

28 October 2022

Hon Kiritapu Allan
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

QUARTERLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD 1 JULY 2022 TO 30 SEPTEMBER 2022

Highlights

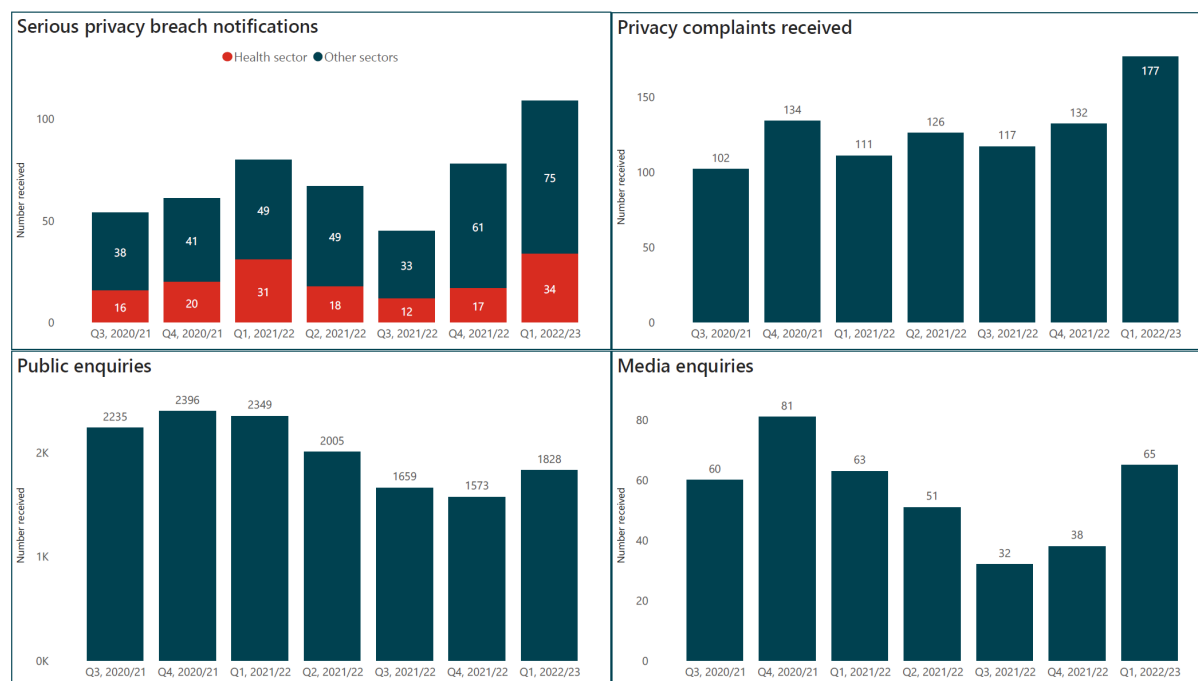
During this quarter we reviewed the strategic position of the Office and the direction we should be taking to achieve the best privacy outcomes. The result of this review is a new 3-5 Strategic Plan centred on making privacy a core focus for agencies. The Strategic Plan will deliver the best privacy outcomes through strengthening the 'fence at the top of the cliff' to protect the privacy of individuals, enable agencies to achieve their own objectives and safeguard a free and democratic society. The Strategic Plan forms the basis of the Statement of Intent that we will be preparing for 2023-27.

In August we issued a consultation paper on the 'Privacy regulation of biometrics in Aotearoa New Zealand'. This paper sought the view of stakeholders, Māori Tiriti partners and the public about how biometrics (including facial recognition technology) should be regulated. We have had a strong response to this consultation paper and are currently reviewing over 90 submissions and the results of our targeted engagement. We will be considering what options are available in the next quarter, which range from issuing further guidance to issuing a code of practice or advocating for legislative change.

In September we released with the Independent Police Conduct Authority the 'Joint Inquiry into Police conduct when photographing members of the public'. This report found a general lack of awareness amongst Police of their obligations under the Privacy Act 2020, leading Police officers to routinely take, use and retain photographs when it was not lawful for them to do so. The report recommendations included that Police policy, procedures and training be revised and enhanced to reflect that photographs are sensitive biometric information and should only be taken under a specific statutory authorisation or in compliance with the Information Privacy Principles and in accordance with youth specific protections.

Significant increase in demand for our services this quarter

During this quarter there was a significant increase in volumes that drive many of our operational activities, including privacy breach notifications, privacy complaints, public enquiries and media enquiries.



We will be considering the drivers behind this change, but at this stage do not believe there is a single underlying cause. We do know that part of the increase in serious privacy breach notifications from the health sector is due to Te Whatu Ora providing better quality reporting compared to some DHBs in prior reporting periods and so is not necessarily a cause for concern. Media enquiries increased with the Joint Inquiry report and a focus on privacy issues by Radio New Zealand. As the media coverage of privacy and the actions of our Office increase, we would expect to see an increase in the volume of public enquiries and privacy complaints.

