

Reference No. HRRT 068/2017

UNDER THE PRIVACY ACT 1993

BETWEEN JOANNE RUDELLE

PLAINTIFF

AND AUCKLAND DISTRICT HEALTH BOARD

DEFENDANT

AT AUCKLAND

BEFORE:

Ms SJ Eyre, Deputy Chairperson

Dr SJ Hickey MNZM, Member

Mr RK Musuku, Member

REPRESENTATION:

Ms J Ruddelle in person

Ms C Campbell and Ms H Botha for defendant

DATE OF HEARING: 2-3 December 2019

DATE OF DECISION: 20 January 2021

DECISION OF TRIBUNAL¹

[1] Ms Ruddelle's son, Michael, is 17 years old. Michael has had flat feet from a young age and in 2015 underwent an operation to correct them. Unfortunately, the outcome of the operation was not as expected, Michael's overall condition worsened, and he suffered ongoing pain. Ms Ruddelle complained about the surgeon, Dr Therese Bidwell, to the Health and Disability Commissioner (HDC). Dr Bidwell then advised other doctors and ACC of Ms Ruddelle's HDC complaint. Ms Ruddelle claims that disclosing the fact she made an HDC complaint was an interference with her privacy.

¹ [This decision is to be cited as *Ruddelle v ADHB* [2021] NZHRRT 5.]

BACKGROUND

[2] On 5 February 2015 Dr Bidwell, Paediatric Orthopaedic Surgeon at Starship Hospital, (employed by Auckland District Health Board (ADHB)) performed surgery to correct Michael's flat feet.

[3] Following the operation Michael experienced ongoing pain and discomfort and he was readmitted to Starship Hospital in April 2015 and attended an appointment in May 2015. Dr Bidwell was on leave on both these occasions, so Michael's first and only post-operation appointment with Dr Bidwell was on 9 June 2015. Ms Ruddelle lost confidence in Dr Bidwell at that appointment and requested that he be treated by another orthopaedic surgeon. Michael was referred to Dr Sue Stott and then subsequently Ms Ruddelle arranged through her GP for Michael to be treated by Dr Wesley Bevan at a location closer to her home.

[4] In September 2015 Ms Ruddelle complained to the HDC about Dr Bidwell's conduct. The complaint was ultimately dismissed by the HDC.

[5] In October 2015, when reviewing her file to respond to the HDC complaint, Dr Bidwell realised she had not completed the ACC forms for Michael. Prompted by that, Dr Bidwell reviewed Michael's file and wrote to Dr Kathryn Edward and Dr Bevan who were now treating Michael and completed the ACC form. These actions are collectively the subject of this claim, as in each communication Dr Bidwell included information about Ms Ruddelle's HDC complaint.

[6] Ms Ruddelle was not advised of these actions at the time and was unaware Dr Bidwell had advised ACC, Dr Edward and Dr Bevan about her HDC complaint. Ms Ruddelle complained to the Privacy Commissioner in March 2017 that there had been an interference with her own and Michael's privacy. The Privacy Commissioner investigated and determined there had been no interference with privacy.

MS RUDELLE'S CLAIM

[7] On 15 December 2017, Ms Ruddelle filed this claim alleging that the ADHB, through Dr Bidwell's actions, disclosed to ACC, Dr Bevan and Dr Edward that she had made an HDC complaint. Ms Ruddelle claimed that this was an interference with her privacy.

[8] Michael is not a party to this claim. He is necessarily mentioned throughout the evidence, but the claim to this Tribunal and therefore this decision only concerns the alleged breaches of Ms Ruddelle's privacy by the disclosure of the existence of the HDC complaint. The wider issues raised by Ms Ruddelle, including the sharing of Michael's health information with other doctors and the completion of Michael's ACC form without express consent were not investigated by the Privacy Commissioner, so are not within the jurisdiction of this Tribunal to determine.

[9] Ms Ruddelle is seeking a declaration of an interference with her privacy, an official statement from the ADHB, and damages of at least \$20,000.

