IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2021] NZHRRT 54**

I TE TARAIPIUNARA MANA TANGATA

	Reference No. HRRT 003/2018
UNDER	**THE PRIVACY ACT 2020**
BETWEEN	**GUY GREENSLADE**
	PLAINTIFF
AND	**COMMISSIONER OF POLICE**
	DEFENDANT

AT WELLINGTON

BEFORE:
Ms GJ Goodwin, Deputy Chairperson
Ms WV Gilchrist, Member
Ms ST Scott QSM, Member

REPRESENTATION:
Mr G Greenslade in person
Ms D Harris and Ms A Lawson for defendant

DATE OF HEARING: **10-14 August 2020 and 17 August 2020**

DATE OF DECISION: **10 December 2021**

DECISION OF TRIBUNAL[1]

INTRODUCTION

[1] Growing up, Guy Greenslade always wanted to join the Police. He was attracted to a career with the Police because he thought it would be exciting, active and a community-based position.

[1] [This decision is to be cited as *Greenslade v Commissioner of Police (Privacy Act)* [2021] NZHRRT 54.]

[2] To be eligible to be appointed as a Police constable an applicant must first graduate from the Royal New Zealand Police College (Police College). Accordingly, Mr Greenslade applied to join Police College. In his application Mr Greenslade disclosed that he had dyslexia. To be admitted to Police College candidates had to sit a variety of tests. One of these was a typing test. Mr Greenslade passed all but the typing test. He failed that test three times.

[3] Mr Greenslade was then asked to provide the Police with any material relevant to his dyslexia. Mr Greenslade supplied an out-dated Seabrook McKenzie Assessment on his dyslexia.

[4] Mr Greenslade was subsequently denied entry to Police College.

[5] Mr Greenslade alleges the Police have breached information privacy principles (IPPs) 1, 3(1)(a) and (b), 8 and 10 of the Privacy Act 1993 (PA) when collecting information about his dyslexia, both from his recruitment application and subsequently from the Seabrook McKenzie Assessment, and using it to determine his application to join Police College. He says the Police have interfered with his privacy. The Police deny this.

[6] To understand the case, further background is required.

The typing test and entry to Police College

[7] In June 2014 Mr Greenslade applied to be admitted to Police College. In September 2014 he completed the first interview in the process towards admission to Police College.

[8] On 29 June 2015 Mr Greenslade was invited to attend an assessment day. As part of the assessment, he completed a Police Officer Recruitment Pre-Assessment Form (Assessment Form). The Assessment Form asks the question: "Do you have a learning disability (e.g. dyslexia)". Mr Greenslade noted on the Assessment Form that he did have dyslexia. The information about his dyslexia is the first collection (first collection) of his personal information that is relevant to Mr Greenslade's allegations that the Police breached IPPs 1, 3(1)(a) and (b), 8 and 10.

[9] On 17 July 2015 Mr Greenslade was advised that he had either met or exceeded the required standards in the assessments and would move to the formal interview stage.

[10] Mr Greenslade's interview took place with Ms Brittany Johnson, a former Police Selection Specialist, on 4 August 2015. At the conclusion of the interview Mr Greenslade was required to complete a typing test. The typing test involves the candidate being shown the hard copy of a text on community policing. It tests the replication of that block of text on a screen, under timed conditions.

[11] Mr Greenslade failed the typing test. Mr Greenslade was not, however, concerned when he failed the typing test. He understood that, in his words, it was "no big deal" and that he could re-sit the assessment multiple times. Ms Johnson suggested that Mr Greenslade should perhaps focus on speed and accuracy and not go back to fix his mistakes.

[12] On 30 November 2015 he was invited to re-sit the typing test but failed twice. Ms Johnson recalls that in these tests Mr Greenslade went "hell for leather" and typed as many words as possible, without going back to correct any errors.

The assessment of Mr Greenslade

[13] Ms Johnson was concerned at Mr Greenslade's negative score on the typing test. On 7 December 2015 she sent an email to Ms Margaret Kennedy, the Police Recruitment Manager for the Lower North/South Islands, seeking advice about Mr Greenslade.

