

# Can I make a protected disclosure to the Privacy Commissioner about my privacy concerns?

The Privacy Commissioner is an ‘*appropriate authority*’ under the Protected Disclosures (Protection of Whistleblowers) Act 2022 **where that disclosure relates to the privacy of individuals or security of personal information.**

This checklist will help you if you are thinking about making a protected disclosure to the Privacy Commissioner about serious wrongdoing in your workplace in the public or private sector.

It is intended to identify things you should think about before making a decision about what to do.

## Do I meet the basic requirements?

- I am someone who is, or has been:
  - employed by the organisation in which the serious wrongdoing is occurring or has occurred;
  - contracted or seconded to that organisation;
  - involved in the management of that organisation (for example, on the Board);
  - volunteering for that organisation;
  - working as a ‘homeworker’ for that organisation;<sup>1</sup> or
  - a member of the Armed Forces (where the organisation is the New Zealand Defence force).
  
- I have reasonable grounds to believe that there is, or has been, **serious wrongdoing** in that organisation, relating to the privacy of individuals or security of personal information, being either:

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<sup>1</sup> Within the meaning of section 5 of the Employment Relations Act

- an offence;<sup>2</sup>
- a serious risk to public health or safety, or the health or safety of any individual, or to the environment;<sup>3</sup>
- a serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial;<sup>4</sup>
- conduct by a public sector employee (or someone performing a public sector function or power) which is either:<sup>5</sup>
  - oppressive;
  - unlawfully discriminatory;
  - grossly negligent; or
  - gross mismanagement.

AND

- My concerns about serious wrongdoing relate to the privacy or individuals and/or the security of personal information

AND

- The information is not legally privileged, is not international relations information<sup>6</sup> and is not intelligence and security information<sup>7</sup>

AND

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<sup>2</sup> Examples of offences include making misleading statements to the Privacy Commissioner; failing to comply with the lawful requirements of the Privacy Commissioner; destroying personal information that has been requested under the IPP 6 (Privacy Act s 212) or failing to report a notifiable privacy breach to the Privacy Commissioner (Privacy Act, s 118).

<sup>3</sup> For example, the concerns relate to inadequate security or the organisation's handling personal information that create a serious risk to life health or safety of any person. When deciding if there is a **serious risk**, factors can include the sensitivity of the information, the nature of the harm that may be caused to individuals, whether the information is protected by security measures and the actions of the organisation to protect reduce the serious risk to individuals.

<sup>4</sup> For example, the concerns relate to the inadequate security or the organisation's handling of personal information that gives rise to a serious risk to the maintenance of the law.

<sup>5</sup> For example, the concerns relate to the organisation's handling of personal information that results in this kind of serious wrongdoing.

<sup>6</sup> The appropriate authority for protected disclosures of international relations information is the Ombudsman.

<sup>7</sup> The appropriate authority for protected disclosures of intelligence and security information is the Inspector-General of Intelligence and Security.

- I do not intend to disclose the information maliciously or in bad faith.<sup>8</sup>

## Is there any supporting information?

- If another person has information in support of or relating to your concerns, that information can also be protected.

## Who do I make my protected disclosure to?

As well as the Privacy Commissioner, you have the option of making a protected disclosure to your organisation or to another appropriate authority.

### Can I disclose within my organisation?

- If there are **internal workplace procedures**, I have checked them and identified who I can make my disclosure to (public sector organisations must publish internal procedures for protected disclosures).
- I can also choose to disclose to the **head of my workplace** at any time.

### Can I disclose outside my organisation?

- If I don't feel comfortable disclosing it to my workplace, I can make my disclosure **outside of the workplace (to an 'appropriate authority')** at any time.
- If my concerns about serious wrongdoing relate to the privacy of individuals or the security of personal information, I can make my disclosure to the Privacy Commissioner.

There are many 'appropriate authorities' that disclosures can be made to. In addition to the Privacy Commissioner these include the Ombudsman, the Commissioner of Police, the Serious Fraud Office, the Health and Disability Commissioner, the Auditor-General and the Independent Police Conduct Authority. A list of appropriate authorities and the types of disclosures they might deal with may be found [here](#). If you are not sure which authority might be appropriate, you can check with the [Ombudsman](#).

### Where can I find more information?

You can [contact the Ombudsman](#) for information and guidance, or to confirm that these requirements are met, or call their 0800 number – 0800 802 602.

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<sup>8</sup> Section 9.

### **Making a disclosure to the Privacy Commissioner**

To make a disclosure about serious wrongdoing which relates to the privacy of individuals or security of personal information click [here](#).

Depending on the nature of your disclosure, the Privacy Commissioner may refer it to your organisation or to another appropriate authority, but we will consult you first about confidentiality.

We may need to release information and disclose your identity if it is essential for the effective investigation of the issues raised, or for natural justice purposes but we will consult you first.

We may need to release information and disclose your identity if it is essential for law enforcement purposes or to prevent a serious risk to health or safety, but if practicable we will consult you first.

### **Making a complaint to the Privacy Commissioner about a breach of confidentiality**

If you make a protected disclosure, your organisation or the appropriate authority receiving it must use their best endeavours to keep your identity confidential.

If the recipient of your protected disclosure releases information that might identify you, you have the right to make a complaint to the Office of the Privacy Commissioner.

For more information about making a complaint, click [here](#).