



ANALYSIS

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1991, No. 126

An Act—

- (a) To provide for the appointment of a Privacy Commissioner, and to define the Commissioner's functions and powers; and**
- (b) To provide for matters incidental thereto**

[18 December 1991]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Privacy Commissioner Act 1991.

(2) This Act shall come into force on the day after the date on which it receives the Royal assent.

PART I

PRELIMINARY PROVISIONS

2. Interpretation—In this Act, unless the context otherwise requires,—

“Adverse action” means any action that may adversely affect the rights, benefits, privileges, obligations, or interests of any specific individual; and, without limiting the generality of the foregoing, includes any decision—

(a) To cancel or suspend any monetary payment:

(b) To refuse an application for a monetary payment:

(c) To alter the rate or amount of a monetary payment:

(d) To recover an overpayment of a monetary payment:

(e) To make an assessment of the amount of any tax, levy, or other charge, or of any contribution, that is payable by any individual, or to alter any such assessment:

(f) To investigate the possible commission of an offence:

“Agency” means—

(a) The Accident Compensation Corporation:

(b) The Customs Department:

(c) The Department of Justice:

(d) The Department of Labour:

(e) The Department of Social Welfare:

(f) The Inland Revenue Department:

(g) The Ministry of Education:

(h) The Registrar-General under the Births and Deaths Registration Act 1951:

“Commissioner” means the Privacy Commissioner established under section 4 of this Act:

“Discrepancy”, in relation to an information matching programme, means a result of the programme that warrants the taking of further action by any agency

for the purpose of giving effect to the objective of the programme:

“Document” means a document in any form; and includes—

(a) Any writing on any material:

(b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:

(c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(d) Any book, map, plan, graph, or drawing:

(e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

“Individual” means a natural person:

“Information matching information”, in relation to any agency, means information that consists of or includes information disclosed to that agency pursuant to an information matching provision:

“Information matching programme” or “programme” means the comparison, by or on behalf of any agency, of information matching information with other personal information for the purpose of producing or verifying information about an identifiable individual:

“Information matching provision” means any provision specified in the second column of the Third Schedule to this Act as an information matching provision of an enactment specified in the first column of that Schedule:

“Information matching rules” means the rules set out in the Second Schedule to this Act:

“Minister” means the Minister of Justice:

“Monetary payment” includes—

(a) A benefit within the meaning of section 3 (1) of the Social Security Act 1964:

(b) A lump sum payable under section 61DB or section 61DC or section 61DD of that Act:

(c) Any special assistance granted out of the Crown Bank Account from money appropriated by Parliament under section 124 (1) (d) or (da) of that Act:

(d) Any compensation within the meaning of section 2 (1) of the Accident Compensation Act 1982: “Personal information” means information about an identifiable individual:

“Unique identifier” means an identifier—

(a) That is created by an agency and assigned to an individual by that agency for the purposes of the operations of that agency; and

(b) That is made up of any combination of characters, or numbers, or both, that is intended to uniquely identify that individual in relation to that agency:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

3. Act to bind the Crown—This Act binds the Crown.

PART II

PRIVACY COMMISSIONER

4. Privacy Commissioner—(1) There shall be a Commissioner to be called the Privacy Commissioner.

(2) The Commissioner shall be appointed by the Governor-General on the recommendation of the Minister.

(3) The Commissioner shall be a corporation sole with perpetual succession and a seal of office, and shall have and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

(4) The Commissioner shall be a Crown agency for the purposes of the Public Finance Act 1989, and, notwithstanding anything in section 1 (3A) of that Act, Part V of that Act shall apply to the Commissioner as if that Part of that Act were in force on the commencement of this section.

(5) An appointment shall be made under this section as soon as practicable after the commencement of this Act.

5. Functions of Commissioner—(1) The functions of the Commissioner shall be—

- (a) To monitor compliance by agencies with the provisions of Part III of this Act, and to provide advice to agencies on their obligations under those provisions:
- (b) To undertake the reviews required by section 21 of this Act:
- (c) To receive and invite representations from members of the public on any matter affecting the privacy of the individual:
- (d) To make public statements in relation to any matter affecting the privacy of the individual or of any class of individuals:
- (e) To consult and co-operate with other persons and organisations concerned with the privacy of the individual:
- (f) To inquire generally into any matter, including any enactment or law, or any practice, or procedure, whether governmental or non-governmental, or any technical development, if it appears to the Commissioner that the privacy of the individual is being, or may be, unduly infringed thereby:
- (g) To examine any proposed legislation (including subordinate legislation) or proposed policy of the Government which the Commissioner considers may affect the privacy of individuals, and to report to the Minister the results of that examination:
- (h) To report to the Prime Minister from time to time on the need for or desirability of taking legislative, administrative, or other action to give protection or better protection to the privacy of the individual:
- (i) To report to the Prime Minister on any other matter relating to privacy that, in the Commissioner's opinion, should be drawn to the Prime Minister's attention:
- (j) To make suggestions to any person in relation to any matter that concerns the need for or the desirability of action by that person in the interests of the privacy of the individual:
- (k) To gather such information as in the Commissioner's opinion will assist the Commissioner in carrying out the Commissioner's functions under this section:
- (l) To exercise and perform such other functions, powers, and duties as are conferred or imposed on the Commissioner by or under this Act or any other enactment.

