make sure custodians of personal information use this information to extract social value while allowing individuals to preserve an appropriate degree of control and trust in the use of their data.

Legal framework for council-held information

- There are many different statutes that relate to information held by councils, including the Privacy Act 1993 (PA), Building Act 2004, Local Government Act 2002 (LGA), Resource Management Act 1991, Local Government Official Information and Meetings Act 1987 (LGOIMA) and the Local Government (Rating) Act 2002.
- The range of overlapping, general and specific, enabling, and prescriptive rules can appear complex and contradictory. However in terms of the principle concern of this paper, the online dissemination of property information, they leave councils with considerable discretion and authority as to how best meet their communities' needs.

Guidance

- It is not for my office to direct Councils how to design efficient and user-friendly online property and building record systems. In the course of looking into this issue I have seen different councils adopt a range of responses, from one that requires people wanting access to property files to physically present themselves at the Council offices, to those which allow the unlimited download of all building consent records without restriction.
- Councils have told my office that they want greater clarity about their privacy obligations in respect of online property and building information. This clarity can be boiled down to 1. What Councils have to do and 2. What Councils can do to reflect privacy values in their management of online property and building information. The suggestions in the second list are optional, not mandatory, and are subject to the needs of each community as communicated to their elected representatives.

What Councils have to do:

- Legally compliant online property and building information records must:
 - include a process for informing individuals how personal information is protected, used and stored. This requirement is necessary at the point of collection of personal information from individuals so that individuals are aware that their personal information will be made available online;
 - provide for the suppression from publication of information about victims of domestic violence; and
 - ensure that technological safeguards are appropriate for the sensitivity of the information in the record system.

- Privacy enhancing online property and building information records should:
 - prevent personal information being used for unrelated purposes;
 - require users to enter specific search terms to access records;
 - comply with section 2.4 of the New Zealand Government Web Usability Standard;
 - prevent bulk-downloads of information contained within the property and building records;
 - prevent bots and scraping of online data;
 - provide people the option of opting-out of online publication of their personal information, where appropriate;
 - should not include the name and contact details of informants or complainants;
 - clearly flag historical information; and
 - allow councils to audit file use and block inappropriate use.

Next steps

Since starting this project in mid-2015 my Office has heard of many innovative privacy-enhancing safeguards being developed by councils for online property and building records. For example, one council told my Office that they are going to cross-match unpublished electoral rolls to online property and building records to ensure that the addresses of people who have a demonstrable need for greater privacy are protected. This type of ingenuity and thinking will help councils be:

- compliant with the statutory requirements related to council held property and building information; and
- design systems which are user-centric through providing individuals with an appropriate degree of control over their personal information.

I am looking forward to seeing and hearing about the creation of new privacy safeguards by councils as the technology of online property and building records matures. Please contact the Office if you are developing online property and building records as we are happy to provide advice about how to make these record systems privacy-enhancing by being both legally compliant and reflective of the expectations of privacy that residents have.