

9 April 2015

Kanwaljit Singh Bakshi
Chairperson, Law and Order Committee
Parliament Buildings
Wellington

Dear Mr Bakshi

Organised Crime and Anti-corruption Legislation Bill

Thank you for giving me the opportunity to provide further comment on the Organised Crime and Anti-corruption Legislation Bill. I have reviewed the Departmental Report. While I am pleased to find that my recommendation regarding consultation with the Privacy Commissioner has been agreed to, overall my concerns have been only partially addressed.

To address my concern that the Bill lacks sufficient oversight and accountability safeguards for international sharing of personal information, in my submission to the Committee I recommended that safeguards agreed to by Cabinet be included in the legislation. These included:

- consultation with the Privacy Commissioner before entering into new international information sharing agreements;
- the Privacy Commissioner to have the power to require the Police to undertake reviews of any such agreements and the arrangements for information disclosure, and report these to the Privacy Commissioner;
- the Police Commissioner to report annually to the Privacy Commissioner on compliance with information sharing provisions; and
- the international information sharing provisions in the Policing Act to be reviewed after 5 years of operation.

I regard such measures as the minimum set of safeguards necessary to ensure consistent oversight of domestic and international information sharing regimes. I am therefore pleased to note that the Departmental Report recommends that the first of these (consultation with the Privacy Commissioner on new international information sharing agreements) be included in the legislation.

However, the Departmental Report recommends that the other safeguards remain as directions from Cabinet. While it is positive to note that the Departmental Report expresses the Police's commitment to comply with the oversight mechanisms agreed to by Cabinet, my view is that leaving oversight provisions to the discretion of the Executive provides weaker assurance to the public than including them in legislation. This is more than an administrative distinction. Adding these provisions to the legislation provides Parliamentary oversight of potentially intrusive practices with significant potential to affect individual privacy.

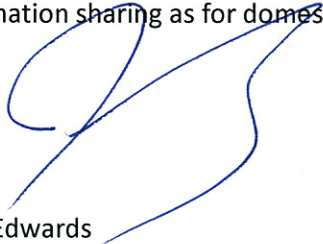
The approach proposed in the Departmental Report would create a situation where safeguards for international information sharing could be seen as significantly weaker than those for domestic information sharing. For domestic information sharing programmes, consultation with, reporting to, and review by the Privacy Commission are required by legislation (Part 9A of the Privacy Act). The level of legislative oversight for international information sharing should not be less than that for domestic information sharing. If anything, there is an argument for greater scrutiny of international information sharing arrangements, given that sending personal information offshore limits the application of New Zealand's Privacy Act.

Despite the arguments put forward in the Departmental Report, my view remains that oversight provisions for international information sharing in the form of consultation with, reporting to, and review by the Privacy Commissioner should be enshrined in legislation. This would provide greater transparency and assurance to the public than leaving oversight provisions to the discretion of the Executive, and bring safeguards for international information sharing in line with those for domestic information sharing.

My specific concerns and my responses to the arguments put forward in the Departmental Report are set out in the table below.

Concerns raised in my submission to the Committee	Response in Departmental Report	Final view
<p>Consultation with the Privacy Commissioner before entering into international information sharing agreements should be required by legislation.</p>	<p>The Departmental Report recommends making the obligation to consult obligation statutory.</p>	<p>I am pleased to see this important step included in the Bill.</p>
<p>The Privacy Commissioner should have the power to require the Police to undertake reviews of any international information sharing agreements and the arrangements for information disclosure, and report these to the Privacy Commissioner (in a format to be mutually agreed and not within 12 months of a the last review).</p>	<p>The Departmental Report argues that this power would add no value compared to a direction from Cabinet, and points out that a comparable power in the Customs and Excise Act has never been used.</p>	<p>My view is that including oversight provisions in legislation adds considerable value in terms of public transparency and assurance compared to leaving these to the discretion of the Executive. The lack of usage of a similar power in the Customs and Excise Act does not remove the importance of including oversight mechanisms for international information sharing.</p>
<p>The Police Commissioner should be required to report annually to the Privacy Commissioner on compliance with information sharing provisions (in a format to be mutually agreed).</p>	<p>The Departmental Report recommends that annual reporting be left as a Cabinet direction, because this allows for changes to be made more easily, and there is no precedent for annual reporting to the Privacy Commissioner in other legislation (such as the Customs and Excise or Immigration Acts).</p>	<p>Part 9A (Information Sharing) of the Privacy Act states that the Privacy Commissioner may require the lead agency to an Approved Information Sharing Agreement to report to the Commissioner annually or at less frequent intervals as the Commissioner may specify (96U(1)). My view is that a comparable provision should exist in legislation for international information sharing agreements.</p>
<p>The international information sharing provisions in the Policing Act should be required to be reviewed after 5 years of operation.</p>	<p>The Departmental Report recommends that such a review could be committed to as part of an MOU to be agreed between the Police Commissioner and the Privacy Commissioner. The State Sector Act also requires chief executives to exercise “regulatory stewardship”, and the Privacy Commissioner can report to Ministers at any time if there are serious concerns with the operation of the Policing Act.</p>	<p>My view is that including such a review provision in legislation would provide greater public assurance than leaving this to the mutual agreement of the Police and Privacy Commissioners, and the discretion of the Executive. If the review and reporting powers discussed above are not included in the legislation, I would particularly urge the Committee to include in the legislation a review of the international information sharing provisions in the Policing Act after 5 years of operation.</p>
<p>Complaints are not sufficient mechanism to ensure compliance with the legislation as people won't know if Police have shared their information.</p>	<p>The Departmental Report argues that oversight mechanisms agreed to by Cabinet (which the Police are committed to complying with) are sufficient to ensure compliance.</p>	<p>My view is that legislative oversight mechanisms provide stronger public assurance, and that there are not good reasons for leaving such mechanisms outside of the legislation.</p>

I recommend that the Committee consider including oversight provisions for international information sharing, including consultation, reporting and review, in the Organised Crime and Anti-corruption Legislation Bill. This will provide transparency and assurance for the public around an important area of Police activity, and ensure that similar oversight exists for international information sharing as for domestic.



John Edwards
Privacy Commissioner