[14] Ms Johnson asked how to proceed with Mr Greenslade. She asked Ms Kennedy whether to decline his application, whether there was another assessment he could undertake or whether they would make an exception for Mr Greenslade in connection with the typing test.

[15] On 7 January 2016 Ms Kennedy sent an email to Ms Fiona Johnston at Police Psychological Services. Ms Kennedy asked Ms Johnston for recommendations as to whether it was appropriate to make an exception for Mr Greenslade in connection with the typing test, so that he could be considered for a position with the Police.

[16] Ms Kennedy's email to Ms Johnston was referred to Inspector Ian Saunders, the then Senior Psychologist with Police Psychological Services.

[17] Inspector Saunders responded on Monday 11 January 2016. His advice was as follows:

> The performance you described below is possibly indicative of highly relevant cognitive issues, related to his dyslexia, that could arise from coding and working memory issues or other challenges in recording information accurately (i.e. this reads to me as not just a typing issue – it's just that typing is where it is expressed) – this is highly relevant to Police work and a significant risk if it surfaces in frontline circumstances (e.g. recording documentary evidence and giving reliable evidence in court using his records, typing registrations, names, etc. into NIA, completing FVIR, completing IONs and TONs safely and accurately under time pressure). In my view, without further investigation of his performance on this test we would be adopting too greater (sic) risk than reasonable for Police and potentially setting up for significant challenges and stress both in the training and operational environment. We have HSE Act responsibilities to minimise this risk and so this weighs heavily against waiving the standards on this occasion.
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> My strong recommendation is that this candidate be provided detailed feedback on this and that we offer to refer him to a neuro psychologist (at his cost – circa $1,600) for detailed review and assessment of his performance against the role requirements. Until we have such a detailed analysis of his performance we will not be in a position to advise on any way to advance his application.
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> It is true that candidates with Dyslexia are in the working population. They all however have passed Police entrance testing and the College program albeit in some instances with support, and no 2 cases are identical. I don't think that makes it a sound business decision to hire someone with the expectation they will require support to be minimally competent or pass the training requirements – it is simply unfair to the candidate, future colleagues/supervisors and the public.

[18] On 10 February 2016 Ms Johnson invited Mr Greenslade to attend a meeting between Mr Greenslade and Inspector Saunders, scheduled for Tuesday 23 February 2016. Mr Greenslade was advised that the purpose of the meeting was to discuss his application to join the Police, the results of his typing assessment and his dyslexia. He was requested to bring to the meeting all reports and documentation with regard to his dyslexia.

[19] In the event the meeting was cancelled by the Police, as Inspector Saunders could not attend. Instead, on 7 April 2016 Ms Brittany Johnson sent an email to Mr Greenslade stating that she would like to get a resolution for him with respect to his recruitment and

asking him to send a copy of the documentation and reports that he had been requested to bring to the meeting.

[20] On 18 April 2016 Mr Greenslade sent Ms Johnson a Seabrook McKenzie Assessment of his dyslexia, that had been compiled almost five years previously, on 28 October 2011. Mr Greenslade advised that the skill level he was working at, as recorded in the Seabrook McKenzie Assessment, was not relevant as it was out-dated, and the documentation was only relevant to how he learnt.

[21] Mr Greenslade's personal information contained in the Seabrook McKenzie Assessment is the second collection (second collection) of his personal information, that forms the basis of Mr Greenslade's allegations that the Police breached IPPs 1, 3(1)(a) and (b), 8 and 10.

[22] On 3 May 2016 Ms Johnson provided Mr Greenslade's Seabrook McKenzie Assessment to Inspector Saunders. On 17 May 2016 Inspector Saunders replied, advising there was nothing in the report that mitigated the concern he had – fundamentally that, despite several opportunities, Mr Greenslade could not demonstrate an ability to pass the typing test.

