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ASK ME ANYTHING:

New Privacy Commissioner John Edwards



While his predecessor as Privacy Commissioner moved things forward but was also, at times, what one pundit described as a “consummate bureaucrat,” John Edwards, who has been appointed by Justice Minister Judith Collins, has been more mofufty. He has sounded off on everything from torture in Fiji to whether Keith Ng should be charged for hacking an MSD kiosk, to cyberbullying legislation, to the legal relevance of Ewen Macdonald being “a scumbag.” Mr Edwards has been on the staff of the Office of the Ombudsmen, the Privacy Commissioner and the Ministry of Health. He provided corporate services for a number of smaller Crown agencies and provides advice and training on information law issues, and undertakes investigations and reviews for departments, Crown entities and ministers. His practice involved information law, which Mr Edwards describes as “a category I made up. It means privacy, freedom of information, copyright, social media, and other stuff too.”

Background reading on
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- Keith Ng, facing two years' jail if successfully prosecuted, has a defence – John Edwards
<http://bit.ly/1c75JC>
- JOHN EDWARDS: Torture in the neighbourhood: we cannot look away
<http://bit.ly/1c68Bdx>
- Collins' cyberbullying proposals get tick from internet lawyer John Edwards, snarf from privacy campaigner
<http://bit.ly/1n8EILK>
- Ewen Macdonald is a scumbag. Is that evidence that he killed Scott Guy?
<http://bit.ly/1dnMKwS>

by **Chris Keall**: A number of big companies and government departments have had data stolen or inadvertently leaked but only confessed after whistleblowers or the media have exposed them. Where are we at in terms of two key elements of Privacy Act reform: mandatory disclosure of data breaches; and giving the Privacy Commissioner the ability to audit an organisation after a data breach so she can see what's gone wrong and how to fix it. by **John Edwards**: Mandatory breach reporting was one of the Law Commission's recommendations, and my office has been working with the Ministry of Justice on options for implementing that recommendation. Once we have a draft bill in front of us, we will know how it is going to work. In the meantime we are getting a pretty good level of voluntary reporting to the office – although, of course, we don't know what we are not being told.

by **Chris Keall**: Google Glass is still at the margins and personally I found it pretty clumsy. But the technology will get better and cheaper, and at some point we're going to see wearable, internet-connected cameras everywhere. What should your office do – now – to prepare for that future? by **John Edwards**: I'm personally averse to leaping to regulatory solutions to new technological developments, although sometimes they do ultimately prove warranted (for example, miniaturisation of cameras leading to covert intimate photography crimes). Certainly Google has received a lot of feedback about the intrusive potential of their spectacles, especially when combined with facial recognition software, and the like, so there will be some strong market demands for consumer choice that respect privacy.

by **NBR reader**: Have you never sneaked a peek at someone's txt messages after they put their phone down then leave the room? by **John Edwards**: Haha! Not since I was appointed.

by **Murray**: On one hand we make privacy of individuals harder to keep while stoutly maintaining privacy of trust members now with one trust in New Zealand for every four men, women and children. Shouldn't trusts be required to publish annual accounts like companies and individuals be given greater privacy protection in this high-tech age we live in?

by **John Edwards**: I'm not sure that the use of trusts to manage assets or income or to protect

from risk is principally a privacy issue. A trust is an “agency” in terms of the Privacy Act, so the same rules apply to it as to every other entity in the country in relation to personal information.

by **Victoria Young**: The Marketing Association is using a “name and shame” system to control unruly data users who do not get warrants under their scheme. But do you think industry self-regulation is enough? <http://bit.ly/1c6aOxR>

by **John Edwards**: I think we'll have to wait and see. It is great to see that industry, which many see as very intrusive, taking some steps to give effect to consumer preferences. I would like to see more publicity given to “do not call” registers and the like, which in other jurisdictions are mandatory.

by **Lance Wiggs**: Central government seems to be on a steady, if slow at times, path toward free and open data. How are you going to accelerate the pace of change for local government – especially for our property data?

by **John Edwards**: I don't think it is my role to accelerate that process but I will certainly be happy to talk about ways in which the twin objectives of open data and privacy protection can be reconciled. The big difficulty in local government is that you've got 80 odd entities finding different solutions to the same challenges, so if I can help by discussing common standards and the like I would be happy to do so.

by **Sacha**: What do you see as the top privacy challenges in putting our health records online as the government has announced?

by **John Edwards**: That's a bigger question than I can answer in this forum. There are going to be enormous benefits to health providers and consumers from better use of technology but there are lots of risks, some of which we've seen with hospitals not adequately managing security.

by **Ben**: Are you happy that the New Zealand privacy regime has no teeth, and is essentially self-regulating or would you like to see the commission given more power?

by **John Edwards**: You can actually assert quite a lot of pressure with gums! But even so, I don't agree that the commissioner is toothless. I can investigate complaints and I have the powers I need to do so. I am required to try to settle complaints and, if I can't, I can move the matter toward the Human Rights Review Tribunal (HRR), which can dish out some pretty hefty remedies. I am really looking forward to seeing the government's proposals for the reform of the Privacy Act which might well give me some more tools (teeth). When they come, I will use them.

