

Hon Kiri Allan
Minister of Justice

Proactive release – Privacy – European Union adequacy status

Date of issue: 28 June 2022

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 – European Union Adequacy Status <i>Cabinet paper</i> Office of the Minister of Justice 4 May 2022	Some information has been withheld in accordance with sections 6(a), 6(b)(ii), 9(2)(d), 9(2)(f)(iv) and 9(2)(j) of the OIA to avoid prejudice to: the security or defence of New Zealand; the international relations of its government; the entrusting of information to its government on a basis of confidence by the government of any other country or an international organisation; the substantial economic interests of New Zealand, and to protect the confidentiality of advice tendered by Ministers of the Crown and officials and enable negotiations.
2	Privacy – European Union Adequacy Status <i>Cabinet Minute SWC-22-MIN-0079</i> Cabinet Office Meeting date: 4 May 2022	Some information has been withheld in accordance with sections 6(a), 6(b)(i), 6(b)(ii), 9(2)(d), 9(2)(f)(iv) and 9(2)(j) of the OIA to avoid prejudice to: the security or defence of New Zealand; the international relations of its government; the entrusting of information to its government on a basis of confidence by the government of any other country or an international organisation; the substantial economic interests of New Zealand, and to protect the confidentiality of advice tendered by Ministers of the Crown and officials and enable negotiations.

In Confidence

Office of the Minister of Justice

Cabinet Social Wellbeing Committee

Privacy – European Union Adequacy Status

Proposal

1. This paper seeks agreement in principle to strengthen the transparency of the indirect collection of personal information under the Privacy Act 2020, and to do further policy work and consultation to achieve this objective.
s9(2)(d), s9(2)(f)(iv), s9(2)(j)

Relation to government priorities

2. s6(a), s9(2)(d), s9(2)(f)(iv)

supports
New Zealand's global reputation for protecting personal information.

Executive summary

3. Countries whose residents and businesses receive personal information from the EU are required to meet GDPR standards with regard to that personal information. EU adequacy¹ status allows New Zealand businesses and agencies to receive personal information from the EU in compliance with the GDPR, without the need for more onerous safeguards (such as contractual clauses committing them to EU-equivalent standards of data protection).
4. EU adequacy status provides significant benefits to New Zealand, including lower costs for businesses trading with the EU, and a reputation for being a country with a strong commitment to protecting privacy. It also provides opportunities to streamline data transfers with other non-EU countries through mutual recognition of privacy regimes.
5. s6(a), s6(b)(ii)
s6(b)(ii), s9(2)(d), s9(2)(j)
s6(b)(ii), s9(2)(d), s9(2)(j)
issue in the Privacy Act 2020 (the Privacy Act) standards relating to transparency to individuals about the *indirect* collection of their personal data, s6(b)(ii), s9(2)(d), s9(2)(j)
s6(b)(ii), s9(2)(d), s9(2)(j)
While the Privacy Act's current transparency standard under information privacy principle (IPP) 3² requires an

¹ EU adequacy is a decision by the European Commission, that a country outside the EU offers an adequate level of data protection. This does not mean that the protections need to be identical to those provided by the GDPR but it does mean they must be "essentially equivalent".

² Principle 3 means that organisations should be open about why they are collecting personal information and what they will do with it. This principle is about helping people understand the reasons for collecting their information.

agency that collects a person's information *directly* (i.e. from the individual concerned) to tell that individual, the same requirement does not apply to agencies that collect information *indirectly* (i.e. from someone other than the individual concerned) (the "indirect collection of personal information").
s9(2)(d), s9(2)(f)(iv), s9(2)(j)

6. s6(a), s9(2)(d), s9(2)(f)(iv), s9(2)(j)

s6(a), s9(2)(j)

seek a Cabinet commitment to address this issue, which will likely mean some amendments to the Privacy Act 2020, subject to further policy work and consultation.

7. s6(a), s6(b)(ii), s9(2)(j)

8. s6(a), s6(b)(ii), s9(2)(d), s9(2)(f)(iv)

I intend to seek detailed policy approvals by October / November this year. Any legislative changes necessary could then be included in a Privacy Amendment Bill, to be introduced in 2023.

EU adequacy and its benefits to New Zealand

9. EU adequacy status allows New Zealand businesses and agencies to receive personal information from the EU in compliance with the GDPR. This means personal information can be transferred between parties in the EU and New Zealand without the need for additional safeguards or authorisation. Without EU adequacy, businesses outside of the EU wishing to receive personal information from within the EU need to incorporate additional clauses in their trade contracts, and process personal information from the EU, under the rules set out in the GDPR.

