

	Reference No. HRRT 051/2020
UNDER	THE PRIVACY ACT 2020
BETWEEN	TIARA PUTIPUTI WILLIAMS
	PLAINTIFF
AND	ATTORNEY-GENERAL (ON BEHALF OF THE CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS)
	DEFENDANT

AT AUCKLAND

BEFORE:

Ms GJ Goodwin, Deputy Chairperson

Ms B Klippel, Member

Dr M Koloamatangi, Member

REPRESENTATION:

Mr C Hirschfeld for plaintiff

Ms VE Squires for defendant

DATE OF HEARING: 1 November 2023

DATE OF DECISION: 18 January 2024

DECISION OF TRIBUNAL¹

[1] This case involves an allegation by Tiara Williams that the Department of Corrections (Corrections) did not respond properly to her request for personal information and so interfered with her privacy.

¹ [This decision is to be cited as *Williams v Attorney-General* [2024] NZHRRT 1.]

[2] The events which formed the background to Ms Williams' allegations of breaches of her privacy took place while she was in Auckland Region Women's Correction Facility (ARWCF). As part of an investigation into Ms Williams' allegations that she had been assaulted while in ARWCF, Ms Williams asked Corrections to provide certain of her personal and health information to a private investigator, Mr Hikaka.²

[3] Corrections sent a packet containing some of the requested information to Mr Hikaka by courier to the address specified in Ms Williams' request. That information was not, however, delivered to the specified address, but to a private address for Mr Hikaka. The information was not immediately opened by Mr Hikaka.

[4] Subsequently Ms Williams previous counsel, Mr Tennet, made a complaint to the Privacy Commissioner that no information had been provided.

[5] Having satisfied himself that the information was for him, Mr Hikaka did then open the packet from Corrections. He noted that not all of the information requested by Ms Williams had been sent and he advised Mr Tennet of that. Approximately a month later Corrections couriered certain additional information to Mr Hikaka.

[6] Ms Williams alleges that, in addition to breaching information privacy principle (IPP) 6, Corrections has also breached:

[6.1] Section 38 of the Privacy Act 1993 (PA) in that it failed to give Ms Williams assistance in connection with her request;

[6.2] Section 40 of the PA in that it failed to notify Ms Williams as to its decision on her request within the specified statutory time period;

[6.3] Section 42 of the PA in that it failed to provide the information to Ms Williams in the way preferred by her; and

[6.4] Section 44 of the PA in that it failed to advise Ms Williams of its refusal to give information to her.³

[7] Corrections generally denies these allegations. Corrections does, however, accept there was delay in providing certain information.

² We refer to allegations of assault, or alleged assault, not because we disbelieve Ms Williams' evidence as to this but because we understand from Ms Williams that the matter is still being progressed through the courts.

³ The PA was repealed and replaced by the Privacy Act 2020 (PA 2020) on 1 December 2020. That repeal did not alter the relevant legal rights and obligations in force at the time Ms Williams' request was made. Agencies, such as Corrections, which dealt with personal information of individuals prior to 30 November 2020, were required to comply with the IPPs prescribed in the PA and to apply the relevant provisions the PA. Accordingly, references in this decision are to the relevant sections of the 1993 Act, unless otherwise specified.

BACKGROUND

[8] To understand Ms Williams' claims, some further background is required.

[9] Ms Williams was in the Mother and Baby Unit at ARWCF. Ms Williams says that on 27 May 2020 she was assaulted by a fellow prisoner. As a result of the alleged assault, Ms Williams says she required hospitalisation and an operation. Because of this, Ms Williams was unable to see or care for her baby and she was unable to continue breastfeeding.

[10] Following the alleged assault, Mr Tennet, engaged the services of Mr Hikaka (a private investigator operating a business called Hikaka Investigations Ltd) to interview Ms Williams, to ascertain the details of the alleged assault.

[11] On 5 August 2020 Mr Hikaka interviewed Ms Williams. At the conclusion of the interview Mr Hikaka obtained a handwritten signed authority from Ms Williams, in which she directed Corrections to disclose the following information to Mr Hikaka:

[11.1] Her medical records relating to her treatment and admissions to Middlemore Hospital and Auckland City Hospital, which resulted in her surgery on 5 June 2020 (the health information).

