

31 January 2021

Hon Kris Faafoi
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

QUARTERLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD 1 OCTOBER 2021 TO 31 DECEMBER 2021

Highlights

Please note that some of the updates in this report are not yet public knowledge and should not be released under the Official Information Act 1982 at this time.

During this reporting period the Privacy Commissioner, John Edwards, was confirmed as the Information Commissioner of the United Kingdom and had his final day as Privacy Commissioner on 31 December. In early December we held a PrivacyLive forum where John reflected on topics such as his views on the future of privacy in New Zealand.

In November we issued guidance resources for both landlords and tenants to ensure that property managers and agencies are acting in accordance with the Privacy Act 2020. We have also established a compliance monitoring programme that involves regular checks of rental sector agencies and an annual survey of key documents, such as application forms and privacy policies. Our aim is to promote an understanding and adherence to the rights and responsibilities within the Privacy Act, with a particular focus on providing clarity about what information is acceptable to collect from tenants during the tenancy application process.

We continued to devote significant resource to the COVID-19 response. This included intervening in the High Court judicial review proceedings concerning the Ministry of Health's responses to the Whānau Ora Commissioning Agency requests for Māori vaccination data. We provided expert submissions on the operation of the "serious threat to public health" exception in the Health Information Privacy Code and the Privacy Act. The intervention and submissions formed an important part of our Te Ao Māori work this quarter.

This reporting period marked one year since the introduction of the mandatory privacy breach regime. To mark this occasion we released an insights report 'Mandatory privacy breach reporting one year on' and this is attached as Appendix A. This report has received good interest and uptake through our digital channels.

Contributing to European Commission review of New Zealand's adequacy status

Retaining New Zealand's adequacy status with the European Union is a priority for our Office as loss of adequacy would impose costs on New Zealand businesses who trade with the European Union and would take some time and change to our legislative framework to regain.

We continued to engage with the Ministry of Justice on outstanding issues with the European Commission's review of New Zealand's adequacy status. As a part of this work, in this reporting period we released guidance on how agencies should treat sensitive personal information under the Privacy Act. We will continue supporting the Ministry of Justice and Ministry of Foreign Affairs and Trade in addressing the remaining matters of concern to the European Commission.

Other activities of our Office

Policy and international related activities

We continued to provide close support to the Ministry of Health, Department of Prime Minister and Cabinet and other agencies on the roll-out of COVID-19 response measures. These measures included privacy advice on vaccination requirements (public and workforce), the design of vaccine certificates, and initiatives to manage COVID-19 at the border. We have also begun the process for making amendments to the Health Information Privacy Code to align it with the structure and functions of the new healthcare system.

We worked on a range of other significant policy issues in the report period. This included working with Oranga Tamariki on information sharing proposals, supporting the Department of Internal Affairs in the development of the Digital Identity programme, submitting on the Anti-Money Laundering / Countering Financing of Terrorism Review being led by the Ministry of Justice, and providing advice to Inland Revenue on their proposed Green Paper on a future tax system.

During the reporting period we made formal submissions to Select Committees on the following Bills:

- Digital Identity Services Trust Framework Bill
- Local Government (Pecuniary Interests Register) Amendment Bill
- Civil Aviation Bill, and
- Pae Ora (Healthy Futures) Bill.

We continued remotely attending significant international privacy conferences. At the October Global Privacy Assembly conference we reported as the convenor of the Data Protection Metrics Working Group and co-sponsored resolutions, such as those on data sharing for the public good and government access to data. In early December we attended the Asia-Pacific Privacy Authorities Forum. This regional forum continues to be very useful and we provided members updates on a range of local privacy matters, including our close involvement with public agencies on New Zealand's response to COVID-19 to ensure that health initiatives are designed with privacy in mind.

Compliance and enforcement

The joint Inquiry with the Independent Police Conduct Authority regarding the Police practise of photographing members of the public is now due for completion in the next reporting period. As a part of our investigation, in December we served a Privacy Act Compliance Notice on the New Zealand Police in order for them remedy their compliance with Information Privacy Principle 9 (which relates to not keeping personal information for longer than necessary). Note that we have not yet publicly released information on this Compliance Notice and will only be doing so when the joint Inquiry report is released.

The number of mandatory Privacy Breach Notifications remained steady in this quarter, with 182 notifications received and processed. Approximately one third of these breaches met the threshold for serious harm. A notable serious privacy breach that was publicised by TVNZ was the spreadsheet of Teaching Council complaints inadvertently made searchable on the internet. We provided comment and guidance to the Teaching Council in working through its response to the breach and the TVNZ reporting.

The health sector continues to be a focus for our compliance efforts given the large amount of sensitive personal sensitive personal information health agencies hold. This included an onsite visit to one hospital following a number of complaints with regard to privacy. Evidence was found to support the complaints and the DHB concerned has introduced new procedures to rectify the issue. We also continue to monitor the Waikato DHB's response to the ransomware attack of its systems in May 2021.

The first year of our new compliance function has shown there is no shortage of Privacy Act compliance issues to investigate. We are prioritising our efforts in line with our Compliance and Regulatory Action Framework, which targets our enforcement efforts towards the most serious and/or systemic breaches of the Privacy Act. We will keep you informed as to the outcomes we achieve with the resources available to us.

Complaints and dispute resolution

We have experienced a lot of in public enquiries about the government's privacy considerations with regard to COVID-19 and vaccination certificates, in particular the inclusion of date of birth on the vaccination certificate. We continued to update our website with answers to frequently asked questions relating to Covid-19 and privacy.

During 2021 we experienced a reduction in the number of privacy complaints received. We believe this is in part due to trivial or simpler complaints being resolved at a lower level before a formal complaint is lodged. We continue to have very high settlement rates for complaints and have begun using the new power in section 77 of the Privacy Act to attempt settlement without or prior to formal investigation. This has the advantage of providing faster resolution to the parties.

The completion of the independent audit of privacy complaints for the Annual Report confirmed that our processes are fair and clear for the parties involved. Our focus for the coming months will be improving our efficiency and timeliness. We have two investigators on secondment to government agencies and hope their return will lead to new ideas to improve our processes.

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.

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned below the text 'Yours sincerely'.

Liz MacPherson
Deputy Privacy Commissioner

Encl: Appendix A: Insights report: Mandatory privacy breach reporting one year on
 Appendix B: Financials for period ending 31 December 2021
 Appendix C: Performance against Statement of Performance Expectations - Year to Date