IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2023] NZHRRT 21**

I TE TARAIPIUNARA MANA TANGATA

	Reference No. HRRT 10/2020
UNDER	**THE PRIVACY ACT 2020**
BETWEEN	**ALISHA MARIE COOK**
	PLAINTIFF
AND	**DEPARTMENT OF CORRECTIONS**
	DEFENDANT

AT WELLINGTON

BEFORE:
Ms K Anderson, Deputy Chairperson
Ms BL Klippel, Member
Ms L Ashworth, Member

REPRESENTATION:
Mr CJ Tennet for plaintiff
Ms VM Rea for defendant

DATE OF HEARING: **18 and 19 July 2023**

DATE OF DECISION: **16 August 2023**

DECISION OF TRIBUNAL[1]

[1] This case concerns Ms Cook's 16 June 2019 request for her personal information held by the Department of Corrections (the Department) to be provided urgently.

[2] At the time of her Information Privacy Principle 6 (IPP6) request, Ms Cook was serving a sentence of home detention. However, on 6 June 2019 the Department made an Application to Cancel Ms Cook's Home Detention (Application) because Ms Cook no longer had a suitable home at which to serve her sentence. The Application was scheduled to be called in Court on 27 June 2019 but was brought forward to 19 June 2019 at the Department's request. Ms Cook was facing the prospect that her sentence of home detention would be changed to a sentence of imprisonment. It was in this context that

[1] [This decision is to be cited as *Cook v Department of Corrections* [2023] NZHRRT 21].

Ms Cook's IPP6 request was sent to the Department on 16 June 2019 (via her lawyer, Mr Tennet).

[3] It is common ground between the parties that:

[3.1] Ms Cook's 16 June 2019 request stated that the request was urgent. The reasons provided were the Application before the Court and because of an upcoming alcohol and drug assessment.

[3.2] A deemed refusal of Ms Cook's 16 June 2019 IPP6 request occurred on 15 July 2019. This is the consequence of s 69(4) of the Privacy Act 2020 (the PA 2020) under which a failure to comply with the 20-working daytime limit must be treated as a decision of the agency to refuse the IPP6 request.

[3.3] The personal information request went unanswered until the Privacy Commissioner's involvement in August 2019, with the requested information being provided on 28 August 2019.

[4] The Department has admitted there has been an interference with Ms Cook's privacy and agrees that a declaration of interference with privacy should be made in the circumstances. The Department says, however, that this is not a case where any other remedy should be granted.

[5] The Tribunal agrees it should make a declaration that there has been an interference with Ms Cook's privacy.

[6] For reasons explained below, the Tribunal does not consider that an award of damages is appropriate in the circumstances. That is, because on the balance of probabilities, the evidence does not establish that the failure to provide access to the requested documents has caused humiliation, loss of dignity, or injury to feelings and there has been no loss of the benefit of using the documents.

MS COOK'S CLAIM

[7] Ms Cook alleges an interference with her privacy because her 16 June 2019 request for her personal information was not responded to.[2] Ms Cook seeks:

[7.1] A declaration that the Department has breached IPP6.

[7.2] An award of damages that "accurately reflects the systemic nature of this breach and holds Corrections accountable."

[8] The precise heads of damages are not particularised in the statement of claim. In submissions Mr Tennet has outlined damages are sought for:

[8.1] Humiliation, loss of dignity and injury to feelings; and

[2] While the Privacy Act 1993 had initial application, it was repealed from 1 December 2020 by the Privacy Act 2020 which came into force on that date. The effect of the transitional provisions in PA 2020 (Sch 1 cl 9(1)) is that the present proceedings must be continued and completed under the 2020 Act. Accordingly, in this decision the provisions of the PA 2020 will be referred to unless otherwise expressly indicated.

[8.2] Loss of a benefit, being the loss of the use of the documents sought for use in Court or other legal processes.

[9] As referred to above, the Department has admitted liability for an interference with Ms Cook's privacy on the basis there was no response to the IPP6 request within the required time period (namely by 15 July 2019) and there was no proper basis for that lack of response. It also acknowledges that the remedy of a declaration of an interference with Ms Cook's privacy should be granted.