[11.2] Her Corrections' files relating to her complaint of an assault by another prisoner, which had occurred on 27 May 2020 and which was to include her PC.01 forms, incident reports, medical reports and a copy of her Integrated Offender Management System (IOMS) information (the assault information).

[12] Ms Williams' signed authority was stamped at the foot "Hikaka Investigations, Peter Hikaka, P O Box [redacted]".

[13] On 6 August 2020, Mr Tennet sent an email to Corrections saying, "*Please see the attached authority*" and then requested Ms Williams' IOMS notes, incident reports, misconduct reports, medical records, CCTV imagery that had been retained, emails and handwritten notes for the duration of her sentence. Mr Tennet did not specify whether the information was to be sent to him as well as to Mr Hikaka. The signed authority attached to the email was the handwritten authority referred to at [11] above.

[14] On receipt of Mr Tennet's email, Corrections assembled a packet of personal information. That packet comprised information relating to the alleged assault, including incident information reports from 27 May 2020, entries from IOMS from May and June 2020, emails between Corrections staff about the assault and about Ms Williams' treatment, a PC.01 form, prisoner complaints from Ms Williams dated 29 May 2020, a copy of a letter from Ms Williams about the assault and an offense report form about the assault. The health information was not included.

[15] On 3 September 2020 the assembled packet was sent by tracked courier addressed to Hikaka Investigations Ltd's PO Box address. The evidence of Ms Alicia Murray, who at the relevant time was the Custodial Systems Manager at ARWCF, was that, from the courier reports, Corrections understood that the packet had been delivered at 10.37am on 4 September 2023 and had been signed for by "Hikaka". The courier track and trace reports in evidence before us supported this.

[16] The evidence of Mr Hikaka was, however, that he did not receive the packet at his company's PO Box and did not sign for it. Rather, his evidence was that on 4 September 2020 he found a package at his home address which showed Corrections to be the sender. He then initiated an enquiry from Corrections as to the packet and also made enquiries with the courier company. He was concerned that someone had forged his signature. At that stage, Mr Hikaka had not opened the packet.

[17] Two weeks later, on 17 September 2020 Mr Tennet made a complaint to the Privacy Commissioner on Ms Williams' behalf, noting that no information had been received.

[18] Only when Mr Hikaka had satisfied himself that the packet of documents was intended for him, which he said was a week or two after 4 September 2020, did he open it. On doing so, Mr Hikaka ascertained that none of the health information had been included. He then advised Mr Tennet both as to the receipt of the documentation and the lack of the health information.

[19] On 21 October 2020 Ms Williams (again apparently unaware of the documents that had been couriered) completed a PC.01 complaint form relating to the personal information request. She said:

My lawyer Chris Tennet on the 06.08.2020 through the privacy commissioner requested all IOMS-unredacted including staff details & note, A copy of all misconducts, Med Records, any and all CCTV footage pertaining to me on the date of 27.03.2020 all that have been retained also a copy of all emails and all handwritten notes relating to from 27.03.2020 to today 19.10.20. To date I have not received. Can I please have a copy of these forms?

[20] Corrections staff, in response to this PC.01 form, noted that the request contained two separate parts, a request for the assault information which, they took the view, had been actioned in September 2020 and a request for the health information.

[21] On 22 October 2020 the Health Centre Manager at Corrections confirmed she could not find any evidence of the request for health information having been processed. Subsequently, on 28 October 2020, the health information was provided to Mr Hikaka, care of Hikaka Investigations Ltd by courier. That information included Ms Williams' medical history held by Corrections for 2019 and 2020.

[22] The certificate of investigation issued by the Privacy Commissioner on 10 November 2020 recorded that the matter investigated by the Commissioner was Ms Williams request of 6 August 2020 for her personal information.

[23] In addition to a declaration that her privacy has been interfered with, Ms Williams seeks damages for loss of benefit of \$20,000 and damages for her humiliation, loss of dignity and injury to feelings of \$15,000. In her pleadings, Ms Williams sought an order requiring Corrections to modify its process and procedures around the retrieval of personal information.