(2) The Commissioner may report to the Prime Minister under subsection (1) (h) of this section on any matter relating to privacy on which the Prime Minister has requested a report.

(3) This section shall not empower the Commissioner to investigate a complaint by any person that his or her privacy has been infringed, but the fact that a person has made such a complaint about a particular matter shall not limit or affect the power of the Commissioner to carry out the kind of inquiry permitted under subsection (1) (f) of this section.

(4) Nothing in this section shall authorise the Commissioner to inquire into the operation of the Wanganui Computer Centre Act 1976 or of the Computer Centre continued by section 3 (1) of that Act.

Cf. 1977, No. 49, s. 67

6. Reports—The Commissioner may from time to time, in the public interest or in the interests of any person or organisation, publish reports relating generally to the exercise of the Commissioner's functions under this Act, whether or not the matters to be dealt with in any such report have been the subject of a report to the Minister or the Prime Minister.

Cf. 1977, No. 49, s. 78 (1)

7. Commissioner to have regard to certain matters—In the performance of his or her functions, and the exercise of his or her powers, under this Act, the Commissioner shall—

- (a) Have due regard for the protection of important human rights and social interests that compete with privacy, including the general 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; and
- (b) Take account of international obligations accepted by New Zealand, including those concerning the international technology of communications; and
- (c) Consider any developing general international guidelines relevant to the better protection of individual privacy.

Cf. Privacy Act 1988 (Aust), s. 29

8. Commissioner to hold no other office—The Commissioner shall not be capable of being a member of Parliament or of a local authority, and shall not, without the approval of the Minister in each particular case, hold any office

of trust or profit or engage in any occupation for reward outside the duties of the Commissioner's office.

Cf. 1975, No. 9, s. 4

9. Term of office—(1) Except as otherwise provided in section 11 of this Act, the Commissioner shall hold office for such term not exceeding 5 years as the Governor-General on the recommendation of the Minister shall specify in the instrument appointing the Commissioner.

(2) The Commissioner shall be eligible for reappointment from time to time.

(3) Where the term for which a person who has been appointed as Commissioner expires, that person, unless sooner vacating or removed from office under section 11 of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until—

(a) That person is reappointed; or

(b) A successor to the person is appointed; or

(c) The person is informed in writing by the Minister that the person is not to be reappointed and is not to hold office until a successor is appointed.

10. Appointment of Judge as Commissioner—The appointment of a Judge as the Commissioner, or service by a Judge as the Commissioner, does not affect that person's tenure of his or her judicial office or his or her rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation) and, for all purposes, that person's service as the Commissioner shall be taken to be service as a Judge.

Cf. 1977, No. 49, s. 7A; 1983, No. 56, s. 5; 1985, No. 23, s. 3 (1)

11. Vacation of office—(1) The Commissioner may at any time be removed from office by the Governor-General for inability to perform the duties of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(2) The Commissioner may at any time resign his or her office by notice in writing addressed to the Minister.

(3) Subsection (1) of this section does not apply where the Commissioner is a Judge; but nothing in this subsection shall limit the application of that subsection where the Commissioner ceases to be a Judge during that person's term of office as the Commissioner.

12. Annual report—(1) Without limiting the right of the Commissioner to report at any other time, the Commissioner shall in each year furnish to the Minister a report with respect to the operation of this Act during the year to which the report relates.

(2) The Commissioner shall include in every annual report of the Commissioner the financial statements prepared by the Commissioner, in accordance with Part V of the Public Finance Act 1989, in respect of the financial year to which the report relates, together with the audit report and the management statement relating to those financial statements.

(3) A copy of every annual report of the Commissioner shall be tabled in the House of Representatives in accordance with section 44 of the Public Finance Act 1989.

13. Further provisions relating to Commissioner—The provisions of the First Schedule to this Act shall have effect in relation to the Commissioner and the Commissioner's affairs.

PART III

INFORMATION MATCHING

14. Information matching agreements—(1) No personal information held by any agency shall be disclosed, pursuant to an information matching provision, to any other agency for the purposes of an information matching programme except pursuant to a written agreement between those agencies.