[10] The ADHB disputes there has been any interference with privacy. It submits that Dr Bidwell complied with the Health Information Privacy Code 1994 (HIPC) in disclosing and using the information relating to the HDC complaint.

[11] To determine Ms Ruddelle's claim the Tribunal must determine the following issues:

[11.1] Did the ADHB disclose personal information about Ms Ruddelle to Dr Bevan, Dr Edward and/or ACC?

[11.2] If so, did the disclosure or use of Ms Ruddelle's personal information fall within one of the exceptions provided in Rule 10 or 11 of HIPC or information privacy principles (IPP) 10 or 11?

[11.3] If not, does the disclosure or use of Ms Ruddelle's personal information amount to an interference with privacy under s 66 of the Privacy Act 1993?

[11.4] If so, should one of the remedies in s 85 of the Privacy Act 1993 be granted?

THE LEGAL FRAMEWORK

[12] The Privacy Act 1993 (the Act) provides that agencies dealing with personal information of individuals up to 30 November 2020 must comply with the information privacy principles and any relevant codes of practice issued under the Act. The Act defines personal information as information about an identifiable individual.

[13] A code of practice modifies the application of the IPPs in relation to specific agencies or specific types of information. A code may contain requirements more or less stringent than the Act and the IPPs. The HIPC provides specific requirements that health agencies must abide by when dealing with personal information that is health information.

[14] The HIPC defines health information in clause 3. The relevant parts of that definition are set out below:

- (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;
- (c) Information about any health services or disability services that are being provided, or have been provided, to that individual; or
- (d) [...]
- (e) Information about that individual which is collected before or in the course of, and incidental to, the provision of any health service or disability service to that individual.

[15] The relevant IPPs and HIPC Rules potentially at issue in this claim are set out below. These IPPs and HIPC Rules require an agency not to use or disclose personal information unless it has reasonable grounds to believe that one of the exceptions applies.

Information Privacy Principles Principle 10

Limits on use of personal information

- (1) An agency that holds personal information that was obtained in connection with one purpose shall not use the information for any other purpose unless the agency believes, on reasonable grounds,—
 - (a) ...
 - (b) that the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained; or

**Health Information Privacy Code
Rule 10
Limits on Use of Health Information**

- (1) (a) ...
(b) that the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained.

**Information Privacy Principles
Principle 11**

Limits on disclosure of personal information

An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds,—

- (a) that the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to the purposes in connection with which the information was obtained; or
(..)
(d) that the disclosure is authorised by the individual concerned; or

**Health Information Privacy Code
Rule 11
Limits on Disclosure of Health Information**

- (1) A health agency that holds health information must not disclose the information unless the agency believes, on reasonable grounds:
(a) ...
(b) that the disclosure is authorised by:
(i) the individual concerned; or
(ii) the individual's representative where the individual is dead or is unable to give his or her authority under this rule;
(c) that the disclosure of the information is one of the purposes in connection with which the information was obtained;
...

[16] The issues set out at [11.1] to [11.4] that this Tribunal must consider, to determine if a disclosure amounts to an interference with privacy, are based on the sequential steps established in *L v L* HC Auckland AP95-SW01, 31 May 2002, Harrison J at [20] (*L v L*). Those steps have been applied by this Tribunal in a number of decisions including *Geary v Accident Compensation Corporation* [2013] NZHRRT 34 (20 September 2013) at [190], where the steps were explained as follows:

[190.1] Has there been a disclosure of personal information. The plaintiff carries the burden of proving this threshold element on the balance of probabilities.

[190.2] If the Tribunal is satisfied that personal information has been disclosed, the burden shifts to the defendant to establish to the same standard that that disclosure fell within one of the exceptions provided by Principle 11.

[190.3] Third, if the Tribunal is satisfied that the personal information was disclosed and that the defendant has not discharged his or her burden of proving one of the exceptions in Principle 11, the Tribunal must then determine whether the disclosure constituted an interference with the individual's privacy as defined in s 66 of the Privacy Act. That is, has the plaintiff established one of the forms of actual or potential harm contemplated by s 66(1)(b). The burden of proof reverts to the plaintiff at this stage.