EU adequacy status means lower costs for New Zealand businesses

10. The EU is our third largest trading partner. Over 22,000 New Zealand businesses import or export goods from the EU,⁴ with exports worth \$4.41 billion and imports worth \$10.63 billion in the year ended March 2021.⁵ Our EU adequacy status provides a standardised compliance option for New Zealand businesses at a country level. This means it is not necessary for each business

s6(a), s6(b)(ii), s9(2)(j)

⁴ Source: Stats NZ.

⁵ Source: Statistics NZ, 'New Zealand International Trade'.

to establish its own approach to cross border data flows when trading with the EU, and gives them a competitive advantage over non-adequate countries when vying for EU contracts.

s6(a), s9(2)(d), s9(2)(j)

11. s6(a), s9(2)(d), s9(2)(j)

EU adequacy provides scope to streamline data transfers from non-EU countries

12. EU adequacy is an established system for personal information transfer in an international environment, where there is a lack of other practical and affordable mechanisms. The number of countries gaining adequacy status is increasing, which has created opportunities for New Zealand to streamline transfers of personal information through the mutual recognition of privacy systems.

s6(a), s6(b)(ii), s9(2)(d), s9(2)(j)

The EU has been reviewing New Zealand's privacy laws since 2019

13. The EU have been reviewing New Zealand's privacy laws since 2019. This is the first review since the introduction of the GDPR in 2018, with its enhanced personal information protection rights.

14. s6(a), s6(b)(ii), s9(2)(d), s9(2)(j)

15. During this same period, Japan and, most recently, the Republic of Korea, have introduced legislative rules s6(a), s6(b)(ii), s9(2)(d)

s6(a), s6(b)(ii), s9(2)(d), s9(2)(j)

16. Transparency around the collection of personal information is a key element for an adequacy assessment. Under the GDPR, the principle of transparency

s6(a), s6(b)(ii), s9(2)(d), s9(2)(j)

⁷ In addition to these countries and New Zealand, the European Commission has also recognised Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Jersey, Switzerland, the United Kingdom and Uruguay as providing adequate protection.

requires that each individual be informed of all the main elements of the processing of their personal information in a clear, easily accessible, concise, transparent and intelligible form.

17. Although the Privacy Act requires a high level of transparency where personal information is collected *directly* (i.e. from the individual concerned), the same level of requirement does not extend to where personal information is collected *indirectly* (i.e. from someone other than the individual concerned).
s9(2)(f)(iv)

s9(2)(d), s9(2)(f)(iv), s9(2)(j)

18. s9(2)(d), s9(2)(f)(iv), s9(2)(j)

19. s6(a), s9(2)(j)

s6(a), s9(2)(f)(iv),
s9(2)(j)

s6(a), s9(2)(d)

20. s9(2)(d)

s6(a), s9(2)(j)

*I am seeking approval 'in principle' to progress amendments s6(a), s9(2)(j)
for indirect collection of personal information requirements*

21. s6(a), s6(b)(ii), s9(2)(j) I am seeking an 'in principle' commitment from Cabinet, through this Cabinet paper, to strengthen the level of transparency where an individual's personal information is collected indirectly by third parties under the Privacy Act and thereby address the indirect collection of personal information issue. s6(a), s6(b)(ii), s9(2)(j)

s6(a), s6(b)(ii), s9(2)(j)

22. s6(a), s6(b)(ii), s9(2)(f)(iv), s9(2)(j)

23. s9(2)(f)(iv), s9(2)(j)

24. s9(2)(f)(iv), s9(2)(j)

25. s9(2)(f)(iv), s9(2)(j)

26. I will report back to Cabinet by November 2022 with detailed policy options to strengthen the level of transparency where an individual's personal data is collected indirectly by third parties under the Privacy Act. I also anticipate seeking approval at that time to include a Privacy Amendment Bill on the 2023 Legislative programme.

I will also explore other related privacy enhancements that could benefit New Zealanders

27. s9(2)(f)(iv), s9(2)(g)(i)

s6(a), s6(b)(ii), s9(2)(j)

s9(2)(f)(iv), s9(2)(g)(i)

28. In addition, since the Privacy Act was enacted in March 2020, my officials and the OPC have identified several issues with its practical implementation, which require some technical amendments to the Act. s9(2)(f)(iv)
29. These issues could also be addressed through a Privacy Amendment Bill, subject to time and resourcing constraints.

Privacy Commissioner comment

30. The Acting Privacy Commissioner supports an amendment to the Privacy Act aimed at strengthening the level of transparency where an individual's personal information is collected indirectly under the Privacy Act, s9(2)(d), s9(2)(f)(iv)

the maturity of New Zealand's privacy framework, which supports OPC in engaging and influencing internationally in a way that benefits New Zealanders' privacy rights.

