



Privacy Commissioner  
Te Mana Matapono Matatapu

## **Christchurch Earthquake**

### **Code of Practice**

### **Questionnaire Results: Public Version**

**9 May 2011**

*On 29 April 2011 the Privacy Commissioner circulated a questionnaire (Appendix 1) to the 26 government departments that attended the Canterbury Earthquake ODESC meetings (being the Officials Committee on Domestic and External Security that coordinated the response to the emergency – see Appendix 2). Distribution was kindly arranged by the Department of Prime Minister and Cabinet. Responses were requested by 6 May. This document summarises the 7 replies received from departments.*

*The document is in two parts:*

- *The responses: pages 2 to 8*
- *The questionnaire: pages 9 to 13*

*This public version omits the names of individuals and their direct contact details but otherwise has not been edited for publication.*

## CHRISTCHURCH EARTHQUAKE CODE OF PRACTICE - QUESTIONNAIRE RESULTS

Question	Organisation / Contact	Answer
1. Has your organisation used the code of practice as a legal basis for the collection, use or disclosure of personal information?	Inland Revenue – Policy Manager	We have not used the Code as a legal basis for action, but rather using its sentiments and considering its parameters, we used it as the basis for an Order in Council overriding our secrecy rules. This override has been very useful.
	Ministry of Education – Senior Solicitor, Legal Services	<p>Yes the Ministry has used the code of practice as the legal basis for the disclosure of student information in the following situations:</p> <p>The Minister and foreign embassies requested information about the international students who were enrolled in the language school that was based in the CTV building. This information was disclosed under the authority of the code of practice.</p> <p>The Ministry has been asked for information about international students in Christchurch to enable claims for refunds of the student fees and accommodation expenses to be provided.</p> <p>The Ministry has also been providing information to the Red Cross and Civil Defence on student movements, including information about where individual students are enrolled.</p>
	Department of Building and Housing - Deputy Chief Executive, Service Delivery	Do not require further extension
	Department of Labour – Manager Organisational Development Programme and Executive Projects	<p>Yes.</p> <p>Immigration New Zealand services in the Canterbury region have used in the code in relation to queries from Ministry of Education about immigration status of students and also from New Zealand Police regarding the deceased. Immigration NZ worked with Ministry of Foreign Affairs and Trade to assist various consular representatives as they tried to determine the status of their citizens.</p> <p>The Department's Labour Group which provides labour inspectorate, health and safety, and employment relations services has not used the code since it was established.</p> <p>Two Department of Labour staff seconded to the Recover Canterbury Business Hub, have informed the Department that the hub has used the code. The hub consists of staff from Ministry of Social Development, Department of Labour, Inland Revenue Department, Te Puni Kokiri, Ethnic Affairs, the Chamber of Commerce and Canterbury Development Corporation. The hub is led by the Ministry of Social Development.</p>

Question	Organisation / Contact	Answer
		<p>The hub meets business owners and provides advice based on their needs and requests – such as restoring their business, exiting the market, or increasing business sustainability. The information gathered by the hub has included some information relating to individuals. This information has been shared in the context of the hub’s remit in informing businesses of a proposed course of action to take, based on their specific requests or needs.</p>
	The Treasury - Senior Analyst	<p>We are not aware of the code having been used by the Treasury for disclosure of personal information.</p>
	MSD - Chief Legal Advisor and Legal Services, Privacy Team	<p>MSD has used the code as a legal basis to share client information to assist other government agencies engaged in the response to Christchurch. For example, we have disclosed information to:</p> <ul style="list-style-type: none"> <li>• Housing New Zealand to assist with the prioritisation of emergency housing for clients who may be particularly vulnerable and whose usual residence is in a heavily damaged area of Christchurch.</li> <li>• Civil Defence Emergency Response Centre / Fletchers to assist with the prioritisation of vulnerable clients for alternative heating for homes with damaged chimneys and also the prioritisation of delivery of portaloos.</li> <li>• The Department of Corrections to assist in locating high risk offenders on probation who had been dislocated as a result of the earthquake in order to ensure their safety and arrange any assistance required as a result of the earthquake as well as alter case management plans if necessary.</li> </ul>
	Housing New Zealand Corporation – Privacy Officer	<p>As a measure to reduce the hardship after the earthquake suffered by Christchurch state rental tenants, as the landlord, the Housing New Zealand Corporation (Corporation) agreed to suspend our Christchurch tenants rent for 3 weeks. Some of our tenants have their rent automatically paid from their benefits by Work and Income. To facilitate the rent suspensions, Work and Income asked the Corporation to provide the names and addresses of all the state rental tenants in Christchurch so they could immediately halt the automatically paid rent payments.</p> <p>The disclosure of this information was not authorised by any of our tenants. Nor did the information sharing protocol we have with Work and Income cover this particular situation.</p> <p>The code of practice was used as the legal basis for sharing this information with Work and Income.</p> <p>We understand the rent suspension worked well and no further suspensions are anticipated. Any other response to the earthquake requiring the sharing of information is being managed within existing authorities.</p>