[190.4] Fourth, if the Tribunal is satisfied to this stage, then its final task is to determine whether, in its discretion, it should grant any of the statutory remedies identified in s 85 of the Act.

DID THE ADHB DISCLOSE PERSONAL INFORMATION ABOUT MS RUDELLE?

[17] The details of the disclosures are undisputed and are set out below:

[17.1] On 21 October 2015, Dr Bidwell wrote to Dr Edward, Paediatric Rehabilitation Specialist at the Wilson Centre. Dr Edward is an employee of the ADHB. Dr Bidwell provided her view on diagnoses for Michael and the possible cause of his ongoing pain. In addition, Dr Bidwell provided the following information relating to Ms Ruddelle's HDC complaint:

Diagnoses:

[...]

5. Now subject of a complaint to Health & Disability Commissioner regarding poor outcome of right side. Michael appears to have developed dystonia on the right side of his body which has become very apparent subsequent to surgery.

[...]

Because of the complaint, I have only seen him once after surgery and I have not had a chance to view his foot since June ... his mother has been unsatisfied with the four specialist appointments he has had at Auckland Hospital subsequent to the last time they saw me.

[...]

I am aware that I cannot interact with the patient at the current time due to the complaint to the Health and Disability Commissioner.

[17.2] On 22 October 2015, Dr Bidwell wrote to Dr Bevan, Orthopaedic Foot and Ankle Surgeon at Middlemore Hospital. Middlemore Hospital is part of the Manukau District Health Board. Dr Bidwell outlined her diagnoses of Michael and his health background. She also commented twice that his mother was not happy with the surgery. Dr Bidwell requested that Dr Bevan review Michael's case and provide him with the care he required and that he advise Dr Bidwell of his opinion. Dr Bidwell advised Dr Bevan of Ms Ruddelle's HDC complaint in the following terms:

His mother is, I understand, not necessarily happy with this diagnosis; she is worried something has gone wrong in the surgery. She has filed a complaint to Health and Disability Commissioner.

[17.3] On 22 October 2015, Dr Bidwell completed an ACC 2152 Treatment Injury Claim form for Michael, to apply for funding for the pain on Michael's right foot and leg with spasms and dystonia, which Dr Bidwell stated was caused by the operation she performed on 5 February 2015. In response to the final question on the form which asked for other information relevant to the claim, Dr Bidwell wrote:

Notes included.
Also complaint to HDC.

The nature of the information disclosed

[18] This claim is by Ms Ruddelle about the disclosure by the ADHB of her personal information, namely the fact she complained to the HDC. The fact Ms Ruddelle made an HDC complaint is Ms Ruddelle's personal information and Michael's health information. The privacy interests of both Michael and Ms Ruddelle must therefore be considered before it can be used or disclosed.

[19] The disclosures made by Dr Bidwell contained both Michael's health information and Ms Ruddelle's personal information. It was not however Ms Ruddelle's health information as the fact Ms Ruddelle complained to the HDC does not come within the definition of health information set out in the HIPC as it is not information related to Ms Ruddelle's health or medical history, nor is it information collected in the provision of a health and disability service to Ms Ruddelle.

[20] The information that was disclosed was Ms Ruddelle's personal information, and was information easily identifiable as relating to Ms Ruddelle, as demonstrated below:

[20.1] The letter to Dr Bevan clearly stated that Michael's mother had made a complaint to the HDC. Ms Ruddelle is clearly linked to this complaint by this statement. It is therefore her personal information.

[20.2] The disclosure to ACC was brief and simply stated "also complaint to HDC". There is no reference to Ms Ruddelle in that disclosure and the ACC form itself was filled out in Michael's name. However, as Michael's mother and primary caregiver, Ms Ruddelle could be easily identified as the person who had made the HDC complaint.

