

Advisory Opinion - NZPC-AO 001/2016

Whether the addresses of fire incidents are 'personal information' and if so, would disclosing such addresses breach the Privacy Act?

An advisory opinion is a mechanism by which agencies can get a clear commitment from the Privacy Commissioner as to the view he would take of a proposed initiative, as described in the application for the opinion. Advisory opinions must be understood in relation to the general provisions of the Privacy Act 1993 and other applicable law. In particular, they must be understood with the caveat that the Privacy Commissioner is not the final interpreter of the law for most Privacy Act cases. For a full description of the advisory opinion policy go to:

<https://www.privacy.org.nz/news-and-publications/guidance-resources/advisory-opinions/>

Executive summary

In this advisory opinion the Privacy Commissioner addresses a legal question posed by the New Zealand Fire Service (NZFS) in respect of their proposed initiative to publish the addresses of fire incidents on its website, in order to reduce administrative burden from insurers seeking this information. The NZFS asks whether addresses of fire incidents are personal information, and, if so, if disclosing this information would be a breach of the Privacy Act.

The Commissioner finds that addresses of fire incidents will often constitute personal information, and disclosing them in the manner described would be a breach of the Privacy Act and suggests an alternative way of sharing this information with insurance companies without compromising individual privacy.

Advisory Opinion

Introduction

1. The New Zealand Fire Service (the NZFS) has asked me to provide an advisory opinion on whether, including on its website (incidents.fire.org.nz) the property address details associated with certain fire incidents would be disclosing 'personal information' for the purposes of the Privacy Act 1993 (the Act). In particular:
 - 1.1 Whether the property address details are 'personal information' when disclosed in this context; and
 - 1.2 If the property address details are 'personal information' whether any of the exemptions to the general restriction on disclosure in information privacy principle 11 (IPP 11) of the Act apply.

Summary of opinion

2. I consider including property address details in the fire incidents reports on the NZFS website would in some instances be disclosing ‘personal information’ under the Privacy Act 1993 about the individuals linked to those properties, for example the property owners or residents. As the NZFS will not have collected this personal information for the purpose of publishing it online, and none of the other exemptions in IPP 11 of the Act would apply unless the proposal was modified from the form submitted for the purposes of this Advisory Opinion, routine publication of property address details would not comply with the Privacy Act.

Background

3. The NZFS maintains a website where it makes information from its fire reporting system about fire incidents available to the public and is updated approximately hourly. Currently the following information about fire incidents is included: reference number; date and time of emergency call; suburb and district/city; incident duration (time between NZFS’s arrival and departure); first attending NZFS station; and incident classification (eg false alarm, structure fire, medical call).
4. It is now proposed to include full property address details (ie street name and number), but only for structure fire incidents and not until at least 24 hours after the incident is concluded. No individual’s name will be directly associated with the address information or otherwise available through the website.
5. The reason for including property address details on the website is to reduce the number of information requests received by NZFS, including in particular from insurers. NZFS say they spend a significant amount of time responding to requests for information about incidents.
6. NZFS obtained legal advice that including property address details in this context, where they are not directly associated with any individuals, are unlikely to be personal information for the purposes of the Privacy Act, but that if in the alternative they are personal information, none of the exemptions in IPP 11 of the Act would apply to allow the disclosure.

Privacy Act applies to “personal information”

7. The Privacy Act governs the use by any “agency” of “personal information”. The definition of “agency” is wide, it applies, with few exceptions, to any person or body of persons¹, this includes the NZFS.
8. The Act defines “personal information” as being “information about an identifiable individual”² a term defined as meaning a “natural person”.³ As the definition is

¹ Section 2 provides “**agency** (a) means any persons or body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector; and, for the avoidance of doubt, includes a department; but (b) does not include.....”

² Section 2 provides “**personal information** means information about an identifiable individual; and includes information relating to a death that is maintained by the Registrar-General pursuant to the Births, Deaths,

limited to natural persons information it excludes information about deceased individuals⁴, companies and other non-natural legal persons, and as that information is not “personal information” it is not subject to the Privacy Act.