[23] On 24 May 2016 Mr Greenslade was advised that his application to join Police College had been declined. The reason given for the decline mirrors Inspector Saunders' views, namely that the Police were of the opinion that Mr Greenslade would not be able to meet the typing standard as evidenced by the typing test due to his dyslexia and cognitive ability.

[24] This claim was originally filed under the PA. On 1 December 2020 that 1993 Act was repealed and replaced by the Privacy Act 2020. The transitional provisions in Privacy Act 2020 Schedule 1, Part 1, cl 9(1) provide that these proceedings must be continued and completed under the 2020 Act. However, that does not alter the relevant legal rights and obligations in force at the time the actions subject to this claim were taken. Accordingly, all references in this decision to PA are to the 1993 Act, unless otherwise stated.

MATTERS TO BE DETERMINED BY THE TRIBUNAL

[25] The Tribunal must determine whether Mr Greenslade's privacy has been interfered with. The statutory test for an interference with privacy is two-limbed. In this case it requires a finding that there has been a breach of any of IPPs 1, 3(1)(a) and (b), 8 or 10 and also a finding that Mr Greenslade has, as a consequence of that breach, suffered one of the forms of harm in PA, s 66(1)(b). The onus is on Mr Greenslade to prove both of these limbs.

[26] Only if an interference with Mr Greenslade's privacy is established will the Tribunal have jurisdiction to consider whether any remedy should be granted.

Whether the Police breached IPP 1

[27] We proceed to consider whether the actions of the Police in making the first collection or the second collection breached IPP 1. IPP 1 provides as follows:

Principle 1

Purpose of collection of personal information

Personal information shall not be collected by any agency unless—

(a) The information is collected for a lawful purpose connected with a function or activity of the agency; and
(b) the collection of the information is necessary for that purpose.

[28] IPP 1 imposes two obligations. The first is the requirement that personal information is collected for a lawful purpose connected with a function or activity of the agency. The second is the requirement that the collection of personal information is necessary for that purpose. The onus is on Mr Greenslade to prove a breach of IPP 1, on the balance of probabilities.

[29] The Tribunal must determine:

[29.1] Whether the first collection of Mr Greenslade's personal information on 29 June 2015, namely that he had dyslexia, or the second collection of Mr Greenslade's personal information on 18 April 2016, namely the information in the Seabrook McKenzie Assessment, were for a lawful purpose connected with a function or activity of the Police; and if so

[29.2] Whether such collections were necessary for that purpose.

[30] In relation to the first limb of IPP 1, namely whether the first collection and the second collection were for a lawful purpose connected with a function or activity of the Police, Mr Greenslade, in summary, says:

[30.1] In relation to the first collection, because the Assessment Form stated that the purpose of the collection of information was to ensure there were no factors that would impact on his performance on the assessment day and, because the Police used his disclosure of dyslexia to make a determination in relation to his cognitive abilities, the collection was for an unlawful purpose.

[30.2] In relation to the second collection, the Seabrook McKenzie Assessment was relied on to determine that his application should be declined. Because this assessment was not up to date and was inherently inaccurate, irrelevant and misleading for the purpose it was used for (being the determination of his ability to pass the typing test), this collection was also for an unlawful purpose.

[31] The Police, in summary, say both the first collection and the second collection were made for the lawful purpose of assisting the Police assessment of Mr Greenslade's performance in the recruitment process and that the collection was necessary for that purpose. They rely on the Policing Act 2008 (Policing Act) and *R v Alsford* [2017] NZSC 42 [2017] 1 NZLR 710.

[32] The Policing Act provides for policing services in New Zealand, states the functions and provides for the governance and administration of the Police. Of note are Policing Act, ss 8 and 9 which set out the principles of the Policing Act and the functions of the Police. Section 8(a) refers to the requirements for principled, effective and efficient policing services. Section 9 of the Policing Act sets out the functions of the Police as follows:

9 Functions of Police

The functions of the Police include—
(a) keeping the peace:
(b) maintaining public safety:
(c) law enforcement:
(d) crime prevention:
(e) community support and reassurance:
(f) national security:
(g) participation in policing activities outside New Zealand:
(h) emergency management.