(2) Every such agreement shall incorporate provisions that reflect the information matching rules, or provisions that are no less onerous than those rules, and the agencies that are parties to the agreement shall comply with those provisions.

(3) Any such agreement may provide that the agencies involved in the information matching programme may charge each other fees for the services provided for the purposes of the programme.

15. Use of results of information matching programme—(1) Subject to any other enactment or rule of law that limits or restricts the information that may be taken into account in taking adverse action against an individual, any agency that is involved in an information matching programme may take adverse action against an individual on the basis of a discrepancy produced by that programme.

(2) Nothing in subsection (1) of this section shall be taken to limit or restrict the use that may lawfully be made, by any

agency, of any information produced by an information matching programme.

Cf. Data-matching Program (Assistance and Tax) Act 1990 (Aust.), s. 10 (1)

16. Further provisions relating to results of information matching programme—(1) Notwithstanding anything in section 15 of this Act, where—

- (a) An agency derives or receives information produced by an information matching programme; and
- (b) As a result of deriving or receiving that information, the agency becomes aware of a discrepancy,—

that agency shall destroy that information not later than the expiration of the period of 60 working days after the agency becomes aware of that discrepancy unless, before the expiration of that period, the agency has considered that information and made a decision to take adverse action against any individual on the basis of that discrepancy.

(2) Any adverse action commenced by an agency in accordance with subsection (1) of this section shall be commenced not later than 12 months from the date on which the information was derived or received by the agency.

(3) Where an agency decides not to take adverse action against any individual on the basis of information produced by an information matching programme, the agency shall as soon as practicable destroy that information.

(4) When information produced by an information matching programme is no longer needed by an agency for the purposes of taking any adverse action against any individual, the agency shall as soon as practicable destroy that information.

(5) Nothing in this section applies in relation to the Inland Revenue Department.

Cf. Data-matching Program (Assistance and Tax) Act 1990 (Aust.), s. 10 (2), (3)

17. Extension of time limit—Where an agency derives or receives information produced by an information matching programme, the Commissioner may, either generally or in respect of any case or class of cases, extend the time limit set out in section 16 (1) of this Act in respect of that information if the Commissioner is satisfied that,—

- (a) Because of the large quantity of information so derived or received by the agency; or
- (b) Because of the complexity of the issues involved; or
- (c) For any other reason,—

the agency cannot reasonably be required to meet that time limit.

Cf. Data-matching Program (Assistance and Tax) Act 1990 (Aust.), s. 10 (3)

18. Notice of adverse action proposed—(1) Subject to subsection (2) of this section, an agency shall not take adverse action against any individual on the basis (whether wholly or in part) of a discrepancy produced by an information matching programme—

- (a) Unless that agency has given that individual written notice—
 - (i) Specifying particulars of the discrepancy and of the adverse action that it proposes to take; and
 - (ii) Stating that the individual has 5 working days from the receipt of the notice in which to show cause why the action should not be taken; and
- (b) Until the expiration of those 5 working days.

(2) Nothing in subsection (1) of this section prevents an agency from taking adverse action against an individual if compliance with the requirements of that subsection would prejudice any investigation into the commission of an offence or the possible commission of an offence.

(3) Every notice required to be given to any individual under subsection (1) of this section may be given by delivering it to that individual, and may be delivered—

- (a) Personally; or
- (b) By leaving it at that individual's usual or last known place of residence or business or at the address specified by that individual in any application or other document received from that individual; or
- (c) By posting it in a letter addressed to that individual at that place of residence or business or at that address.

(4) If any such notice is sent to any individual by post, then, in the absence of proof to the contrary, the notice shall be deemed to have been delivered to that individual on the fourth day after the day on which it was posted, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

Cf. 5 USC 552a (p) (3), (4); Data-matching Program (Assistance and Tax) Act 1990 (Aust.), s. 11

19. Reporting requirements—(1) Every agency that is involved in an information matching programme shall make

such reports to the Commissioner in respect of that programme as the Commissioner may from time to time require.

