

## **Terms of Reference: Inquiry into Ministry of Health disclosure of COVID-19 Patient Information**

### **Background**

In April 2020 the Office of the Privacy Commissioner received complaints from individuals indicating that the Police vetting service had received health information about patients who had tested positive for COVID-19. This Office contacted Police to ask about this practice, who confirmed this information was being entered into the National Intelligence Application and was therefore available to all officers with access to that system. On 29 April, the Commissioner advised the Ministry and Police that he was making preliminary inquiries about the purpose of sharing individuals' health information with Police and Police use of that information within its information systems. As a result of these inquiries, the Privacy Commissioner conveyed to the Director-General of Health and the Police Commissioner some provisional views by letter on 7 July 2020.

#### *The Heron Report*

On 30 July Michael Heron QC released a report following his investigation into the COVID-19 active cases privacy breach.<sup>1</sup> His report found that Michelle Boag and Hamish Walker were responsible for the unauthorised disclosure of COVID-19 patient information to the media. The findings stated that the motivation for each disclosure was political.

Later that day the State Services Commissioner referred the matters described in Mr Heron's report to the Privacy Commissioner to consider what further action, if any, under the Privacy Act is appropriate.

The Heron Report raised similar issues to those under consideration in the preliminary inquiry. This has led the Privacy Commissioner to initiate a formal Inquiry under section 13(1)(m) of the Privacy Act and widen the Inquiry into Ministry of Health disclosures of patient information to emergency services more generally.

### **Authority**

The Inquiry is a Privacy Commissioner initiated inquiry under section 13(1)(m) of the Privacy Act 1993. The Privacy Commissioner has inquiry functions under that provision to inquire generally into any matter including any governmental law, practice or procedure if it appears that the privacy of the individual is being or may be infringed thereby.

As part of any inquiry the Privacy Commissioner may use his powers to summon witnesses and obtain relevant documentation under section 91 of the Privacy Act.

---

<sup>1</sup> <https://ssc.govt.nz/assets/SSC-Site-Assets/Investigation-Report-into-COVID-19-active-cases-privacy-breach.pdf>

## **Matters for Inquiry**

The purpose of the Inquiry is to inquire into whether:

- The Ministry of Health's disclosure of COVID-19 patient information to emergency services was compliant with the information privacy principles and rules of the Health Information Privacy Code 1994 ("the Code") and whether the disclosure infringes or may infringe individual privacy.
- Police's access to and use of COVID-19 Patient Information was compliant with the privacy principles and rules of the Code, and whether it infringes or may infringe individual privacy.

The Inquiry will consider the processes and procedures that govern Police and the Ministry's compliance with the relevant rules, the type and amount of information obtained and disclosed, the frequency of the disclosures and the purpose for which information was and is disclosed.

## **Exclusions**

The Inquiry will not investigate the use or disclosure of personal or health information by any member of Parliament, as they are excluded from the definition of agency under section 2(b)(iv) of the Act.

This Inquiry does not preclude an investigation under Part 8 of the Privacy Act at the request of an affected individual.

Individuals who believe their privacy may have been infringed and wishing to consider a complaint to the Office of the Privacy Commissioner can find more information on this process at [www.privacy.org.nz](http://www.privacy.org.nz)

## **Commencement of Work and Reporting Requirements**

The Inquiry will commence on **5 August 2020**.

A draft report will be provided to the Ministry and Police prior to being finalised. The report will be publicly released once it has been considered by the Ministry and Police.