[33] The Police require employees to fulfil the above statutory functions. Accordingly, a lawful function or activity of the Police must be that of a prospective employer. The Police had determined that one of the skills required of its employees, who would be employed as cadets at Police College, was typing, as measured by the typing test. The Assessment Form indicates that the Police considered dyslexia to be relevant to the assessments, including the typing test, made of prospective Police College employees.

[34] It is Mr Greenslade's submission that the two collections of his personal information were improperly and so unlawfully made.

[35] Both collections were made to assist the Police assessment of Mr Greenslade's performance in the recruitment process. The first collection and the second collection were made in accordance with the functions of the Police as a prospective employer. We find both collections of information about Mr Greenslade's dyslexia were for a lawful purpose in connection with the functions of the Police as an employer.

[36] The next issue is, therefore, whether such collections were necessary for that purpose.

[37] The phrase "necessary for that purpose" means reasonably necessary. See *Lehmann v Canwest Radio Works Ltd* [2007] NZHRRT 35 at [50] and *Tan v New Zealand Police* [2016] NZHRRT 32 at [77] and [78] where the Tribunal concluded that the term "necessary for that purpose" indicated a higher threshold than "reasonableness" and "expedient":

> **[77]** In the present context the information privacy principles have as their purpose the promotion and protection of individual privacy. Those principles are not absolute and are subject to limits sometimes framed in terms of the agency holding a belief on reasonable grounds and sometimes in terms of the agency concluding non-compliance is "necessary". From this we conclude the term "necessary" as used in the information privacy principles indicates a higher threshold than "reasonableness" and "expedient". We therefore intend employing the *Canterbury Regional Council v Independent Fisheries Ltd* meaning of "needed or required in the circumstances, rather than merely desirable or expedient".
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> **[78]** We believe this approach to be consistent with *Commissioner of Police v Director of Human Rights Proceedings* (2007) 8 HRNZ 364 (Clifford J, S Ineson and J Grant), a decision on Principle 11. We understand this decision to mean that while the term "necessary" sets a higher threshold than "expedient", it does not set the highest of thresholds. The Court at [53] to [54] agreed with a submission that something would be necessary when it was "required for a given situation, rather than that it was indispensable or essential"

[38] The issue of whether the two collections were reasonably necessary in connection with the role of the Police as Mr Greenslade's prospective employer must be considered in light of the situation which then existed between the Police and Mr Greenslade.

[39] The first collection, in the Assessment Form, was purely routine and made at the commencement of the assessment day. As referred to above at [33], the Police

considered dyslexia to be relevant to the assessments, including the typing test, made of prospective Police College employees. The relevance of dyslexia is a matter for the Police. Given this, we find that the first collection did meet the requirement of being necessary in connection with the functions of the Police as a prospective employer.

[40] The second collection, the information in the Seabrook McKenzie Assessment, was provided to the Police by Mr Greenslade at the request of Ms Johnston. This was at a time when Mr Greenslade had failed the typing test three times and the Police were attempting to determine what their future course would be in relation to his application. Following the cancellation of his proposed meeting with Inspector Saunders, Ms Johnson sent an email to Mr Greenslade, stating that she would like to get a resolution for him with respect to his recruitment, and asking him to send a copy of the documentation and reports that he had been requested to bring to the meeting. Police did not know what documentation and reports Mr Greenslade would have in relation to his dyslexia. The request was, however, clearly made by the Police in the context of the recruitment process.

[41] Given the test for "necessary" discussed at [37] above, we also find the second collection met the requirement of being necessary in connection with the functions of the Police as an employer.

[42] Accordingly, Mr Greenslade has not proven that, on the balance of probabilities, the Police breached IPP 1.