by **Justin Palmer**: Proposed legislation is currently before Parliament that will override our Privacy Act due to a US law known as FATCA. This law requires all New Zealand financial institutions to create a list of all customers “suspected” of being American (even if they are also New Zealanders) and giving their private account details to the US. According to the regulatory impact statement, your office has approved this legislation. Why would you support this and why would you allow the privacy rights of New Zealanders to be violated in this way?

by **John Edwards**: It's not really accurate to say that my office “approved” the legislation. Our advice to Treasury on FATCA has been that New Zealand financial institutions would be unable to comply with FATCA without breaching some of the privacy

principles set out in the Privacy Act. As a result, we recommended that the only way financial institutions could comply would be through the enactment of legislation that clearly authorises the collection and transmission of the relevant information. That is different from supporting the policy that has been deemed a necessary consequence of our trade and financial institutions links with the US.

by **Hamish**: Do you think the commissioner's office is adequately resourced for the job it has to do?

by **John Edwards**: I've got a job to do, and I've got resources to do it, and I'm going to get on with that. If Parliament votes for more money to do more, then I will do more. Any organisation like mine can spend as much as it is given and still want more. Having said that our funding has not increased since 2007 and our activities across all categories, enquiries, complaints, breach notifications, policy input etc have steadily increased. Last year new functions were added to the Privacy Act but no new funding was allocated. My predecessor and the team here have done a brilliant job in stretching the dollars so that they've been able to continue to respond to the increased demand within a static baseline.

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John Edwards

by **Hamish**: Do you see a role for the commissioner's office in conducting privacy audits? by **John Edwards**: I learned yesterday that around the office we call that “the A word.” Audits are problematic because you've got to have an agreed set of standards to audit against and they can be quite resource-intensive. My Irish colleague requires all companies setting up in Ireland to be audited against their data protection law before beginning their operations. It is not something that I would see as a priority for us to be doing at this stage.

by **Hamish**: How much will your effectiveness depend on working in concert with other privacy commissioners around the world?

by **John Edwards**: I wouldn't regard international links as a dependency to effectively carrying out my domestic functions, but certainly those connections are important for keeping up with “best practice” and having consistency in the way in which transnational entities and issues are addressed. There can also be some benefit in joining forces to influence organisations such as where common concerns are identified across a number of jurisdictions in which the entity operates.

by **Chris Keall**: The GCSB muffed its annual report, under-reporting the number of intercept warrants and access authorisations. The Law Society and InternetNZ said the initial draft of the GCSB Bill rode roughshod over privacy. Are you confident the final version added enough oversight?

by **John Edwards**: The intelligence organisations are not subject to my jurisdiction or the information privacy principles except in relation to individuals' access to and correction of personal information

so, as a matter of law, I don't get to be part of that oversight. Internationally in the last year there has been widespread concern and anxiety at all levels of society in Europe, the US and elsewhere about the activities of intelligence agencies and a consequent call for more robust oversight.

Last year's legislation did improve the level of oversight and that was a good thing. We've come a long way since the 1970s in this space, but it needs to be a continued process of pressure and enquiry and monitoring and public demands for improved transparency and better accountability.

by **Tony Siu**: What do you do if you have your identity stolen via credit card fraud?

by **John Edwards**: It depends on the circumstances but credit card companies actually absorb quite a lot of the risk from fraudulent activities, so your first stop should be the card issuer.

by **Thomas Beagle**: I, for one, welcome our new privacy overlord. What are the privacy issues around anonymity and pseudonymity online? Should people have a right to have multiple identities and keep those separated from each other? Under what sort of circumstances should these identities be revealed?

by **John Edwards**: It is an interesting discussion. I think Vikram Kumar has had some thoughtful things to say on this subject. You ask if people should, or do have a “right” to multiple identities. I'm not sure what that means. Do people have a “right” to clean drinking water? Not in law, or in international instruments. How would that work? At the moment there is nothing preventing people from interacting online (in New Zealand) anonymously or pseudonymously, and in certain circumstances ISPs or website admins can be asked to provide IP addresses or other identifying information. They should be able to resist those requests (and in fact they mostly should not disclose) unless there is a proper legal authority for the asker to have the information. With proper oversight (such as under judicial warrant authorised under a specific statute) I am OK with agencies being required to produce information. For private disputes, there is plenty of offline precedent for a plaintiff asking the court to order a third party to hand over information identifying a potential defendant.

by **Fan**: You said in your interview with TVNZ that you plan to throw the book at offenders who breach the Privacy Act. What avenues do you have available for repeat offenders, say the Ministry of Social Development or ACC?

by **John Edwards**: Actually I did not say that – that was Simon Bradwell's voiceover, inspired no doubt by the coinciding footage they had of my unpacking some privacy texts. I don't have any more avenues for repeat offenders than I do for first timers, although my patience might be a little thinner, and I might be less likely to accept undertakings, or to settle things at an “apology + bunch of flowers” level. I will be selecting candidates for bringing before the HRR and, if they are repeat offenders, I might want to draw that fact to the attention of that tribunal for when they determine what orders to make in favour of a plaintiff.



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