Hon Kiri Allan
Minister of Justice

Proactive release: Privacy Act 2020: Introducing a notification obligation for indirect Collection of Personal Information

Date of issue: 1 June 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	**Privacy Act 2020: Introducing a notification obligation for indirect collection of personal information** *Cabinet Paper* Office of the Minister of Justice 5 April 2023	Some information has been withheld in accordance with the following section of the OIA: • Section 6(a) to avoid prejudice to the security or defence of New Zealand or the international relations of the Government of New Zealand. • Section 9(2)(d) to avoid prejudice to the substantial economic interest of New Zealand • Section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protects the confidentiality of advice tendered by Ministers of the Crown and officials.
4.	**Privacy Act 2020: Introducing a Notification Obligation for Indirect Collection of Personal Information** *Cabinet Minute SWC-23-MIN-0034* Cabinet Office 5 April 2023	Some information has been withheld in accordance with the following section of the OIA • Section 6(a) to avoid prejudice to the security or defence of New Zealand or the international relations of the Government of New Zealand. • Section 9(2)(d) to avoid prejudice to the substantial economic interest of New Zealand. • Section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protects the confidentiality of advice tendered by Ministers of the Crown and officials.

In Confidence

Office of the Minister of Justice

Cabinet Social Wellbeing Committee

Privacy Act 2020 – introducing a notification obligation for indirect collection of personal information

Proposal

1. This paper seeks agreement to amend the Privacy Act 2020 (the Act) to require that individuals are notified where their personal information is collected indirectly. This is intended to strengthen the transparency of New Zealand's privacy laws. [redacted]

Relation to government priorities

2. [redacted] However, they will update New Zealand's privacy laws in line with international best practice and support New Zealand's global reputation for protecting personal information.

Executive summary

3. In May 2022, Cabinet agreed, in-principle, to amend the Act to address a gap [redacted] [CAB-22-MIN-0167]. The gap relates to there being no requirement for agencies (public and private) to notify individuals when personal information has been collected about them from a source other than the individual themselves ('indirect collection'). This means individuals may not know who holds their personal information in these circumstances.

4. Officials undertook public engagement on how best to address the gap between 24 August and 30 September 2022. Support for the proposals was mixed. While most submitters recognised the potential benefits to individual's privacy rights, there were concerns about the administrative burden of notifying individuals when their personal information is collected indirectly.

5. Taking this feedback into account, I propose amending the Act to require agencies collecting personal information indirectly to notify individuals of the agency's name, contact details, and purpose for the collection. I propose that the change be broadly based on the current notification requirement for direct collection in the Act in information privacy principle (IPP) 3.

6. I propose a range of practical exceptions to the new notification obligation. These mirror many of the existing exceptions in IPP 3 to ensure efficient administration of certain public functions, ensure individuals are not overwhelmed with notifications, and protect against other unintended consequences.

7. These changes will enhance the privacy rights of individuals and ensure New Zealand keeps up with international best practice. The new requirement will have some compliance costs for a range of public and private agencies. These include one-off costs associated with mapping information flows and in some cases setting up systems to notify individuals where their information has been collected indirectly.

8. Future guidance will be important in helping agencies understand which business practices will need to change. Some of these compliance costs, particularly in the private sector, are offset by the trade benefits these agencies enjoy from New Zealand having an internationally recognised privacy regime, including EU adequacy status.

Background

There is a 'transparency gap' where personal information is collected indirectly

9. The sharing (collection and disclosure) of personal information is an essential part of doing business both worldwide and in New Zealand. Some businesses need to be able to collect personal information in order to provide goods and services to customers or when running processes such as cloud-based email, and file storage. In the public sector, agencies need to collect and share information in order to provide a range of public services.

10. Much of this personal information is collected indirectly – that is, it is not collected from the individual whose personal information it is but from another source ('indirect collection'). Although the Act restricts when information can be collected and disclosed in this way, it may not provide full transparency to individuals on every agency which has collected their personal information indirectly.

