

**MINISTERIAL BRIEFING**  
**ON THE OFFICE OF THE PRIVACY COMMISSIONER (OPC)**

20 NOVEMBER 2008

## Summary

In the "information century," data protection and privacy are critical issues for business and government. Areas as diverse as biometrics, DNA, social networking, money-laundering and smart cards have to be dealt with. Rapidly changing technologies, internet fraud and safety, "cloud" computing and cross-border data processing all raise challenging information and privacy issues.

Consumer and citizen confidence in business and government is critically affected by the standard of information handling. As a small independent watchdog agency, OPC can provide reassurance to the public and assistance for business to grow and government to be efficient, while respecting personal information and data.

Current OPC priorities are to:

- secure trade benefits for New Zealand from long awaited amendments to the Privacy Act and pursue other international trading opportunities;
- respond to pressing demands from business and individuals for expert advice to deal with data protection issues; including assisting small businesses to self manage privacy issues;
- contribute expertise and ideas to the Law Commission's major review of privacy law.

## Context

### The information century

Economically, information is a new currency. New Zealand business needs to be in a position to compete globally in the internet economy and take advantage of new opportunities. We are living and transacting in an information-rich world. Technology enables details about individuals to be collected, sorted and disclosed on an unprecedented scale, both in New Zealand and overseas. New Zealand businesses, such as the New Zealand Supercomputing Centre in Wellington, are well placed in terms of time-zones and skill-base, but the supporting infrastructure and regulatory framework must also be right.

Personal information must be managed well if consumer confidence in high-tech business and e-commerce is to grow. Local providers must be able to give assurances about data protection to offshore and local clients. Protecting business assets means protecting customer data.

### What do New Zealanders think?

Recent survey results give some clear messages to both business and government about protecting information in order to retain customer confidence (UMR, August 2008). New Zealanders are increasingly concerned about the collection and misuse of their personal information and invasion of their privacy by new technology. A third of people surveyed (32%) reported that they had become *more* concerned about issues of individual privacy and personal information in the last few years. Eighty-one percent of people were

concerned with their personal information being held by overseas businesses. Concern about safety of children on the internet (87%), and security of personal information on the internet (82%) is high.

### **Information is global**

Internationally, data protection and privacy issues are centre-stage. Globally, businesses are becoming extremely aware that information is an asset and are seeking to put measures in place to protect that information against loss or misuse. Effective data security and protection is critical to maintaining business capability and consumer confidence. International cooperation on privacy is a key to securing the benefits of the internet economy. Both business and privacy advocates internationally see privacy as a key human right to be protected in the twenty first century.

### **Policy and international work**

#### **Passing the Privacy Act amendment to enhance competitiveness**

A Privacy Act Amendment Bill was introduced in July 2008 and awaits inclusion in a reinstatement motion. New Zealand's global competitive advantage will be enhanced by a small amendment to better enable businesses to take up data processing opportunities. There are international trade and investment opportunities to be gained from a recognition of "EU adequacy" (e.g. for locating data processing or call centres in New Zealand). This straightforward, technical, amendment has support from the business community and has been awaiting enactment for nearly a decade.

#### **International action on privacy**

Current action internationally involving New Zealand includes:

- the APEC Pathfinder project to establish cross-border rules for handling information;
- a promising (and potentially ground-breaking) initiative to develop worldwide standards for data protection, arising from the recent international privacy commissioners meeting;
- EU and OECD initiatives;
- Passenger Name Recognition (PNR) negotiations on airline travel data exchange; and
- our own EU adequacy application.

#### **Policy work ranges widely across business and government**

The Privacy Commissioner is mandated to comment on policy and legislative proposals. In addition, government departments constantly request assistance with operational policies, such as information sharing projects for children and families at risk. Current resources within the Office to carry out policy and legislative work are stretched (260 legal and policy projects dealt with in 2007/08).

The Ministry of Health has funded a position within the Office to deal with the wide ranging privacy issues arising in the health sector, such as the introduction of electronic health records.

The Privacy Commissioner can independently issue statutory codes to regulate personal information handling. Major industry codes include the Health Information Privacy Code, the Telecommunications Information Privacy Code, and the Credit Reporting Privacy Code. OPC recently initiated a review to ensure the credit reporting code continues to address current commercial pressures.

## Technology

The phenomenal growth in technology and its impact on individuals and business mean this is one of the areas where the Office is subject to pressing and growing demands. The State Services Commission funds one position in this four-person team, to work on e-government.

The Privacy Commissioner has an oversight and monitoring role for all government data matching programmes. At October 2008, there were 78 authorised data matching programmes, of which 46 are active (cf. 36 in 2004/05). Data matching programmes between government agencies can deliver cost efficiencies for government and recover overpayments, and are an area of strong growth.

