

Privacy (Information Sharing) Amendment Bill

Note - the name of the Privacy (Information Sharing) Amendment Bill was changed to the Privacy (Information Sharing) Bill prior to introduction.

10 August 2011
ATTORNEY-GENERAL

Privacy (Information Sharing) Amendment Bill (PCO 15298/5.0): consistency with the New Zealand Bill of Rights Act 1990
Our Ref: ATT395/160

1. I have reviewed the Privacy (Information Sharing) Amendment Bill for consistency with the New Zealand Bill of Rights Act 1990 (“the Bill of Rights Act”). I conclude that the Bill is consistent with that Act.
2. The Bill amends the Privacy Act 1993 by:
 - 2.1 Widening the exceptions to information privacy principles 10(d) and 11(f) to allow the sharing of personal information when there is a serious threat to public health or safety, or the life or health of an individual (currently, that threat must also be imminent for the information to be shared); [\[1\]](#) and
 - 2.2 Allowing for information to be shared within and between public sector agencies, or agencies which provide a public service, under information sharing agreements approved by order in council. [\[2\]](#)
3. The Bill raises a possible issue in relation to s 21 of the Bill of Rights Act, the right to be free from unreasonable search and seizure. A request for information about an individual made by one agency to another under an information sharing agreement arguably amounts to a “search” in terms of s 21. [\[3\]](#) However, even if an information request of this type does amount to a search, the Bill only authorises the approval of information sharing agreements that are consistent with s 21. [\[4\]](#) The Bill is therefore not inconsistent with the Bill of Rights.
4. In accordance with Crown Law protocol, this advice has been peer reviewed by Jane Foster, Crown Counsel. Cat Fleming, Assistant Crown Counsel, assisted in the preparation of this advice.

Ian Carter
Crown Counsel

Footnotes:

1. Clause 5 of the Bill.
2. Clause 8 of the Bill.
3. The meaning of “search” in s 21 is not settled. In particular, it is yet to be decided whether s 21 applies in relation to non-law enforcement activities, see *The New Zealand Airline Pilots Association v Civil Aviation Authority* HC Wellington CIV-2011-485-954 13 July 2011 at [79] – [82]. The Crown position is that it does not. The Courts have accepted that a request for

information about an individual from a third party can be a search for the purposes of s 21, at least where a search is authorised by statute or warrant: see for example *New Zealand Stock Exchange v Commissioner of Inland Revenue* [1992] 3 NZLR 1 at 6 (the Privy Council was “content to assume” that requesting information from the New Zealand Stock Exchange about members was a search). In *R v Javid* [2007] NZCA 232 at [45(a)] it was accepted that the obtaining of confidential information from a telecommunications company (text messages) by the police was properly seen as a search and seizure.

4. Section 6 of the Bill of Rights and *Drew v Attorney-General* [2002] 1 NZLR 58 (CA) at [68].
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