11. Where personal information is collected directly (and an exception does not apply), IPP 3 requires the collecting agency to notify the individual concerned of a range of matters including the agency's name and address. However, there is no requirement to notify the individual when personal information is collected indirectly, with the result that the individual concerned may not know all the agencies which have collected their personal information ('the indirect collection issue'). This transparency gap is likely to widen as the New Zealand economy becomes increasingly digitalised, which is also an important consideration for future proofing our privacy protections.

Section (9)(2)(f)(iv), Section 9(2)(d)

12. EU adequacy is an assessment by the EU that a country's domestic privacy regime offers an 'adequate' level of data protection as that afforded by the EU's privacy framework. In May 2022, Cabinet agreed in-principle to amend the Act to address the transparency gap Section (9)(2)(f)(iv), Section 6(a), Section 9(2)(d) subject to further policy work and consultation [CAB-22-MIN-0167]. Section 6(a) .

Section [redacted]. Section (9)(2)(f)(iv), Section 6(a), Section 9(2)(d) [redacted]

Public engagement

14. Officials conducted public engagement on addressing the indirect collection issue between 24 August and 30 September 2022. The Ministry of Justice received 53 written submissions from a range of private sector and public sector agencies and professional/academic privacy law experts.

15. Overall, the responses to the proposal to introduce a notification requirement for the indirect collection of information were mixed. Those that supported the proposal (and many who did not) saw the benefits the new obligation could bring in terms of improved transparency; improved accountability; and increased consistency with the GDPR and the consequent safeguarding of New Zealand's EU adequacy status.

16. Those who opposed the change, or who saw risks in its implementation, were concerned about whether a notification obligation was proportionate to the identified gap in transparency. They also noted the costs of compliance (e.g., due to needing to re-design systems and train staff) and sought clarity on the circumstances in which the obligation applies, and the agency it applies to. Officials have used this feedback to shape the design of the notification obligation proposed below.

I propose to introduce a new notification obligation for indirect collection in the Privacy Act

I propose that the individual concerned should be notified of the collector's name, contact details and the purpose for the collection

17. I propose amending the Act to require agencies collecting personal information indirectly to notify individuals of the agency's name, contact details of the collecting agency and the purpose for the collection. The agency collecting personal information would be required to provide their name, contact details and the purpose for the collection to the individual concerned, as soon as practicable after the personal information is collected.

18. I propose that the change be broadly based on the current notification requirement for direct collection in the Act (IPP 3). IPP 3 requires an agency to notify an individual of certain matters when the agency collects personal information *directly* from them. This is in line with the approach most submitters favoured in the public engagement. IPP 3 also contains a number of practical

exceptions that are relevant to indirect collection (more detail on these is outlined below in paragraphs 23-26).

19. Notification would not be necessary if the individual concerned has already been provided this information in relation to an earlier collection of personal information. Notification could occur in advance, for example by naming and providing contact details of agencies in the current IPP 3 notice when information is directly collected, or through the terms and conditions expressly agreed to when individuals provide personal information via a website.

The circumstances in which the notification obligation applies should mirror IPP 3

20. The notification obligation:

    a. would not apply if the collection by an agency is authorised or required under New Zealand law;

    b. may be exempted or modified in an Approved Information Sharing Agreement (AISA)[1] approved or amended after the commencement of the notification obligation (however all AISAs approved or amended before this would be exempt[2]);

    c. may be modified, exempted or its compliance prescribed by the Privacy Commissioner when issuing a Code of Practice and

    d. does not apply to an intelligence and security agency[3], as notification could compromise the purposes and methods of its information collection and impact New Zealand's national security.

21. I also propose that the new notification obligation be subject to the current 'reasonableness' threshold under IPP 3, whereby an agency must only take those steps that are reasonable under the circumstances to notify the individual concerned.

22. My officials have discussed the scope of the 'reasonableness' threshold with the Office of the Privacy Commissioner (OPC). OPC guidance will assist agencies with examples of steps that may be reasonable to provide notification and scenarios where it may be reasonable not to take any steps to provide notification.