(2) Without limiting the generality of subsection (1) of this section, the matters on which the Commissioner may require any agency to submit a report include the following:

- (a) The actual costs and benefits of an information matching programme:
- (b) Any difficulties experienced in the operation of an information matching programme, and how those difficulties are being, or have been, overcome:
- (c) Whether or not internal audits or other forms of assessment are undertaken by an agency in relation to an information matching programme, and, if so, the results of those audits or assessments:
- (d) Where an agency dispenses with the giving of notice under section 18 of this Act, the reasons why such a dispensation is made, and the grounds in support of those reasons:
- (e) The details of the operation of an information matching programme, including—
 - (i) The number of matches undertaken:
 - (ii) The proportion of matches that revealed discrepancies in information involved in the matching:
 - (iii) The number of discrepancies so revealed:
 - (iv) The proportion of cases in which action was taken as a result of such discrepancies:
 - (v) The number of cases in which such action was taken:
 - (vi) The number of cases in which such action was taken even though the accuracy of the discrepancy was challenged:
 - (vii) The proportion of cases in which such action did not proceed after the individual concerned was notified of the discrepancy:
 - (viii) The number of cases in which action taken as a result of a discrepancy was successful:
- (f) Such other matters as the Commissioner considers relevant.

Cf. Data-matching Program (Assistance and Tax) Act 1990 (Aust.), clause 9 of Schedule

20. Information matching programmes to be reported on in annual report—(1) The Commissioner shall include in every annual report of the Commissioner, in relation to each

information matching programme that is carried out (in whole or in part) during the year to which the report relates,—

- (a) An outline of the programme; and
- (b) An assessment of the extent of the programme's compliance, during that year, with—
 - (i) The provisions of this Part of this Act; and
 - (ii) The information matching rules; and
- (c) The details of each extension granted, during that year, under section 17 of this Act, the reasons why the extension was granted, and the grounds in support of those reasons; and
- (d) The details of each approval given, during that year, under clause 3 of the Second Schedule to this Act, the reasons why the approval was given, and the grounds in support of those reasons.

(2) Nothing in subsection (1) of this section requires the Commissioner to include in any annual report, in respect of any information matching programme, any information the disclosure of which would be likely to frustrate the objective of the programme.

Cf. Data-matching Program (Assistance and Tax) Act 1990 (Aust.), clause 10(1) of Schedule

21. Review of statutory authorities for information matching—(1) As soon as practicable after the expiry of the period of 2 years beginning on the date of commencement of this section, the Commissioner shall carry out a review of the operation, since that date, of every information matching provision.

(2) On completing the review required by subsection (1) of this section, the Commissioner shall report to the House of Representatives, and shall state in that report, in respect of each information matching provision,—

- (a) Whether or not, in the Commissioner's opinion, the authority conferred by the provision should continue; and
- (b) Whether or not any amendments to the provision are necessary or desirable.

PART IV

MISCELLANEOUS PROVISIONS

Proceedings of Commissioner

22. Powers of Commissioner—The Commissioner shall have all such powers as are reasonably necessary or expedient

to enable the Commissioner to carry out the Commissioner's functions.

23. Commissioner may regulate own procedure— Subject to the provisions of this Act, the Commissioner may regulate his or her procedure in such manner as he or she thinks fit.

24. Evidence—(1) The Commissioner may from time to time, by notice in writing, require any person who in the Commissioner's opinion is able to give information relevant to an investigation being conducted by the Commissioner for the purposes of performing any of the Commissioner's functions or duties under Part III of this Act to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Commissioner are relevant to the subject-matter of the investigation.

(2) The Commissioner may summon before him or her and examine on oath any person who in the Commissioner's opinion is able to give information relating to the matter under investigation, and may for that purpose administer an oath to any person so summoned.

(3) Every such examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

Cf. 1977, No. 49, s. 73 (1), (2)

25. Requirements of Commissioner to be complied with within certain period—(1) Subject to this section, where, during the course of an investigation being conducted by the Commissioner for the purposes of performing any of the Commissioner's functions or duties under Part III of this Act, the Commissioner, pursuant to any power conferred on the Commissioner by section 24 of this Act, requires any agency to furnish or produce to the Commissioner any information or document or thing which relates to that investigation, that agency shall, as soon as reasonably practicable, and in no case later than 20 working days after the day on which that requirement is received by that agency, comply with that requirement.

(2) Where any requirement to which subsection (1) of this section applies is made to any agency, the agency may extend the time limit set out in subsection (1) of this section in respect of that requirement if—

- (a) The requirement relates to, or necessitates a search through, a large quantity of information or a large number of documents or things, and meeting the original time limit would unreasonably interfere with the operations of the agency; or
 - (b) Consultations necessary before the requirement can be complied with are such that the requirement cannot reasonably be complied with within the original time limit; or
 - (c) The complexity of the issues raised by the requirement are such that the requirement cannot reasonably be complied with within the original time limit.
- (3) Any extension under subsection (2) of this section shall be for a reasonable period of time having regard to the circumstances.
- (4) The extension shall be effected by giving or posting notice of the extension to the Commissioner within 20 working days after the day on which the requirement is received.
- (5) The notice effecting the extension shall—
- (a) Specify the period of the extension; and
 - (b) Give the reasons for the extension; and
 - (c) Contain such other information as is necessary.
- (6) If any agency fails, within the time limit fixed by subsection (1) of this section (or, where that time limit has been extended under subsection (2) of this section, within that time limit as so extended) to comply with any requirement to which subsection (1) of this section applies, the Commissioner may report such failure to the Prime Minister.

