



Privacy Commissioner
Te Mana Matapono Matatapu

HEALTH INFORMATION PRIVACY CODE 1994

Fact Sheets

The fact sheets especially written to be read with the Health Code have the prefix 'HC'.

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FACT SHEET NO. 1
A Guide to the Privacy Act 1993

THE PRIVACY ACT 1993

Applies to every person or organisation in New Zealand in respect of personal information held in any capacity other than for the purposes of their personal, family or household affairs

The Act uses the term "agency" to describe individuals and organisations that are covered by the information privacy principles (IPPs). The only individuals and organisations that are excluded from this definition are listed in section 2 of the Privacy Act. For example the Governor-General, Members of Parliament, Ombudsmen and Courts are excluded from the definition of agency, and therefore exempt from the Act. The news media, in relation to their news activities, are also expressly excluded.

Controls how agencies collect, use, disclose, store and give access to personal information

At the core of the Privacy Act are the IPPs (see Fact Sheets 3-3.5) which set out rules, and exceptions to those rules, under the following headings:

- Principle 1 - Purpose of collection of personal information.
- Principle 2 - Source of personal information
- Principle 3 - Collection of information from subject
- Principle 4 - Manner of collection of personal information
- Principle 5 - Storage and Security of personal information
- Principle 6 - Access to personal information
- Principle 7 - Correction of personal information
- Principle 8 - Accuracy, etc., of personal information to be checked before use.

- Principle 9 - Agency not to keep personal information for longer than necessary
- Principle 10 - Limits on use of personal information
- Principle 11 - Limits on disclosure of personal information
- Principle 12 - Unique identifiers

Provides for the appointment of a Privacy Commissioner

The Act provides for the appointment of a Privacy Commissioner by the Governor-General on the recommendation of the Minister of Justice. The Office of the Privacy Commissioner is an independent Crown entity, with the right to report to the Prime Minister on matters affecting the privacy of the individual. The Commissioner has a variety of functions including monitoring legislation, making statements on a range of privacy issues, issuing codes of practice and investigating complaints. Bruce Slane is the first Privacy Commissioner (see Fact Sheet 2).

Enables codes of practice to be issued covering specific agencies and activities

The Privacy Commissioner may issue codes of practice which modify the IPPs to take into account the special characteristics of specific industries or agencies or types of personal information. The provisions of a code may be more stringent or less stringent than the IPPs. A code of practice will be issued only after a process of public consultation has been undertaken, unless there is an urgent need for a code which precludes consultation (see Fact Sheet 8).

Empowers the Privacy Commissioner to investigate complaints of interference with privacy

Any person may make a complaint to the

Commissioner that an action by an agency is an "interference with privacy". An interference with the privacy of an individual initially involves a breach of an IPP (or of the procedures relating to requests for access to or correction of information - see Fact Sheets 3-3.5), a breach of a code of practice, or a breach of the provisions relating to information matching.

Usually, the Commissioner will require that the matter be raised first with the agency concerned before investigating the complaint. The Commissioner will try to settle complaints by conciliation and mediation. If no settlement can be achieved, the Commissioner may, in some cases, refer the complaint to the Director of Human Rights Proceedings. The Director of Human Rights Proceedings will decide whether to take the matter to the Human Rights Review Tribunal. The Tribunal may make an order prohibiting a repetition of the action complained of or requiring the interference to be put right. It can also require damages or compensation to be paid (see Fact Sheet 6).

Places some controls on the administration of public registers

The Public Register Privacy Principles (PRPPs) apply to "public registers". These are registers set up by law such as the electoral roll, the marriage register and the land titles register. Although they do not override the Acts establishing the public

registers, the PRPPs seek to control the ways that personal information may be obtained from these registers. The PRPPs also prohibit information from one public register being combined with information from another public register for the purpose of selling the combined information. The Commissioner may issue a code of practice to cover a public register.

Authorises some government agencies to undertake information matching programmes

Certain agencies, such as the Ministry of Social Development and the New Zealand Customs Service, are permitted to share limited amounts of information about certain individuals, usually clients of the Ministry of Social Development. Only the agencies listed in the Act as "specified agencies" can engage in information matching programmes.

These programmes must comply with the restrictions in the Privacy Act and with information matching rules set out in the Act. Agreements between agencies to allow information matching must be in writing, and a copy must be given to the Privacy Commissioner. The Commissioner has to report on the operation of these agreements every year - and more often if she wishes. Her reports are tabled in Parliament by the Minister of Justice.