I propose that a number of exceptions apply to the new notification obligation

I propose existing practical exceptions apply to the new notification obligation

23. As indicated above, I propose that the new notification obligation is subject to existing practical exceptions drawn from other IPPs, including IPP 3, as well as relevant exceptions under IPPs 2 and 11. This will, in combination with the

[1] See s.145(2) of the Act.
[2] AISAs enable personal information to be shared between (or within) organisations for the purpose of delivering public services and are approved by Order in Council under the Act.
[3] An intelligence and security agency is defined in the Act as the New Zealand Security Intelligence Service; and the Government Communications Security Bureau.

practical guidance which the Privacy Commissioner will provide, mitigate the concerns of submitters regarding the compliance burden of the notification obligation.

Current IPP 3 exceptions apply

24. I propose the current exceptions at IPP 3(4) applying to direct notification also apply to indirect notification. These include, for example, exceptions for law enforcement and statistical purposes, in addition to a number of other practical and well-understood exceptions.

Publicly available exception

25. I propose the notification obligation would not apply where the personal information collected by the collecting agency is publicly available information. Requiring notification when publicly available information is collected would represent a significant departure from the current Act. The Act currently provides this as an exception to the requirement to collect personal information directly from an individual under IPP 2. Agencies are also free to disclose such information under IPP 11, subject to a fairness and reasonableness test.

Serious threat exception

26. One of the IPP 3(4) exceptions that I have proposed is carried over is where non-notification would not prejudice the interests of the individual concerned. I propose another exception to address concerns that a notification to an individual about the collection of their personal information could pose risks to other people. This could occur, for example, where a vulnerable person discloses personal information about someone else to an organisation and a notification could threaten the vulnerable person's well-being. I propose an additional exception where notification poses risks to the interests of another person. This would be modelled on the current IPP 11(1)(f) which allows disclosure of personal information where there is a threat to someone's health.

I propose two new exceptions apply to the new notification obligation

Contrary to the interests of a child exception

27. It is important that the interests of children are built into the design of the new notification obligation and I consider that particular consideration should be given to notification that might impact the interests of a child. I propose that the notification obligation would not apply where notification would be contrary to the interests of a child. This exception would be based on section 49 of the Act, which is a ground for refusing a child's access to personal information.

Archiving in the public interest exception

28. It will often not be practical to notify individuals when personal information about them is archived due to the age and number of individuals' personal information being processed. Archiving is often authorised and required by law and so will not be subject to the notification obligation.

29. Nonetheless, for the avoidance of doubt, I propose an explicit exception where personal information is archived in the public interest and (i) the archived information is not used for measures or decisions about particular individuals, and (ii) there are controls on access and use of the personal information to protect the privacy of the individual.

Implementation

30. OPC will be the main agency responsible for implementation in accordance with its functions under the Act. This includes issuing guidance, educating agencies on compliance and ultimately monitoring compliance.

31. Some government departments have raised concerns that the proposed amendments could create an administrative burden, and that this could have timing and resourcing implications impacting their ability to carry out their core functions. However, these changes are in line with the underlying principles in the Act and many agencies with high levels of privacy maturity will already be complying with the changes.

32. In order to provide reassurance and greater certainty to affected agencies, clear advance messaging from the Ministry, the OPC and other government agencies about the scope of the proposed changes and the types of steps which will be needed to be ready to comply. This will require a detailed communications strategy. The Ministry and OPC will work closely with agencies to ensure the amendments are implemented and interpreted in a way that minimises the compliance burden while still giving effect to the notification requirement.

To allow time for agencies to implement the new rules, I recommend the proposed changes come into force six months after Royal Assent

33. Some lead-in time is desirable to provide agencies with the opportunity to adapt their systems and processes, and for the OPC to prepare any guidance it considers necessary. I propose a commencement date of six months following Royal Assent (which mirrors the period provided for implementation following the enactment of the Act in 2020).

Minor and Technical Amendments to the Privacy Act 2020

34. I am proposing a number of minor and technical amendments to the Act, set out in Appendix One to this paper. These amendments correct drafting errors in the Act and address minor issues that have arisen in implementing the Act since it came into force. These amendments would commence on the day after the date of Royal Assent.