9. As the Act does not separately define ‘information’ the ordinary wide meaning applies, being ‘that which informs, instructs, tells or makes aware’.⁵ Accordingly, ‘personal information’ means any type of information about an identifiable individual and is not limited to sensitive, intimate or private details.⁶ Further, the information need not be exclusively about one individual.⁷
10. Crucially, the definition of ‘personal information’ only requires that the information be about an *identifiable* individual not that the individual be identified in the information. Information can be ‘personal information’ even if the individual is only identifiable with the use of extrinsic information or knowledge. The High Court in *Siewwrights v Apostolakis*⁸ expressly rejected the proposition that the individual concerned must be able to be identified in the information without the use of any extrinsic information or knowledge.⁹
11. If any person can link the information with other information to identify the individual or individuals to which it relates then the information will be ‘personal information’. Identifiability is not limited to identification by strangers, but can be made on the basis of a link identifying the individual, whether that link is obtained from the recipient’s own knowledge or by other means.¹⁰
12. The definition of personal information is therefore wide and can apply to any piece of information that identifies or is capable of identifying an individual, and that can ‘say something’ about an individual. Whether information constitutes personal information is a question of fact and context is all important.¹¹

Marriages, and Relationships Registration Act 1995 or any former Act (as defined by the Births, Deaths, Marriages, and Relationships Registration Act 1995).”

³ Section 2 provides “**individual** means a natural person, other than a deceased natural person”. This means other legal entities such as companies or societies are excluded from the definition of ‘personal information’.

⁴ Apart from information relating to a death maintained under the Births, Deaths, Marriages, and Relationships Registration Act 1995.

⁵ As noted in *Watson v Capital and Coast District Health Board* [2015] NZHRRT 27 at [70] that “information” is not defined appears deliberate and as held by McMullin J in *Commissioner of Police v Ombudsmen* [1988] 1 NZLR 385 (CA) in respect of the forerunner to the present provisions in the Privacy Act, from this it can be inferred that the ordinary dictionary meaning of “information” should be adopted that “which informs, instructs, tells or makes aware.”

⁶ As noted by the Law Commission in *Review of the Privacy Act 1993: Review of the Law of Privacy: Stage 4* (NZLC R123, June 2011) at [2.38].

⁷ *Watson v Capital and Coast District Health Board* [2015] NZHRRT 27 at [71]

⁸ *Siewwrights v Apostolakis* HC Wn CIV 2005 485 527 [17 December 2007]

⁹ At [17]. And at [18] said “We note that the OECD Guidelines upon which the Privacy Act is intended to be in general accordance (long title to the Act) suggests that the use of the word ‘identifiable’ allows linked data to establish identity whereas ‘identified’ indicates the individual is identified from the information itself (see OECD Guidelines Article Art.1(b))”.

¹⁰ *Proceedings Commissioner v Commissioner of Police* [2000] NZAR 277. This approach to identifiability is consistent with the international standards on which the Privacy Act was based as noted by Roth in *Privacy Law and Practice* at 152,403. And see the recent decision *Google v Vidal-Hall* [2015] EWCA Civ 311 where the England and Wales Court of Appeal held it is clearly arguable that browser generated information was capable of being “personal data” because it can be connected to a particular user’s browsing history.

¹¹ *Siewwrights v Apostolakis* HC Wn CIV 2005 485 527 [17 December 2007] at [10] and [15]

