

2 May 2022

Hon Kris Faafoi  
Minister of Justice  
Parliament Buildings  
WELLINGTON

Dear Minister

**QUARTERLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD  
1 JANUARY 2022 TO 31 MARCH 2022**

**Highlights**

Our operational activities were impacted by Covid-19 in this reporting period, with key staff and stakeholders affected. This has had particular ramifications on the speed of delivery of our joint report with the Independent Police Conduct Authority into Police photography and our engagement to develop a kaupapa Māori framework for privacy that will inform how we consider privacy from a Te Ao Māori perspective. We expect to progress both of these pieces significantly in the June quarter.

We continued to support officials from the Ministry of Justice and Ministry of Foreign Affairs and Trade with the ongoing discussions about New Zealand's adequacy status for processing personal information from the European Union. This issue continues to be a priority for our Office due to its importance to New Zealand businesses and we consider it would be highly desirable for Cabinet decisions to be taken this year on our approach to responding to the European Commission's concern in this area.

We have been developing a programme of activities for Privacy Week 2022, which will be held from 9 to 15 May. The theme will be Privacy: The Foundation of Trust.

During this quarter we have seen a decrease in the advice sought from us on Covid-19 related issues. There has been a corresponding increase in our advice on elements of the Government's reform programme which have significant privacy elements, in particular the Health and Disability sector reforms, Income Insurance, Consumer Data Right and Fair Pay Agreements. We expect these to continue to be key areas of focus for us as policy and legislative design decisions are taken.

## **The Government's reform programme**

Several elements of the Government's reform programme have significant privacy implications and we are prioritising supporting these reforms.

The structural reforms for the health sector have meant that we have developed and are currently consulting on amendments to the Health Information Privacy Code 2020. These amendments will align the Code with the structural reforms and are timed to coincide with the commencement date for the Government's structural reforms (1 July 2022). We are also in discussions with the Ministry of Health and other officials associated with the transitions to the new regime to ensure that the stewardship of personal information is being well thought through as the systems and processes for the reformed system are developed. Given the sensitivity of health information and the importance that citizens' trust and confidence is maintained, we see supporting this work as a key priority for us over the coming months.

We have provided advice to the Ministry of Business, Innovation and Employment (MBIE) on the proposed Income Insurance Scheme. This Scheme requires personal information to operate and we have emphasised the importance of undertaking and publishing privacy analysis in support of the Scheme. We will comment on the required enabling legislation for the Scheme.

Our Office has been engaged with the MBIE investigation into the impacts of the December 2021 changes to the Credit Contracts and Consumer Finance Act 2003 and regulations. We have encouraged the Ministry to consider amendments to the regulations minimising the amount of personal information lenders collect while still achieving the consumer protection objectives. We view the changes announced in phase one of the review as positive from a personal information perspective.

We are also supporting MBIE in the development of the regulatory regime for the Consumer Data Right, where it appears we will play a part in the dispute resolution scheme. We have signalled that we are keen to work with MBIE and the other regulators of the Consumer Data Right (once these have been decided) to ensure a coherent regulatory regime.

We also provided advice on the Government's Fair Pay Agreements Bill on the issue of how unions should be provided with the contact information of non-unionised workers, given that unions will initiate negotiations and represent all workers regardless of whether they are represented by a union.

## **Other activities of our Office**

### *Policy and international related activities*

As outlined above, we have continued working on a range of significant policy issues in the report period. In addition to the key reform programmes above, we made formal submissions to Select Committees on the Firearms Prohibition Orders Legislation Bill and Russia Sanctions Bill.

After significant civil liberties concerns were raised about the Data and Statistics Bill, we prepared a submission to the Governance and Administration Committee. This submission stated our broad comfort with the adequacy of safeguards in the Bill to protect individual privacy having engaged with Stats NZ during the policy development process, while also proposing additional safeguards for the Committee's consideration.

In the international arena, in addition to our work related to New Zealand's European Union adequacy status, we also have been supporting initial work on the Indo-Pacific Ministers Declaration.

### *Compliance and enforcement*

We have begun our monitoring programme on the compliance of landlords and property managers with the guidance that we issued in November 2021. A risk and intelligence approach identified agencies to investigate and progress to date has shown that many key market players have significantly reduced the personal information they collect to be in line with our guidance. We have a partnership with Consumer New Zealand who will conduct a mystery shopping exercise for us to test practice on the ground and we jointly publish the results around the middle of the year.