This fact sheet is designed to explain in general terms the relevant provisions of the Privacy Act 1993. It is not a detailed legal analysis. If you require more specific information, you should contact this office or seek legal advice.

We welcome any comments on this fact sheet. If you think that it should include any additional information, or if you have any other comments, please let us know. *This fact sheet is revised from time to time. Contact this office to see whether you have an up-to-date copy.*

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FACT SHEET NO. 2

The Privacy Commissioner

What is the status of the Commissioner?

The Office of the Commissioner is a corporate body with the same legal powers as an individual. It is an independent "Crown entity". The law under which the Commissioner operates is the Privacy Act 1993. The Commissioner is appointed by the Governor-General, on the recommendation of the Minister of Justice.

What are the functions and responsibilities of the Commissioner?

The Privacy Commissioner has a wide number of functions. These include:

Complaints

You may complain to the Commissioner about any action that is or appears to be an interference with your privacy. An interference with the privacy of an individual initially involves a breach of an information privacy principle (or of the procedures relating to requests for access to or correction of information - see Fact Sheets 3-3.5), a breach of a code of practice (see below), or a breach of the provisions relating to information matching (see below).

The Commissioner may investigate any such action. If she is satisfied after investigation that an interference with privacy has occurred, she may then also act as a mediator to try to achieve a settlement. In certain cases, if a settlement is not possible, the Commissioner may refer the matter to the Director of Human Rights Proceedings. The Director of Human Rights Proceedings can bring a case before the Human Rights Review Tribunal. The Tribunal has powers to grant enforcement orders and award damages and compensation (see Fact Sheet 6).

Codes of Practice

The Privacy Act sets out 12 information privacy principles (IPPs) which govern the collection, use, storage and disclosure of personal information held

by agencies. The Commissioner has powers to issue codes of practice. A code will replace the IPPs for particular sectors or for particular types of personal information. Codes of practice will have provisions which may be more stringent or less stringent than the IPPs. These provisions will take into account the special nature of the sector, or particular types of personal information to which they apply (see Fact Sheet 8).

Public Role

The Commissioner invites representations from members of the public on any matter affecting the privacy of the individual. The Commissioner may also make public statements on such matters. This enables her to highlight any public concerns and to indicate her views at any time. The Commissioner can also consult and co-operate with other people and organisations concerned with the privacy of the individual.

New Legislation

The Commissioner is to examine any proposed legislation or any proposed policy of the government which may affect the privacy of the individual. The Commissioner reports to the Minister of Justice.

Information Matching

The Privacy Act permits and controls specified "information matching programmes". These programmes involve the sharing of information for the purpose of assessing eligibility for a benefit or detecting whether an overpayment of a benefit has taken place. Most programmes involve public sector agencies. Information matching programmes are reported on annually and reviewed by the Commissioner at regular intervals. A new information matching programme requires special legislation before it can be set up. Information matching programmes have to comply with strict guidelines. If the programme does not comply, a

complaint can be made to the Commissioner (see Fact Sheet 5).

Inquiries

The Commissioner has the power to inquire generally into any matter, including any law, practice or procedure in the private or public sector, or any technical development if it appears to her that the privacy of the individual is being infringed or is likely to be infringed.

Public Registers

The Privacy Act sets out four public register privacy principles (PRPPs). The Act does not change any of the existing statutory authorities for public registers. In the case of a breach of the PRPPs, the Commissioner can make recommendations to the relevant Minister or to the chief administrative officer of the agency concerned. The Privacy Commissioner may issue codes of practice covering public registers. The provisions of such codes may be more or less stringent than the PRPPs themselves. The Commissioner monitors compliance with the PRPPs. She has a number of benchmarks including the Council of Europe Recommendations on

Communications to Third Parties of Personal Data Held by Public Bodies (see Fact Sheet 4).

Publicity and Education

The Commissioner has a function of promoting, by education and publicity, an understanding and acceptance of the IPPs and their objectives.

In carrying out her functions, the Commissioner has to:

- have regard for the protection of important human rights and social interests that compete with privacy, including the desirability of a free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way;
- have regard to the IPPs and the PRPPs;
- take account of international obligations accepted by New Zealand, including those concerning the international technology of communications;
- consider any developing general international guidelines relevant to the protection of individual privacy.

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FACT SHEET NO. HC 3.1
Health Information Privacy Rules 1-4

COLLECTING HEALTH INFORMATION

How do the health information privacy rules regulate the collection of health information?