13. There may be particular factors that compel a conclusion that, although an individual may not be named in the information, nonetheless there is a sufficient connection between the information and the individual to justify a conclusion that the information is personal information about an individual.
14. Information about a property can be personal information about an individual or individuals, in particular when the property is owned or tenanted by individuals. For example it has been held that:
 - 14.1 Information about whether a building was insured was personal information, as it was essentially information relating to the owners' personal finances; that the insurance on their building was about to or had lapsed (*Sievwrights v Apostolakis*¹²).
 - 14.2 Information in a geotechnical property report prepared by a local council's insurance company was personal information about the unnamed property owner, as it included information about the property, the damage to it, and had 'direct implications for her situation.' (Case Note 228045¹³).
 - 14.3 Electricity power usage data collected for a particular property was personal information about the resident/account holder whom lives at the address, as it can be linked to them and the data tells something about the individual, the amount of power they use (Case Note 251185¹⁴).
15. In other instances information about a property will not be personal information, for example when the property is owned and tenanted by a company and the information does not concern any natural persons (or individuals).¹⁵ In some instances information about a property may be a mix of information that is not personal information (for example information about the company owner) and information that is personal information (for example information about the tenants whom are individuals).¹⁶

Property addresses on NZFS website would be 'personal information'

16. The context in which the property address details appear is relevant to whether it is personal information.
17. In this case the property addresses are to be included in NZFS website fire incident reports. Information about a property fire (including its occurrence, date, type and duration) is information related to the personal situation of the property's owners or

¹² *Sievwrights v Apostolakis* HC Wn CIV 2005 485 527 [17 December 2007]

¹³ *Case Note 228045* [2012] NZ PrivCmr 8.

¹⁴ *Case Note 251185* [2015] NZ Priv Cmr 3.

¹⁵ In *Case Note 48819* [2002] NZ Priv Cmr 13 (*Case Notes 1994-2005*) the Commissioner found information about the financial performance of a married couple real estate team was not personal information as it was information about the company they worked for.

¹⁶ In *Case Note 204595* [2009] NZPrivCmr 14 (October 2009) the Commissioner noted that some of the information a couple requested from their accountant concerned a company they ran and as it was not personal information did not have to be provided under a Privacy Act request.

residents. Where those property owners or residents are identifiable individuals (that is natural persons) it is their 'personal information'.

18. Whilst the reports do not include names of property owners or residents, there is a reasonable chance that they could be identified from the property address details by those whom already know the connection or by those whom are able to discover the connection. By including property address details in fire incidents reports in addition to the other reported information about the fire incident, makes it possible to identify individual owners or residents of the property where the fire took place.
19. Accordingly, the property address details in this context will, in many cases, be "information about an identifiable individual" and therefore will be 'personal information' for the purposes of the Act.

None of the IPP11 exemptions apply to allow disclosure of property addresses

20. Information privacy principle 11¹⁷ (IPP 11) provides that personal information shall not be disclosed, unless the agency believes on reasonable grounds one of the following listed exceptions applies:
 - a. the disclosure is either one of the purposes, or is directly related to the purposes, in connection with which the information was obtained (principle 11(a));
 - b. the source of the information is a publicly available publication¹⁸ (principle 11(b));
 - c. the disclosure is either made to or authorised by the individual (principle 11(c) and (d));
 - d. non-compliance is necessary to avoid prejudice to the maintenance or enforcement of the law, or for the protection of the public revenue, or for the conduct of proceedings before any Court or Tribunal (principle 11(e));
 - e. the disclosure is necessary to prevent or lessen a serious and imminent threat to public health or safety or the life or health of any individual (principle 11(f));
 - f. the disclosure is necessary to facilitate the sale of a business as a going concern (principle 11(g));

¹⁷ The rationale behind Principle 11 is discussed by Roth in *Privacy Law and Practice* at PVA6.14(b), including quoting the Australian Law Reform Commission's report *Privacy* (1983) at para 1301 that was quoted with approval by the Ombudsman in *Case No 985* (1989) 9 CCNO 177 (J Robertson) that "Privacy protection is, in part, a recognition that personal privacy is an integral part of personal autonomy. A person totally without privacy cannot be said to be autonomous. This means that each person has an interest in controlling the perceptions that others have of them. He has an interest in restricting or guiding flows of personal information about himself. Where personal information is collected for a purpose, this means that record subject is entitled to expect that his understanding of the extent of the proposed disclosure of the information should be adhered to."

