Privacy Commissioner
Te Mana Matapono Matatapu

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Hon Kris Faafoi
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

FOUR MONTHLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD 1 MARCH 2021 TO 30 JUNE 2021

Highlights

In this reporting period we placed considerable focus on our responses to mandatory privacy breach notifications. We began our shift from a purely educative and supportive approach with agencies to signalling the use of our compliance powers where warranted. Multiple warning letters have been sent and compliance notices may be prepared in the next reporting period if compliance is not achieved. Appendix A provides you with information on serious privacy breaches notified to us (for the period December 2020 to June 2021).

The Office continued to progress its three strategic priorities relating to the rental sector, improving the performance of public sector agencies in relation to access requests and embedding Te Ao Māori perspectives into our work. An accomplishment has been our engagement with key stakeholders in the rental sector and we expect to issue guidance to landlords and tenants during August.

We have also devoted considerable resource to providing privacy advice on a range of COVID-19 issues. These include the possibility of mandatory record-keeping for individuals or businesses and information sharing related to the vaccination roll-out.

Privacy Week was held in May and included a half day privacy forum and presentations to a range of public, private and not-for-profit sectors.

This reporting period also marks the completion of our recruitment to fill our new functions under the Privacy Act 2020. We have now filled all positions in our Compliance and Enforcement team and appointed a Principal Adviser to help us embed Te Ao Māori perspectives into our work.

Mandatory privacy breach notifications under the Privacy Act

Following the commencement of the Privacy Act on 1 December 2020, agencies have been required to notify the Privacy Commissioner as soon as practicable after they become aware that a privacy breach that is or is likely to cause serious harm has occurred.

For the first six months we deliberately took an educative and advisory approach with agencies regarding notifiable privacy breaches for example, we devoted significant resource to high profile privacy breaches such as the Waikato District Health Board ransomware attack and the Reserve Bank security breach caused by an unpatched file sharing application.

Our Compliance and Enforcement team has also been undertaking follow-up activities with agencies to identify and address the underlying causes of notified breaches. One such activity is emphasising the importance of informing and supporting individuals whose personal information is or may be disclosed.

During Privacy Week (10 – 14 May) we made it clear that the Office will begin using its compliance powers to strengthen adherence with the breach notification requirements. The Privacy Commissioner has recently provided additional clarity by stating that we would be interpreting the "as soon as practicable" notification requirement as meaning 72 hours unless there were extenuating circumstances. Six warning letters were sent in June, five to the public sector and one to the private sector. Our key messages around timeliness and the use of compliance powers were picked up and publicised widely by the media, key law firms, privacy consultancies, the Government Chief Privacy Officer and Crown Law.

Our long-term objective is to reduce the number of notifiable privacy breaches that may cause serious harm. While it is too early to judge our impact, in June we saw the number of breaches reported by the public sector eclipsing that of the private sector. June also had the most reported breaches and the most reported serious harm breaches for any month since the privacy breach notification requirements came into force.

The Compliance and Enforcement team will also continue to work with key partners to provide support and gain assurance from agencies that key IT security risks are being appropriately anticipated and managed. These partners include the Computer Emergency Response Team (CERT NZ), the National Cyber Security Centre, the Government Chief Privacy Officer and the Government Chief Digital Officer.

Strategic priorities of the Office

The three strategic priorities the Office focused on during the reporting period were:

1. Rental sector – collection and use of personal information.
2. Embedding Te Ao Māori perspectives into our work.
3. Improving the performance of public sector agencies in relation to access requests.

Inquiring into rental sector privacy practices

This priority is seeking to achieve a balance between landlords and property managers having sufficient personal information to select suitable tenants and ensuring that information practices are not overly intrusive for tenants.

During this reporting period we engaged with key stakeholders to better understand the rental sector in detail. A focus has been on new and developing business models, such as the use of third-party information platforms and aggregated data sets.

Key stakeholders were provided with a policy discussion paper and their feedback has helped us develop refreshed guidance for landlords and tenants – a first for tenants. The revised guidance is currently being consulted with these key stakeholders and will be issued during - August. The guidance will be supported by a concerted communications push and the use of our regulatory powers to improve rental sector compliance with the Privacy Act.

During Privacy Week we also facilitated a successful rental sector panel discussion focussed on how to balance the needs of renters and landlords and the implications of the growing role of the property manager and third-party information providers.

Embedding te Ao Māori perspectives in our work

The Privacy Act 2020 requires the Commissioner to take account of cultural perspectives on privacy when exercising their functions and powers. We are prioritising building our capability to take a te Ao Māori perspective on privacy, this will require a multi-year effort to build our capability and connections.

We have appointed a Principal Adviser Māori to help us define and deliver the work required across the Office. Weekly te Reo Māori lessons are available to all of our staff and we have recently had an all staff day focussed on this priority area, included hearing from Hurimoana Dennis about how Manaaki Tāngata E Rua manages the interface between privacy and supporting people with complex needs into sustainable housing.

We continue to build a relationship with Te Puea Marae to support them in addressing any privacy challenges they face, we have met with the Oranga Tamariki Ministerial Advisory Board to support their work on how privacy and te Ao Māori apply in relation to Oranga Tamariki's work, and we continue to participate in Statistics New Zealand's Māori data governance work.

Improving public sector compliance with access requests

The Privacy Act provides individuals with a right to access their personal information and issues related to access requests consistently comprise at least 60 percent of our complaints, with 65 percent of these relating to public agencies[1].