[redacted] Section (9)(2)(f)(iv) [redacted]

Financial implications

36. The cost of creating guidance, educating and monitoring compliance with the indirect notification requirement, will be met from OPC's existing funding.

37. Agencies are already required to meet a range of privacy-related obligations. There are likely to be some costs for public and private agencies with mapping their information flows, and in some cases making adjustments to their current notification systems or creating new notification systems.

38. I expect government agencies will be able to build on their existing processes and practices to implement the new notification obligation. There will be variation across agencies depending on the current privacy maturity of each agency and the extent of any potential changes they may need to make. For example, agencies that have a high volume of collection notices and information sharing agreements may need to consider more extensive process changes.

39. Some agencies, particularly those engaged in the transfer of personal information overseas, will continue to benefit from savings associated with New Zealand retaining EU adequacy status.

Legislative implications

Section . Section (9)(2)(f)(iv)

Section (9)(2)(f)(iv)

42. Bills that amend existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Privacy Act 2020 binds the Crown, and it is proposed that the Privacy Amendment Bill will follow that position. It will therefore bind the Crown.

Impact analysis

Regulatory Impact Statement

43. The Treasury's Regulatory Impact Analysis team has determined that the five minor and technical amendments listed in Appendix One are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

44. For the remaining regulatory proposals in this paper, a Regulatory Impact Statement has been completed and is attached in Appendix Two.

45. The Ministry of Justice Regulatory Impact Analysis Quality Assurance Panel has reviewed the Regulatory Impact Statement prepared by the Ministry of Justice, and consider that the information and analysis summarised in the Regulatory Impact Statement (RIS) meets the Quality Assurance criteria. The RIS highlights that there is limited evidence on the problem leading to uncertainty on the exact level of compliance costs. The RIS clearly outlines how the proposal has been developed to consider as much as possible the practical concerns of stakeholders, and the benefits for stakeholders of ensuring our privacy regime in this area is sufficiently strong from an international perspective.

Climate Implications of Policy Assessment

46. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Te Tiriti o Waitangi / Treaty of Waitangi Implications

47. Greater transparency about the indirect collection of Māori personal information should improve the awareness Māori have over who holds their information, and their ability to access it or correct it.

48. We have considered the risk that the notification obligation may create a barrier to sharing personal information with hapū, iwi or other Māori service providers to the benefit of Māori. Withholding information and data from Māori during the COVID-19 response led to a lengthy judicial process.[4] As a result of this, health data is now shared directly with Māori in support of self-determination and as permitted by the Privacy Act.

49. The risk that the notification requirement could create some disincentive to share personal information with Māori groups has been minimised by placing the notification obligation on the collecting rather than disclosing agency, and through the design of appropriate exceptions and thresholds. The exceptions should also minimise the “chilling effect” of sharing personal information under conditions with greater compliance obligations. However, this risk needs to be

[4] See the High Court judicial review proceedings in *Te Pou Matakana vs Attorney-General* [2021] NZHC 3319 [6 December 2021].

carefully monitored and minimised as much as possible by ensuring agencies have appropriate guidance.

Population implications

Women, children and disabled people

50. Information sharing under other legislative regimes which protect the welfare of vulnerable groups – such as the Family Violence Act 2018 and the Oranga Tamariki Act 1989 should not usually be subject to the notification obligation. In addition, in other contexts, the proposed exemptions from the notification obligation (such as where notification would prejudice the purposes of collection, or where non-notification is necessary to protect the life or health of any individual, and where non-notification is in the interests of a child) should ensure that a notification will not occur when it is against the interests of children or family violence victims.

51. Article 22 (2) of the United Nations Convention on the Rights of Persons with Disabilities (the Convention) outlines that "States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others". The proposals in this paper will go some way to meeting the government's commitments as a signatory to the Convention.

52. Ensuring the 'serious threat exemption' is in place will help safeguard disabled people, particularly disabled women and children, who are experiencing abuse. Disabled people report much higher rates of experiencing victimisation than non-disabled people. The NZ Crime and Victimisation Survey (2021) showed that 35% of disabled people had experienced sexual assault or intimate partner violence, compared to 23% of non-disabled people. The reasons for non-reporting of victimisation can include fear of punishment (e.g., losing social supports) by the perpetrators on whom they may depend to meet their daily needs.