[20.3] The letter to Dr Edward stated that there was now a complaint to the Health and Disability Commissioner and that Michael's mother was unsatisfied. The Tribunal considers this information is sufficient read together to identify Ms Ruddelle as having made the HDC complaint. The existence of the complaint therefore being Ms Ruddelle's personal information.

[21] As the information disclosed was personal information about Ms Ruddelle and not health information, the Act and the relevant IPPs apply, not the rules in the HIPC.

Letter to Dr Edward

[22] The ADHB stated in its closing submissions that because Dr Edward is employed by the Starship Paediatric Rehabilitation Service, which is under the umbrella of the ADHB, the letter from Dr Bidwell to Dr Edward is not a disclosure that comes within the scope of IPP 11.

[23] The Tribunal accepts that Dr Edward is an employee of ADHB. However, that does not mean personal information about Ms Ruddelle can be shared with her, without restriction. It is unnecessary to determine whether the letter from Dr Bidwell to Dr Edward is a disclosure that comes within the scope of IPP 11. However, IPP 10 clearly limits use of personal information within an agency, even if the disclosure of personal information from Dr Bidwell to Dr Edward is not within the scope of IPP 11.

[24] IPP 10 prevents any use of information which is not authorised by the exceptions in IPP 10. In a large agency such as the ADHB, this is particularly important. If information was able to be shared and used without restriction within the ADHB this would be entirely inconsistent with IPP 10. Information within an agency can only be used if it is authorised by one of the exceptions in IPP 10. Accordingly, the use of Ms Ruddelle's personal information in the letter to Dr Edward will be assessed against the exceptions in IPP 10.

DID THE DISCLOSURE AND USE FALL WITHIN ONE OF THE EXCEPTIONS?

[25] The ADHB submitted that the HDC complaint was part of Michael's health information and that the HIPC is the relevant framework to assess it.

[26] However, as the Tribunal has determined that the information shared was Ms Ruddelle's personal information not health information, the communications must be assessed against IPPs 10 and 11 respectively. Accordingly, the ADHB disclosures will be considered against the exceptions in IPP 10 and 11, which correlate to HIPC, rr 10(1)(b), 11(1)(b) and 11 (1)(c).

Disclosures to Dr Bevan and ACC

[27] IPP 11 requires an agency not to disclose personal information unless it believes one of the exceptions detailed in the IPPs apply. The ADHB has relied on two exceptions to justify its disclosures to Dr Bevan and ACC, IPP 11(a) and (d).

[28] To successfully rely on these exceptions *L v L* requires the ADHB to prove that Dr Bidwell subjectively believed the grounds for these exceptions existed and that the grounds for her beliefs were objectively reasonable.

[29] Dr Bidwell stated in evidence that she believed the disclosure of the HDC complaint to both Dr Bevan and ACC was allowed as it was part of Michael's health history, that she was entitled to share. Dr Bidwell was of the view that she was entitled to disclose Michael's health history to both Dr Bevan and ACC, because this was authorised when Michael's parents signed his patient registration forms and sharing this information was one of the purposes it was collected for. The Tribunal accepts this was Dr Bidwell's subjective belief. However, to prove on reasonable grounds that an exception applies, the ADHB must also establish that these beliefs are objectively reasonable.

The exception in IPP 11(a)

[30] The exception in IPP 11(a) reads as follows:

An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds,—

- (b) that the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to the purposes in connection with which the information was obtained; or

[31] The focus of this exception is on the purpose for which information was obtained. This IPP allows an exception to the non-disclosure principle, where the disclosure is one of the purposes for which the information was obtained, or is directly related to that purpose.

[32] The Tribunal has previously determined that a directly related purpose, is one where there has been an "uninterrupted immediate relationship to the original purpose". See *Director of Human Rights Proceedings v Crampton* [2015] NZHRRT 35 (29 July 2015) (*Crampton*) at [92].