Whether the Police breached IPPs 3(1)(a) or (b) or IPP 10

[43] For the reasons set out in [44] to [50] following, we now consider Mr Greenslade's allegations that the Police breached IPPs 3 and 10. Those IPPs provide:

> Principle 3
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> *Collection of information from subject*
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> (1) Where an agency collects personal information directly from the individual concerned, the agency shall take such steps (if any) as are, in the circumstances, reasonable to ensure that the individual concerned is aware of—
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> (a) the fact that the information is being collected; and
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> (b) the purpose for which the information is being collected; and
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> …
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> 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,—
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> (a) that the source of the information is a publicly available publication and that, in the circumstances of the case, it would not be unfair or unreasonable to use the information; or
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> (b) that the use of the information for that other purpose is authorised by the individual concerned; or
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> (c) that non-compliance is necessary—
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> (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
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> (ii) for the enforcement of a law imposing a pecuniary penalty; or
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> (iii) for the protection of the public revenue; or
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> (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or

(d) that the use of the information for that other purpose is necessary to prevent or lessen a serious threat (as defined in section 2(1)) to—
  (i) public health or public safety; or
  (ii) the life or health of the individual concerned or another individual; or
(e) that the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained; or
(f) that the information—
  (i) is used in a form in which the individual concerned is not identified; or
  (ii) is used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
  (g) that the use of the information is in accordance with an authority granted under section 54.

(2) In addition to subclause (1), an intelligence and security agency that holds personal information that was obtained in connection with one purpose may use the information for any other purpose (a secondary purpose) if the agency believes on reasonable grounds that the use of the information for the secondary purpose is necessary to enable the agency to perform any of its functions.

Application of the Policing Act

[44] The Police submit that neither IPP 3 nor IPP 10 can be breached in this case, because of the Policing Act, s 57.

[45] Section 57 of the Policing Act, as it applied at the time of Mr Greenslade's application for Police College, provided:

> **57 Application of Privacy Act 1993 to assessment for suitability for employment**
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> Nothing in information privacy principles 2, 3, and 10 of the Privacy Act 1993 applies in relation to information collected, obtained, held, used, disclosed by, or disclosed to the Police for the purpose of any assessment by the Commissioner of the suitability of any particular person for employment with the Police.

[46] The Police say that, as the first collection and the second collection were made in the course of assessing Mr Greenslade's suitability for employment, the Police were not required under IPP 3 to inform Mr Greenslade of the fact that information was being collected or the purpose for which information was being collected. The Police say, further, that because of the Policing Act, s 57 they were entitled, under IPP 10, to use the information disclosed by Mr Greenslade about his dyslexia for a purpose other than that for which it was originally collected.

[47] Mr Greenslade says, in summary:

[47.1] Section 57 of the Policing Act is only intended to apply to all legitimate and lawful assessments by the Police, in other words, to information genuinely required for vetting purposes.

[47.2] If the Tribunal finds that the collection of information relating to his dyslexia was not required for vetting purposes or was used in an unlawful way, the words "any assessment by the Commissioner" in s 57 of the Policing Act would not apply to block the application of IPPs 3 and 10.

[47.3] The words "information required" in section 57 can give rise to an inference that the section was intended only to apply to information required for legitimate and lawful assessments of applicants. He cites academic commentary from Mr Ian McKay "*Interpreting Statutes – A Judge's View*" [2000] Otago Law Review 743, which supports an interpretation that words that have been omitted by mistake or inadvertence can be supplied, if it is obvious for the context that they are intended.

He says that in this case the plain and ordinary reading of s 57 of the Policing Act is likely to be incorrect. He says it is appropriate to give effect to the intention of the legislation by adding the word "lawful" to prevent a contradictory or absurd outcome.

[48] Mr Greenslade appears to argue that s 57 of the Policing Act does not apply in this case as, in breaching IPPs 1 and 10, Police were acting with an unlawful purpose, in that the information was not genuinely required for vetting purposes.

[49] We have already found that the first collection and the second collection of information by the Police was not unlawful. Rather, the Police made the two collections for the lawful purpose of assessing Mr Greenslade's suitability for employment.