Question	Organisation / Contact	Answer
	Christchurch Recovery Department of Corrections – General Manager and Planning Manager	Yes. The Corrections Act 2004 provides a legislative basis for information sharing (between Corrections and other agencies) on high risk offenders and child sex offenders prior to their release from prison (sections 181A and 182A). During the period immediately following the earthquake some high risk community-based offenders were not able to be located at their usual addresses. The Department shared information with agencies that would enable the offender to be located. The purpose of sharing the information was consistent with the purposes for which information is shared with other agencies on prisoners who will be released, and in particular facilitated the monitoring of compliance of highest-risk offenders with their conditions of release and managed the risk that the offender may commit further offences.
2. Has the code made any difference to your agency's information handling?	Inland Revenue – Policy Manager	Yes – see above – we used the Code as a basis for overriding our legislation.
	Ministry of Education – Senior Solicitor, Legal Services	Yes it has, as without the emergency code, the Ministry would not have been able to disclose the information without breaching Information Privacy Principle 11 as none of the exceptions was applicable.
	Department of Building and Housing - Deputy Chief Executive, Service Delivery	Do not require further extension
	Department of Labour – Manager Organisational Development Programme and Executive Projects	The code gave the Department the ability to respond to requests for information relating to individuals quickly where we would otherwise have to seek approval from individuals or their representatives.  Department staff seconded to the Recover Canterbury business hub also confirmed that the ability to share information quickly has supported the hub's ability to respond to businesses with the best advice on a proposed course of action relating to their specific requests or needs.
	The Treasury - Senior Analyst	No
	Housing New Zealand Corporation – Privacy Officer	Except for the situation set out in 1 above, the normal information handling practices of the Corporation remain unchanged.
	MSD – Chief Legal Advisor and Legal Services, Privacy Team	Yes, in the situations described above, without the code this information sharing may not have been possible.
	Christchurch Recovery Department of Corrections – General Manager and Planning Manager	There have been no changes to collection of information on offenders or prisoners. The disclosure of information is outlined above.
3. Do you have any ongoing need for the code in its activities?	Inland Revenue – Policy Manager,	No
	Ministry of Education – Senior Solicitor, Legal Services	Yes, the Ministry does have an ongoing need for the code. We are continuing to liaise with organisations such as private insurers, Public Trust, NZQA, King's Education Ltd, and Immigration NZ about individual cases. Many of the likely claims for student fee and/or accommodation refunds and for

Question	Organisation / Contact	Answer
		<p>compassionate travel grants have yet to be lodged. They require significant cooperation and coordination amongst the above mentioned organisations with personal information involved.</p> <p>Some of the payments will have to be accrued for the next financial year, and we'd like this special Code to last until the end of this year, if possible.</p> <p>The Ministry is also continuing to provide information to the Red Cross and Civil Defence on enrolment of Christchurch students.</p>
	Department of Building and Housing - Deputy Chief Executive, Service Delivery	Do not require further extension
	Department of Labour – Manager Organisational Development Programme and Executive Projects	<p>The Department of Labour anticipates that there may be a need for ongoing provision of the code to support the activities of the business recovery hub described above. The hub is led by the Ministry of Social Development.</p> <p>The removal of the code may constrain the ability of the hub to provide advice to businesses in the timeliest manner given that the code's removal would diminish the ability to share information as quickly.</p> <p>Beyond the work of the hub, there is no ongoing need for the code to support the Department's staff in Canterbury to deliver core immigration, labour inspectorate, health and safety and employment relations services. These services can continue to be provided within the normal provisions of the Privacy Act and Official Information Act.</p>
	The Treasury - Senior Analyst	No
	MSD – Chief Legal Advisor and Legal Services, Privacy Team	<p>It is likely there are certain uses for the Code which are only being realised now that some time has passed since the earthquake.</p> <p>Because of the nature of MSD's role (e.g. administering benefits and allowances) we are often the government agency that holds the most current contact details for individuals. As the needs of individuals in relation to repatriation, health, financial services etc are identified over the coming months; the code may be required for us to assist other agencies in contacting individuals to provide such services. For example, we are aware of the following issues for other agencies in Christchurch:</p> <ul style="list-style-type: none"> <li>• Children who have not been re-enrolled in school since the earthquake. We understand that the Ministry of Education may wish to locate these children and their parents. It may become necessary for MSD to provide MOE with current contact details for the families in our systems in order for MOE to contact those families and ensure</li> </ul>