[33] The ADHB submits that Dr Bidwell was entitled to disclose the existence of the HDC complaint to Dr Bevan and ACC as part of Michael's health information. However, this submission overlooks the making of an HDC complaint was Ms Ruddelle's personal information as well as Michael's health information. Dr Bidwell was notified of

Ms Ruddelle's HDC complaint for the purpose of allowing Dr Bidwell to respond to the complaint. There is no evidence that the Health and Disability Commissioner sent Dr Bidwell the HDC complaint for any reason other than that.

[34] Nor has there been any evidence presented by ADHB to suggest that the disclosure of the HDC complaint to Dr Bevan or to ACC was "directly related" to the purpose for which the information was obtained. To use the words set out in *Crompton*, no "uninterrupted immediate relationship" between the provision of the HDC complaint to Dr Bidwell and her decision to send a letter to Dr Bevan and apply for accident compensation for Michael has been established. The onus of proving an exception to the IPPs is on the ADHB. In this instance there is no evidence to prove the exception in IPP 11(a) applies, apart from Dr Bidwell's subjective belief.

[35] The Tribunal finds that Dr Bidwell's subjective belief was not objectively reasonable. The purpose of the provision of the HDC complaint to Dr Bidwell should have been apparent and that purpose did not relate to ACC or to an unsolicited letter to Dr Bevan. If Dr Bidwell had paused to think about the information she was sharing, how she acquired it and who it related to, it would have been apparent to her that she was sharing information that was not simply Michael's health information. The information Dr Bidwell shared was mixed information, Michael's health information and Ms Ruddelle's personal information. While there will be some situations where a parent's information in relation to a child patient will appropriately be shared, IPP 11(a) requires consideration of the purpose for which the information was obtained before information is disclosed. In this claim, it is clear the personal information relating to the HDC complaint was received by Dr Bidwell for the purpose of eliciting Dr Bidwell's reply.

[36] The Tribunal has had regard to Dr Bidwell's suggestion that referring to the HDC complaint gave weight to the ACC claim or the letter to Dr Bevan, but that is not a relevant exception to the non-disclosure required by IPP 11. Furthermore, it is difficult to see how that could result in a greater likelihood of accident compensation being granted or improved treatment being offered when the act of making an HDC complaint is not itself evidence of the complaint having any substance. The seriousness or otherwise of a patient's condition can be conveyed without mentioning any complaints. Furthermore, as Ms Ruddelle explained, the opposite effect is also arguable. It was her fear that the mention of the HDC complaint in fact would result in a less impartial and less favourable treatment for Michael. While there is no evidence to support that contention either, this highlights the fact that there was no objective reason to share the existence of the HDC complaint with Dr Bevan or ACC. The ACC form could have been completed without mention of the HDC complaint and the letter to Dr Bevan completed without mention of it either.

[37] There is no reasonable or objective basis upon which Dr Bidwell could have considered the purpose of her being advised of the HDC complaint was to enable her to disclose it to another doctor treating Michael or to ACC. Accordingly, the ADHB has not proven the exception in IPP 11(a) applies.

The exception in IPP 11(d)

[38] IPP 11(d) states:

An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds, —

...

(d) that the disclosure is authorised by the individual concerned;

[39] Dr Bidwell's subjective belief that she considered the disclosure was authorised is not objectively reasonable, in respect of Ms Ruddelle, whose personal information was disclosed. The patient authorisations that Dr Bidwell referred to relate only to the sharing of Michael's health information and do not address at all the sharing of Ms Ruddelle's personal information. There is no evidence that Ms Ruddelle authorised the sharing of her personal information. Accordingly, the exception in IPP 11(d) has not been proven by the ADHB.

Use of information in letter to Dr Edward

[40] The ADHB contended that Dr Bidwell was entitled to share the fact Ms Ruddelle had made an HDC complaint with Dr Edward, as it was one of the purposes for which the information was obtained. The ADHB relied on HIPC, r 10(1)(b) to justify this. This rule is equivalent to IPP 10(1)(e) which allows use of information, if the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained.

[41] The Tribunal accepts that, as already discussed above, Dr Bidwell considered (albeit incorrectly) that she could disclose this information as it was simply part of Michael's health information. This belief is incorrect as even in respect of health information the HIPC sets out strict restrictions and exceptions on the sharing of health information.