¹⁸ As defined in s 2 of the Act

- g. the information is to be used in a form in which the individual is not identified or for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual (principle 11(h)); or
 - h. the disclosure accords with an authority granted under s 54(principle 11(i)).
21. Principle 11 gives agencies a discretion to decide whether the information should be disclosed when the agency believes on reasonable grounds that it is necessary to do so.
22. The agency that discloses personal information carries the burden of proving it reasonably believed at the time of disclosure that one of the exceptions applied. The reasonable grounds test is a mixed subjective and objective one. The agency must actually believe at the time of the disclosure that the exception applies and there must be a reasonable basis for that belief.
23. I do not consider NZFS could objectively form a reasonable belief to rely on any of the exceptions to Principle 11 to disclose the property address information where that is personal information. This was the same conclusion reached by NZFS, which specifically considered that the exemptions in principles 11(a) and 11(h) could not apply. I will address these exceptions below.
24. I agree NZFS is unable on principle 11(a) to justify the disclosure of property address details where that is personal information as they could not reasonably believe the disclosure is for one of the purposes in connection with which that information was obtained, or is directly related to that purpose.
25. When interpreting the phrase ‘directly related to the purposes in connection with which the information was obtained’ the Tribunal held it is deliberately framed so as to place a strict limit on the circumstances in which a change in purpose or an addition of purpose is permissible and that there must be ‘an uninterrupted, immediate relationship to the original purpose’.¹⁹
26. In this case the proposed action of disclosing selected personal information on the NZFS’ website, such as property address details where that is personal information, is not related to the purpose for which the information was collected, which was to provide an emergency response to a fire. NZFS’s reason for wanting to include property address details in certain of the website fire incident reports is to reduce the number of requests it receives for this information from third parties and ease the workload associated with responding to requests. This is different to the purpose for which the NZFS obtained the information it intends to disclose.
27. I acknowledge NZFS’s comment that one of the functions of its controlling body, the New Zealand Fire Service Commission (the Commission), is to promote fire safety by sharing information with the public about fires. While it may be necessary to promote fire safety by the public knowing the number of fires and what action the NZFS took

¹⁹ *Director of Human Rights Proceedings v Crampton* [2015] NZHRRT 35 at [88]–[89],[91]–[92].

in response, the disclosure of specific personal information, property address details is not necessary for this purpose.

28. I similarly consider NZFS is unable on principle 11(h) to justify the disclosure of property address details where that is personal information, as the disclosure of the personal information in some cases would make it possible to identify the individual or individuals concerned. The exemption in principle 11(h) only applies where an agency intends to disclose information about an individual in a form in which the individual concerned is not identified or identifiable. NZFS is unable to rely on the exemption in principle 11(h) unless the information is amended to ensure identifiable details are removed.

Conclusion

29. I consider including property address details in the fire incidents reports on the NZFS website would in some instances be disclosing 'personal information' about the individuals linked to those properties where the fire took place, for example the property owners (if they are individuals) or the residents.
30. As the routine online publication of incident address details is not one of the purposes for which the information is collected and none of the other exemptions in IPP 11 of the Act apply, disclosure of property address details in such circumstances would not comply with the Privacy Act.
31. If it proceeded with the proposal unamended therefore, NZFS would be at risk of interfering with the privacy of a property owner or occupier who suffered some harm as a result of the publication (s.66 refers).
32. Having reviewed the proposal however it is clear that it would be possible for the NZFS to reach its objectives of improving the efficiency of meeting insurers' information requests in ways which do comply with the Privacy Act. For example, presumably the insurer's need for information about the NZFS's attendance at a particular incident is prompted by the lodging of a claim by a person with an interest in the property. It should be a simple matter for the insurer to obtain the authority of the insured to the disclosure, and an indemnity in relation to other individuals who may be affected. The NZFS could provide an online facility for approved insurers to access in relation to claims where such authority had been given. Provided NZFS audited the insurers' access from time to time, such a system should be sufficient to meet the needs of insurers without exposing the NZFS to legal risk, or compromising the privacy of individuals associated with fire affected properties.



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