Cf. 1982, No. 156, s. 29A; 1987, No. 8, s. 17 (3)

26. Protection and privileges of witnesses, etc.—

(1) Except as provided in section 28 of this Act, every person shall have the same privileges in relation to the giving of information to, the answering of questions put by, and the production of documents and things to, the Commissioner or any employee of the Commissioner as witnesses have in any Court.

(2) Subject to this section and to section 27 of this Act, any person who is bound by the provisions of any enactment to maintain secrecy in relation to, or not to disclose, any matter may be required to supply any information to or answer any question put by the Commissioner in relation to the matter, or to produce to the Commissioner any document or thing relating to it, notwithstanding that compliance with that

requirement would otherwise be in breach of the obligation of secrecy or non-disclosure.

(3) Compliance with a requirement of the Commissioner (being a requirement made pursuant to subsection (2) of this section) is not a breach of the relevant obligation of secrecy or non-disclosure or of the enactment by which that obligation is imposed.

(4) No person shall be liable to prosecution for an offence against any enactment, other than section 35 of this Act, by reason of that person's compliance with any requirement of the Commissioner or any employee of the Commissioner under section 24 of this Act.

(5) Where the attendance of any person is required by the Commissioner under section 24 of this Act, the person shall be entitled to the same fees, allowances, and expenses as if the person were a witness in a Court and, for that purpose,—

- (a) The provisions of any regulations in that behalf under the Summary Proceedings Act 1957 shall apply accordingly; and
- (b) The Commissioner shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or to increase, any amounts payable under the regulations.

Cf. 1975, No. 9, s. 19 (3), (4); 1977, No. 49, s. 73 (3), (6)–(7); 1982, No. 156, s. 50

27. Disclosure of certain matters not to be required—
Where—

- (a) The Prime Minister certifies that the giving of any information or the production of any document or thing might prejudice—
 - (i) The security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation); or
 - (ii) Any interest protected by section 7 of the Official Information Act 1982 (which relates to the Cook Islands, Niue, Tokelau, and the Ross Dependency); or
- (b) The Attorney-General certifies that the giving of any information or the production of any document or thing—
 - (i) Might prejudice the prevention, investigation, or detection of offences; or

(ii) Might involve the disclosure of proceedings of Cabinet, or any committee of Cabinet, relating to matters of a secret or confidential nature, and such disclosure would be injurious to the public interest,—neither the Commissioner nor any employee of the Commissioner shall require the information to be given or, as the case may be, the document or thing to be produced.

Cf. 1975, No. 9, s. 20 (1); 1977, No. 49, s. 74

28. Exclusion of public interest immunity—Subject to section 27 of this Act, the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before the Commissioner under this Act.

Cf. 1975, No. 9, s. 20 (2)

29. Proceedings privileged—(1) This section applies to the Commissioner and every person engaged or employed in connection with the work of the Commissioner.

(2) Subject to subsection (3) of this section,—

(a) No proceedings, civil or criminal, shall lie against any person to whom this section applies for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties under this Act, unless it is shown that he or she acted in bad faith:

(b) No person to whom this section applies shall be required to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions.

(3) Nothing in subsection (2) of this section applies in respect of proceedings for—

(a) An offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961; or

(b) The offence of conspiring to commit an offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961.

(4) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner under this

Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

(5) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by the Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand.

Cf. 1975, No. 9, s. 26; 1982, No. 164, s. 5

30. Commissioner and staff to maintain secrecy—

(1) Every person to whom section 29 of this Act applies shall maintain secrecy in respect of all matters that come to that person's knowledge in the exercise of that person's functions under this Act.

(2) Notwithstanding anything in subsection (1) of this section, the Commissioner may disclose such matters as in the Commissioner's opinion ought to be disclosed for the purposes of giving effect to this Act.

(3) The power conferred by subsection (2) of this section shall not extend to—

(a) Any matter that might prejudice—

(i) The security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation); or

(ii) Any interest protected by section 7 of the Official Information Act 1982; or

(iii) The prevention, investigation, or detection of offences; or

(b) Any matter that might involve the disclosure of the proceedings of Cabinet, or any committee of Cabinet, relating to matters of a secret or confidential nature, where such disclosure would be injurious to the public interest; or

(c) Any information, answer, document, or thing obtained by the Commissioner by reason only of compliance with a requirement made pursuant to section 26 (2) of this Act.