[24] Corrections says it would be appropriate for the Tribunal to make a declaration of an interference with Ms Williams' privacy in the respect of its delay in providing some information. Corrections says, however, that other than that delay there were no interferences with Ms Williams privacy, that PA, ss 38, 42 and 44 were not breached and that (other than the declaration in relation to the late provision of information) no further remedies should be granted.

ISSUES

[25] Ms Williams alleges a breach of a number of the provisions of the PA and these are considered separately. A draft formulation of issues, set out in a *Minute* dated 27 August 2021, was adopted by both parties. From this, the issues are:

[25.1] What was the nature of the requests that Ms Williams made for her personal information and when were these requests received by Corrections?

[25.2] Whether Corrections gave Ms Williams reasonable assistance in connection with her requests for her personal information in accordance with PA, s 38.

[25.3] Whether, within 20 working days after the date on which it received Ms Williams' requests for her personal information, Corrections decided whether the requests were to be granted, and if so, in what manner they were to be granted; and whether Corrections gave notice to Ms Williams of its decision on her requests in accordance with PA, ss 40(1)(a) and (b)

[25.4] Whether Corrections made Ms Williams' information available to her in the manner she preferred and, if not, whether Corrections gave Ms Williams its reasons for not providing the information in the manner she preferred in accordance with PA, ss 42(2) and 42(3).

[25.5] Whether Corrections interfered with Ms Williams' privacy in that it:

[25.5.1] Decided to make available Ms Williams' personal information in a manner other than that which she preferred and there was no proper basis for that decision; see PA, ss 66(2)(a)(ii) and 66(2)(b); or

[25.5.2] Failed to make Ms Williams' personal information available to her without undue delay; see PA, s 66(4).

[25.6] If Ms Williams' privacy has been interfered with what, if any, remedies should be granted to Ms Williams; see PA, ss 85 and 88?

NATURE OF THE REQUEST AND ITS RECEIPT

[26] In this case, the request for personal information in Ms Williams' counsel's email of 6 August 2020 was in two parts:

[26.1] The first was her counsel's request for a wide range of documents relating to Ms Williams for the entire period of her sentence (the Tennet request).

[26.2] The second was the request in the signed authority, directing the assault information and the health information to be sent to Mr Hikaka of Hikaka Investigations Ltd (the Hikaka request).

[27] Corrections submitted, that of these two parts, only the one sent under Ms Williams written authorisation (the Hikaka request) was able to be actioned. Corrections said that her counsel's request was wider in scope than what was authorised in the signed authority and was not accompanied by any separate authorisation from Ms Williams for this wider information to be disclosed to Mr Tennet.

[28] We do not understand Ms Williams to be submitting that the wider information should have been sent separately to Mr Tennet. In his closing submissions, counsel for Ms Williams did not challenge the decision of Corrections to comply only with the Hikaka request. However, under cross-examination Ms Williams said that in August 2020 she wanted both the information contained in the Hikaka request and the Tennet request. This also accorded with the request in her subsequent PC.01 of 20 October 2020.

Privacy Act provisions relating to requests for information

[29] Section 34 of the PA provides that an information privacy request can be made only by an individual.⁴

[30] While there is no express provision allowing an agent to make a request on behalf of an individual this must be implied by the language of PA, s 45. That section requires agencies to ensure that, where a request for personal information was made by an agent

⁴ Section 40 of the 2020 Act now provides that an IPP 6 request may be made only by the individual concerned or that individual's representative.

of an individual, the agent had the written authority from that individual to obtain the information or was otherwise properly authorised by the individual to obtain the information.⁵

[31] As to the request to disclose information to Mr Hikaka, while Corrections was not able to generally disclose personal information to other than Ms Williams or her agent (in accordance with a written authority), IPP11 allows an agency to disclose information to a person, body or agency where the agency believed on reasonable grounds that the disclosure was authorised by the individual concerned.⁶

Analysis of the request for personal information

[32] In this case the only written authority was Ms Williams' authorisation, which clearly stated which information was to be disclosed to Mr Hikaka.

[33] It was the evidence of Ms Alicia Murray, the Deputy Prison Director at ARWCF (who during the relevant period was the Custodial Systems Manager at ARWCF), that on 11 November 2020 she met with Ms Williams to discuss her personal information request in the PC.01 of 20 October 2020. Ms Murray said that she showed Ms Williams the Tennet request and the Hikaka request and provided Ms Williams with a copy of the documents released in accordance with the Hikaka request.

