

Report by the Privacy Commissioner
into Veda Advantage's charge for urgent requests for
personal information

24 March 2014

Executive summary

The Privacy Commissioner has conducted an own motion investigation into Veda Advantage's charge for urgent requests by consumers for access to their own credit information.

The investigation has concluded that Veda's current charge of \$51.95 for urgent requests is unreasonable. Veda is not legally entitled to charge for some of the aspects of the process that make up its charges. The only aspect that can be charged for is the actual cost of making the information available to the individual – that is copying or formatting; and for delivering the information to the consumer.

The Commissioner's view is that a reasonable charge would be nominal and that a flat rate at such a high level is unreasonable and therefore unlawful.

The Commissioner has sought undertakings from Veda:

- that Veda will only charge for the actual cost of putting the requested information into a format ready for delivery and the actual cost of the delivery of information to the requester; and
- that Veda will cease charging for other aspects of processing urgent requests.

At the date of publishing this report, Veda had not provided the Commissioner with the assurances sought. Veda disagrees with our interpretation of what the law permits.

The Commissioner is now considering what further action to take. That action could take the form of either amending the Credit Reporting Privacy Code, or referring the case to the Director of Human Rights Proceedings for him to consider whether to file proceedings against Veda in the Human Rights Review Tribunal or both.

The first step is to publish this report and findings in order to inform consumers about their rights. While these matters are resolved, consumers may wish to seek free access to their credit report on a regular basis to reduce the risk that they will be put in a position of having to make an urgent request.

This investigation has only been against Veda Advantage. We have not yet investigated other credit reporters' practices. The Commissioner is considering whether to do so.

The investigation

An individual complaint was resolved, but we then undertook an own motion investigation

We received a complaint that Veda Advantage Ltd (“Veda”) was charging too much for requests by people for a copy of their own credit information, when people wanted the credit information urgently.

The complainant refused to pay for an urgent report and instead received a free credit report, though not as early as he wanted or thought was reasonable. As he had not paid for an urgent report, he could not demonstrate that he had suffered any harm or loss as a result of Veda’s actions. In terms of the law there was therefore no interference with his privacy, and we closed the individual complaint.

However, this did not deal with our concerns that the standard charge for urgent requests was excessive. We therefore commenced an own motion investigation under section 69(2) of the Privacy Act.

Veda’s charges

Veda’s current practice is to offer individuals either a “Personal Credit File” for \$51.95, where information is provided urgently, or to provide a “Free Credit File”, the reference to which is subtitled on Veda’s website as “Want your credit report but have twenty days to spare?”

As we understand it, the report that is provided for \$51.95 includes standard credit information, a credit score and explanatory notes relating to the credit information.

We understand that the free credit file contains the credit information about that individual that is held by Veda at the time of the request.

If people want access to their credit information urgently, they have no choice but to pay \$51.95.

We note that people making urgent requests for their credit information may be doing so because they have a pressing issue regarding their credit, and accordingly are in a relatively vulnerable position. They may not have “twenty days to spare”.

A credit reporter is allowed to make a charge for urgent requests under the Code

Clause 7(2)(b) of the Credit Reporting Privacy Code allows credit reporters to charge requesters a reasonable fee if the information is requested on an urgent basis. Urgency is defined as a request for the information to be provided within 5 working days.

If the request is not urgent, the Code provides that information should be made available “as soon as reasonably practicable and in any case not later than 20 working days”.

Section 35 of the Privacy Act defines what can be considered when determining a reasonable charge. In short, credit reporters are not allowed to charge for “the processing of the request including deciding whether or not the request is to be granted and if so in what manner”. The only thing they are allowed to charge for is the “making available of the information in compliance with the request.”

Section 35 therefore limits what an agency can charge for in response to an information request. An information privacy request includes three distinct stages that an agency must undertake:

1. Identify and understand the information that falls or may fall within the scope of the request
2. Make a decision about what information should be released
3. Make that information available.

We consider that agencies cannot recover the costs of processing of requests; that is, stages 1 and 2.

Only the actions taken at stage 3 are chargeable. The actions for which a charge can be made consist of putting the information into a format ready for delivery and sending the credit report to the requester, either by email or post, including password-protecting an email version and providing a cover letter.

Also, while the Code clearly contemplates that some payment can be required in the case of urgent requests, that charge still expressly needs to be reasonable.

In our view any reasonable charge would be nominal. Veda’s charge of \$51.95 exceeds this, by a large margin.

We note that Veda disagrees with our interpretation of what the law permits.