53. Guidance will assist public agencies to understand the circumstances in which notification is not required to ensure notification does not occur in these circumstances and/or to safeguard against a 'chilling effect' on the sharing of information due to concerns about compliance burdens/risks.

Human Rights

54. These changes will enhance individuals' privacy rights and have sought to balance increased transparency against other non-privacy rights through exceptions. Freedom of expression is engaged via the requirement to notify but the transparency objective justifies the limitation.

Consultation

55. The following agencies have been consulted on this Cabinet paper: Department of Internal Affairs (including the Government Chief Privacy Officer), Inland Revenue Department, Accident Compensation Corporation, Customs, Te Puni

Kōkiri, Kainga Ora, Ministry of Social Development, Ministry of Health, Ministry of Business Innovation and Employment, Ministry of Education, Ministry for Primary Industries, Statistics New Zealand, Office of the Privacy Commissioner, Police, Corrections, Oranga Tamariki, Waka Kotahi, Ministry of Foreign Affairs and Trade, Ombudsman, New Zealand Intelligence Community, Ministry of Defence, and Whaikaha. The Department of Prime Minister and Cabinet has been informed.

Privacy Commissioner comment

56. The Privacy Commissioner supports the Ministry's proposed broadening of the Act's notification obligation. The proposed amendments would increase transparency for individuals whose personal information is collected indirectly and assist them to exercise their privacy rights to access and request correction of their personal information. The amendment would also align our Act with the internationally recognised best practice for this area of privacy law and is relevant to the challenges posed by digital processing of personal information.

57. Consistent with the Commissioner's functions, he will continue to monitor international developments in privacy law and consider whether other changes would be desirable to align New Zealand's approach to international best practice.

Communications and proactive release

58. I intend to proactively release this Cabinet paper and the related Cabinet Minute, with appropriate redactions, in accordance with the Government's proactive release policy, following Cabinet's decisions.

59. I also propose to share the Cabinet paper, with appropriate redactions, and Cabinet Minute with the EU. My officials will communicate with the EU through DG JUST to enable the commitments in this paper to be considered by the European Parliament as it completes its review of our adequacy status.

60. Releasing this paper will ensure our EU partners, businesses, and the public are aware of our intent to strengthen the level of transparency where an individual's personal data is collected indirectly by third parties under the Privacy Act.

Recommendations

61. The Minister of Justice recommends the Committee:

1 **note** that on 9 May 2022, Cabinet agreed, in-principle, to amend the Privacy Act 2020 (the Act) to address the transparency gap Section 9(2)(f)(iv), Section 9(2)(d), [redacted] [CAB-22-MIN-0167];

2 **agree** to amend the Act to require agencies collecting personal information indirectly ('indirect collecting agencies') to notify the individual concerned of that agency's name, contact details and purpose for the collection, as soon as practicable after collection (the notification obligation);

3 **agree** that the notification obligation:

3.1 is not breached if the action of an agency is authorised or required under New Zealand law;

3.2 may be exempted or modified in an Approved Information Sharing Agreement (AISA) approved or amended after the notification obligation commences;

3.3 may be modified, exempted or its compliance prescribed by the Privacy Commissioner when issuing a Code of Practice; and

3.4 does not apply to an intelligence and security agency;

4 **agree** that, in line with information privacy principle (IPP) 3, the indirect collecting agency must take reasonable steps to comply with the notification obligation, and notification would not be necessary if the individual concerned has already been provided the information in relation to an earlier collection of information;

5 **agree** that notification for indirect collection will not be necessary where notification for direct collection is currently not necessary under IPP 3(4);

6 **agree** that, in addition to the circumstances where notification is not necessary for direct collection, notification is not necessary where:

6.1 the information is publicly available information;

6.2 non-notification is necessary to prevent or lessen a serious threat public health or public safety, the life or health of the individual concerned or any other individual;