[10] The Department does not, however, accept that an award of damages is warranted in the circumstances. It says that the required causative link between the interference with privacy and the alleged harm and loss of a benefit is not established.

[11] At the hearing counsel for Ms Cook argued that there was a further liability issue (beyond that admitted by the Department), namely whether there had been an interference with Ms Cook's privacy much earlier in time. Mr Tennet nominated the date of Wednesday 19 June 2019 as the date the documents requested under urgency could have, and should have, been provided.

[12] Assuming this additional dimension was part of the complaint to the Privacy Commissioner (which is not clear), as liability for an interference with privacy is already admitted the Tribunal considers that there is no need to determine the possible further basis for such liability.

[13] Due to the request for an urgent response to the IPP6 request, the issue of whether the documents were required to be provided earlier in time is, however, considered in the context of the damages claims.

FACTUAL BACKGROUND

[14] Ms Cook was sentenced on 8 April 2019. Taking into account Ms Cook's demonstrated commitment to her own rehabilitation, Judge Edwards sentenced Ms Cook to a sentence of ten months home detention.[3]

[15] Home detention requires there to be a suitable place to serve that sentence. Within about two months of her sentencing, Ms Cook found herself in a position in which she did not have suitable accommodation.

[16] As a result, the Department lodged its Application on 6 June 2019. Ms Cook therefore faced the prosect of her sentence being changed from home detention to imprisonment. This clearly caused her distress. That same day the Court granted Ms Cook bail, requiring her to attend Court on 27 June 2019 in respect of the Department's Application.

[17] On Sunday 16 June 2019 Ms Cook's lawyer sent the following request to Ms Cook's probation officer, Ms Malifa:

> Please provide copies of all Ms Cook's IOMS notes, any emails, memos or handwritten notes that may exist from the commencement of her HD sentence to the current date.

[3] Doc 3 Tennet bundle.

> Kindly treat this request as urgent. The reason for the urgency is that this information is required for both her forthcoming private A & D assessment and her resentencing on 27/06/2019. For the sake of expedience all information can be provided electronically.

[18] The reference to "IOMS notes" is a reference to the Department's offender management records. Normally all records, including emails and text messages, are centrally recorded in an offender's IOMS electronic file.

[19] Ms Malifa, Ms Cook's probation officer at the time, gave evidence for the Department. She said that she has no memory of receiving the 16 June email request and it was likely overlooked at the time. Mr Tennet invited the Tribunal to conclude that that explanation was not credible. Having heard from Ms Malifa, we accept that the relationship between Ms Cook, and her probation officer was strained at the time. However, there is nothing to suggest Ms Malifa was acting unprofessionally or was motivated to deliberately frustrate Ms Cook's request for her personal information. We accept Ms Malifa's evidence that she has no recollection of receiving Mr Tennet's email of 16 June 2019 and that the failure to respond to it was inadvertent.

[20] Ms Cook visited Ms Malifa on 17 June 2019, saying she was upset when she entered the probation office, but became more so and was crying by the time she left. Ms Cook said that she thought at this time that her probation officer "wanted to send her to prison" and conveyed to us that her relationship with her probation officer had broken down.

[21] On 18 June 2019 the Department asked the Court to bring forward the hearing of its Application from 27 June to 18 June 2019. The Court was advised that the Application had been made "due to her having no ongoing accommodation" but that now Ms Cook "has absolutely no accommodation." As no time was available on 18 June 2019, the Application was set down to be called at Court at 2.15 pm on 19 June 2019.[4]

[22] In her evidence Ms Cook gave credible and moving evidence about her distress when meeting with her young daughter on 18 June 2019 and explaining to her daughter that she may be going to prison the next day.