Other activities of our Office

Compliance and enforcement

Over the past year our Compliance Team has emphasised the importance of notifying the Privacy Commissioner and individuals of privacy breaches within 72 hours. While our efforts are ongoing, over the past 12 months the percentage of serious breaches reported within 72 hours has increased 47% to 61%. While we will be continuing this emphasis on notification timeliness, the increase in privacy breach notifications has been pressuring our ability to triage and support agencies experiencing breaches. We are addressing this issue through expanding our Compliance Team in accordance with the new Strategic Plan. At our meeting we discussed with you the resourcing pressures we face in the Compliance area.

This quarter saw the completion of all requirements included in the first compliance notice issued under the Privacy Act. This notice had been issued to the Reserve Bank of New Zealand following a cyber-attack in December 2020.

Law enforcement issues have been a prominent feature of this quarter. Outside of the release of the Joint Inquiry, there has also been strong media interest in the New Zealand Police's use of Automatic Number-Plate Recognition data held by private companies. We are currently investigating this situation with the objective of improving the privacy maturity of these companies.

Investigations and dispute resolution

Throughout this calendar year our Investigations and Dispute Resolution Team has focused on reducing the number of days between the receipt of privacy complaints and their closure. Our approach has been to focus on conciliation, early resolution and triaging straight forward complaints. While it is too early to judge the success of this approach, the difficulty of improving the situation has increased with the increasing number and complexity of privacy complaints.

During this quarter there were several privacy complaints under Information Privacy Principle 5 (storage and security of personal information) following a series of phishing events. These complaints are raising issues about the reasonable steps small to medium businesses should have in place to protect personal information where a large amount of money is changing hands (for example, for a contractor remodelling a house). We are discussing this issue with CERT New Zealand and continue to work closely with affected agencies on how they can keep personal information secure, such as through multi-factor authentication.

Communication and education

When Privacy Week 2022 was held in May, we introduced a new approach where we worked with our community to put on a week of virtual events and activities, rather than hosting a series of in-person events. This flexible format was successful, with more than 2,700 registrations for events ranging from how to respond to cyber-incidents to reflecting on tikanga Māori and privacy (following the High Court reviews of decisions about Māori Covid-19 vaccination data).

During this quarter we continued our approach and held two PrivacyLive webinars that had over 500 registrations. These webinars were to introduce the new Privacy Commissioner and on the topic of gender affirming data collection.

Our print publications remain an important way to improve privacy understanding and during this quarter we condensed two existing brochures into a simplified and bilingual privacy rights brochure.

Two privacy complaint case notes were published on our website, relating to:

- a hospital incorrectly recording history of cancer in personal information, and our Office helping to facilitate a restorative hui hohou i te rongo for the first time, and
- information collected in an employer investigation being used in a different report.

Policy and international related activities

A central part of the new Strategic Plan is that as regulator we provide agencies with certainty through setting specific and clear expectations, including through issuing guidance and Codes of Practice. To accomplish this objective, in this reporting period we began developing the concept of a Privacy Risk Management System (PRMS) to provide clarity to agencies on what they must do to meet the requirements of the Privacy Act. We are developing PRMS in consultation with key agencies, such as the Government Chief Privacy Officer. A PRMS is similar to frameworks in place for other regulatory systems, such as health and safety.

Our thinking behind the PRMS has informed the support we are providing to the health sector during their structural reforms. The sensitivity of health information and the importance that citizens' trust and confidence is such that supporting the health sector is of high importance.

We continued to support the Ministry of Business Innovation and Employment as they develop the regulatory regime for the Consumer Data Right. Our Office is proposed to be a regulator of the Consumer Data Right and part of the dispute resolution scheme. We intend to brief you separately on the significant implications of this role for our Office and the Privacy Act.

We made the following submissions to Parliamentary select committees:

- Aotearoa New Zealand Public Media Bill
- Electoral Amendment Bill
- Water Services Entities Bill, and
- Improving Arrangements for Surrogacy Bill (a Member's Bill).

We also made submissions to the:

- Department of Corrections on 'Options to Achieve Improved Outcomes in the Corrections System: Discussion Document 2022', and
- Ministry of Justice on 'A new adoption system for Aotearoa New Zealand'.

Financial report

Financial information and performance against our Statements of Performance Expectations are appended to this report. The Office has reported a surplus in excess of its quarter 1 budget mainly as a result of various staff vacancies (like many agencies, we are facing high staff turnover, but are also actively working to fill vacancies), lower contract services' costs and reduced travel.

Yours sincerely



Michael Webster
Privacy Commissioner

Encl: Appendix A: Q1 KPI Trend Report – September 2022
 Appendix B: Financials for period ending 30 September 2022
 Appendix C: Performance against Statement of Performance Expectations - Year to Date