[50] On this basis, s 57 of the Policing Act does negate the operation of IPPs 3 and 10. The Police were not required to inform Mr Greenslade of the fact that the information was being collected or the purpose for which it was being collected. Similarly, the Police were entitled to use information disclosed by Mr Greenslade in the first collection, namely his dyslexia, and information disclosed by Mr Greenslade in the second collection, namely the Seabrook McKenzie Assessment, for a purpose other than which it was originally collected.

[51] We should add that even if the Policing Act, s 57 did not apply, in this case IPPs 3 and 10 were not breached, as briefly discussed below.

No breach of IPP 3

[52] IPP 3 requires that where an agency collects personal information directly from the individual concerned, the agency must take such steps as are, in the circumstances, reasonable to ensure, inter alia, that the individual concerned is aware of the fact that information is being collected and the purpose for which the information is being collected.

[53] Clearly, as he supplied the information, Mr Greenslade was aware of its collection. As to the purpose of the first collection the Assessment Form stated: "The purpose of this form is to ensure there are no factors that may impact your performance on your assessment day". Mr Greenslade's disclosure of his dyslexia did inform the Police about his failure to pass the typing test and was used for the purpose stated.

[54] Mr Greenslade says, however, that the Police did not inform him that the information would be used to decline his application. Police say that it was the failure to pass the typing test that led to the decline, not his dyslexia.

[55] We have found in *Greenslade v Commissioner of Police (Human Rights Act)* [2021] NZHRRT 53 that Mr Greenslade was declined from entry to Police College as he did not pass the typing test.

[56] When Mr Greenslade submitted his application to be considered for Police College, he signed a printed certification that, inter alia, he was aware that "any information I provide is being collected to enable the Police to consider my application to join the Police...". The Police did use their knowledge that Mr Greenslade had dyslexia, not to decline his application, but to consider whether any exception could be made to the typing test because of his dyslexia. This was the specified purpose to which the information that Mr Greenslade had dyslexia was put. Accordingly, there was no breach of IPP 3 in relation to the first collection.

[57] This rationale applies similarly to the second collection. Mr Greenslade was requested by Ms Johnson to supply reports on his dyslexia, to get a resolution regarding his recruitment. This was the purpose for which Mr Greenslade understood that he supplied the Seabrook McKenzie Assessment. It was clear that the information from any reports supplied by Mr Greenslade could be used by the Police to consider Mr Greenslade's application to join Police College. In the event, however, the Seabrook McKenzie Assessment was found by the Police to be dated and neither advancing his application nor altering the Police's determination in relation to Mr Greenslade's application. We find that, to the limited (if any) extent it was used, the Seabrook McKenzie Assessment was used for the purpose stated in [56] above. Given this, IPP 3 is not breached in relation to the second collection.

No breach of IPP 10

[58] Turning then to IPP 10; that provides 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, that one of the statutory exceptions applies.

[59] In summary, Mr Greenslade says:

> **[59.1]** In relation to the first collection, he understood, from the Assessment Form that the purpose of the collection of the information that he had dyslexia was to ensure there were no factors that might impact on his performance on the assessment day. He says the information in the first collection was, however, used to determine factors relating to his cognitive ability and therefore to determine an inability to pass the typing test (which he denies).
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> **[59.2]** In relation to the second collection, this was requested for the purpose of the meeting with Inspector Saunders. Instead, it was used, unbeknown to him, to determine that his application to join Police College should be declined.

[60] Mr Greenslade understood that the first collection was for the purpose of ensuring there were no factors that might impact on Mr Greenslade's performance on his assessment day. It was used for that purpose.

[61] The second collection, Mr Greenslade's personal information in the Seabrook McKenzie Assessment, was provided, as explained by Ms Johnson to Mr Greenslade, to get a resolution for Mr Greenslade in relation to his recruitment. It was used (to the extent it was used at all) for that purpose.

[62] Mr Greenslade appears to be arguing that the underlying purpose of collection was to decline his request and the Police did not inform Mr Greenslade that the information would be so used. This is not correct. The Police did not use the disclosure of the dyslexia or the Seabrook McKenzie Assessment to decline his application. Rather, his application was declined because Mr Greenslade failed the typing test.