The joint Inquiry with the Independent Police Conduct Authority regarding the Police practise of photographing members of the public was not released as scheduled in March due to Covid-19 related delays and the breadth and complexity of the Inquiry. A new release date is yet to be confirmed.

We continue to work with the Waikato District Health Board to understand the causes of the 2021 ransomware attack on their systems and get assurances of appropriate remediation. This has included reviewing internal and external reports into both causes and remediation. We were also consulted as part of the Ministry of Health commissioned independent review of the Health Response to the Waikato DHB ransomware incident. We have also been consulted on the Accident Compensation Corporation's independent review of their privacy practices following multiple instances of employees inappropriately accessing and sharing client information.

Radio New Zealand published a news story relating to the company Crime Scene Cleaners, who had been posting photographs online of crime scenes they had been contracted to clean. We are collecting evidence on whether the Privacy Act 2020 has been breached by the company and have received a privacy complaint about the company from a member of the public.

The number of mandatory Privacy Breach Notifications significantly decreased this quarter, with 132 notifications received and processed (down from 182 in the last reporting period). Some of this reduction is likely due to the summer holiday period falling in this quarter. Approximately a third of these breaches meet the threshold for serious harm.

This reporting period is the first quarter where we can compare the volume of Privacy Breach Notifications with those received a year prior under the new Privacy Act. The period of January to March 2021 saw us receive 169 Privacy Breach Notifications, which is 28% higher than the current reporting period. We consider that the increase in early 2021 notifications may have

reflected the newness of the reporting requirements and publicity associated with the new Act. In addition, our Compliance and Enforcement team often finds that agencies do not have good systems and processes to capture and report privacy breaches, suggesting that there is likely under-reporting.

### *Investigations and dispute resolution*

Our Investigations and Dispute Resolution team has focused on conciliation conferences as a way of increasing efficiency and effectiveness. The new section 77 of the Privacy Act allows us to call the parties to a complaint to conciliation without formally investigating the matter first. This is very effective for matters where the agency has acknowledged a breach, there is an ongoing relationship to protect, or the complaint is otherwise “ripe” for resolution.

We have also been using conciliation conferences after investigations are completed where the parties required the benefit of our view before being ready for resolution. Our investigators then have an opportunity to place the complaint in context of other settlements and assist in shaping the expectations of the parties with regards to likely outcomes if they are not able to resolve the matter through the formal privacy complaints process.

We have successfully held nine settlement conferences this year, both face to face and using Zoom and other technology to bring the parties together. We are also taking the opportunity to review our internal and external guidance on conciliation, and ensuring our process complies with best practice and incorporates cultural knowledge and understanding.

As noted in previous reports we are continuing to monitor the potential impact of operational changes we have made (new online forms and early triaging of straight-forward cases as above) on the number of complaints received, the increased complexity of the residual complaint workload and the flow-on effects to resolution times.

### *Communication and education*

We have been preparing for Privacy Week, which will be held from 9 to 15 May with the theme of Privacy: The Foundation of Trust. We are working with our stakeholders and partners to put on a whole week of virtual events and activities. This flexible format will mean we can provide more space for different types of events on any topic related to privacy and trust. We will be listening to people’s privacy experiences to inform our future work.

We published a case note to help agencies to understand the High Court’s findings with respect to the judicial reviews of the Ministry’s of Health decisions to not share Māori vaccination data with the Whānau Ora Commissioning Agency. This case was important as it considered the role of tikanga in the context of the Privacy Act, albeit in a fairly narrow context given the pandemic conditions at the time. To further assist agencies in understanding the implications of this case, we will be hosting a webinar during Privacy Week to talk through the findings. These findings will be one input into our continued work to develop a kaupapa Māori framework for privacy to help shape our work.

We have also focused on making improvements and content updates to our website.

## Financial report

Financial information and performance against our Statements of Performance Expectations are appended to this report. The Office continues to record a surplus due in large part to the impacts of Covid-19 restrictions on operational expenditure.

Income is higher than budget by \$214k as a result a Ministry of Health grant to support Covid initiatives.

Operational Costs are tracking \$482k lower than budget due to:

- Personnel costs below budget by \$158k due to the flow on effect of vacancies and the timing of recruitments.
- Contract Services are below budget by \$118k. Expenditure continues to be lower due to the increase in employees rather than a reliance on external contractors.
- Travel costs are tracking below budget by \$86k. This is due to the continued effects of the pandemic.

Yours sincerely



Liz MacPherson  
**Deputy Privacy Commissioner**

Encl: Appendix A: Financials for period ending 31 March 2022  
Appendix B: Performance against Statement of Performance Expectations - Year to Date