

Reference No. HRRT 052/2017

UNDER THE PRIVACY ACT 2020

BETWEEN PAUL CRAWFORD JUDGE

PLAINTIFF

AND CARE PARK NEW ZEALAND LIMITED

DEFENDANT

AT HAMILTON

BEFORE:

Ms S Eyre, Chairperson

Ms S Kai Fong, Member

Ms B Klippel, Member

REPRESENTATION:

Mr P Judge in person

Mr M King for defendant

DATE OF HEARING: 27 and 28 February 2023

DATE OF DECISION: 13 April 2023

DECISION OF TRIBUNAL¹

[1] Mr Judge was an employee of the Waikato Institute of Technology (Wintec) and a regular user of the Wintec car park that was managed by Care Park New Zealand Limited (Care Park). However, Mr Judge incurred numerous parking tickets and Care Park disclosed information relating to the parking tickets, but not Mr Judge's name to Wintec.

¹ This decision is to be cited as *Judge v Care Park New Zealand Limited* [2023] NZHRRT 10.

[2] Care Park managed the Wintec car park in accordance with a Car Park Enforcement Agreement (the Agreement). The background to the Agreement is set out below:

BACKGROUND

A. Wintec provides car parks for its Hamilton Campuses.

B. Wintec has agreed to engage, and Care Park has agreed to manage, the overstay and unauthorised parking use of the car parks on the terms set out in this agreement.

[3] Under the Agreement, Wintec has a significant role in the control of the management of the car park, including issuing the parking permits, the right to waive parking notices (and the corresponding fees) and in a related protocol the approving (or not) the clamping of vehicles in the car park. The clamping protocol requires Care Park to notify Wintec when it clamps a vehicle so Wintec can respond to any queries from the affected parker. In practice, Care Park asks Wintec for approval before clamping a vehicle.

[4] On 16 February 2016 Carol Pepere from Care Park emailed Danielle Threadgold from Wintec to seek approval to clamp “a vehicle that had over 20” parking tickets. Ms Threadgold asked Ms Pepere for the registration number, make and model of the vehicle and indicated Wintec would try and identify the staff member. Ms Pepere did not provide this additional information requested.

[5] On 18 February 2016 Ms Threadgold emailed Ms Pepere granting permission to clamp the vehicle after 25 February 2016. Ms Threadgold also indicated that Wintec had located the owner of the vehicle and that the vehicle owner said they had a generic permit. The owner of the vehicle was not named in the email. In response Ms Pepere emailed Ms Threadgold a list of all the parking tickets the vehicle had incurred, that information included the ticket number, the date it was issued, the reason, and the status such as ‘outstanding’. The registration number of the vehicle and the owner of the vehicle were not mentioned.

[6] From 25 February 2016 to 11 March 2016, Ms Threadgold sought to clarify with Care Park the standard practice in the event of non-payment of the parking ticket fees, to confirm that the parking notices did relate to registration number CZY445 and to ascertain how Care Park found the address to send notices to. Scott Fowler (another Care Park employee) advised Ms Threadgold of the standard procedure for non-payment and obtaining addresses for vehicle owners, but he did not, despite Ms Threadgold’s request, confirm the registration number nor owner of the vehicle.

[7] At around this time Mr Judge was notified of a complaint about his parking by a colleague and Mr Judge attended an investigation meeting with Wintec staff regarding the parking tickets.

[8] Shortly after that meeting Mr Judge complained to the Privacy Commissioner that Care Park and Wintec had breached his privacy by disclosing and misusing his personal information respectively.

[9] In September 2016 the Privacy Commissioner issued its finding on Mr Judge’s complaint against Wintec and Care Park. Wintec subsequently dropped its investigation into Mr Judge’s car parking issues.

[10] Mr Judge's employment with Wintec ended in December 2016, following a full and final settlement of all matters arising from the employment relationship between Mr Judge and Wintec.

MR JUDGE'S CLAIM

[11] In October 2017 Mr Judge filed this claim against Care Park and Wintec, alleging each defendant had interfered with his privacy.