[23] Arrangements had been put in place for Ms Cook to have a private alcohol and drug assessment by Mr Hohepa Albert of Te Hurahi Rereke Services. This involved Mr Albert having an assessment meeting with Ms Cook at 9.30 am on 19 June 2019. That was the morning of the same day the Department's Application was to be called in Court in the afternoon. We accept that the preparation of Mr Albert's report is closely connected with and relevant to the sentencing matter that was before the Court. In other words, the privately commissioned report was intended to be used in the existing legal proceeding.

[24] Mr Albert's report (dated 9 July 2019) records that when he met with her Ms Cook was exhausted and stated that she would "be better to go back to prison, as [have] no options [for] where to live",[5] and that her probation officer supported the idea (as did her counsellor).

[25] The Department's report for the Court dated 19 June 2019 was prepared by Ms Malifa and delivered to Court that day, by 2.15 pm at the latest. It was provided to

[4] SB 115.
[5] Doc 12 Tennet bundle (p 2 of doc 12).

counsel for Ms Cook at Court. Ms Malifa recommended that Ms Cook's home detention sentence be changed to imprisonment.[6]

[26] Mr Albert attended Court with Ms Cook on the afternoon of 19 June, where Ms Cook accepted accommodation that she had previously rejected.[7] On the basis Ms Cook would be housed at the new accommodation, her conditions were varied so that she could serve her home detention at the new address.[8]

[27] However, the Department's Application was still technically before the Court and was to be called in Court at a future date.

[28] Ms Cook was aware of the upcoming Court date and had permission from her probation officer to meet with Mr Albert at 1.30 pm on 27 June 2019.[9] Mr Albert's 9 July 2019 report records that he had spoken with Ms Cook's mother who was "very concerned about her daughter's current living conditions" at the new accommodation Ms Cook had been in from 19 June 2019, based on photos Ms Cook had sent her of the living conditions. Mr Albert's key conclusion in his report was that "Ms Cook has clearly proved that she can maintain a drug free lifestyle and does not require ongoing Alcohol and Drug intervention."

[29] On 9 July 2019 the Department granted permission to Ms Cook for her to be absent from her home detention address to attend Court on 11 July 2019.[10]

[30] Ms Cook's probation officer prepared a further report for the Court dated 11 July 2019. Ms Malifa advised the Court that the Application was withdrawn because of Ms Cook's "continued good compliance and the fact she has secured and settled in stable accommodation."[11] That report was provided to the Court on 11 July 2019. It is only at this point in time, that the risk to Ms Cook of being resentenced to a term of imprisonment was removed. Ms Cook and her counsel learned of this development when they were at Court on 11 July 2019. From this point in time, there was no legal proceeding before the Court relating to Ms Cook.

[31] Four days later, on 15 July 2019, the 20-working day timeframe for responding to Ms Cook's IPP6 personal information request expired. There had been no response to the request by that date.

[32] Following a complaint to the Privacy Commissioner on 20 July 2019,[12] the Office of the Privacy Commissioner contacted the Department about the complaint. Ms Cook's probation officer was then asked to process Ms Cook's privacy request 'per your normal processes' on 26 August 2019.[13] Two days later, on 28 August 2019, the Department provided the requested information to Ms Cook's lawyer.

[33] Mr Tennet suggested that the content of some of the IOMS documents released in August 2019 were inaccurate. However, Ms Cook confirmed in her oral evidence she has

[6] SB 110.
[7] SB 92.
[8] SB 105.
[9] SB 77.
[10] SB 47.
[11] SB 51.
[12] Doc 10 Tennet bundle.
[13] SB 290.

never asked the Department to correct any of her personal information held in her IOMS file.

[34] The documents provided on 28 August 2019 had a limited amount of information redacted (the names of other prisoners, for example). Mr Tennet confirmed at the hearing that he accepted that the redactions were appropriately made, because names of other prisoners were not Ms Cook's personal information.

ISSUES

[35] As we have noted, liability is formally admitted by the defendant based on its failure to respond within the 20-working day statutory timeframe. The parties agree a declaration of interference with privacy should be made. The Tribunal concurs. Hence this issue does not require examination.