Cf. 1975, No. 9, s. 21 (2), (4), (5); 1987, No. 8, s. 24 (2)

31. Corrupt use of official information—Every person to whom section 29 of this Act applies shall be deemed for the

purposes of sections 105 and 105A of the Crimes Act 1961 to be an official.

Cf. 1977, No. 49, s. 77; 1987, No. 8, s. 25 (1)

32. Adverse comment—The Commissioner shall not, in any report or statement made pursuant to this Act, make any comment that is adverse to any person unless that person has been given an opportunity to be heard.

Cf. 1977, No. 49, s. 78 (2)

33. Delegation of functions or powers of Commissioner—(1) The Commissioner may from time to time delegate to any person holding office under the Commissioner all or any of the Commissioner's functions and powers under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include the power to delegate under this section.

(4) The power of the Commissioner to delegate under this section does not limit any power of delegation conferred on the Commissioner by any other Act.

(5) Subject to any general or special directions given or conditions imposed by the Commissioner, the person to whom any functions or powers are delegated under this section may exercise any functions or powers so delegated to that person in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation.

(6) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) Any delegation under this section may be made—

(a) To a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices:

(b) Subject to such restrictions and conditions as the Commissioner thinks fit:

(c) Either generally or in relation to any particular case or class of cases.

(8) No such delegation shall affect or prevent the exercise of any function or power by the Commissioner, nor shall any such delegation affect the responsibility of the Commissioner for the actions of any person acting under the delegation.

(9) Any person purporting to exercise any power of the Commissioner by virtue of a delegation under this section shall, when required to do so, produce evidence of that person's authority to exercise the power.

Cf. 1975, No. 9, s. 28

34. Revocation of delegations—(1) Every delegation under section 33 of this Act shall be revocable in writing at will.

(2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the Commissioner by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of the Commissioner.

Offences

35. Offences—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who,—

- (a) Without reasonable excuse, obstructs, hinders, or resists the Commissioner or any other person in the exercise of their powers under this Act:
- (b) Without reasonable excuse, refuses or fails to comply with any lawful requirement of the Commissioner or any other person under this Act:
- (c) Makes any statement or gives any information to the Commissioner or any other person exercising powers under this Act, knowing that the statement or information is false or misleading:
- (d) Represents directly or indirectly that he or she holds any authority under this Act when he or she does not hold that authority.

Cf. 1975, No. 9, s. 30

Amendments to Other Enactments

36. Amendment to Higher Salaries Commission Act 1977—The Fourth Schedule to the Higher Salaries Commission Act 1977 (as substituted by section 14 of the Higher Salaries Commission Amendment Act 1988) is hereby amended by inserting, after the item relating to the Wanganui Computer Centre Privacy Commissioner, the following item:

“The Privacy Commissioner established under the Privacy Commissioner Act 1991”.

37. Amendment to Official Information Act 1982—The Official Information Act 1982 is hereby amended by inserting

in the First Schedule (as substituted by section 23 (1) of the Official Information Amendment Act 1987), in its appropriate alphabetical order, the following item:

“Privacy Commissioner established under the Privacy Commissioner Act 1991”.

38. Amendment to Films Act 1983—Part II of the Schedule to the Films Act 1983 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

“The Privacy Commissioner established under the Privacy Commissioner Act 1991”.

SCHEDULES

Section 13

FIRST SCHEDULE

PROVISIONS APPLYING IN RESPECT OF COMMISSIONER

1. Employment of experts—(1) The Commissioner may, as and when the need arises, appoint any person who, in the Commissioner's opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise by the Commissioner of the Commissioner's functions to make such inquiries or to conduct such research or to make such reports or to render such other services as may be necessary for the efficient performance by the Commissioner of the Commissioner's functions.

(2) The Commissioner shall pay persons appointed by the Commissioner under this clause, for services rendered by them, fees or commission or both at such rates as the Commissioner thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Commissioner.

2. Staff—(1) Subject to the provisions of this clause, the Commissioner may appoint such officers and employees (including acting or temporary or casual officers and employees) as may be necessary for the efficient carrying out of the Commissioner's functions, powers, and duties under this Act.

(2) The Commissioner, in making an appointment under this clause, shall give preference to the person who is best suited to the position.

(3) The number of persons that may be appointed under this clause, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Minister.

(4) Officers and employees appointed under this clause shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Commissioner from time to time determines in agreement with the State Services Commissioner, or as the Minister from time to time determines in any case where the Commissioner and the State Services Commissioner fail to agree.

3. Salaries and allowances—(1) There shall be paid to the Commissioner—

(a) A salary at such rate as the Higher Salaries Commission from time to time determines; and

(b) Such allowances as are from time to time determined by the Higher Salaries Commission.

