

15 March 2023

Bridget Morison

**By email only to:** [fyi-request-21978-5e49f103@requests.fyi.org.nz](mailto:fyi-request-21978-5e49f103@requests.fyi.org.nz)

Tēnā koe

### **Official Information Act Request (Our Ref: OIA/0267)**

We refer to your Official Information Act request of 2 March 2023 relating to (1) the compliance and honesty of agencies and persons during an investigation and (2) the privilege status of the bundle of documents and information compiled during an investigation.

### **Your first request**

Please provide a copy of or link to:

- a) Policy, guidelines, reports, position statements and/or briefings explaining how your Office protects individuals when reliance is placed solely on an agency being honest and compliant in their obligations to your Office during an investigation. This includes all documentation provided to your staff to assist them in their enquiries or investigations.
- b) With a date range of 10 years - data showing how many agencies your Office has investigated, or have been involved in an investigation, when it's become known that false and/or misleading information or identities have been used. That is, how many agencies or individuals are known to have been non-complaint and/or dishonest during the course of an investigation but your Office has not made them liable.
- c) With a date range of 10 years - data showing how many agencies and/or individuals have been held liable for non-compliance and/or dishonesty under the PA.
- d) Information provided to agencies being investigated, or to other agencies or individuals involved, during an investigation advising that non-compliance and dishonesty is an offence under the Act.
- e) Information showing reasons why you may choose not to make agencies or individuals liable for false or misleading information.

## Our response to your first request

Your request (a) and (e) is granted to the extent that the Privacy Commissioner holds information that is the subject of your request.

Please see attached:

- our draft decision guide explaining how decisions are made about the investigation of privacy complaints,
- our compliance notice guidelines - <https://privacy.org.nz/assets/New-order/Resources-/Publications/Statements-and-media-releases/2.-Compliance-Notice-Guidelines.pdf>;
- our prosecution policy explaining how decisions are made about prosecuting an offence under the Privacy Act - <https://privacy.org.nz/assets/New-order/About-us/Transparency-and-accountability-/4.-Prosecution-Policy.pdf>
- our Compliance and Regulatory Action Framework that provides an overview of how the Privacy Commissioner's functions are exercised - <https://privacy.org.nz/assets/New-order/About-us/Transparency-and-accountability-/1.-Compliance-and-Regulatory-Action-Framework.pdf>.

Your request (b)-(d) is refused under section 18(f) of the Official Information Act as the information requested cannot be made available without substantial collation and research.

However, please note the following: When the Privacy Commissioner's powers under the Privacy Act are used to require information be provided for purposes of an investigation, the agency concerned will be informed that this is a mandatory requirement and that it is an offence not to comply with the Commissioner's lawful request. This is covered on our website here.<sup>1</sup>

The Privacy Act changed in 2020 and the Office now has a compliance team who can investigate compliance issues.

## Your second request:

Please provide:

a) Policy, guidelines, reports, position statements and/or briefings showing how your office has considered the privilege of information obtained during an investigation and how you manage the protection of the complainant when investigation information is disclosed to multiple agencies or individuals involved during the investigation process.

b) Policy and position statements, guidelines, reports or other information which shows the Commissioners perspective of the privilege status of investigation information, and how (or if) that information can be used by agencies and/or individuals who were involved in the investigation.

<sup>1</sup> [https://privacy.org.nz/tools/knowledge-base/view/494?t=928658\\_1063868](https://privacy.org.nz/tools/knowledge-base/view/494?t=928658_1063868)

### **Our response to your second request**

To the extent that the first part of this request relates to the protection applied by this Office to information provided in the course of an investigation under the Privacy Act, this request is granted, in relation to information this Office holds, or can be provided without substantial collation and research.

Please see attached our practice note on the confidentiality of complaint investigation information.

To the extent that the second part of this request relates to the action of agencies and individuals outside of this Office using information provided in the course of an investigation under the Privacy Act, this request is refused under section 18(e) of the Official Information Act as the information requested does not exist.

### **Conclusion**

I hope the information provided is useful. You are entitled to seek review of my decision on your request by the Office of the Ombudsman.

Nāku iti noa, nā

A handwritten signature in black ink that reads "J. M. Hayward." The signature is written in a cursive, slightly slanted style.

Joanna Hayward  
**General Counsel**

Encl. Draft Decision Guide  
Practice note