[36] The issue to be determined is whether, in addition to the making of the declaration, damages should be awarded in the circumstances. Relevant sub-issues include:

> **[36.1]** Whether the interference with Ms Cook's privacy caused her humiliation, loss of dignity or injury to feelings? If yes, what are the appropriate damages for such harm?
>
> **[36.2]** Whether the interference with Ms Cook's privacy caused a loss of a benefit (whether at 19 June or 11 July 2019)? If yes, what are appropriate damages for such loss?
>
> **[36.3]** Whether the Prisoners' and Victims' Claims Act 2005 (the PVC Act) applies, such that this Tribunal must consider the purpose of that Act and the guiding considerations set out in Part 2 of the PVC Act?
>
> **[36.4]** If Part 2 of the PVC Act applies, is compensation required to provide effective redress, and if it is, what quantum is required to do so?

THE LEGAL FRAMEWORK

[37] Section 69 of the Privacy Act 2020 (PA 2020) sets out when an action of an agency is an interference with the privacy of an individual.

[38] In relation to an IPP6 request for personal information, s 69(3) provides that a decision to refuse a request under IPP6 without a proper basis is an interference with privacy. A failure to comply with the statutory timeframe is a deemed refusal of the request (s 69(4)).

[39] As already noted, the interference with Ms Cook's privacy is admitted. Even if not admitted, the conclusion there was an interference is inevitable given no response was provided by 15 July 2019 and the Department has not suggested there was a proper basis for not providing the requested information.

[40] Where there has been an interference with privacy the Tribunal may grant one or more of the remedies set out in s 102 of the PA 2020. These are (relevantly):

> **[40.1]** A declaration of interference with privacy.
>
> **[40.2]** Damages in accordance with s 103.

Declaration

[41] The grant of a declaration is discretionary but declaratory relief is not normally denied where there has been an interference with privacy.[14]

[42] It is appropriate in this claim that the Tribunal issue a formal declaration that the Department has interfered with Ms Cook's privacy. This declaration is accordingly made.

Damages

[43] The types of damages the Tribunal may order are set out in s 103 under four specific heads, namely pecuniary loss, expenses reasonably incurred, loss of a benefit, and humiliation, loss of dignity and injury to feelings. It is the third and fourth categories that are relevant in this proceeding.

Damages: humiliation, loss of dignity and injury to feelings

[44] There must be a causative link established, on the balance of probabilities, between the interference with privacy and the claimed harm. In this case, the Tribunal would need to be satisfied that any humiliation, loss of dignity and injury to feelings Ms Cook suffered were as a result of the interference with her privacy.

Damages: loss of a benefit

[45] To award damages for loss of a benefit under s 103(1)(c) the Tribunal must be satisfied, on the balance of probabilities, that there has been a loss of a benefit and that the interference with privacy was a contributing or material cause of the loss of benefit.

[46] Where the loss of a benefit is the inability to use documents in a court proceeding, it is necessary to consider the extent to which the information requested is likely to have actually affected the outcome of the litigation for which it was said to be required.[15] In the *Attorney-General v Dotcom* case Churchman J also noted that it did not have to be inevitable that the information would influence the outcome, but there must be some evidential basis for assuming it was potentially relevant.[16]

Impact of Prisoners' and Victims' Claims Act

[47] In accordance with s 103(3) of the PA 2020, the award of any of the categories of damages under s 103(1) is subject to Part 2 of the PVC Act. The Tribunal must therefore have regard to specified matters under that Act when assessing whether compensation should be awarded. Those matters include (but are not limited to):

[47.1] Whether compensation is required to provide effective redress.

[47.2] The quantum of compensation required to provide effective redress.

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[14] See *Geary v New Zealand Psychologists Board* [2012] NZHC 384, [2012] 2 NZLR 414 (Kós J, Ms SL Ineson and Ms PJ Davies) at [107] and [108].
[15] *Attorney-General v Dotcom* [2018] NZHC 2564 [2019] 2 NZLR 277.
[16] As above, at [207].