(2) Subject to the Higher Salaries Commission Act 1977, any determination made under subclause (1) of this clause may be made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination, or any other date, whether before or after the date of the making of the determination.

(3) Every determination made under subclause (1) of this clause in respect of which no date is specified as provided in subclause (2) of this clause shall come into force on the date of the making of the determination.

(4) There shall also be paid to the Commissioner, in respect of time spent in travelling in the exercise of the Commissioner's functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF COMMISSIONER—*continued*

accordingly as if the Commissioner were a member of a statutory Board and the travelling were in the service of the statutory Board.

4. Superannuation or retiring allowances—(1) For the purpose of providing superannuation or retiring allowances for the Commissioner and for any of the officers or employees of the Commissioner, the Commissioner may, out of the funds of the Commissioner, make payments to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

(2) Notwithstanding anything in this Act, any person who, immediately before being appointed as the Commissioner or, as the case may be, becoming an officer or employee of the Commissioner, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as the Commissioner or, as the case may be, to be an officer or employee of the Commissioner; and that Act shall apply to that person in all respects as if that person's service as the Commissioner or, as the case may be, as such an officer or employee were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) of this clause entitles any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(4) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2) of this clause, to a person who holds office as the Commissioner or, as the case may be, is in the service of the Commissioner as an officer or employee and (in any such case) is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person, means the Commissioner.

5. Application of certain Acts to Commissioner and staff—No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment as the Commissioner or a person appointed under clause 1 or clause 2 of this Schedule.

6. Services for Commissioner—(1) The Crown, acting through any Department, may from time to time, at the request of the Commissioner, execute any work or enter into any arrangements for the execution or provision by the Department for the Commissioner of any work or service, or for the supply to the Commissioner of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

(2) The Commissioner and the Human Rights Commission may from time to time enter into any arrangements for the provision, by the Commission to the Commissioner, of office accommodation and other services, on and subject to such terms and conditions as may be agreed.

7. Funds of Commissioner—The funds of the Commissioner shall consist of—

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF COMMISSIONER—*continued*

- (a) Any money appropriated by Parliament for the purposes of the Commissioner and paid to the Commissioner for the purposes of the Commissioner:
- (b) All other money lawfully received by the Commissioner for the purposes of the Commissioner:
- (c) All accumulations of income derived from any such money.

8. Bank accounts—(1) The Commissioner shall open at any bank or banks such accounts as are necessary for the exercise of the Commissioner's functions and powers.

(2) All money received by the Commissioner, or by any officer or employee of the Commissioner, shall, as soon as practicable after it has been received, be paid into such bank accounts of the Commissioner as the Commissioner from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised in such manner as the Commissioner thinks fit.

9. Investment of money—Any money that belongs to the Commissioner and that is not immediately required for expenditure by the Commissioner may be invested pursuant to section 25 of the Public Finance Act 1989.

10. Commissioner not to borrow without consent of Minister of Finance—Notwithstanding anything in section 4 (3) of this Act, the Commissioner shall not borrow or contract to borrow any money, or renew any loan made to the Commissioner, without the prior written consent of the Minister of Finance.

11. Seal—The Commissioner's seal of office shall be judicially noticed in all Courts and for all purposes.

12. Exemption from income tax—The income of the office of the Commissioner shall be exempt from income tax.

SECOND SCHEDULE

Sections 14, 20

INFORMATION MATCHING RULES

1. Notice to individuals affected—(1) Agencies involved in an information matching programme shall take all reasonable steps (which may consist of or include public notification) to ensure that the individuals who will be affected by the programme are notified of the programme.

(2) Nothing in subclause (1) of this clause requires an agency to notify any individual about an information matching programme if to do so would be likely to frustrate the objective of the programme.

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

3. On-line transfers—(1) Except with the approval of the Commissioner, information transferred between agencies for the purposes of an information matching programme shall not be transferred by means of on-line computer connections.

(2) Any approval given under subclause (1) of this clause may be given either unconditionally or subject to such conditions as the Commissioner thinks fit.

(3) Any approval given under subclause (1) of this clause may at any time be withdrawn by the Commissioner; and any condition subject to which any such approval is given may from time to time be revoked, varied, or added to by the Commissioner.

4. Technical standards—(1) The agency primarily responsible for the operation of an information matching programme shall establish and maintain detailed technical standards to govern the operation of the programme.