Health information privacy rules 1-4 limit or restrict the collection of health information by health agencies. The term "health agency" is given a wide meaning in the Health Information Privacy Code 1994 - see clauses 3 and 4(2) of the code for the full definition of this term.

Health information privacy rules 1-4 govern the *reason* for collecting health information, *where* health information may be collected from, and *how* it is collected.

What health information is an agency allowed to collect?

Health information privacy rule 1 says:

Health information shall not be collected by any health agency unless -

- (a) The information is collected for a lawful purpose connected with a function or activity of the health agency; and*
- (b) The collection of the information is necessary for that purpose.*

Where can an agency collect health information from?

Health information privacy rule 2 says:

Where a health agency collects health information, the health agency must collect the information directly from the individual concerned.

There are exceptions to this rule. For example, a health agency does not have to collect information directly from the individual if he or she has agreed that it can be collected from somewhere else. In

addition, a health agency does not have to collect the information directly from the person if this would:

- undermine the reason for collecting it in the first place;
- prejudice the interest of the individual concerned;
- prejudice the safety of any person.

For the full list of exceptions see rule 2.

It will not be a breach of the rules if the collection complained of is authorised by another law. In addition, the Privacy Commissioner may also give special authority for the health agency to collect the information from another source, if this is in the public interest.

As with all exceptions to the health information privacy rules, if there is a dispute, it is up to the agency to prove that the exception rather than the rule applies.

What must a health agency tell an individual when it is collecting personal information?

Health information privacy rule 3 says:

Where a health agency collects health information directly from the individual concerned, or from the representative of that individual, the health agency must take such steps as are, in the circumstances, reasonable to ensure that the individual concerned is aware of -

- (a) the fact that the information is being collected;*
- (b) the purpose for which the information is being collected;*
- (c) the intended recipients of the information;*

- (d) *the name and address of-*
 - (i) *the health agency that is collecting the information; and*
 - (ii) *the agency that will hold the information;*
- (e) *whether or not the supply of the information is voluntary or mandatory and if mandatory the particular law under which it is required;*
- (f) *the consequences (if any) for that individual if all or any part of the requested information is not provided;*
- (g) *the rights of access to, and correction of, health information provided by rules 6 and 7.*

These things should be explained before the health information is collected or as soon as practicable after it is collected. However, if the health agency has already done so in relation to similar information on a recent occasion, it does not have to do so again. As with health information privacy rule 2, there are several other exceptions to this rule. It is not necessary for a health agency to comply with rule 2 if the agency believes, on reasonable grounds:

- that non-compliance is authorised by the individual concerned;
- that compliance would:
 - (i) prejudice the interests of the individual concerned;
 - (ii) prejudice the purposes of collection;
- that non-compliance is necessary to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences;
- that compliance is not reasonably practicable in the circumstances of the particular case.

An action is also not a breach of a rule if authorised or required by law.

Do any other health information privacy rules restrict the collection of health information?

Health information privacy rule 4 says:

Health information must not be collected by an agency -

- (a) *by unlawful means; or*
- (b) *by means that, in the circumstances of the case, -*
 - (i) *are unfair; or*
 - (ii) *intrude to an unreasonable extent upon the personal affairs of the individual concerned.*

What if a health agency breaches one of the health information privacy rules in its collection of health information?

If you think that a health agency has breached one of the health information privacy rules in collecting information, you should get in touch with that health agency, explaining your concern and asking for the matter to be put right. If the health agency refuses to do anything or does not reply, you may complain to the Privacy Commissioner.

The Commissioner may find that there has been an "interference with the privacy" of an individual and commence an investigation (see Fact Sheet HC 6).

When did the Health Information Privacy Code 1994 come into effect?

The code commenced on 30 July 1994 and replaced a temporary code issued in 1993. Rules 1-4 only cover information collected from 30 July 1994 onwards. Complaints may be made about events in the year before 30 July 1994 under the information privacy principles (1 July 1993 – 9 August 1993) or the temporary code (10 August 1993 – 29 July 1994).

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FACT SHEET NO. HC 3.2
Health Information Privacy Rule 5

STORAGE AND SECURITY

What does the Health Information Privacy Code say about storage and security of health information?