WHETHER MS COOK SUFFERED HUMILIATION, LOSS OF DIGNITY OR INJURY TO FEELINGS

[48] In her evidence, Ms Cook emphasised how stressful it was facing the prospect of being resentenced to a term of imprisonment. She also discussed the distress she experienced on 17 June (the day after the IPP6 request) when she met with her probation officer and her concerns that Ms Malifa, wanted to put her in jail. In addition, she discussed other events, not connected to the Department, that she found distressing in September and October 2019.

[49] Ms Cook spoke of her distress at having to tell her daughter on 18 June 2019 that she could be going to prison the next day. She also said that she felt she was fighting against the Department, rather than it helping her. She told us how she fell into depression because she felt so alone.

[50] Overwhelmingly, Ms Cook's evidence is that her distress arose out of the fact that from 6 June 2019 she was facing imprisonment because she had no place to serve her sentence of home detention.

[51] Mr Tennet accepted that it was difficult to say there were no other causes (beyond privacy issues) of Ms Cook's distress at the relevant times.

[52] There is no evidence that would support the Tribunal concluding that on the balance of probabilities the Department's failure to release the requested information by 19 June 2019 was the cause of any humiliation, loss of dignity or injury to feelings experienced by Ms Cook. That conclusion is the same in respect of the timeframe from 20 June to the date the documents were disclosed (28 August 2019).

Conclusion on damages for humiliation, loss of dignity or injury to feelings

[53] The necessary causative link between the interference with privacy and harm is not established. It follows that no award of damages for humiliation, loss of dignity or injury to feelings can be made in the circumstances.

WHETHER MS COOK SUFFERED A LOSS OF A BENEFIT?

[54] Ms Cook's evidence included that she needed to see her entire IOMS file "so I could fight going to prison."

[55] Mr Tennet submits that there has been a loss of the benefit of using the requested documents in Court proceedings. He relies on *Patel v Dean,*[17] to support his claim that an award of $5,000 for the loss of the claimed benefit is appropriate.

[56] The only relevant Court proceeding was the Department's Application. The Application was made because of Ms Cook's lack of suitable housing. Although Mr Tennet suggested that a further reason for the Application was Ms Cook's lack of compliance with certain matters, the evidence does not support his submission. The fundamental reason for the Application was Ms Cook's housing situation. Once her housing arrangements had been seen to have stabilised, the Department withdrew the Application on 11 July 2019.

[57] The Department submits that there can be no loss of a benefit before the date on which an interference with privacy is deemed to occur (because of a failure to respond to

[17] *Patel v Dean* [2020] NZHRRT 37 at [55].

the IPP6 request no later than 20 working days). It says the timeline is important and that because the Department withdrew its Application to cancel Ms Cook's home detention on 11 July 2019, before the deemed refusal of the IPP6 request on 15 July 2019, there was no Court process in which the requested documents could be utilised.

Potential use for court proceedings on 19 June 2019

[58] Mr Tennet submitted that he should have received the requested documents by 19 June 2019. He pointed out that once the probation officer was asked on 26 August 2019 to release the personal information, it took only two days to send the documents by email. On this basis, he says in light of the 16 June request for urgency, Ms Cook's IOMS file could have been provided by 19 June 2019. Even if Mr Tennet is right, the issue is whether the requested information was relevant to the matter that was in Court on the afternoon of 19 June 2019.

[59] Mr Tennet did not take the Tribunal to any document released by the Department in August 2019 which he said would have been relevant to or affected the outcome of the matters in Court (whether on 19 June or 11 July 2019). In closing submissions Mr Tennet accepted that it was speculative as to what use could be made of the IOMS documents.

[60] When considering the fundamental reason for the Application (lack of suitable housing), the Tribunal does not accept that there is anything contained in the released information that was likely to be relevant to or to have actually affected the outcome of the Department's Application. It was because Ms Cook accepted accommodation she had previously refused, that she was able to continue serving her sentence of home detention.

[61] The Tribunal considers it is doubtful that a finding of interference with privacy could be made as at 19 June 2019, because the time between the request and that date is so short. Without deciding that point, even assuming that Ms Cook was entitled to the requested documents by 19 June 2019, we do not consider there was a loss of the benefit of the use of those documents for Court proceedings on 19 June 2019.

