

The Privacy Act

In “Comment” on January 17 Steven Price referred to journalists’ annoyance at being refused information because of the terms of the Privacy Act. I’m not surprised that journalists feel frustrated. The Privacy Act is probably the most misunderstood act in New Zealand. Everybody knows about it, but nobody reads it (apart from lawyers and large organisations’ privacy officers).

And who can blame the average person for failing to read the Act? While it’s cheap to buy, it doesn’t make exciting bedtime reading. It’s also complex, detailed and confusing.

Steven Price’s article referred to the case of the teacher who hid a camera in a classroom to find out which pupil was stealing. Even the Commissioner for Children, when discussing the matter, misinterpreted the Act and thought that the teacher was breaking the law. The article also pointed out that many people refuse to give information because they wrongly think the Act stops them from giving it.

So what are the requirements of the Privacy Act?

The Act is limited to dealing with personal information about individuals held by “agencies”, which are defined as people, organisations, government departments or businesses. It’s concerned with how information relating to individuals is collected, used and disclosed, and with the access people should have to personal information about themselves.

Under the Privacy Act, the news media are excluded from the definition of “agency”. This means that they can print any information they collect (as long as the defamation law is not breached) and are not bound by the Act’s principles about the collection of information.

Under the Act, any “agency” which collects personal information must comply with 12 principles:

1. Personal information may be collected only if it is needed for a lawful purpose connected with the agency’s work.
2. Information about a person must be collected directly from that person.
3. The agency must take reasonable steps to ensure that the person knows the information is being collected, why it is being collected, who it will be given to, who is collecting it, who will be holding it and that he or she may have mistakes corrected.
4. Information may not be collected in an unlawful or unfair way or in a way that invades the person’s privacy unreasonably.
5. Information must be kept reasonably safe from being lost, changed, used, or seen by unauthorised persons.
6. If information is easily accessible, the person concerned is entitled to know whether information is held and may have access to it.
7. The person concerned may ask to have information corrected. If the agency won’t correct it, he or she may have a statement about the correction which he or she asked for attached to the information
8. Information must be checked before it is used to ensure that it is accurate
9. Information may not be kept any longer than it is needed
10. Information collected for one purpose must not be used for another purpose (with some special exceptions).
11. An agency can give information to a person or another agency only in certain circumstances.
12. An agency may give a person an identifying number or code only if it needs to do so to carry out its work efficiently. It may not give a person a number that is used by another agency.

But the Act also makes exceptions to these principles. This means we can often collect information without the consent or knowledge of the person concerned and may often give it to other people.

You can collect information without going to the person concerned if:

- The information is publicly available
- The person concerned authorises its collection from someone else (e.g. from a doctor)
- Collecting it indirectly won't harm the person's interests
- It is being collected for a criminal investigation or enforcement of a financial penalty, or for a court case or so that any type of tax can be collected
- Collecting it from the person concerned would harm the purposes of the collection or is not practicable in the circumstances
- The information will be used in a form that won't identify the person concerned

Under the second-to-last of these exceptions the teacher referred to in Steven Price's article would not be in breach of the Act.

It's surprising how much personal information is publicly available. For instance, public records will show what property we own, its value, our marriages, what companies we're directors of, the details of shareholdings and whether we have a driver's licence.

We tend to think that the Privacy Act prevents the giving of all personal information. But an agency can give personal information to a person or body if it reasonably believes it's complying with any of the following nine circumstances:

- One of the purposes of collecting the information was to disclose it
- The information was publicly available
- It's being given to the person concerned
- The person concerned agrees to the disclosure
- Disclosure is necessary to allow a public sector agency to uphold the law, including investigating and prosecuting offences, or to enforce a financial penalty, or to collect any type of tax, or for a court case
- Disclosure is necessary to prevent a serious and urgent threat to public health, safety or the life or health of any person
- It's necessary to ensure a business is sold as a going concern
- It's to be used in a form in which the person concerned won't be identified
- The Privacy Commissioner has authorised the disclosure.

The first exception enables schools to give reports to parents and would usually allow hospitals to give information to the families of psychiatric patients.

You can be successful in complaining to the Privacy Commission about the release of information only where there is an "interference with privacy", which requires the breach of a principle or code and a personal loss or detriment.

So it's not the Act itself that is causing problems. It's the lack of public knowledge of its terms and the fallacies that are unnecessarily preventing the disclosure of information.

If you have any concerns in this area or would like to know more, contact your solicitor.

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