Health information privacy rule 5 says:

A health agency that holds health information

must ensure -

(a) that the information is protected, by such security safeguards as it is reasonable in

the circumstances to take, against -

(i) loss;

(ii) access, use, modification, or disclosure, except with the authority of the agency that holds the information;

and

(iii) other misuse;

(b) that if it is necessary for the information

to be given to a person in connection of

the provision of a service to the health agency, including any storing, processing or destruction of the information, everything reasonably within the power of the health agency is done to prevent unauthorised disclosure of the information; and

(c) that, where a document containing health information is not to be kept, the document is disposed of in a manner that preserves the privacy of the individual.

Does rule 5 apply to information collected before the Health Information Privacy Code came into effect?

Health agencies are required to store and ensure the security of health information that they now hold even if they originally obtained it some time ago. Rule 5 applies to all health information held by an agency, whenever the information was obtained.

What happens if any health agency breaches rule 5?

The Commissioner may find that there has been an “interference with the privacy of an individual” and commence an investigation.

Does rule 5 apply to information held by a New Zealand health agency overseas?

Yes. Rule 5 also applies to information that is held outside New Zealand by an agency, where the information has been transferred out of New Zealand by that agency or any other agencies. However, a health agency will not be in breach of the rule in respect of any action it is required to take under the laws of the country where the information is held.

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FACT SHEET NO. HC 3.3
Health Information Privacy Rules 6 and 7

ACCESS TO AND CORRECTION OF HEALTH INFORMATION

What rights of access do individuals have to health information?

provision of any health service or disability service to that individual.

Health information privacy rule 6 says:

Where a health agency holds health information in such a way that it can be readily retrieved, the individual concerned is entitled:

- (a) to obtain from the agency confirmation of whether or not the agency holds such health information; and*
- (b) to have access to that information.*

What information are you entitled to request?

You are entitled to request your “health information”. The code defines health information as meaning information about an identifiable individual that is -

- (a) information about the health of that individual, including his or her medical history;*
- (b) information about any disabilities that individual has, or has had; or*
- (c) information about any health services or disability services that are being provided, or have been provided, to that individual;*
- (d) information provided by that individual in connection with the donation, by that individual, of any body part or any bodily substance of that individual or derived from the testing or examination of any body part, or any bodily substance of that individual; or*
- (e) information about that individual which is collected before or in the course of, and incidental to, the*

How do you make a request for health information?

You may ask in person, or write to the agency that holds the information. There is no special form you have to use although, for convenience, some health agencies may supply a form. It may be better to make your request in writing so that there is a record of it and the agency knows exactly what you want. It is a good idea to give the agency your telephone number so that they can discuss your request with you if there is some problem. The agency may require evidence of your identity.

Who can make requests for health information?

Any person in New Zealand (whether a citizen or not) may make a request for health information held about themselves.

Does the agency have to give the information straight away?

Agencies that receive a request for health information must make a decision about your request as soon as reasonably practicable, and in any case not later than 20 working days after they receive your request.

If you have requested a large quantity of information or if extensive consultation is needed to decide on your request, an agency can extend the 20 working day time limit. The agency should tell you this before the original 20 day period is up. If you feel that the extension period is too long, you can complain to the Privacy Commissioner.

Do you have to pay?

Health agencies are not generally allowed to charge for providing access to personal health information.

Private sector agencies can charge for making available or correcting personal health information where a request for the same information has already been made in the previous 12 months. They may also charge for providing an x-ray, video recording or CT scan film.

Any charge made by a private sector agency must be reasonable and if the cost is likely to exceed \$30 an estimate is to be provided. If you feel that the charge is not reasonable, you may complain to the Privacy Commissioner.

Can a request be refused?

The Privacy Act lists a number of reasons for refusing access to personal information. If the request is refused, in whole or in part, the agency must rely on one of the listed reasons. You are entitled to be told the reason and supporting grounds for the refusal. Some reasons for refusing a request include:

- to avoid prejudice to the maintenance of the law
- to avoid prejudice to the physical or mental health of the person making the request).
- administrative reasons (for example that the information is not readily retrievable, or that the information does not exist or cannot be found).

The full list of reasons for refusing access is contained in sections 27 to 29 of the Act. A copy of these sections is included in the appendix to the Health Information Privacy Code.

In addition, an agency may refuse to give access to information if it is authorised to do so by another law. If there is a dispute about the reasons for refusing the request, it is up to the agency to prove that they apply.

How will access to the information be given?

The information requested may be made available in a number of ways:

- a copy of the document;
- a reasonable opportunity to inspect the document;
- a transcript of the information;
- an excerpt or summary of the contents;

- oral information about the information requested.