We have been working with the Public Service Commission/Te Kawa Mataaho and the Government Chief Privacy Officer to build a comprehensive picture of the performance of public sector agencies when dealing with access requests. We have met with key agencies to better understand their experience with access issues and identified underperforming agencies that may require additional support. We will continue to work with the Public Service Commission and the Government Chief Privacy Officer to influence agencies as they are better placed to lead this drive for better performance.

[1] For example, in calendar year 2020 a total of 443 out of 615 complaints contained an access component (72%). Of these access related complaints, 289 related to public agencies (65%).

Information on other activities of our Office

Communications and engagement activities

Our annual Privacy Week was held in the week beginning 10 May. The week included:

- A half-day Privacy Forum where we provided an update on developments with the implementation of the Privacy Act and sessions on privacy in the rental sector, COVID-19 and privacy, and the intersection between privacy and Te Ao Māori.
- A 'Privacy Live' session in Auckland on the new Privacy Act and answering questions from agencies about privacy in practice.
- The publication of our first insights piece on key themes from the first five months of mandatory privacy breach notification.
- Presentations to audiences across the public, private and not-for-profit sectors by the Commissioner and other OPC staff.

Policy related activities

As noted above, our policy function has continued to prioritise the response to COVID-19, working closely with the Ministry of Health and other key partners to provide advice on critical privacy issues.

We have also worked closely with the Department of Internal Affairs on a diverse range of initiatives. These include reviewing Approved Information Sharing Agreements being developed under the Privacy Act, commenting on the policy concerning the regulation of online gambling and the use of biometric information (including facial recognition).

In March, the Minister for the Digital Economy and Communications sought the Privacy Commissioner's view on developing a Privacy Act Code of Practice for facial recognition technology (following a December 2020 Law Foundation recommendation). While we do not consider a Code of Practice to be appropriate at this time, we are developing a position paper to clearly set out how we consider the principles of the Privacy Act apply to the use of biometrics. OPC has also joined the refreshed Cross-Government Biometrics Group as an observer.

During the reporting period we made submissions to Select Committees on the following Bills:

- Drug and Substance Checking Legislation Bill (No 2) 2021
- Counter-Terrorism Legislation Bill
- International Treaty Examination of the Council of Europe Convention on Cybercrime
- Land Transport (Drug Driving) Amendment Bill
- Films, Videos, and Publications Classification (Urgent Interim Classification of Publications and Prevention of Online Harm) Amendment Bill, and
- Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill.

Complaints and dispute resolution

We continue to focus on the triaging and early resolution of complaints and assisting parties to resolve their disputes at a low level. Our supporting initiatives include:

- Updating our website to help agencies and individuals find advice on resolving disputes.
- Developing a tool to assist individuals in directing their complaint to the privacy officer or the appropriate complaints team at the agency.
- Employing a complaints assessor, a new role that will focus on triaging complaints.

Changes to our new complaint processes in March have seen an increase in the actioning and closing of complaints received over April to June (now at 33 percent compared to 26 percent over the same period last year). Our settlement of complaints rate has remained steady at 64 percent.

	Actual as at 30 June	**Expectation as at 30 June[1]**
Number of complaints received	560	800
Number of complaints closed by settlement	64%	40%

Compliance and enforcement

The Compliance and Enforcement team is now fully staffed with a Manager and four staff. The increase in resourcing has seen a lift in compliance and enforcement activity, including that related to privacy breach notifications (discussed above).

The Compliance and Enforcement team is continuing to work on the joint Inquiry with the Independent Police Conduct Authority regarding the Police practise of photographing members of the public. This Inquiry is due for completion in the next reporting period.

International activities

We have maintained an active presence in international privacy discussions. Activities undertaken in this reporting period include:

- Regular engagement with the OECD drafting group for principles related to government access to personal data held by the private sector.
- Contributing to the success of the 55th Asia Pacific Privacy Authorities Forum 16-18 June 2021, including a presentation by the Commissioner on the Office's work in the rental sector and an update on biometrics.
- Signing a Memorandum of Understanding with the United Kingdom's Information Commissioner's Office establishing a framework that sets out broad principles of

[1] As per the Statement of Performance Expectations 1 July 2020 to 30 June 2021

collaboration and the legal framework governing the sharing of relevant information and intelligence (excluding the sharing of personal information).

The Privacy Commissioner's 13th periodic update report on developments in Data Protection Law covering the period July to December 2020 was prepared for the European Commission (and sent on 9 July). This report confirmed that no significant changes in the level of data protection had occurred in New Zealand over this six month period, and noted one minor change to Schedule 4 of the Privacy Act as a consequence of the Land Transport (NZTA) Legislation Amendment Act 2020.

We continued to support Ministry of Justice officials with the European Commission's review of New Zealand's adequacy status under the General Data Protection Regulation.

Financial report

We have reached full and final settlement with the landlord of our previous premises under the make good provisions of the lease.

The end of year financials has a higher than budgeted surplus. This is due principally to the staggered period for recruitment of new staff positions. With the near completion of the recruitment process that trend of higher surplus at year end will not continue.

Further financial information and performance against our Statements of Performance Expectations are appended to this report.

Yours sincerely

John Edwards
Privacy Commissioner

Encl: Appendix A: Information on serious breach notifications (December 2020 to June 2021)
Appendix B: Financials for period ending 30 June 2021
Appendix C: Performance against Statement of Performance Expectations - Year to Date

Appendix A: Information on serious breach notifications (December 2020 to June 2021)