Potential use for Court proceedings on 11 July 2019

[62] As we have stated, the Department withdrew its Application on the same day it was being called in Court on 11 July 2019. The express reason for doing so was because of continued good compliance and Ms Cook being settled in stable accommodation.[18]

[63] Even if the Application had not been withdrawn and was required to be opposed by Ms Cook, it is difficult to conclude that any of the documents released to Ms Cook on 28 August 2019 would have been likely to be relevant to or to affect the outcome of the Application. That is because the outcome turned on Ms Cook having a place to serve her sentence of home detention. Mr Tennet has not relied on any particular document or documents that were later released to convince the Tribunal otherwise. In particular he has not pointed to any information in the IOMS file that would have helped establish that Ms Cook had suitable accommodation.

[64] We therefore do not consider that there was a loss of the benefit of the use of the requested documents for court proceedings in the period 20 June to 11 July 2019. Once the Department's Application was withdrawn on 11 July 2019, four days before the

[18] SB 51.

deemed refusal of the request, there was no court proceeding in which the requested documents could be used.

Potential use for alcohol and drug assessment

[65] As set out in the background section above, Ms Cook met with Mr Albert on 19 June and 27 June 2019 for her private alcohol and drug assessment. Mr Albert's report reflecting his assessment was dated 9 July 2019. In light of that timing, it was likely prepared for the Application being called in Court on 11 July 2019.

[66] In response to Ms Rea's questions, Ms Cook's evidence was that, as much as she could remember, she required the requested documents to help with her alcohol and drug report.

[67] There was no evidence from a person experienced in preparing alcohol and drug assessments about what information they need to be able to complete their assessments. Mr Albert was not called as a witness to give evidence on how his assessment may have been aided by a copy of Ms Cook's IOMS documents.

[68] Mr Albert's report was focused on assessing whether Ms Cook required ongoing alcohol and drug intervention. He identifies the sources of the information he gathered for his report. He had made telephone contact with a number of individuals, including those involved in treating Ms Cook (her counsellor, those at the Salvation Army Bridge programme) as well as Ms Cook's family and support people as part of his information gathering process. We infer the purpose of those interactions was to help with his assessment of the nature and extent of risk factors relating to Ms Cook's drug and alcohol rehabilitation.

[69] There is nothing in his 9 July 2019 report to suggest he had considered that the Department would be a source of information relevant to the assessment he was carrying out.

[70] Ms Royds, Ms Malifa's manager at the time, gave evidence for the Department. Her evidence was that IOMS notes are not usually provided to those carrying out alcohol and drug assessments commissioned by the Department.

[71] Ms Cook did not point to any document released in August 2019 that she considered was relevant to her alcohol and drug assessment. Nor did Mr Tennet.

[72] In that context, there is no basis for the Tribunal to conclude that the IOMS documents released in August 2019 contained any information that was relevant to the drug and alcohol assessment carried out by Mr Albert.

[73] There has therefore been no loss of an opportunity to use the released documents for the purpose of Ms Cook's drug and alcohol assessment.

Conclusion on damages claims for loss of a benefit

[74] The necessary causative link between the interference and any loss of a benefit has not been established. It follows that no award of damages for loss of a benefit can be made.

PRISONERS' AND VICTIMS' CLAIMS ACT 2005

[75] The parties accept that the PVC Act applies in the circumstances. However, because there is no legal foundation on which damages can be awarded under the PA 2020, it is not necessary to address the potential impact of the PVC Act.

FURTHER SUBMISSION: ALLEGED SYSTEMIC FAILURE

[76] Mr Tennet drew the Tribunal's attention to an email he sent on 18 June 2019 to Ms Royds and copied to Ms Malifa. In that email Mr Tennet asked the Department to "provide full disclosure by return e-mail, along with a copy of all applications, affidavits and IOMS records."[19] He relied on the Department's response to this for his submission there were systemic issues relevant to the Tribunal's assessment of damages (because the defendant's conduct is relevant to the Tribunal's remedies' assessment[20]).

