

26 March 2021

Hon Kris Faafoi
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

**FOUR MONTHLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD
1 NOVEMBER 2020 TO 28 FEBRUARY 2021**

Highlights

This reporting period covers the month leading up to the commencement of the Privacy Act 2020 on 1 December and the first three months of operation under the new legislation. The Office has had a strong focus on ensuring the Privacy Act successfully commenced and that our related “Privacy 2.0” changes to our operating model were successfully implemented.

To assist in implementing the new Privacy Act we undertook a significant awareness campaign that achieved high reach, including with Māori and Pasifika people. This campaign was completed with a range of guidance and tools to help agencies understand and meet their privacy obligations.

Since the requirement for mandatory reporting of privacy breaches came into force on 1 December there has been a 200 percent increase in notifications of breaches, with a total of 155 privacy breaches notified by 28 February.

We have set three strategic priorities to guide our efforts at least until mid-2021. These priorities relate to the rental sector, improving the performance of public sector agencies in relation to access requests and embedding Te Ao Māori perspectives into our work.

Covid-19 has continued to be a priority for our policy work, and we have supported public and private sector agencies to manage the privacy implications of their work on managing the pandemic.

We have also launched a joint Inquiry with the Independent Police Conduct Authority regarding the Police photographing members of the public. The draft Inquiry report is expected to be completed in September 2021.

Implementation of the Privacy Act 2020

Our 'Privacy is Precious' campaign ran in November and December 2020 and was the first nationwide advertising and awareness campaign to raise awareness of privacy. The campaign ran across television, radio and digital channels and achieved high reach, reaching 67 percent of all people aged 25-65 (1.63 million people) an average of 6.45 times. Visits to our website reached an all-time high of 117,496 in November 2020 and visits in February 2021 were 46 percent above the same month a year ago.

Māori and Pasifika people were target groups for the campaign and we successfully reached these communities. For example, the television commercial reached 40 percent of all Māori and Pasifika people at least once and Samoan and Tongan radio activity reached 45 percent of Pasifika people aged 18 or over. Reaching Māori and Pasifika and other communities that we have had less interaction within the past will continue to be a focus for us.

We developed new tools and guidance to support agencies to understand their obligations. One new tool ('NotifyUs') assists agencies in self-assessing whether they need to make a mandatory privacy breach notification under the Privacy Act. This tool has been performing well and privacy breach notifications have increased by 200% in comparison to the period prior to mandatory privacy breach reporting. We will be undertaking a 4-month analysis of the data collected and the operation of the new tool both to improve our systems and to provide any lessons learnt to the sector.

The six Codes of Practice made under the Privacy Act 1993 were repealed and replaced to reflect the changes in the new Privacy Act, with effect from 1 December 2020.

We released our Compliance and Regulatory Action Framework and accompanying guidelines to provide transparency on how and when we will use our statutory powers under the Privacy Act. These powers include access directions, compliance notices and prosecutions. While for the next several months our compliance approach will primarily focus on education and awareness, we will not hesitate to use our new powers in situations where obligations have been in place for decades.

Strategic priorities of the Office

There are three strategic priorities we are focusing on until at least the middle of 2021:

1. Rental sector – collection and use of personal information.
2. Improving the performance of public sector agencies in relation to access requests.
3. Embedding Te Ao Māori perspectives into our work.

Inquiring into rental sector privacy practices

We have seen numerous examples of over-collection, use and retention of personal information by the rental and property management sector. There needs to be a balance between landlords and property managers having sufficient personal information to select suitable tenants and ensuring that privacy practices are not overly intrusive. We have completed the initial information gathering stage of this project and will be undertaking more focussed engagement to better understand the operation of the sector in more detail. This engagement will help us assess and redesign our guidance for the sector, which we expect to finalise in mid-2021.

Embedding Te Ao Māori perspectives in our work

We are mindful of our Treaty of Waitangi obligations and a new requirement in the Privacy Act for the Privacy Commissioner to have regard to cultural perspectives on privacy when undertaking statutory functions. We are at the beginning of our journey in building our cultural engagement capability and are currently recruiting for a Principal Advisor Māori in conjunction with the Commerce Commission. We are taking opportunities to engage with Māori agencies and communities across our work, for example by continuing to participate in Statistics New Zealand's Māori data governance work and continuing to build a relationship with Te Pūea Marae to support them to address any privacy challenges they face in their work.

Improving public sector compliance with access requests

The Privacy Act provides individuals with a right to access their personal information and it is also an element of the Public Service Act 2020's principle of open government. This important right allows individuals to understand how agencies have used their personal information and to seek correction or redress. Issues related to access requests consistently comprise at least 60% of our complaints, with 65% of these relating to public agencies¹. We will be working with Te Kawa Mataaho and the Government Chief Privacy Officer to build a comprehensive picture of the performance of public sector agencies when dealing with access requests.