The information should be provided in the way you prefer, unless providing the information in that way would:

- impair efficient administration; or
- be contrary to any legal duty of the agency in respect of that document; or
- prejudice one of the interests protected by sections 27-29 of the Act.

Can inaccurate or misleading information be corrected?

Yes. You are entitled to ask an agency to correct information it holds about you. If the agency does not wish to change the information it holds, you can ask the agency to attach a statement setting out your version of the facts (see health information privacy rule 7).

What do I do if an agency refuses my request?

If you are refused access to your health information, or the information is not given in the form you have asked, or the agency refuses to make a correction you have requested, you may:

- ask the agency to reconsider its decision;
- use the agency's complaints procedure;
- make a complaint to the Privacy Commissioner (see Fact Sheet HC 6).

In addition, if you are refused access to personal information held by a public sector agency you may ask the court to rule on the matter.

Health information privacy rules 6 and 7 apply to all health information no matter when it was gathered.

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FACT SHEET NO. HC 3.4
Health Information Privacy Rules 8-11

USE AND DISCLOSURE OF HEALTH INFORMATION

Are there limits on the ways that agencies can use and disclose health information?

Health information privacy rules 8, 9, 10 and 11 each place some restriction on how an agency can use or disclose the personal health information it holds.

A "health agency" can be any person or company or government department that provides health or disability services or that falls within the definition of "health agency" in the Health Information Privacy Code 1994.

Health information privacy rule 8 says:

A health agency that holds health information must not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up-to-date, complete, relevant and not misleading.

Health information privacy rule 9 says:

A health agency that holds health information must not keep that information for longer than is required for the purposes for which the information may lawfully be used.

This rule *does not* require the destruction of documents containing health information which are required for providing further health or disability services to the individual concerned.

If an agency obtained personal health information for one purpose can it then use the information for other purposes ?

In most cases, no. Health information privacy rule 10 says:

A health agency that holds health information that was obtained in connection with one purpose must not use the information for any other purpose ...

There are a number of exceptions. For example, an agency may use personal information for another purpose if that agency believes it is a directly related purpose, that the source of the information was a publicly available document, or that the individual has said the information can be used for the new purpose.

For a full list of exceptions to this rule, refer to rule 10. As with all exceptions to the health information privacy rules, if there is a dispute, it is up to the agency to prove that the exception, rather than the rule, applies.

It will not be a breach of the rules if the action complained of is authorised by another law. In addition, the Privacy Commissioner may also give special authority for an agency to use information for a different purpose, if the proposed use is in the public interest.

Are agencies allowed to disclose personal information to third parties?

Health information privacy rule 11 says:

A health agency that holds health information shall not disclose the information to a person or body or agency ...

Again, there are some exceptions. For example, an agency may disclose health information if it is authorised to do so by another law or it believes that the proposed disclosure is one of the reasons the information was obtained, or is for a directly related purpose. It is up to the agency to prove that the exception, rather than the rule, applies.

What if an agency breaches one of the health information privacy rules in its use or disclosure of health information?

If you think that one of the health information privacy rules has been breached by a health agency in the way it has used or disclosed personal information, you should get in touch with the agency, explain your concern and ask for the matter to be put right. If the agency refuses to do anything,

does not reply, or replies unsatisfactorily, you may complain to the Privacy Commissioner.

When do these health information privacy rules come into effect?

Health information privacy rules 8, 9 and 11 apply to all health information, no matter when it was gathered. Rule 10 applies only to health information obtained from 1 July 1993 onwards.

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FACT SHEET NO. HC 3.5
Health Information Privacy Rules

UNIQUE IDENTIFIERS INCLUDING NHI NUMBERS

What is a "unique identifier"?

Section 2 of the Privacy Act says:

'Unique Identifier' means an identifier -

- (a) *That is assigned to an individual by an agency for the purposes of the operations of the agencies ; and*
- (b) *That uniquely identifies that individual in relation to that agency; - but for the avoidance of doubt, does not include an individual's name used to identify that individual.*

What is an example of a unique identifier?

Examples are a client number used by a bank, an IRD number, a driver's licence number, a passport number, etc. An example in the health sector is the National Health Index (NHI) number or the registration number given to doctors by the Medical Council.

Are there any controls on how unique identifiers can be used?