[42] Accordingly, the Tribunal considers it was not objectively reasonable for Dr Bidwell to hold this inaccurate belief. As noted earlier, if Dr Bidwell had turned her mind to why she had information about the HDC complaint, she would have realised it was for the purposes of responding to it. There is no evidence that Dr Edward was part of Dr Bidwell's response. The reference to the complaint was additional and unnecessary information. There is no objective basis upon which Dr Bidwell could have reasonably concluded that one of the purposes for her being made aware of the HDC complaint was to share it with a colleague who was treating Michael, but who was not involved at all with the HDC complaint.

[43] The use of Ms Ruddelle's personal information in the letter to Dr Edward was not a justified exception to IPP 10.

[44] The disclosures made by Dr Bidwell did not fall within the exceptions to IPP 10 or IPP 11. Accordingly, the Tribunal must now consider whether these disclosures amount to an interference with privacy.

WERE THE IPP BREACHES AN INTERFERENCE WITH PRIVACY?

[45] The Tribunal has concluded that Dr Bidwell's actions in disclosing the HDC complaint to ACC and Dr Bevan and in sharing that information with Dr Edward breached IPP 11 and IPP 10 respectively.

[46] A remedy can only be awarded for breaches of an IPP if there has been an interference with privacy as defined in s 66 of the Act. It is the definition in subsection (1) that is relevant for this proceeding. It reads:

66 Interference with privacy

- (1) For the purposes of this Part, an action is an interference with the privacy of an individual if, and only if, —
- (a) in relation to that individual, —
- (i) the action breaches an information privacy principle; or
 - (ii) the action breaches a code of practice issued under section 63 (which relates to public registers); or
 - (iia) the action breaches an information privacy principle or a code of practice as modified by an Order in Council made under section 96J; or
 - (iib) the provisions of an information sharing agreement approved by an Order in Council made under section 96J have not been complied with; or
 - (iic) the provisions of Part 10 (which relates to information matching) have not been complied with; and
- (b) in the opinion of the Commissioner or, as the case may be, the Tribunal, the action—
- (i) has caused, or may cause, loss, detriment, damage, or injury to that individual; or
 - (ii) has adversely affected, or may adversely affect, the rights, benefits, privileges, obligations, or interests of that individual; or
 - (iii) has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to the feelings of that individual.

[47] Applying this definition to Ms Ruddelle’s situation, the Tribunal can only find that there has been an interference with her privacy if the breaches of an IPP have a causal connection to at least one of the harms above and that harm was experienced by Ms Ruddelle.

[48] The causation standard for s 66 is explained in *Taylor v Orcon Ltd* [2015] NZHRRT 15, (2015) 10 HRNZ 458 (*Taylor*) at [58] to [61]. *Taylor* requires the breach of an IPP to have been a material or contributing factor to the consequences suffered.

[49] The Tribunal has already determined that IPPs 10 and 11 were breached by the ADHB. This satisfies the first stage of the test under s 66(1)(a)(i).

[50] The second stage requires the Tribunal to consider the consequences of the breach and to determine whether the breaches of IPPs 10 and 11 resulted in one of the consequences set out in s 66(1)(b) and were a material or contributing factor.

[51] The Tribunal has been left with no doubt that the consequences of Michael’s unsuccessful surgery, his delayed recovery, the loss of confidence in Dr Bidwell and the need to consult multiple additional health professionals has had a profound impact on Ms Ruddelle and Michael. The ADHB also acknowledged in its closing submissions the upset that Ms Ruddelle has suffered. However, to establish an interference with privacy, the Tribunal must be satisfied that the disclosure and use of the fact of the HDC complaint was a contributing or material cause in these consequences, not just part of the overall background.