Information on other activities of our Office

Policy related activities

Covid-19 continued to have a large impact on those parts of the Government's work programme related to privacy. We supported both public and private sector agencies in managing the privacy implications of the pandemic, with our key activities including:

- Engaging in discussions with the Ministry of Health, MIQ, Customs and other government agencies on legislative proposals in the Covid-19 Public Health Act 2020 Amendment Bill that would expand information sharing powers for these agencies. We provided extensive feedback on these proposals, including on the Cabinet paper and direct to Ministers.
- Providing regular advice to the Ministry of Health and District Health Boards on the vaccination roll-out and the privacy implications.
- Reviewing the privacy impact assessment from the Ministry of Health on the Border Workforce Testing Register.

We also made submissions to Select Committees on the following Bills:

- The Reserve Bank of New Zealand Bill, in relation to provisions which provide the Bank with information-gathering and disclosure powers.
- The Protected Disclosures (Whistleblower) Bill, in relation to the protection of the confidentiality of a whistleblower and the application of the Privacy Act.
- The Arms (Firearms Prohibitions Orders) Amendment Bill No.2 (a Member's Bill), in relation to the issuing of Firearms Prohibition Orders to gang members who meet certain criteria.

¹ For example, in calendar year 2020 a total of 443 out of 615 complaints contained an access component (72%). Of these access related complaints, 289 related to public agencies (65%).

- The Rights for Victims of Insane Offenders Bill (a Member’s Bill), in relation to the rights of victims of offending by special patients and special care recipients, and potential privacy implications.

We were consulted on the review of the Ministry of Social Development’s Code of Conduct made under the Social Security Act 2018. This Code related to issues raised in our 2019 Inquiry into the Ministry’s collection of highly personal information in fraud investigations. The Code of Conduct has now been revised.

Complaints and dispute resolution

Our Privacy 2.0 strategy has a focus on more efficient triaging of complaints to both facilitate earlier resolution and enable a focus on complaints that have potential to provide broader benefits for New Zealanders. To assist with this, we are developing a new self-assessment tool based on a similar approach used by the Office of the Australian Information Commissioner. This tool will help us provide better guidance to people about what we can and cannot investigate before they submit a complaint.

Year to date there has been a lower level of complaints received against forecast, in part due to the new triaging process. Under the Privacy Act we can now decline to investigate a complaint, for example where an individual has not made reasonable efforts to resolve their complaints with the agency first or where there is an alternative dispute resolution process available. Individuals are provided with advice allowing them to resolve their issue at a lower level without our direct involvement. Incoming correspondence triaged in this way is recorded as an enquiry rather than a complaint. We expect to record fewer “complaints” as a result of this new, more efficient process.

A more efficient triaging process can also mean earlier identification of complaints which are amenable to settlement through disputes resolution. To date this emphasis has resulted in a higher percentage of complaints closed through settlement (62%) than forecast (40%).

	Actual as at 28 February	Expectation as at 28 February²
Number of complaints received	385	533
Number of complaints closed by settlement	62%	40%

Covid-19 has placed additional stress on individuals including on their mental health and well-being. The calls our investigations and complaints team receive mirror this stress. To support our people and help them keep themselves and our callers safe we have contracted with Lifeline to provide training, a debrief line and group debrief sessions.

² As per the Statement of Performance Expectations 1 July 2020 to 30 June 2021

Compliance and enforcement

The Privacy Act has established a new compliance and enforcement powers for the Office. We are currently completing recruitment for our new Compliance and Enforcement Team and hope the team will be fully staffed (one Manager and four staff) by the end of April 2021.

We have initiated a joint Inquiry with the Independent Police Conduct Authority regarding the Police practise of photographing members of the public. The Inquiry will incorporate an investigation into allegations that Police were photographing Māori youth in the Wairarapa without arresting or detaining them. The Inquiry Terms of Reference were made public on Monday 8 March 2021.

International activities

The 12th periodic update report on developments in Data Protection Law covering the period July to December 2020 was sent to the European Commission on 29 January 2021. This report covered the commencement of the Privacy Act 2020 and the replacement Codes of Practice, the commencement of an information sharing Order, and a notable Court of Appeal privacy decision (*Dotcom v Attorney-General* [2020] NZCA 551) in which the Commissioner was represented as intervener.

We continued to support Ministry of Justice officials with the European Commission's review of New Zealand's adequacy status under the General Data Protection Regulation. This has included providing information to respond to questions posed as part of this review.

Financial report

With the expiration of our Lease in February 2021, the Wellington office relocated to new premises in Grant Thornton House. The new premises are 100% of the Earthquake Code, which is higher than previous premises.

Further financial information and performance against our Statements of Performance Expectations are appended to this report.

Yours sincerely



John Edwards

Privacy Commissioner

Encl: Appendix A: Financials for period ending 28 February 2020
Appendix B: Performance against Statement of Performance Expectations - Year to Date