[77] The 18 June 2019 request was a criminal disclosure request. That is an important mechanism available for obtaining documents in criminal proceedings, including personal information.

[78] A response 25 minutes later asked for confirmation that the email was from Mr Tennet (pointing out reasons for the query). Mr Tennet responded a few minutes later with an email stating "Please provide the disclosure as requested."[21] Mr Tennet sent a further email the following day,[22] refuting the basis on which Ms Royds had questioned who the author of his 18 June email was. Ms Royds responded later on 19 June 2019 to Mr Tennet advising she was unclear on what further disclosure he was seeking, as the Application and affidavit in support had already been provided.[23]

[79] The question of whether there has been an interference with Ms Cook's privacy arising from the 18 June 2019 criminal disclosure request is not before the Tribunal. That is because there has been no complaint to the Privacy Commissioner relating this (second) request for personal information. We therefore lack jurisdiction in respect of the second request.[24]

[80] Mr Tennet accepted that conclusion on jurisdiction but emphasised he drew this event to our attention in support of his submission that the Department's responses to the two requests was evidence of a systemic failure to respond appropriately and lawfully to information requests.

[81] We do not consider that the Department's responses to the two requests provide an evidential foundation that supports Mr Tennet's submission of systemic failure. Firstly, the responses to each of the two requests turned on the context in which each request was made. Secondly, two events alone will not usually provide a strong basis to reach a conclusion there is a pattern of behaviour that demonstrates a systemic failure and does not do so here.

[82] We do, however, note that in giving evidence about what should happen when a request for personal information is made, the evidence of both Ms Malifa and Ms Royds

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[19] SB 266.
[20] Privacy Act 2020, s 102(3).
[21] SB 267.
[22] SB 272.
[23] SB 274.
[24] Privacy Act 2020, s98(1).

demonstrated there was confusion about whose job it was to respond to an IPP6 request. Ms Malifa says probation officers do not deal with IPP6 requests, that it is another part of the Department that does so (both receiving them and responding to them). Ms Royds also indicated that if a probation officer received an IPP6 request, the process was that they should forward to another part of the Department to deal with.

[83] However, their evidence on standard processes within the probation service for IPP6 requests was inconsistent with the documentary evidence that after the complaint to the Privacy Commissioner, it was in fact the probation office that was to respond to Ms Cook's IPP6 request. This suggests probation officers do sometimes action responses to an IPP6 request.

[84] Ms Malifa, who now has a more senior role in the probation service, indicated she was 'vaguely aware' of Privacy Act obligations, but more so in the context of what could be disclosed to third parties than in dealing with IPP6 requests.

[85] We make the observation that senior leaders in the probation service are unlikely to be in a position to champion good privacy practice when they themselves are only vaguely aware of the importance of the right of access to personal information (and the right to have that information corrected) and their obligations under the Privacy Act. It appears that there could be benefit in privacy training within the probation service.

FORMAL ORDERS

[86] For the reasons explained earlier there is a deemed interference with Ms Cook's privacy.

[87] A declaration is made under s 102(2)(a) of the Privacy Act 2020 that the Department interfered with Ms Cook's privacy by failing to respond to Ms Cook's 16 June 2019 information privacy request in accordance with the Privacy Act 2020.

COSTS

[88] The Tribunal's recent decision regarding costs include *Beauchamp v B & T Co (2011) Limited (Costs),*[25] and the cases cited in that decision. If after having considered those decisions, the plaintiff considers that this is a proceeding where costs should be awarded, application can be made within 14 days of the date of this decision. Any reply to an application for costs is due within a further 14 days, with the plaintiff's reply within a further 7 days.

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

.....	.....	.....
Ms K Anderson	**Ms BL Klippel**	**Ms L Ashworth**
Deputy Chairperson	**Member**	**Member**

[25] *Beauchamp v B & T Co (2011) Limited (Costs)* [2022] NZHRRT 30.