

Privacy Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Privacy Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This bill seeks to improve transparency for individuals about the collection of their personal information and better enable them to exercise their privacy rights. It would amend the Privacy Act 2020 to introduce a new information privacy principle (IPP).

At present, the Act requires an agency, when collecting personal information from the individual concerned, to take reasonable steps to ensure that the individual is aware of various matters. However, there is no such requirement when information is collected about an individual indirectly, from other sources. New IPP 3A would require an agency that is collecting personal information about an individual from other sources to take reasonable steps to ensure that the individual is aware of specified matters, including:

- the fact that the information has been collected
- the name and address of the collecting agency
- the purpose for which the information has been collected
- the intended recipients of the information
- the rights of the individual relating to access to and correction of the information.

The bill would also make technical amendments to the Act to improve its operation.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

An exception for archiving in the public interest

As introduced, the bill includes some exceptions to IPP 3A. For example, it is not necessary for an agency to comply with the requirement in IPP 3A if the agency believes, on reasonable grounds, that:

- non-compliance would not prejudice the interests of the individual concerned, or
- the information is publicly available, or
- compliance is not reasonably practicable in the circumstances.

We consider that there should also be an exception for archiving practice where it is in the public interest. Submitters in the gallery, library, archives, and museum sector told us that new IPP 3A could deeply disrupt their operations, with negative effects for the sector. We heard that complying with IPP 3A could have a chilling effect on organisations that collect personal information for archival purposes, and could create a risk-averse environment.

Therefore, we recommend amending clause 4 to insert a new exception in IPP 3A. New IPP 3A(5) would mean that agencies indirectly collecting personal information would not have to comply with IPP 3A if certain criteria were met:

- the collection of the information is for the purpose of determining whether the information is of enduring value for general interest and should be archived for public reference, study, or exhibition
- compliance is likely to seriously impair the achievement of this purpose.

Exceptions relating to national security, defence, and trade secrets

As introduced, the bill would exempt an agency from complying with IPP 3A if the agency believes, on reasonable grounds, that compliance would prejudice the security or defence of New Zealand or the international relations of the Government, or reveal a trade secret.

These criteria are narrower than the grounds in sections 51 and 52 of the Act on which an agency may rely to refuse access to personal information requested by the individual concerned. Those sections also exempt compliance if disclosure of the personal information would prejudice:

- the security or defence of New Zealand, the Cook Islands, Niue, Tokelau, or the Ross Dependency
- the international relations of the Governments of New Zealand, the Cook Islands, or Niue
- the relations between any of the Governments of New Zealand, the Cook Islands, and Niue
- confidential information entrusted to the Government of New Zealand by another country, agency, or international organisation
- the commercial position of the person who supplied or is the subject of the information.

We consider that exceptions for national security or commercial sensitivity purposes should be consistent throughout the Act. Therefore, we recommend amending clause 4 to insert new IPP 3A(6) and (7).

Our amendments would ensure that the exceptions to IPP 3A would mirror the matters set out in sections 51 and 52 of the Act.

Amending section 57 of the Policing Act

Section 57 of the Policing Act 2008 currently exempts the Police from complying with IPPs 2, 3, and 10 when assessing someone's suitability for employment with the Police. The exemptions provide legislative support to undertake robust pre-employment vetting of new staff and provide greater legal certainty around background checks.

The bill as introduced does not include an exemption for the Police regarding compliance with IPP 3A. We understand that this could undermine Police vetting processes. For example, an applicant might counsel potential referees to restrict the disclosure of information that could be critical for the Police's suitability assessment. Therefore, we recommend inserting clauses 9A and 9B to amend section 57 of the Policing Act. This would exempt the Police from IPP 3A when assessing the suitability of people for employment with the Police.