## Education and outreach

Privacy and data protection are a 'hot topic' for media, business, the health sector and government. We respond to around 150 media enquiries each year for comment on privacy, data protection and technology issues and provide specialist briefings. The Office carries out a regular programme of training seminars (94 in 2007/08) on information handling issues, largely on a cost recovery basis. The Commissioner and senior staff also undertake numerous speaking engagements for business, government and community groups.

The 0800 line is a key service, receiving about 6,000 enquiries per year. The 0800 line helps people to resolve problems quickly and informally.

Continuing to produce high-quality guidance material and resources for individuals and business is a priority activity. Recent work has included targeted pamphlets for business and health organisations and further developing online website guidance. The Office has been active in the annual Asia-Pacific Privacy Awareness Week.

## Investigations

Significant efforts to lower an historical complaints backlog have been successful. Currently, 88% of complaints are less than 12 months of age, and 70% are under six months old (cf. only 46% in 2005). The inflow of complaints to the Privacy Commissioner is now around 600-700 per year. We actively work with agencies across New Zealand to reduce the causes of complaints and thereby lower inflow.

Current work in the investigations team focuses on mediating and conciliating complaints. In the 2007/08 year, 135 of the complaints closed were settled or mediated. Special investigations are undertaken from time to time e.g. medical insurance (disclosure requirements) and Trade Me (disclosure of personal contact details to criminal accused).

## Priorities for action

### Immediate

- Reinststate and pass an amendment to the Privacy Act to assist New Zealand to gain a finding of EU adequacy and associated trade benefits.

### Short / Medium term

- Respond to demands for expert advice and guidance on data protection by delivering expert briefings, guidance materials and practical tools (such as self audit mechanisms) to assist business, government and civil society organisations.
- Make submissions to the Law Commission's privacy review including recommendations to:
  - respond to technological challenges;
  - implement technical and non-contentious amendments to the Privacy Act that will modernise it and assist business and government objectives;
  - enable the Commissioner to conduct privacy audits, and thereby better respond to public concerns about systemic challenges to privacy;
  - explore the establishment, in line with strong public demand, for a national "do-not-call" register as a response to telemarketing.

### Longer term / ongoing

- Pursue New Zealand's leading contribution to the APEC Privacy Pathfinder, and other international initiatives, to ensure New Zealand's global competitiveness, and protect the rights of New Zealanders.

## Budget bids 2009/10

To respond to the above demands, the Office will present two budget bids for the 2009/10 budget round.

### 1. Privacy and Economic Advantage

The Office is active in the APEC pathfinder projects on privacy, which promote a consistent approach to data protection across the region. The initiatives support business needs, reduce compliance costs, provide consumers with effective remedies and ensure regulators operate efficiently, with minimal regulatory burden. They are necessary to build a model for implementation across APEC and EU countries that takes account of New Zealand's needs. They contribute to economic growth by removing barriers for New Zealand business.

### 2. Business Continuity and Capability

Successful implementation of e-government and the management and use of health information are important government initiatives that depend upon securing public trust and confidence in data management practices. The capacity to provide this expertise and quality-assurance work would appropriately be core funded and should not be reliant upon third-party funding relationships. This bid will also enable us to respond more effectively to demands for expertise and guidance on data protection issues.

## Snapshot

The Office of the Privacy Commissioner (OPC) is an Independent Crown Entity, with business, civil society and government jurisdiction. OPC has a budget of \$3,523 million (excl GST) which includes an appropriation from the Crown of \$3,148 million (excl GST). We have a staff of 31.5 FTEs, which has remained constant for a number of years.

Marie Shroff took up office as Privacy Commissioner in late 2003, succeeding the long serving first Commissioner, Bruce Slane. Marie Shroff was re-appointed for a further 5-year term in September 2008.

The Privacy Act was passed by unanimous vote of Parliament in 1993. Key issues at the time were to meet OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data to protect our international trade; and to allow the government to match databases to detect fraud (eg benefits and employment) while monitoring and providing reassurance to the public in general. Principal functions are to:

- advise on the risks and benefits of new technologies, policy proposals or initiatives;
- comment on proposed legislation;
- oversee authorised government data matching programmes;
- educate and communicate on privacy and personal information protection issues;
- deal with complaints from the public about breaches of privacy in both private and public sectors;
- issue codes of practice for industry.

The Privacy Commissioner has offices in Auckland and Wellington. The floor-space in the Auckland office was halved in August 2007. The Wellington office lease expires at the end of 2009, and some further space-saving will then be possible.

## Attachments

- (a) Organisational chart of the Office of the Privacy Commissioner
- (b) Statement of Intent of the Office of the Privacy Commissioner