[34] Ms Murray said she asked Ms Williams whether she consented to the information in the Tennet request being released to Mr Tennet. Ms Murray's evidence was that, in reply, Ms Williams said that she did not understand why her lawyer would be requesting further information than she had authorised. Ms Williams said she could not recall this and Ms Murray did not make a file note of this. However, on 11 November 2020 Ms Williams signed a brief note indicating she was "completely satisfied" with the information provided in response to her previous request for information. This accords with a notation made on the PC.01 form on 11 November 2020 that Ms Williams said she was satisfied that her lawyer had received all of the documents she had requested.

[35] In this case, while Ms Williams said in the hearing she wanted the Tennet information we prefer the evidence of Ms Murray. Her evidence was supported both by the PC.01 notation and by Ms Williams' written acknowledgement of 11 November 2020, that Ms Williams was not also pursuing receipt of the Tennet information.

Conclusion

[36] We conclude that, in this case, it was reasonable for Corrections to understand that the only IPP 6 request which required their response, or to which they could properly respond, was that contained in the Hikaka request. This is because of the legislative

⁵ See PA s 45(c).

⁶ IPP11(d).

provisions relating to how requests for personal information were to be made⁷, that Mr Hikaka (at Mr Tennet’s instigation) only interviewed Ms Williams in relation to the alleged assault (hence the more limited scope of the Hikaka request), that in his email Mr Tennet prefaced the whole of the request by a reference to the attached Hikaka request, Ms Williams’ acknowledgement of 11 November 2020 and the evidence of Ms Murray⁸.

REASONABLE ASSISTANCE

[37] The second issue for determination is whether Corrections gave Ms Williams reasonable assistance in connection with her requests for her personal information, in accordance with PA, s 38.

Privacy Act provisions relating to reasonable assistance

[38] Section 38 provides:

38 Assistance

It is the duty of every agency to give reasonable assistance to an individual, who—

- (a) wishes to make an information privacy request; or
- (b) in making such a request, has not made the request in accordance with the requirements of this Act; or
- (c) has not made his or her request to the appropriate agency,—
to make a request in a manner that is in accordance with the requirements of this Act or to direct his or her request to the appropriate agency.

[39] The High Court in *Chief Executive of the Ministry of Social Development v Holmes*⁹ described this provision as creating a “positive duty” to assist an individual to obtain their private information.¹⁰ In that case, the Tribunal had found that WINZ had breached s 38 as a particular staff member had not responded adequately to Mr Holmes. On appeal, the High Court emphasised that the assistance only has to be “reasonable” and that the standard should take into account the ability of the person seeking information to respond and also the context.¹¹

Submissions on reasonable assistance

[40] Ms Williams submitted that Corrections did not provide reasonable assistance to her in that Corrections:

[40.1] Failed to communicate with her and her agents and actively, without justification, hindered access to her personal information.

⁷ See [29] - [31].

⁸ See [34] and [35].

⁹ *Chief Executive of the Ministry of Social Development v Holmes* [2013] NZHC 672, (2013) 9 HRNZ 541 (*Holmes*).

¹⁰ *Holmes* at [46].

¹¹ *Holmes* at [79].

[40.2] Ignored her instructions contained in the PC.01 form and continued to withhold that information from her.

[41] Corrections submitted that reasonable assistance was provided to Ms Williams to make the IPP 6 request she wanted. It was Ms Murray's evidence that staff at ARWCF had actioned Ms Williams' request in the terms of the Hikaka request (other than the health information) and couriered that information to Hikaka Investigations Ltd on 3 September 2020.

[42] Counsel for Ms Williams submitted that that Ms Williams was a vulnerable individual, requiring Corrections to facilitate her request for her information. Both Ms Murray and Ms Hughes, a Senior Case Manager at ARWCF, acknowledged this to be the case. It was, however, unclear what additional assistance (if any) Ms Williams would require in connection with making her request for personal information. She was being assisted by Mr Hikaka and by her previous legal counsel.

Conclusion

[43] The requirement for reasonable assistance in PA, s 38 is triggered where an individual:

[43.1] Wishes to make an information privacy request; or

[43.2] Has not made a request in accordance with the requirements of the PA; or

[43.3] Has not made the request to the appropriate agency.