(2) The technical standards established by an agency in accordance with subclause (1) of this clause shall deal with the following matters:

(a) The integrity of the information to be matched, with particular reference to—

- (i) Key terms and their definition; and
- (ii) Relevance, timeliness, and completeness:

(b) The matching techniques to be used in the programme, with particular reference to—

- (i) The matching algorithm;
- (ii) Any use of unique identifiers;
- (iii) The nature of the matters being sought to be identified by the matching process;

(iv) The relevant information definitions:

(v) The procedure for recognising matches:

(c) The controls being used to ensure the continued integrity of the programme, including the procedures that have been established to confirm the validity of matching results:

(d) The security features included within the programme to minimise and audit access to personal information, including the means by which the information is to be transferred between agencies.

(3) The technical standards established in accordance with subclause (1) of this clause shall be incorporated in a written document (in this clause called a Technical Standards Report), and copies of the Technical

SECOND SCHEDULE—*continued*INFORMATION MATCHING RULES—*continued*

Standards Report shall be held by all agencies that are involved in the information matching programme.

(4) Variations may be made to a Technical Standards Report by way of a Variation Report appended to the original Report.

(5) The agency that prepares a Technical Standards Report shall forward a copy of that report, and of every Variation Report appended to that report, to the Commissioner.

(6) The Commissioner may from time to time direct that a Technical Standards Report be varied, and every such direction shall be complied with by the agency that prepared the Report.

(7) Every agency involved in an information matching programme shall comply with the requirements of the associated Technical Standards Report (including any variations made to the report).

5. Safeguards for individuals affected by results of programmes—

(1) The agencies involved in an information matching programme shall establish reasonable procedures for confirming the validity of discrepancies before any agency seeks to rely on them as a basis for action in respect of an individual.

(2) Subclause (1) of this clause shall not apply if the agencies concerned consider that there are reasonable grounds to believe that the results are not likely to be in error, and in forming such a view regard shall be had to the consistency in content and context of the information being matched.

(3) Where such confirmation procedures do not take the form of checking the results against the source information, but instead involve direct communication with the individual affected, the agency that seeks to rely on the discrepancy as a basis for action in respect of an individual shall notify the individual affected that no check has been made against the information which formed the basis for the information supplied for the programme.

(4) Every notification in accordance with subclause (3) of this clause shall include an explanation of the procedures that are involved in the examination of a discrepancy revealed by the programme.

6. Destruction of information—(1) Personal information that is disclosed, pursuant to an information matching provision, to an agency for use in an information matching programme and that does not reveal a discrepancy shall be destroyed as soon as practicable by that agency.

(2) Where—

(a) Personal information is disclosed, pursuant to an information matching provision, to an agency for use in an information matching programme; and

(b) That information reveals a discrepancy,—
that information shall be destroyed by that agency as soon as practicable after that information is no longer needed by that agency for the purposes of taking any adverse action against any individual.

(3) Nothing in this clause applies in relation to the Inland Revenue Department.

7. No new databank—(1) Subject to subclauses (2) and (3) of this clause, the agencies involved in an information matching programme shall not

SECOND SCHEDULE—*continued*INFORMATION MATCHING RULES—*continued*

permit the information used in the programme to be linked or merged in such a way that a new separate permanent register or databank of information is created about all or any of the individuals whose information has been subject to the programme.

(2) Subclause (1) of this clause does not prevent an agency from maintaining a register of individuals in respect of whom further inquiries are warranted following a discrepancy revealed by the programme, but information relating to an individual may be maintained on such a register only for so long as is necessary to enable those inquiries to be carried out, and in no case longer than is necessary to enable any adverse action to be taken against an individual.

(3) Subclause (1) of this clause does not prevent an agency from maintaining a register for the purpose of excluding individuals from being selected for investigation, but such register shall contain the minimum amount of information necessary for that purpose.

8. Time limits—(1) Where an information matching programme is to continue for any period longer than 1 year, or for an indefinite period, the agencies involved in the programme shall establish limits on the number of times that matching is carried out pursuant to the programme in each year of its operation.

(2) The limits established in accordance with subclause (1) of this clause shall be stated in writing in an annex to the Technical Standards Report prepared in respect of the programme pursuant to clause 4 of this Schedule.

(3) The limits established in accordance with subclause (1) of this clause may be varied from time to time by the agencies involved in the programme.

Sections 2, 21

**THIRD SCHEDULE
INFORMATION MATCHING PROVISIONS**

Enactment	Information Matching Provision
Births and Deaths Registration Act 1951 Penal Institutions Act 1954 Marriage Act 1955 Customs Act 1966 Inland Revenue Department Act 1974 Accident Compensation Act 1982 Immigration Act 1987 Education Act 1989	Sections 41A and 41B Section 36F Section 49A Section 305B Sections 13A and 13B Section 115A Section 141A Section 307A

This Act is administered in the Department of Justice.