Yes. Health information privacy rule 12 contains the following safeguards:

Unique Identifiers

- (1) *A health agency must not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable the agency to carry out any one or more of its functions efficiently.*
- (2) *A health agency must not assign to an individual a unique identifier that, to that agency's knowledge, has been assigned to that individual by another agency, unless -*
 - (a) *Those two agencies are associated persons within the*

meaning of section OD7 of the Income Tax Act 1994; or

- (b) *It is permitted by subrule (3) or (4).*
- (3) *[omitted - allows various health agencies to assign NHI numbers.]*
- (4) *[omitted - allows health agencies to assign health professional's registration numbers.]*
- (5) *A health agency that assigns unique identifiers to individuals must take all reasonable steps to ensure that unique identifiers are assigned only to individuals whose identity is clearly established.*
- (6) *A health agency must not require an individual to disclose any unique identifier assigned to that individual unless the disclosure is for one of the purposes in connection with which that unique identifier was assigned or for a purpose that is directly related to one of those purposes.*
- (7) *[omitted]*
- (8) *[omitted]*

Subrules 1-5 of rule 12 apply only to unique identifiers assigned after 30 July 1994. Subrule 6 applies to all unique identifiers whenever they were assigned.

What should you do if you think that an agency has breached rule 12 ?

You should first take the matter up with the agency using their complaints procedure. If you are not satisfied with the outcome you may make a complaint to the Privacy Commissioner (see Fact Sheet HC 6). If you do wish to go to the agency first, you may complain directly to the Privacy Commissioner.

Does the Privacy Commissioner "keep an eye on" events and developments in this area?

Yes, the Commissioner has a specific function to monitor the use of unique identifiers. She can report to the Prime Minister on the results of the monitoring and can recommend taking legislative, administrative or other actions to give protection, or better protection to the privacy of the individual.

Does the Privacy Act control the use of unique identifiers in any other way?

Yes. Rule 2 of the information matching rules set

out in the fourth schedule to the Act states:

Use of Unique Identifiers - Except as provided in any other enactment, unique identifiers shall not be used as part of any authorised information matching programme unless their use is essential to the success of the programme.

Can the Government give everyone a personal number to use in all their dealings with the Government?

No. That is illegal under the Privacy Act.

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FACT SHEET NO. HC 6

Complaints

When can you make a complaint to the Privacy Commissioner?

You can complain to the Privacy Commissioner if you believe there has been an "interference with your privacy". Where the Health Information Privacy Code 1994 applies, an "interference with your privacy" occurs if there has been:

- a breach of the Health Information Privacy Code

and this action

- has caused loss, detriment, damage or injury to you, or may do so, or
- has adversely affected your rights, benefits, privileges, obligations or interests, or may do so, or
- has resulted in significant humiliation, loss of dignity or injury to your feelings, or may do so.

It is also an interference with your privacy, if an agency refuses your request (or breaches the correct procedures) for:

- access to your personal information (rule 6) or,
- correction of your personal information (rule 7),

and there is no proper basis for the decision.

Are there any other grounds for making complaints against health agencies?

If you think that a health agency has breached an information privacy principle in respect of "personal information" which is not "health information", you may also complain to the Privacy Commissioner.

Internal complaints procedures

Most health agencies are required to have their own complaints procedure under both the Health Information Privacy Code and the Health and Disability Commissioner's Code of Health and Disability Services Consumers' Rights.

Where possible, you should contact the agency concerned and ask it to put the matter right. You should also state what you want the agency to do about your complaint. For example, do you want the agency to apologise for the action or to assure you that the action will not happen again? Or do you want compensation for a financial loss brought about by the interference with your privacy?

If you are not satisfied with the agency's reply, you may complain to the Privacy Commissioner. If you do not wish to go to the agency first, you may go directly to the Privacy Commissioner.

What happens then?

One of the functions of the Privacy Commissioner under the Privacy Act is to investigate complaints.

In conducting any investigation the Commissioner will be looking for ways of settling the complaint without going through the full formal process set out in the Act.

If a complaint cannot be resolved and the Privacy Commissioner considers the complaint to have substance, she may refer the matter to the Director of Human Rights Proceedings. The Director of Human Rights Proceedings will decide whether to take the case to the Human Rights Review Tribunal.

What powers does the Privacy Commissioner have?

The powers of the Privacy Commissioner depend on the type of complaint that is made. Generally the Privacy Commissioner has the power to:

- help settle complaints;
- call compulsory conferences to bring about a settlement;
- make recommendations;
- summon people and examine them on oath;

- refer complaints to the Director of Human Rights Proceedings.

What happens after the Privacy Commissioner has investigated a complaint?