[52] Ms Ruddelle’s evidence is that the consequences of the disclosure of the HDC complaint, were that Dr Bidwell’s letter to Dr Bevan “influenced him [Dr Bevan] to concur with [Dr Bidwell’s] assumption” about Michael’s health. Ms Ruddelle stated that this undermined her ability to obtain an independent second opinion for Michael. Ms Ruddelle also believes the disclosure to Dr Bevan caused delays in Michael receiving the appropriate treatment. No detailed or specific evidence was provided to substantiate these concerns, other than Ms Ruddelle’s own view that this had occurred.

[53] Ms Ruddelle explained the personal impact on her was “a lot of stress” and she experienced anxiety and was “full of despair” whenever she took Michael to Dr Bevan. Ms Ruddelle has presented a letter from her GP, confirming that Ms Ruddelle reported feeling “a lot of stress and anxiety as she feels Michael may not receive optimum care he needs from Dr Bevan”. Ms Ruddelle also explained it was not part of her culture to seek out a doctor for herself when she was upset, but that instead when she was deeply upset she would “tangi” [cry].

[54] The Tribunal acknowledges Ms Ruddelle’s desire to ensure Michael received the most appropriate and effective treatment for him and an independent second opinion was part of how she saw that occurring. However, there is no evidence that this outcome was adversely affected by the ADHB disclosures and use of her personal information. Ms Ruddelle maintained that unwavering commitment to arranging appropriate treatment for Michael despite the disclosures. While Ms Ruddelle has suggested that this disclosure caused delay, there is no independent evidence of delay nor is there any evidence that the treatment he required has not been provided.

[55] While Michael’s pathway to treatment and recovery appears to have been difficult, and the realisation that Dr Bidwell had told others about her HDC complaint caused Ms Ruddelle stress, this does not constitute an interference with privacy. The Tribunal is not satisfied that the disclosure and use of the HDC complaint by Dr Bidwell was a material and/or contributing factor in causing any loss, detriment, damage or injury to Ms Ruddelle herself or to adversely affecting her rights, benefits, privileges, obligations or interests. Accordingly, the Tribunal finds the consequences in s 66(1)(b)(i) and (ii) have not been established to the necessary standard.

[56] With regard to s 66(1)(b)(iii), the disclosure or use of the HDC complaint could amount to an interference with privacy if there was a causal link between it and significant humiliation, significant loss of dignity or significant injury to Ms Ruddelle’s feelings. While Ms Ruddelle has not specifically claimed that she felt humiliation, loss of dignity or injury to feelings, it is arguable that she did experience this to a degree. However, the Tribunal would require evidence this was significant and causally linked to the established breaches of IPPs before it could find that Ms Ruddelle experienced an interference with privacy. There is no evidence this occurred in Ms Ruddelle’s situation.

[57] The Tribunal concludes that while there was a breach of IPPs 10 and 11 by the disclosure of the existence of Ms Ruddelle’s HDC complaint to Dr Bevan and ACC and the use of her personal information in a letter to Dr Edward, there has not been an interference with privacy as defined in s 66 of the Privacy Act 1993.

CONCLUSION

[58] As there has been no interference with Ms Ruddelle’s privacy, no remedy can be ordered and Ms Ruddelle’s claim is unsuccessful.

[59] The claim filed by Ms Ruddelle against the ADHB is dismissed.

COSTS

[60] No submissions were made regarding costs. Both parties have attained a measure of success in this claim, as Ms Ruddelle has proven breaches of IPPs but the ADHB has been successful in proving the breaches were not an interference with privacy.

Accordingly, the Tribunal's preliminary view is that costs should appropriately lie where they fall.

[61] If the parties do not agree with this view they are to file a joint memorandum within 10 working days of this decision. If agreement over a joint memorandum is not achievable, then the parties are to file separate memoranda.

[62] The parties' attention is drawn to recent decisions of this Tribunal where applications for costs have been considered, *Fisher v Foster (Costs)* [2020] NZHRRT 29 and *O'Hagan v Police (Costs)* [2020] NZHRRT 28.

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Ms SJ Eyre
Deputy Chairperson

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Dr SJ Hickey MNZM
Member

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Mr RK Musuku
Member