[63] We find that Mr Greenslade has not discharged the onus on him to prove, on the balance of probabilities, a breach of IPP 10.

Whether the Police breached IPP 8

[64] IPP 8 provides:

Principle 8

Accuracy, etc, of personal information to be checked before use

> An agency that holds personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading.

[65] The onus is on Mr Greenslade to show that the Police failed to take reasonable steps, having regard to the purpose for which the information was to be used, to ascertain whether that information was accurate, up to date, complete, relevant, and not misleading.

[66] IPP 8 focusses on the reasonableness of the steps taken to check information having regard to how that information is to be used. Accordingly, the key to considering an alleged breach of IPP 8 is the identification of the purpose for which the information is to be used. As was said in *Mullane v Attorney-General* [2017] NZHRRT 40 at [102] and [103]:

> [102] The phrasing of Principle 8 underlines that in its application, context is everything. The key words or phrases (which are themselves of some imprecision) are:
>
> - such steps (if any).
> - as are in the circumstances.
> - reasonable.
> - having regard to the purpose for which the information is proposed to be used.
>
> [103] It must also be remembered that Principle 8 is open-textured and does not impose the "certainty" of a bright line rule. A degree of flexibility as to how an agency complies with it must be allowed. The elements of "reasonableness" and "circumstances" also underline the need to avoid reading the Principle 8 requirements as an inflexible test to be applied in a literal and mechanical manner.

[67] The information that Mr Greenslade had dyslexia came directly from him. Mr Greenslade makes no suggestion that, at the time of its use, the Police had failed to ascertain that the information (which was simply Mr Greenslade's own reference to his dyslexia) was not accurate, up to date, complete, relevant and not misleading. On this basis IPP 8 is not breached.

[68] In relation to the Seabrook McKenzie Assessment once again Mr Greenslade provided this information voluntarily, while also sending an email to the Police advising that the Assessment was not relevant to the skill level he was then working at, as the Assessment was almost five years old.

[69] The Seabrook McKenzie Assessment was passed to Inspector Saunders. It is his evidence that he did not consider the Assessment to be useful. Inspector Saunders' evidence was that the Assessment was simply used to the extent that it did not mitigate the concern he already had about Mr Greenslade's dyslexia and cognitive ability. The information in the Seabrook McKenzie Assessment did not take the determination Inspector Saunders had made, prior to receipt of that Assessment, any further.

[70] The Police accepted the Assessment as dated and so placed little, if any, reliance on it. Given the lack of use of the Seabrook McKenzie Assessment, Mr Greenslade has not satisfied the Tribunal that the Police failed to take such steps as were reasonable to ascertain whether the information in the Assessment was accurate, up to date, complete, relevant, and not misleading. We find, therefore, that the Police were not in breach of IPP8.

DECISION

[71] Mr Greenslade has not established that the Police breached any of IPPs 1, 3(1)(a) or (b), 8 or 10. That being the case, we are not called upon to consider whether, as a consequence of a breach, Mr Greenslade suffered any of the forms of harm in PA, s 66(1)(b), nor to give any consideration as to remedies.

[72] Mr Greenslade's claim is dismissed.

COSTS

[73] Costs are reserved. Unless the parties are able to reach agreement on the question of costs, the following procedure is to apply:

> **[73.1]** The Commissioner of Police is to file his submissions within 14 days after the date of this decision. The submissions for Mr Greenslade are to be filed within a further 14 days with a right of reply by the Commissioner of Police within seven days after that.
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> **[73.2]** The Tribunal will then determine the issue of costs on the basis of the written submissions without any further oral hearing.
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> **[73.3]** In case it should prove necessary, we leave it to the Chairperson of the Tribunal to vary the foregoing timetable.

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Ms GJ Goodwin	**Ms WV Gilchrist**	**Ms ST Scott QSM**
Deputy Chairperson	**Member**	**Member**