Question	Organisation / Contact	Answer
		<p>their educational needs are being met.</p> <ul style="list-style-type: none"> <li>• Elderly persons who use medical alarms. Many residential care facilities in Christchurch were damaged or destroyed in the earthquake and so their residents have moved elsewhere. We have recently been contacted by St Johns as they may need to contact some of their medical alarm users, many of whom are receiving a disability allowance.</li> <li>• Ongoing response by Housing New Zealand. It is not clear what services will be required once HNZ have completed their assessment as to which homes are considered uninhabitable and which homes can be repaired (and the timescale for this becomes clear) or need to be demolished (and the timescale for this becomes clear – some homes may currently be habitable but must be demolished or moved for land remediation work to occur). Once this determination has been made, additional information sharing reliant on the Code may be necessary.</li> </ul> <p>MSD and IR are also looking at potential ways of working together more closely to enhance service delivery in Christchurch. Part of the work stream may relate to providing assistance to quake vulnerable clients in the immediate future and the code may be the means by which this can be achieved.</p> <p>It is also possible that information sharing under the code may be required in relation to MSD's Earthquake Employment Subsidy (ESS) (for example with MED and Statistics NZ and possibly ACC in relation to Job Loss Cover) if existing information sharing agreements do not allow for it.</p> <p>These examples highlight the fact that our use of the code is likely to continue as a responding agency to requests for information.</p>
	Housing New Zealand Corporation – Privacy Officer	No
	Christchurch Recovery Department of Corrections - General Manager Planning Manager	No. All community-based high-risk offenders have been located or warrants actioned for breaching conditions of their sentence.
4. Have you identified any problems with the code?	Inland Revenue – Policy Manager	None that you can deal with – our secrecy rules apply to all taxpayers, natural persons and others, whereas, as I understand it, the Privacy Commission only deals with natural Individuals.
	Ministry of Education – Senior Solicitor, Legal Services	No problems were identified.
	Department of Building and Housing - Deputy Chief	Do not require further extension

Question	Organisation / Contact	Answer
	Executive, Service Delivery	
	Department of Labour – Manager Organisational Development Programme and Executive Projects	No problems have been identified through the Department of Labour's experience and usage of the code.
	The Treasury - Senior Analyst	N/A
	Housing New Zealand Corporation – Privacy Officer	No
	MSD – Chief Legal Advisor and Legal Services, Privacy Team	Not to date. The code has been helpful in facilitating timely provision of information to assist with delivering services to those likely to be the most in need.
	Christchurch Recovery Department of Corrections – General Manager and Planning Manager	No problems with the code have been identified.
5. Looking to the future, do you think it would be useful to your agency for the code to be continued beyond 25 May 2011?	Inland Revenue – Policy Manager,	From our perspective, no.
	Ministry of Education – Senior Solicitor, Legal Services	Yes, please see response to question 3.
	Department of Building and Housing - Deputy Chief Executive, Service Delivery	Do not require further extension
	Department of Labour – Manager Organisational Development Programme and Executive Projects	The Department of Labour can deliver its core business within the provisions of the Privacy Act and Official Information Act.  As referenced above, it is anticipated that extending the code may however be beneficial in support of the Recover Canterbury business hub's work.
	The Treasury - Senior Analyst	No
	Housing New Zealand Corporation – Privacy Officer	Not at this stage. Our continued involvement in the recovery effort and the sharing of information with other agencies involved is continuing on the basis of a person's written consent to the Corporation to share information with these other agencies (normal disclosure practice).
	MSD – Chief Legal Advisor and Legal Services, Privacy Team	Yes. See the response to Question 3 above. While there is a continuing need to agencies to assess and respond to those affected by the Christchurch earthquake, it is likely that further information sharing using the code will be required.
	Christchurch Recovery Department of Corrections and Planning Manager	Not applicable.
Further information?	Inland Revenue – Policy Manager	Nothing further not discussed above.
	Department of Building and Housing - Deputy Chief Executive, Service Delivery	Do not require further extension
	Housing New Zealand Corporation – Privacy Officer	The sharing of information was an issue that arose in the wake of the first earthquake. The Privacy Commissioner's swift action in preparing and issuing the code in response to

Question	Organisation / Contact	Answer
		the second earthquake was of immediate assistance and gave all agencies the certainty that sharing of information during this time (provided they met the quite broad test set out in the code) was not an interference with an individual's privacy.



## Appendix 1

### QUESTIONNAIRE REGARDING EXPIRY OF CHRISTCHURCH EARTHQUAKE (INFORMATION SHARING) CODE 2011 (TEMPORARY)

The [Christchurch Earthquake \(Information Sharing\) Code 2011 \(Temporary\)](#) was issued on 24 February and is due to expire on 24 May 2011. The Office of the Privacy Commissioner invites views from a selection of people on whether the code should be continued beyond its scheduled expiry date.