[44] In this case Ms Williams had made a request for personal information, in accordance with the PA, to the correct agency. In these circumstances, we do not find that a requirement for reasonable assistance arose. It follows that Corrections did not fail to give reasonable assistance in breach of PA, s 38.

DECISION ON THE REQUESTS

[45] The third issue is whether, within 20 working days after the date on which it received Ms Williams request for personal information, Corrections decided whether the request was to be granted and, if so, in what manner it was to be granted; and whether Corrections gave notice to Ms Williams of its decision on her request in accordance with the relevant provisions of the PA.

[46] The relevant provisions are contained within PA, s 40, which provides:

40 Decisions on requests

- (1) Subject to this Act, the agency to which an information privacy request is made or transferred in accordance with this Act shall, as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received by that agency,—

- (a) decide whether the request is to be granted and, if it is to be granted, in what manner and, subject to sections 35 and 36, for what charge (if any); and
- (b) give or post to the individual who made the request notice of the decision on the request.

[47] Section 40 focuses on whether a decision on access to the information has been made, rather than the content of that decision.¹²

The assault information

[48] While the focus of s 40 is on the decision as to whether the request is to be granted, and on the giving of notice of that decision, it is not unusual for agencies to respond to the requirement to give that notice by making the requested information itself available. This occurred in the case of the assault information. The decision to provide the information was made (and communicated to Ms Williams' agent, Mr Hikaka) by sending the information by courier to the address specified by Ms Williams on 3 September 2020. This was within the statutory time period.

[49] Here, a complication arises. It was Mr Hikaka's evidence (a witness we found to be credible) that he did not receive the packet at the address specified by Ms Williams, rather on 4 September 2020 he found a packet at his home address which showed Corrections to be the sender. Mr Hikaka did not then open the packet.

[50] Corrections had, however, received confirmation from the courier company that the packet had been delivered to the specified address and it had been signed for by "Hikaka".

[51] While we accept Mr Hikaka's evidence, the requirement in PA s 40(1)(b) is for the agency to give or post notice of the decision (in this case the requested information itself) to the individual who made the request. We are satisfied that Corrections did comply with this. Having received what apparently was an acknowledgement of receipt by Mr Hikaka, to the address specified for delivery, Corrections had no reason to suspect the information had not been correctly delivered. Accordingly, the subsequent delivery events did not persuade us that Corrections had failed to comply with PA, s 40.¹³

The health information

[52] The position differs in relation to the health information. Corrections did not determine until 22 October 2020 that the information had not been provided. That information was not provided until 28 October 2020. This was outside the 20-day working period prescribed by s 40 for decisions on requests and so in breach of that section. The consequences of that breach are addressed in the remedies section below.

¹² *Holmes* at [67].

¹³ As best as we can tell, without determining the matter, the packet was delivered to an address known to be Mr Hikaka's home address and signed by an unknown third party, possibly an individual at the courier company.

MANNER OF PROVISION OF INFORMATION

[53] The next issue is whether Corrections made Ms Williams' information available to her in the manner she preferred and, if not, whether Corrections gave Ms Williams its reasons for not providing the information in the manner she preferred in accordance with PA, ss 42(2) and 42(3).

[54] Section 42(2) provides that an agency is to make information available in the way preferred by the individual requesting it, subject to certain exceptions. Section 42(3) provides that if the information is not provided in the way preferred by the individual, the agency is to give the reason for not providing the information that way.

Submissions

[55] It was submitted for Ms Williams that her preferred method of receipt, which was clearly stated, was by email.

[56] Corrections said that it understood the preferred method was by hard copy, to the address specified in the Hikaka request.

Analysis of method of providing information

[57] There was no evidence before us that Ms Williams asked for the information to be sent by email. While Mr Tennet sent the request for information by email, he did not specify that the response, sending the information, should likewise, be by email. Rather he referenced the Hikaka request. That request clearly specified that the information was to be made available to Mr Hikaka at Hikaka Investments Ltd and was to be sent to a designated PO Box. That can only lead to the conclusion that the information was to be made available in hard copy.

[58] Corrections pre-assembled the assault information (and subsequently the health information) and, in each case, arranged for the information to be sent to Mr Hikaka's PO Box in hard copy.