We have only investigated Veda’s actions at this stage

Veda is not the only credit reporter operating in New Zealand, and it is not the only credit reporter that charges for urgent access to credit reports.

However, at this stage, we have not investigated other credit reporters. This is because of the history of this investigation, which originally stemmed from an individual complaint against Veda alone. We have completed this investigation first, and we will consider whether to broaden our investigation in due course.

We are considering what action to take next

There are two options for further action that we are considering. They are not mutually exclusive. First, if the Commissioner is of the view that an agency's actions amount to an interference with privacy, but the agency has not provided the assurances that the Commissioner has sought to rectify that interference, the Commissioner has the discretion to refer the matter to the Director of Human Rights Proceedings. The Director then takes an independent decision about whether to file proceedings against the agency in the Human Rights Review Tribunal.

Secondly, the credit reporting industry is already regulated by a Code of Practice under the Privacy Act. It may be possible to amend that Code to deal in more detail with the issue of charging for urgent requests. There is a statutory consultation process involved with creating or amending Codes of Practice.

Our first action, though, is to publish this report in order to inform consumers about their rights. While these matters are being resolved more formally, consumers may wish to seek free access on a regular basis to their credit report and therefore reduce the risk that they will be put in a position of having to make an urgent request.

John Edwards
Privacy Commissioner

24 March 2014

Appendix One: the legal provisions

Rule 6 of the CRPC: Access to Credit Information

(1) Where a credit reporter holds credit information in such a way that it can readily be retrieved, the individual concerned is entitled:

(a) to obtain from the credit reporter confirmation of whether or not the credit reporter holds such information; and

(b) to have access to that information.

(2) Where, in accordance with subrule (1)(b), an individual is given access to credit information, the individual must be advised that, under rule 7, the individual may request the correction of that information.

(2A) Where, in accordance with subrule (1)(b), an individual is given access to a credit score, the individual must be provided with a statement outlining:

(a) the general methodology used to create the score, including the types of information used; and

(b) the range within which that score is placed.

(3) Where a credit reporter notifies an individual of its decision on a request, the credit reporter must:

(a) if refusing that request, advise the individual of the complaints procedure available under clause 8; and

(b) provide the individual with a copy of the Summary of Rights.

(4) A copy of the Summary of Rights need not be given pursuant to subrule (3)(b) if the credit reporter has either:

(a) made the summary available to the individual on a recent previous occasion; or

(b) [notified the individual that the summary is available on the credit reporter's website and offered to make a copy available on request.]

(5) The application of this rule is subject to:

(a) Part 4 of the Act (which sets out reasons for refusing access to personal information);

(b) Part 5 of the Act (which sets out procedural provisions relating to access to personal information); and

(c) clause 7 (which concerns charges).

(6) This rule applies to credit information held by a credit reporter that was obtained before or after the commencement of this rule.

Clause 7(2) of the CRPC: Charges

(1) The circumstances in which a credit reporter may impose a charge under section 35(3) of the Act are limited by subclause (2).

(2) No charge may be made for:

- (a) responding to a request made pursuant to rule 6(1)(a);
- (b) making available credit information in accordance with rule 6(1)(b) unless the individual concerned requests that the information be made available within 5 working days, in which case a reasonable charge may be made;
- (c) correcting any credit information in compliance with a request made pursuant to rule 7(1)(a); or
- (d) providing a copy of any corrected information pursuant to rule 7(7)(b).

35 Charges

...

(2) Subject to subsection (4) an agency that is not a public sector agency shall not require the payment, by or on behalf of any individual who wishes to make an information privacy request, of any charge in respect of –

- (a) the provision of assistance in accordance with section 38; or
- (b) the making of that request to the agency; or
- (c) the transfer of the request to any other agency; or
- (d) the processing of the request, including deciding whether or not the request is to be granted and, if so, in what manner.

(3) An agency that is not a public sector agency may require the payment, by or on behalf of any individual who wishes to make a request pursuant to subclause (1)(a) or subclause (1)(b) of principle 6 ... of a charge in respect of –

- (1) the making available of information in compliance, in whole or part, with the request ...
- (4) Where an agency that is not a public sector agency makes information available in compliance, in whole or in part, with an information privacy request, the agency may

require the payment of a charge in respect of the provision of assistance, by that agency, in accordance with section 38, in respect of that request.

(5) Any charge fixed by an agency pursuant to subsection (3) or subsection (4) ... in respect of an information privacy request shall be reasonable, and (in the case of a charge fixed in respect of the making available of information) regard may be had to the cost of the labour and materials involved in making information available in accordance with the request and to any costs incurred pursuant to a request of the applicant for the request to be treated as urgent.