31. s6(a), s6(b)(ii), s9(2)(d), s9(2)(j)

32. s9(2)(d), s9(2)(f)(iv), s9(2)(j)

Implementation

33. I will report back to this Committee no later than November 2022 with detailed proposals to strengthen the level of transparency where an individual's personal information is collected indirectly under the Privacy Act; and to implement other related privacy enhancements; and implement general improvements to the practical implementation of the Privacy Act.

Financial implications

34. There are no financial implications arising from the proposals in this paper. I will set out the financial implications, if any, when I report back to Cabinet on detailed policy options no later than November 2022.

s6(a), s9(2)(d), s9(2)(f)(iv), s9(2)(j)

35. s6(a), s9(2)(d), s9(2)(f)(iv), s9(2)(j)

Regulatory Impact Statement

36. The proposals in this paper do not include a government regulatory proposal. A Regulatory Impact Statement (RIS) will be developed to accompany the detailed proposals for amending the Privacy Act, which I will bring to Cabinet for approval no later than November 2022.

Te Tiriti o Waitangi / Treaty of Waitangi Implications

37. My officials will consider the articles and principles of Te Tiriti o Waitangi (te Tiriti), including considering potential Māori data sovereignty implications, when developing the detailed proposals for amending the Privacy Act.

Population implications

38. My officials will consider the impacts on specific population groups when developing the detailed proposals for amending the Privacy Act.

Human Rights

39. A formal human rights assessment will be part of the next stage of work. I anticipate that any changes proposed will enhance individuals' privacy rights, and so support the advance of their human rights protections.

Consultation

40. The Ministries of Foreign Affairs and Trade, and Business, Innovation and Employment, and the Office of the Privacy Commissioner have been consulted in the preparation of this paper. The Policy Advisory Group of the Department of Prime Minister and Cabinet have been informed.

Communications and proactive release

41. I do not propose to issue a media release at this time.
42. I will 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.
43. In addition, I seek approval 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 EDPB.
44. These steps will ensure our ^{s6(a)} 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. This will support their engagement with officials on the development of detailed policy options.

Recommendations

45. The Minister for Justice recommends the Committee:

1. s6(a), s6(b)(ii), s9(2)(d)
2. s6(a), s9(2)(f)(iv)
3. s6(a), s9(2)(d)
s9(2)(j)
4. **Agree**, 'in principle', to amend the Privacy Act 2020 to strengthen the level of transparency where an individual's personal information is collected indirectly by third parties under the Privacy Act 2020 and thereby address the indirect collection of personal information issue;
5. s6(a), s6(b)(ii)
6. **Agree** that, as part of this process, officials will consider potential enhancements to transparency provisions in the Privacy Act 2020, if necessary s9(2)(f)(iv), s9(2)(j)
7. **Agree** to officials progressing other technical amendments to support the implementation of the Privacy Act 2020 that could also be included in any Privacy Amendment Bill;
8. **Invite** the Minister of Justice to report back to Cabinet with detailed proposals on amending the Privacy Act 2020 by 30 November 2022; and
9. **Authorise** the Minister of Justice to share a redacted version of this Cabinet paper and its corresponding Cabinet Minute with the EU.

Authorised for lodgement

Hon Kris Faafoi

Minister for Justice



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Privacy – European Union Adequacy Status

Portfolio Justice

On 4 May 2022, the Cabinet Social Wellbeing Committee:

- 1 s6(a), s6(b)(i), s9(2)(d)
- 2 s6(a), s9(2)(d), s9(2)(j)
- 3 s6(a), s9(2)(d), s9(2)(j)
- 4 **agreed in principle** to amend the Act to strengthen the level of transparency where an individual's personal information is collected indirectly by third parties under the Act and thereby address the indirect collection of personal information issue;
- 5 s6(a), s6(b)(ii), s9(2)(d), s9(2)(j)
- 6 **agreed** that, as part of this process, officials will consider potential enhancements to transparency provisions in the Act if necessary s9(2)(f)(iv), s9(2)(j)
- 7 **agreed** to officials progressing other technical amendments to support the implementation of the Act that could also be included in any Privacy Amendment Bill;
- 8 **invited** the Minister of Justice to report back to the Cabinet Social Wellbeing Committee with detailed proposals for amending the Act by 30 November 2022;

- 9 **noted** that the Minister of Justice intends to share a redacted version of the Cabinet paper under SWC-22-SUB-0079 and its corresponding Cabinet Minute with the EU.

Jenny Vickers
Committee Secretary

Present:

Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins (Chair)
Hon Poto Williams
Hon Kris Faafoi
Hon Willie Jackson
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Officials Committee for SWC

RELEASED BY THE MINISTER OF JUSTICE