[59] In these circumstances we find that there has been no breach of s PA, s 42(2). That being the case, we do not need to consider the matter of delivery further under PA, s 42(3).

REQUIREMENTS FOR INTERFERENCE WITH PRIVACY

[60] To grant Ms Williams any remedy there must first be an interference with her privacy. An interference with privacy is defined in PA, s 66. In this case, the definition in subs (2) is the most relevant. It provides:

66 Interference with privacy

...

- (2) Without limiting subsection (1), an action is an interference with the privacy of an individual if, in relation to an information privacy request made by the individual,—
- (a) the action consists of a decision made under Part 4 or Part 5 in relation to the request, including—
 - (i) a refusal to make information available in response to the request; or
 - (ii) a decision by which an agency decides, in accordance with section 42 or section 43, in what manner or, in accordance with section 40, for what charge the request is to be granted; or
 - (iii) a decision by which an agency imposes conditions on the use, communication, or publication of information made available pursuant to the request; or
 - (iv) a decision by which an agency gives a notice under section 32; or
 - (v) a decision by which an agency extends any time limit under section 41; or
 - (vi) a refusal to correct personal information; and
 - (b) the Commissioner or, as the case may be, the Tribunal is of the opinion that there is no proper basis for that decision.
- (3) If, in relation to any information privacy request, any agency fails within the time limit fixed by section 40(1) (or, where that time limit has been extended under this Act, within that time limit as so extended) to comply with paragraph (a) or paragraph (b) of section 40(1), that failure shall be deemed, for the purposes of subsection (2)(a)(i) of this section, to be a refusal to make available the information to which the request relates.

[61] Section 66(2) imposes a two-stage test:

[61.1] First, s 66(2)(a) requires one of the decisions listed to have been made regarding the information privacy request; and

[61.2] Secondly; the Tribunal must be of the opinion that there is no proper basis for that decision.

[62] Corrections' failure to respond to the information privacy request relating to health information within the time limit fixed by s 40(1) is deemed by PA, s 66(3) to be a refusal to make information available (per s 66(2)(a)(i)). Accordingly, the first part of the two-stage test is met.

[63] In terms of the second part of the test, we do not understand Corrections to be submitting that there was any proper basis for the deemed refusal. Accordingly, the second limb of the definition of an interference with privacy is met. The Tribunal finds that, in its failure to make a decision on providing the health information within the statutory time period, Corrections interfered with Ms Williams' privacy. Corrections has, properly, acknowledged this.

[64] For the sake of completeness, we note that in relation to the assault information, we have found that there was no breach of PA s 40. Accordingly, there was no interference with Ms Williams' privacy in relation to that category of information. We have also found that there was no breach of PA, ss 38 (reasonable assistance) or 42 (to make the information available in the way preferred).

REMEDIES

[65] Where the Tribunal is satisfied on the balance of probabilities that any action of the defendant is an interference with the privacy of an individual it may grant one or more of the remedies allowed by PA, s 85:

85 Powers of Human Rights Review Tribunal

- (1) If, in any proceedings under section 82 or section 83, the Tribunal is satisfied on the balance of probabilities that any action of the defendant is an interference with the privacy of an individual, it may grant 1 or more of the following remedies:
 - (a) a declaration that the action of the defendant is an interference with the privacy of an individual:
 - (b) an order restraining the defendant from continuing or repeating the interference, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the interference, or conduct of any similar kind specified in the order:
 - (c) damages in accordance with section 88:
 - (d) an order that the defendant perform any acts specified in the order with a view to remedying the interference, or redressing any loss or damage suffered by the aggrieved individual as a result of the interference, or both:
 - (e) such other relief as the Tribunal thinks fit.
- ...
- (4) It shall not be a defence to proceedings under section 82 or section 83 that the interference was unintentional or without negligence on the part of the defendant, but the Tribunal shall take the conduct of the defendant into account in deciding what, if any, remedy to grant.

[66] Section 88(1) provides that damages may be awarded in relation to three specific heads of damage; pecuniary loss, loss of any benefit (whether or not of a monetary kind) and humiliation, loss of dignity, and injury to the feelings.¹⁴

Declaration

[67] While the grant of a declaration is discretionary, declaratory relief should not ordinarily be denied.¹⁵

[68] The Tribunal sees nothing to justify withholding from Ms Williams a declaration that Corrections interfered with her privacy. This declaration is accordingly made.