6.3 notification would be contrary to the interests of a child;

6.4 personal information is archived in the public interest and (i) the archived information is not used for measures or decisions about particular individuals and (ii) there are controls on access and use of the archived personal information to protect the privacy of individuals;

7 **agree** that AISAs approved or amended prior to the commencement of the notification obligation be exempt from the notification obligation;

8 **agree** to the minor and technical amendments set out in Appendix One to this paper, to correct drafting errors in the Act and address minor issues that have arisen in implementing the Act since it came into force

9 **agree** that the amendments proposed in this Cabinet Paper (other than the minor and technical amendments) come into force six months after Royal Assent in order to give agencies the opportunity to adapt their systems and processes;

Section [redacted] Section (9)(2)(f)(iv) [redacted]

11 **invite** the Minister of Justice to issue drafting instructions to give effect to the decisions in these recommendations; and

Section [redacted] Section (9)(2)(f)(iv) [redacted]

Authorised for lodgement

Hon Kiri Allan

Minister of Justice

Appendix One: List of minor and technical amendments to Privacy Act 2020

#	Issue	Change	Amendments to Privacy Act sections
1	Allow a bloc of countries to be prescribed as having privacy safeguards comparable to New Zealand	These amendments would: • allow a bloc of countries to be prescribed as having privacy safeguards comparable to New Zealand if the bloc of countries has adopted substantially similar privacy laws or standards; • enable the Privacy Commissioner to provide advice to the Minister of Justice on the privacy laws or standards of a bloc of countries. Currently, only individual countries can be prescribed if they have comparable privacy safeguards. These amendments would streamline the process by also allowing a bloc of countries to be assessed in the same way (such as European Union countries, which are subject to the General Data Protection Regulation [GDPR]). This streamlined process would allow the Minister of Justice, Ministry of Justice, and the Office of the Privacy Commissioner to significantly improve the efficiency of assessments. This is because there is a very high level of resourcing required to conduct this process on a country-by-country basis.	18, 22, 214

#	Issue	Change	Amendments to Privacy Act sections
2	Permit an agency to respond only once to a requestor when the agency has grounds to transfer an access request	This amendment would allow an agency to respond only once to a requestor when it has grounds to transfer an access request to another agency, but does not transfer the request because it has good cause to believe the requestor does not want the request transferred. Currently, when an agency has transferred an access request, an agency only needs to respond once to a requestor to notify them of the transfer. However, currently an agency must respond twice when it receives an access request that it could transfer, but does not. Here, the agency must first respond to notify the requestor that the request has not been transferred, and then subsequently respond with a substantive decision about whether it grants the access request. This was not the intended policy, which was for: • all agencies to have the same obligations to respond to access requests that could be transferred • an agency to be relieved from substantively responding to an access request when another agency is better placed to do so. This amendment would treat all agencies who have grounds to transfer an access request (whether or not the agency transfers the request) consistently by requiring only one response from them.	44
3	Clarify that an agency does not have to substantively respond to a correction request it has transferred	This amendment makes a minor drafting change to clarify that an agency does not have to substantively respond to a correction request it has transferred. Instead, the agency is only required to respond to notify the requestor of the transfer. This amendment aligns the obligations on agencies to respond to transferred correction requests with those for transferred access requests as originally intended.	63

#	Issue	Change	Amendments to Privacy Act sections
4	Permit an agency to respond only once to a requestor when the agency has grounds to transfer a correction request	This amendment would allow an agency to respond only once to a requestor when it has grounds to transfer a correction request to another agency, but does not transfer the request because it has good cause to believe the requestor does not want the request transferred. This amendment parallels amendment #2 above to align the positions in respect of access and correction requests that agencies have grounds to transfer. Currently, an agency must respond twice when it receives a correction request that it could transfer, but does not. Here, the agency must first respond to notify the requestor that the request has not been transferred, and then subsequently respond with a substantive decision about whether it grants the correction request. This was not the intended policy, which was for: • all agencies to have the same obligations to respond to correction requests that could be transferred • an agency to be relieved from substantively responding to a correction request when another agency is better placed to do so. This amendment would treat all agencies who have grounds to transfer a correction request (whether or not the agency transfers the request) consistently by requiring only one response from them.	63