If the Commissioner does not think your complaint has substance, she will write to you and give you the reasons for her opinion. If she thinks your complaint does have substance and no settlement can be reached, she may refer the matter to the Director of Human Rights Proceedings.

If the Director of Human Rights Proceedings decides to take the case on to the Human Rights Review Tribunal, he will give notice to the agency of his intention. If the Human Rights Review Tribunal decides in your favour, it may order the agency to stop the action that you have complained about, award damages, or order that the agency put the situation right, if possible.

Can the Privacy Commissioner refuse to investigate a complaint?

Yes. For example, if she feels that too much time has passed since the action you have complained about, she may decide to take no action. She may also take no action if she decides that:

- you do not have a sufficient personal interest in the matter;
- the complaint is trivial or you did not make it in good faith;
- there is some other appropriate course of action which you could take.

Can I take a case to the Human Rights Review Tribunal myself?

Yes. The Director of Human Rights Proceedings can allow you to do so. Also, if the Privacy Commissioner or the Director of Human Rights Proceedings decide not to refer your complaint to the Human Rights Review Tribunal, you can choose to bring a case before the Tribunal yourself.

This fact sheet is designed to explain in general terms the relevant provisions of the Health Information Privacy Code 1994. It is not a detailed legal analysis. If you require more specific information, you should contact this office or seek legal advice.

We welcome any comments on this fact sheet. If you think that it should include any additional information, or if you have any other comments, please let us know. This fact sheet is revised from time to time. Contact this office to see whether you have an up-to-date copy.

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FACT SHEET NO. 7

Privacy Officers

What does a privacy officer do?

A privacy officer is a person within an agency whose job is to:

- encourage compliance with the information privacy principles (see Fact Sheets 3-3.5) and with other provisions of the Privacy Act;
- deal with requests for personal information and issues concerning personal information generally;
- deal with privacy complaints made to the agency;
- work with the Privacy Commissioner when she is investigating a complaint about the agency (see below and also Fact Sheet 6).

An "agency" is any person or company or government department. There are some important exceptions (see Fact Sheet 1).

An interference with the privacy of an individual initially involves a breach of an information privacy principle (or of the procedures relating to requests for access to or correction of information - see Fact Sheets 3-3.5), a breach of a code of practice, or a breach of the provisions relating to information matching (see Fact Sheet 5).

Why have a privacy officer?

The Privacy Act requires each agency to ensure that there are, within the agency, one or more privacy officers. The agency should ensure that the person has sufficient resources to carry out his or her responsibilities properly.

The name of the privacy officer should be publicised within the agency and staff should be encouraged to discuss privacy issues with that person. If the privacy officer is unable to assist, the Office of the Privacy Commissioner can provide guidance, including written information such as this fact sheet series. (However it is not the role of the Commissioner to provide legal advice or

guidance on a hypothetical situation. In those cases, the agency should consult a solicitor.)

Will one privacy officer be enough?

This depends on a number of factors such as:

- the size of the agency;
- the structure of the agency (is it in one location only, or does it have a number of offices or branches?);
- the amount of personal information it holds, and the type of activity it is engaged in.

A large organisation with a number of branch offices might find it desirable to designate a privacy officer in each location. However, a company (either big or small) that holds very little personal information might find that one privacy officer in that organisation is enough.

Does this mean that agencies need to hire extra staff?

In most cases, no. It should be possible for an existing staff member to take on the duties of a privacy officer.

However, where the main business or activity of the agency is connected with the collection and use of personal information, these duties may take up more time.

Who else should know about the information privacy principles and Privacy Act?

Everyone in the agency who handles personal information should have an understanding of the information privacy principles and the objectives of the Privacy Act generally. Where a more detailed knowledge of the agency's rights and responsibilities is required, the privacy officer should be able to provide assistance. If not, he or she can contact the Office of the Privacy

Commissioner for help.

What is the privacy officer's role if a complaint is made to the agency?

Most health agencies are required to have an internal process for handling complaints (see clause 7, Health Information Privacy Code). The Privacy Officer will often be involved in dealing with these complaints (Fact Sheet HC 6).

What is the privacy officer's role if a complaint is made to the Privacy Commissioner?

If a person complains to the Privacy Commissioner that an agency has caused an interference with his or her privacy, the Privacy Commissioner or one of her staff may contact the privacy officer in that agency to discuss the complaint, and to see whether there is any means of settling the matter. The

privacy officer should provide whatever assistance is necessary.

The privacy officer may be asked to provide background information or identify the people in the agency who can do so.