¹⁴ PA, ss 88(1)(a), (b) and (c).

¹⁵ See *Geary v New Zealand Psychologists Board* [2012] NZHC 384, [2012] 2 NZLR 414 at [107] and [108] per Kós J, Ms SL Ineson and Ms PJ Davies.

Damages

[69] Before damages can be awarded for an interference with the privacy of an individual there must be a causal connection between that interference and one of the forms of loss or harm listed in PA, s 88(1)(a), (b) or (c). The plaintiff must show the defendant's act or omission was a contributing factor to the alleged loss or harm, in that it constituted a material cause.¹⁶

[70] An award of damages is at the discretion of the Tribunal and damages are not accessed as of right.¹⁷ Any award under PA, s 88 must be an appropriate response to the circumstances.

Damages for loss of benefit

[71] Ms Williams seeks damages for loss of a benefit in an amount of \$20,000.

[72] Ms Williams' statement of claim alleges that as a consequence of Corrections' interference with her privacy, she was unable to prepare for a forthcoming parole hearing.

[73] Ms Williams appeared for the first time before the Parole Board 2 April 2020. That was prior to her request for personal information in August 2020.

[74] Ms Williams did not appear again before the Parole Board until 2 December 2020. By 28 October 2020, Ms Williams' agent had received the assault information and the health information, which was also available to her counsel (who assisted her in preparation for her next Parole Board appearance and represented her at that appearance) and Ms Williams had been personally given the information from Corrections on 11 November 2020.

[75] Accordingly, by the time of her second appearance before the Parole Board (on 2 December 2020) Ms Williams had been in receipt of the requested information for approximately one month. In its report following the appearance on 2 December 2020, the Parole Board noted a number of recommendations but made no mention of any issues faced with access to information. Ms Williams acknowledged, at the hearing, that a lack of information did not feature in the Parole Board process.

[76] Similarly, at Ms Williams' subsequent appearances before the Parole Board on 7 January 2021 and 3 June 2021 there was no mention of a lack of information (and, in any event, Ms Williams had the requested information well before those appearances).

¹⁶ See *Taylor v Orcon Ltd* [2015] NZHRRT 15, (2015) 10 HRNZ 458 at [59]-[61].

¹⁷ See *Holmes v Housing New Zealand* [2015] NZHRRT 36 at [36].

[77] In these circumstances, we are not satisfied that there was the loss of the benefit of using the documents to prepare for the Parole Board hearing. No award for loss of benefit should be made.

Damages for humiliation, loss of dignity and injury to feelings

[78] In *Hammond v Credit Union Baywide*¹⁸ it was noted that damages for humiliation, loss of dignity and injury to feelings are fact-driven and vary widely. Nonetheless, the Tribunal stated that awards fall into roughly three bands. At the less serious end of the scale awards have ranged upwards to \$10,000. For more serious cases awards have ranged from \$10,000 to about \$50,000. For the most serious category of cases it was contemplated awards could be in excess of \$50,000.¹⁹ The Tribunal emphasised, however, that these bands are descriptive, not prescriptive and that no award of damages should exceed what fits the case.²⁰

[79] Ms Williams claims damages for humiliation, loss of dignity and injury to feelings in an amount of \$15,000, being in the second band of *Hammond*. As referred to at [69], for an award of damages Ms Williams must satisfy the Tribunal, on the balance of probabilities, that she suffered humiliation, loss of dignity and injury to feelings as a result of the interference with her privacy.

[80] A large part of Ms Williams' evidence went to the circumstances of the alleged assault in May 2020, her treatment by Corrections in relation to the alleged assault and what Ms Williams said was incorrect information on Corrections' files recording matters relating to that assault. Those are matters over which the Tribunal has no jurisdiction. The matter we can determine is the alleged failure by Corrections to comply with Ms Williams' request of 6 August 2020 for personal information. That is the matter we must consider in relation to any award of damages.

[81] In relation to her humiliation, loss of dignity and injury to feelings Ms Williams said:

[81.1] Corrections failed to provide the level of care she was entitled to following the attack on her by another prisoner.