[12] In April 2018 the Tribunal struck out Mr Judge's claim against Wintec and dismissed Care Park's strike-out application.²

[13] Mr Judge's claim against Care Park alleges it interfered with his privacy by disclosing his personal information to Wintec in breach of IPP 11 of the Privacy Act 1993. Mr Judge seeks compensation of \$127,500 for loss of wages and \$15,000 for hurt and humiliation.

[14] Care Park denies it has interfered with Mr Judge's privacy. In particular, it denies the information disclosed to Wintec was Mr Judge's personal information and says even if it was it falls within the exception to IPP 11(a) as the disclosure was directly related to the purpose for which the information was obtained.

ISSUES

[15] The issues the Tribunal must determine are:

[15.1] Did Care Park disclose personal information to Wintec?

[15.2] If so, did Care Park have reasonable grounds to disclose personal information to Wintec?

[15.3] If not, was there an interference with Mr Judge's privacy?

[15.4] If there has been an interference with Mr Judge's privacy what is the appropriate remedy?

DID CARE PARK DISCLOSE PERSONAL INFORMATION TO WINTEC?

[16] Personal information is defined in the Privacy Act 1993 as information about an identifiable individual.³

[17] In *Tapiki and Eru v New Zealand Parole Board*⁴ (*Tapiki*) the Tribunal concluded that "the definition of personal information does not require that the information itself identify the individual", but that "information can be personal information even if the individual is identifiable only with the use of extrinsic information or knowledge". This finding was consistent with the earlier approach to the definition of personal information taken in the High Court in *Sievwrights v Apostolakis*⁵ (*Sievwrights*). In *Sievwrights* the High Court

² See *Judge v Care Park New Zealand Limited (Strike-out application)* [2018] NZHRRT 14.

³ The Privacy Act 1993 was repealed and replaced by the Privacy Act 2020. The transitional provisions in the Privacy Act 2020 enable this claim to be continued and completed under the 2020 Act, but do not alter the relevant legal rights and obligations in force at the time the alleged disclosure to Wintec was made. Accordingly, this claim is assessed against the IPPs as detailed in the Privacy Act 1993.

⁴ [2019] NZHRRT 5 at [61.2]

⁵ HC Wellington CIV-2005-485-527, 17 December 2007 at [17]

observed that the definition of personal information “only requires that the information be about an identifiable individual not that the individual be identified in the information”, noting that in that situation the Sievwrights knew the particular information was about Mr and Mrs Apostolakis as a result of their relationship with them.

[18] In this claim, it is undisputed that on 18 February 2016, Care Park sent a list of details about Mr Judge’s parking tickets to Wintec. The list did not contain Mr Judge’s name nor vehicle registration number, but it did provide the dates each parking ticket was issued to Mr Judge, the reason for each parking ticket being issued; and the total sum owed on the parking tickets, which was \$2,180.

[19] Care Park submits that as the parking ticket information provided did not include identifying details of Mr Judge it was not personal information about Mr Judge. However, while the information did not by itself identify Mr Judge, it was information about “an identifiable individual”, being Mr Judge. Similar to the situation in *Siewwrights*, Wintec was able to establish that the information was about Mr Judge from its own knowledge and relationship with Mr Judge.

[20] The parking ticket information provided by Care Park to Wintec was about an identifiable individual, therefore the Tribunal finds that Care Park did disclose Mr Judge’s personal information to Wintec. However, it is now necessary to consider whether there were reasonable grounds for Care Park to do so.

REASONABLE GROUNDS TO DISCLOSE PERSONAL INFORMATION?

[21] IPP 11 sets out the limits on disclosure of personal information held by an agency. Care Park maintains that it was entitled to disclose Mr Judge’s information in accordance with the exception in IPP 11(a) set out below:

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.
- (b) [...]