#### Background and timing

The Privacy Commissioner issued the code within a day of the declaration of a state of national emergency in reliance upon section 52 of the Privacy Act 1993. That section allows the Commissioner to immediately issue or amend a code where it would be impracticable to follow the usual public notification and submission process and there is a need to issue the code or amendment urgently. The reliance upon section 52 powers also allowed the Commissioner to drop the usual 28 day period before commencement.

A code issued under section 48 must be identified as temporary and cannot continue for more than 12 months. The Commissioner initially issued the code to expire on 24 May 2011, three months after issue, or “on the date on which the emergency declaration terminates, whichever is the earlier”. In early March, the Commissioner issued an amendment to provide that the code would expire on a fixed date, 24 May 2011.

#### Considerations for Privacy Commissioner concerning expiry or continuation of code

The Privacy Commissioner was of the opinion that the code of practice was necessary at the start of the state of national emergency. At that point, lives were at risk, rescues were being undertaken and it was desirable to provide additional certainty and discretion in the sharing of personal information supporting the government and local government response to the emergency. The Commissioner sees no long term or permanent need for a code. She considers the Privacy Act provides all the necessary authority or discretion for the collection or disclosure of personal information that might be necessary.

However, between the start of the disaster response, and the long term point, lies a middle phase of post-rescue activity. That recovery phase will continue beyond the three month life of the code and the Commissioner is faced with the question of whether there is any continuing need for a code either in its current or an amended form. Responses to this questionnaire will inform any decision by the Commissioner to let the code lapse, to extend its life or to amend it.

The Commissioner’s tentative view is that the code should be allowed to lapse on 25 May 2011 unless she identifies an ongoing need for it.

It will not be possible to extend or replace the existing code prior to its expiry using the normal processes for issue or amendment which would require public notification, a period for submissions and a 28 day delay. Accordingly, if the Commissioner wishes to continue the code, she will once again

need to use the urgency powers set out in section 52. At most, that would allow the Commissioner to continue the code for a further 9 months as there is a 12 month maximum duration for a temporary code. However, the Commissioner's tentative view is that it would be inappropriate to continue the code for that long. If minded to extend the code, the Commissioner might be more likely to consider a period of between one and three months. If there is a need for a code having a much longer life, the Commissioner would contemplate using the full public notification and submission processes to propose a code to replace the temporary code. If this course were to be followed, the temporary code would be continued in the interim.

If there appears to be a need for the code to continue beyond a relatively short period, the Commissioner may be likely to consider narrowing the code's scope so that it remains proportionate to any ongoing special needs.

Accordingly, in responding to the questionnaire, agencies should keep in mind that the temporary code should not be seen as a long term expedient. The Commissioner is especially interested in views on short-term and medium-term issues.

## Questionnaire

### Details of respondent

Please provide details of the person and organisation completing the questionnaire.

Please return any answers by **6 May 2011** to [lesley.cairns@privacy.org.nz](mailto:lesley.cairns@privacy.org.nz).

### Questions

1. **Has your organisation used the code of practice as a legal basis for the collection, use or disclosure of personal information?**

If so, please provide brief details.

2. **Has the code made any difference to your agency's information handling?**

If so, please provide brief details. For example, have there been instances of collection or disclosure of information that are permitted under the code that would not have been permissible under the Privacy Act normally? Another example might be where the code assisted your agency to obtain necessary cooperation from other agencies.

**3. Do you have any ongoing need for the code in its activities?**

If so, please provide brief details.

**4. Have you identified any problems with the code?**

If so, please briefly explain the problem. Suggestions for improvement to the code are welcomed.

**5. Looking to the future, do you think it would be useful to your agency for the code to be continued beyond 25 May 2011?**

If so, please briefly explain the ongoing need that you perceive and explain how long you think this need might continue.

Please feel free to share any further information regarding privacy issues in the wake of the emergency or in relation to the operation of the Privacy Act or the code.

*If you have any questions regarding this questionnaire, please contact Blair Stewart, Assistant Commissioner (Auckland), Office of the Privacy Commissioner, telephone 09 302 654.*

## Appendix 2

### List of Agencies attending Canterbury Earthquake ODESC Meetings

Reserve Bank of New Zealand  
Department of Building and Housing  
Ministry of Health  
Department of Internal Affairs  
Department of the Prime Minister and Cabinet  
New Zealand Police  
Ministry of Foreign Affairs and Trade  
Ministry of Economic Development  
Ministry of Social Development  
Department of Corrections  
Crown Law Office  
Ministry of Civil Defence and Emergency Management  
Land Information New Zealand  
Department of Conservation  
New Zealand Fire Service  
Earthquake Commission  
New Zealand Defence Force  
State Services Commission  
Government Communications Security Bureau  
Ministry of Education  
Ministry of Agriculture and Forestry  
Ministry of Transport  
The Treasury  
New Zealand Customs Service  
Inland Revenue Department  
Housing New Zealand Corporation