Do privacy officers need any special training?

Privacy officers need to be familiar with the information privacy principles. However, no special training is required. Educational material is available from the Office of the Privacy Commissioner that explains what an agency needs to know in order to comply with the Privacy Act. In addition, the Privacy Commissioner will, on request, arrange seminars for privacy officers. In-house training programmes can also be arranged.

This fact sheet is designed to explain in general terms the relevant provisions of the Health Information Privacy Code 1994. It is not a detailed legal analysis. If you require more specific information, you should contact this office or seek legal advice.

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FACT SHEET NO. 10
Health Information Privacy Code 1994

The Privacy Commissioner may issue codes of practice which modify the information privacy principles set out in the Privacy Act to take into account the characteristics of specific industries, agencies or types of personal information. The provisions in a code may be more stringent or less stringent than the principles.

In July 1993 the Privacy Commissioner issued the first code of practice under the Privacy Act aimed at the health sector. That temporary code was replaced by the Health Information Privacy Code 1994 which commenced on 30 July 1994.

Why was a code of practice issued for the health sector?

Health information has been long recognised as being highly sensitive. Much medical and health information includes details about an individual's body, lifestyle, behaviour and practices which are particularly intimate or may, if improperly disclosed, be misused. The code was also issued with particular characteristics of the health sector and health information in mind including, for instance, the fact that much health information is collected in a situation of confidence and trust.

What is the effect of a code?

Where the code applies it replaces the principles. For example, an action that would otherwise be a breach of one of the principles is deemed not to breach that principle if done in accordance with the code. Also a failure to comply with the code, where it applies is, for the purposes of the complaints procedures under the Privacy Act, deemed to be a breach of the principles.

Why was the code first issued as a "temporary" code?

The Commissioner considered that it was necessary to issue a code of practice to cover health information and there was a need to issue the code urgently. In those circumstances, the Act permits the Commissioner to dispense with the full public notification and consultation procedures, but requires that the code have a life of no more than 12 months. During that time, the Commissioner consulted widely on a review of the temporary code and on the draft of the new permanent code.

Does the code of practice help the health sector to comply with the Privacy Act?

The code does assist the health sector to meet the objectives of the Privacy Act because:

- the code's language has been specifically tailored to refer to the health sector;
- some limited and specific exceptions, tailored to the health sector, have been included where difficulties in complying with the principles are anticipated;
- a (non binding) commentary with examples from the health sector is included;
- certain exceptions which are in the principles but which have no relevance to the health sector have been omitted from the code;
- reference has been made to "representatives" of people unable to act on their own behalf.

Does the code impose more stringent standards on health agencies handling health information?

Generally yes. As mentioned, however, some additional exceptions tailored to the health sector have been included. Some of the more stringent standards include:

- A number of the principles include an exception where "non compliance would not prejudice the interests of the individual concerned". That standard has been raised in the code so that the exception will only apply where "compliance

would prejudice the interests of the individual concerned".

- Principle 3 obliges agencies to give certain explanations to an individual where an agency collects personal information "directly from the individual concerned". This has been widened in the code to oblige health agencies to also provide those explanations where the collection is from the individual's "representative" (such as the parent where information is being collected about a young child) and where authorisation is sought from the individual to collect information from another source.
- The limits on disclosure under principle 11 are modified to make it clear that disclosure of health information should normally be authorised by the individual concerned unless that is not desirable or practicable.
- Generally, no charge is permitted under the code of practice for giving access to an individual's own health information.

How can I see or get a copy of the code of practice?

You can read a copy of the code for free at the Office of the Privacy Commissioner in Auckland or Wellington or on the Privacy Commissioner's website: www.privacy.org.nz (look under: Complying with the Act / Codes of Practice).

Copies can also be purchased from the Privacy Commissioner's offices or from Bennetts Government Bookshops and Bennetts' usual agents.

What do I do if I think the code has not been followed?

In the first instance you can take up the matter with the particular health agency. If that isn't appropriate, or if you are dissatisfied with how the agency deals with your request or complaint, you can complain to the Privacy Commissioner (see Fact Sheet HC 6).

This fact sheet is designed to explain in general terms the relevant provisions of the Health Information Privacy Code 1994. It is not a detailed legal analysis. If you require more specific information, you should contact this office or seek legal advice.

We welcome any comments on this fact sheet. If you think that it should include any additional information, or if you have any other comments, please let us know. This fact sheet is revised from time to time. Contact this office to see whether you have an up-to-date copy.

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