[22] To determine if Care Park can rely on this exception, the Tribunal must consider the factors set out in *L v L*,⁶ as applied by this Tribunal on a number of occasions.⁷

[23] The Tribunal must be satisfied to the standard of the balance of probabilities that Ms Pepere believed, on reasonable grounds, at the time of the disclosure, that the disclosure of the information was either one of the purposes in connection with which the information was obtained or was directly related to the purposes in connection with which the information was obtained. A belief on reasonable grounds, has a subjective component (the belief) and an objective component (the reasonable grounds). Both

⁶ HC Auckland AP95-SW01, 31 May 2002, at [20].

⁷ See *Ruddelle v ADHB* [2021] NZHRRT 5 at [16]; and *Geary v Accident Compensation Corporation* [2013] NZHRRT 34, at [190].

components must exist at the time of disclosure to successfully rely on an exception in IPP 11.

[24] Ms Pepere sent the parking ticket information in conjunction with a request for permission to clamp the vehicle in accordance with the clamping protocol that was part of the Agreement. The clamping protocol allowed a vehicle to be clamped after four parking tickets. Mr Judge accepted in evidence that he and other staff knew about the clamping protocol, including the fact it would apply after four parking tickets and that permission was always sought from Wintec first.

[25] Care Park submits that it was entitled to disclose this parking notice information to Wintec as disclosure of this information was one of the purposes in connection with which the information was obtained. The information has been obtained to enforce the car park rules and it was being disclosed to enforce the car park rules and in accordance with the Agreement and the clamping protocol.

[26] The Tribunal is satisfied, having heard Ms Pepere's evidence, that Care Park did genuinely believe it was entitled to disclose this information under the Agreement for enforcement purposes. It is accepted that the information was obtained and recorded for enforcement purposes and it was disclosed in accordance with those enforcement purposes. The Tribunal finds that Ms Pepere's subjective belief that she had reasonable grounds to disclose this information under the Agreement for enforcement purposes is therefore objectively justified.

[27] Mr Judge submitted that Care Park should have had regard to the purpose for which the information it disclosed may be used and should have been aware that it might be used in disciplinary proceedings against him. However, this submission misunderstands the reference in IPP 11(a) to purpose. IPP11(a) refers to "the purposes in connection with which the information was obtained" not to, consideration of any possible purpose for which the disclosed information may be used in the future. Accordingly, the fact that the information may ultimately have been used by Wintec for that purpose was not a necessary or relevant matter to Care Park's decision to disclose the information.

[28] Mr Judge also suggested that he and other staff were not sufficiently informed that the sharing of parking ticket information between Wintec and Care Park may occur. While that is irrelevant to the issue of whether Care Park could rely on IPP 11(a) or not, it should be no surprise to anyone who uses a paid car park that information is being collected about their vehicle for potential enforcement purposes.

[29] The Tribunal finds that Care Park believed on reasonable grounds that the disclosure of personal information to Wintec was one of the purposes in connection with which the information was obtained. In particular, it is accepted that Ms Pepere's decision to make this disclosure on the basis of her subjective belief was objectively reasonable.

CONCLUSION

[30] Care Park's disclosure of Mr Judge's personal information to Wintec on 18 February 2016 was in accordance with the exception in IPP 11(a) of the Privacy Act 1993.

[31] Care Park did not breach IPP 11, accordingly the remaining issues at [15] above do not require determination as there is no basis upon which the Tribunal can find an interference with Mr Judge's privacy.

ORDER

[32] Mr Judge's claim against Care Park New Zealand Limited is dismissed.

COSTS

[33] Care Park has indicated it wishes to be heard on the matter of costs. The Tribunal's recent decisions regarding costs include *Beauchamp v B & T Co (2011) Limited (Costs)*;⁸ and *Taylor v Corrections (Costs)*.⁹

[34] If, after having considered these decisions, Care Park considers that this is a proceeding where costs should be awarded, application can be made within 14 days of the date of this decision. If Mr Judge wishes to reply to any such application, his reply is due within a further 14 days and Care Park may reply within a further 7 days.

[35] If no such application is made by Care Park within 14 days of the date of this decision, then costs lie where they fall.

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Ms S Eyre
Chairperson

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Ms S Kai Fong
Member

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Ms B Klippel
Member

⁸ [2022] HZHRRT 30.

⁹ [2022] NZHRRT 45.