#	Issue	Change	Amendments to Privacy Act sections
5	Allow agencies to refuse requests if disclosing the requested information would be either contrary to the interests of any individual aged under 16 or likely to prejudice the safe custody and rehabilitation of any individual	These amendments would allow agencies to refuse requests if disclosing the requested information would be: • contrary to the interests of any individual aged under 16; or • likely to prejudice the safe custody or rehabilitation of any individual convicted of an offence and detained in custody. As currently drafted, agencies can only refuse these requests because doing so would be: • contrary to the interests of the individual aged under 16 who is requesting the information (as opposed to any individual aged under 16); or • likely to prejudice the safe custody and rehabilitation of the individual requesting the information (as opposed to any individual). This was not the intended policy. These amendments would restore the policy position in the Privacy Act 1993 that the Privacy Act 2020 intended to retain. The protections outlined would now extend to any individual who is either in custody or who is aged under 16.	49(1)(c), 49(1)(d)

SWC-23-MIN-0034

Cabinet Social Wellbeing Committee

Minute of Decision

Privacy Act 2020: Introducing a Notification Obligation for Indirect Collection of Personal Information

Portfolio **Justice**

On 5 April 2023, the Cabinet Social Wellbeing Committee (SWC):

1 **noted** that in May 2022, SWC agreed in-principle to amend the Privacy Act 2020 (the Act) to address the transparency gap Section (9)(2)(f)(iv), Section 9(2)(d), Section 6(a) [redacted] [SWC-22-MIN-0079];

2 **agreed** to amend the Act to require agencies collecting personal information indirectly ('indirect collecting agencies') to notify the individual concerned of that agency's name, contact details, and purpose for the collection as soon as practicable after collection (the notification obligation);

3 **agreed** that the notification obligation:

3.1 is not breached if the action of an agency is authorised or required under New Zealand law;

3.2 may be exempted or modified in an Approved Information Sharing Agreement (AISA) approved or amended after the notification obligation commences;

3.3 may be modified, exempted, or its compliance prescribed by the Privacy Commissioner when issuing a Code of Practice; and

3.4 does not apply to an intelligence and security agency;

4 **agreed** that, in line with information privacy principle (IPP) 3, the indirect collecting agency must take reasonable steps to comply with the notification obligation, and notification would not be necessary if the individual concerned has already been provided the information in relation to an earlier collection of information;

5 **agreed** that notification for indirect collection will not be necessary where notification for direct collection is currently not necessary under IPP 3(4);

6 **agreed** that, in addition to the circumstances where notification is not necessary for direct collection, notification is not necessary where:

6.1 the information is publicly available information;

6.2 non-notification is necessary to prevent or lessen a serious threat public health or public safety, the life or health of the individual concerned or any other individual;

6.3 notification would be contrary to the interests of a child;

6.4 personal information is archived in the public interest and (i) the archived information is not used for measures or decisions about particular individuals and (ii) there are controls on access and use of the archived personal information to protect the privacy of individuals;

7 **agreed** that AISAs approved or amended prior to the commencement of the notification obligation are exempt from the notification obligation;

8 **agreed** to the minor and technical amendments set out in Appendix One under SWC-23-SUB-0034, to correct drafting errors in the Act and address minor issues that have arisen in implementing the Act since it came into force;

9 **agreed** that the amendments to the Act (other than the above minor and technical amendments) will come into force six months after Royal Assent in order to give agencies the opportunity to adapt their systems and processes;

10 Section (9)(2)(f)(iv) [redacted]

11 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions;

12 Section (9)(2)(f)(iv) [redacted].

Rachel Clarke
Committee Secretary

Present:
Hon Carmel Sepuloni (Chair)
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Willie Jackson
Hon Kiri Allan
Hon Peeni Henare
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Willow-Jean Prime
Hon Rino Tirikatene
Jo Luxton, MP

Officials present from:
Office of the Prime Minister
Office of the Chair
Officials' Committee for SWC