

**Case note 232848 [2012] NZ PrivCmr 3 : DRSL reviewers not required to provide hearing transcript under Privacy Act**

An ACC claimant asked Dispute Resolution Services Limited ("DRSL") to formally review a decision made by ACC. DRSL is a specialist dispute resolution company which engages independent reviewers to conduct review hearings.

After the hearing was completed, the claimant asked the DRSL reviewer for a copy of a transcript of the hearing. The reviewer refused the request on the basis that transcripts are only provided if there is an appeal of the review decision.

The man complained to us about this refusal.

Principle 6 of the Privacy Act ("the Act") provides that individuals are entitled to request, and have access to, personal information held by an agency.

'Agency' is defined in section 2 of the Act and section 2(b) specifically excludes some organisations. In particular, the definition of 'agency' does not include "in relation to its judicial functions" a court or tribunal.

The Accident Compensation Act 2001 mandates the independent reviewer role and review process for ACC appeals.

DRSL advised that reviewers formally review disputed decisions made by ACC. Reviews and hearings are an opportunity for the parties to generally meet and discuss any issues. The reviewer conducts a hearing, and delivers a written binding decision based on an assessment of the evidence presented.

We considered that the role of the reviewer is quasi-judicial in nature. Reviewers, when conducting reviews, are acting in the nature of a tribunal and in a judicial way. Because of their judicial

role, they are not considered to fall within the definition of an 'agency' for the purposes of the Privacy Act (section 2(b)(viii)).

Reviewers record hearings to meet the requirements of section 143 of the Accident Compensation Act 2001. That section requires a reviewer to take reasonable steps to ensure that an accurate record of the evidence given at the hearing is taken.

The purpose of section 143 is to ensure that a record of evidence given at a review hearing is available to the District Court if an appeal is lodged against a reviewer's decision. If an appeal is lodged, a copy of the sound recording of the review hearing is transcribed.

Outside the appeal process it is each independent reviewer, rather than DRSL, who is the custodian of the records of each review hearing. Whether to release a record of a review hearing outside of the appeal process is a decision for the reviewer who conducted the hearing.

It was our view that, when conducting a review, the reviewer is acting in the nature of a tribunal in relation to their judicial functions. As such, reviewers are not an agency for the purposes of the Act so are not obliged to release a copy of the transcript under principle 6 of the Act.

June 2012

*Request for personal information - DRSL reviewer - definition of 'agency' - in relation to its judicial functions a tribunal - Privacy Act 1993; principle 6, section 2(b)(viii)*

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