[81.2] She remains concerned that her complaints to Corrections were not investigated properly and that she was not provided with all relevant disclosures by Corrections in a timely manner.

[81.3] She wanted Corrections to look further into the assault to ensure it would not be allowed to happen again.

¹⁸ *Hammond v Credit Union Baywide* [2015] NZHRRT 6 (*Hammond*).

¹⁹ *Hammond* at [176].

²⁰ *Hammond* at [170.8].

[81.4] When she received information she was concerned that it contained a number of inaccuracies.

[81.5] Corrections has let her down in that because the assault was not taken care of in the beginning by Corrections, she lost breastfeeding and had to be separated from her baby and go to hospital for a week.

[81.6] If everything had been sorted out from the beginning she would not be currently before the Tribunal.

[81.7] The incident (the assault) still impacted on her life and she was, at the time of giving her evidence, going through court proceedings to prosecute the other prisoner.

[81.8] Corrections abused her human rights because she was not treated like a human. Ms Williams said that when someone was hurt it was Corrections' duty to care for her.

[81.9] Corrections failed to treat her as a human being by not getting her medical attention and they made her feel unheard and as if she did not matter. Ms Williams said Corrections made her feel that her child did not matter as well, because that child was also a victim in the assault.

[82] We do not doubt that Ms Williams was aggrieved by Corrections' treatment of her following the alleged assault and that she was adversely affected by having to be separated from her baby.

[83] The Tribunal must, however, consider the humiliation, loss of dignity or injury to feelings that arose from the delay in the provision of documents, in response to Ms Williams information privacy request. To make an award of damages Ms Williams must satisfy us of the required causative link between the humiliation, loss of dignity or injury to feelings and the interference with privacy.

[84] In this case the interference with privacy was the late provision of her health information (Ms Williams already had been sent the assault information). While the Tribunal accepts Ms Williams' evidence that the alleged assault was traumatic and that, in the events following, Ms Williams did suffer humiliation, loss of dignity or injury to feelings, Ms Williams has not convinced us that this emotional distress was causally connected to the late provision of her health information. The emotional distress Ms Williams describes is more readily attributed to her frustration with the actions of Corrections following the alleged assault on her by another prisoner.

[85] Ms Williams has the onus to convince us that there was a causal link between her emotional distress and the interference with her privacy. She has failed to convince us of that link.²¹ Absent the required causal connection between Ms Williams' emotional distress and the interference with her privacy, the Tribunal declines to make any award for damages in relation to humiliation, loss of dignity or injury to feelings.

Modification of processes

[86] Finally, Ms Williams sought an order requiring Corrections to modify its process and procedures around the retrieval of personal information.

[87] In cross examination, Ms Murray acknowledged the importance of the health information, but explained that the only persons who could access that information at Corrections (and so comply with Ms Williams' request) were members of the Health Team.

[88] In this case it appeared to us that there was simply an error in processing the request for the health information, which was corrected as soon as it was discovered.

[89] The submission from counsel for Ms Williams was, however, that there was a disconnect in being able to comply with the request for the health information and the assault information. This was acknowledged by Ms Murray, in that health information could not be accessed by all staff at Corrections.

[90] Given the importance of the confidentiality of health information and the importance of its access and disclosure being protected, we are not of the view that any order requiring Corrections to modify its process and procedures around the retrieval of information should be made.

ORDERS

[91] For the reasons set out above, the decision of the Tribunal is that it is satisfied on the balance of probabilities that an action of Corrections was an interference with Ms Williams privacy.

[92] A declaration is made under s 85(1)(a) of the Privacy Act 1993 that the Department of Corrections interfered with the privacy of Ms Williams by failing to make available certain personal information to her in breach of s 66(2)(a) of the Privacy Act 1993.

Costs

[93] The issue of costs was not raised at the hearing. The Tribunal does not, however, consider this to be an appropriate case for an award of costs. Both parties have had a

²¹ See also *Reekie v Attorney-General* [2022] NZHRRT 20 at [65] and [66].

measure of success and, in light of recent determinations by the Tribunal in relation to costs, there will be no order of costs.

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Ms GJ Goodwin
Deputy Chairperson

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Ms B Klippel
Member

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Dr M Koloamatangi
Member