Information-matching agreements and information-sharing agreements

Clause 9 of the bill as introduced would amend Schedule 1 of the Act, which deals with transitional arrangements. A new Part 2 would be inserted in Schedule 1 to provide that IPP 3A does not apply to personal information collected before, on, or after 1 June 2025 (the commencement date of the bill) under an approved information-sharing agreement that is in force immediately before this date. These agreements enable personal information to be shared between organisations for the purpose of providing public services.

We consider that a similar transitional provision should apply in respect of information-matching agreements. An information-matching agreement is another type of information-sharing agreement that enables organisations to compare their respective records of personal information.

We recommend amending the proposed new Part 2 of Schedule 1 to provide that IPP 3A would not apply to personal information collected before, on, or after the commencement date of the bill under either an approved information-sharing agreement or information-matching agreement that was in force prior to the bill's commencement date.

Submissions on other exceptions

We received submissions from organisations in the banking, insurance, real estate, and fundraising sectors that proposed exceptions to the bill. Submitters told us that the proposed exceptions would allow more flexibility for business operations. We considered the points raised by these submissions, but recommend only the narrow exception discussed above for archiving in the public interest. We consider that only the narrow exception for archiving in the public interest fits with the original intention of the bill and that the existing provisions which allow for non-compliance will be sufficient to meet most of their concerns.

Appendix

Committee process

The Privacy Amendment Bill was referred to the committee on 2 May 2024. We called for submissions on the bill with a closing date of 14 June 2024. We received and considered submissions from 55 interested groups and individuals. We heard oral evidence from 16 submitters.

Advice on the bill was provided by the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Cameron Brewer

Tākuta Ferris

Paulo Garcia

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul

Todd Stephenson

Hon Dr Duncan Webb

Related resources

The documents we received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Paul Goldsmith

Privacy Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Privacy Amendment Act **2023**.

2 Commencement

- (1) **Part 1** comes into force on **1 June 2025**. 5
- (2) **Part 2** comes into force on the day after Royal assent.

3 Principal Act

This Act amends the Privacy Act 2020.

Part 1	
Substantive amendments to principal Act	10

4 Section 22 amended (Information privacy principles)

In section 22, after information privacy principle 3, insert:

Information privacy principle 3A	
<i>Collection of personal information other than from individual concerned</i>	
(1)	If an agency collects personal information about an individual other than from the individual concerned, the agency must take any steps that are, in the circumstances, reasonable to ensure that the individual concerned is aware of—
(a)	the fact that the information has been collected; and
(b)	the purpose for which the information has been collected; and
(c)	the intended recipients of the information; and

- (d) the name and address of—
 - (i) the agency that has collected the information; and
 - (ii) the agency that is holding the information; and
 - (e) if the collection of the information is authorised or required by or under the law, the particular law by or under which the collection of the information is authorised or required; and
 - (f) the rights of access to, and correction of, information provided by the IPPs.
- (2) The steps referred to in **subclause (1)** must be taken as soon as is reasonably practicable after the information has been collected (unless taken sooner).
- (3) An agency is not required to take the steps referred to in **subclause (1)** in relation to the collection of personal information if the individual concerned has previously been made aware by any means of all of the matters specified in **subclause (1)** in relation to the agency's collection of the information.

Example relating to IPP 3A(3)

An agency (**A**) has collected personal information from the individual concerned. A has disclosed the information to another agency (**B**). B, after collecting the information, is not required to comply with **subclause (1)** if A, when complying with IPP 3, notified the individual concerned that the information would be disclosed to B and of the matters in **subclause (1)** in relation to B's collection of the information.

- (4) It is not necessary for an agency to comply with **subclause (1)** if the agency believes, on reasonable grounds,—
- (a) that non-compliance would not prejudice the interests of the individual concerned; or
 - (b) that the information is publicly available information; or
 - (c) that non-compliance is necessary—
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including prejudice to the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) for the enforcement of a law that imposes a pecuniary penalty; or
 - (iii) for the protection of public revenue; or
 - (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
 - (d) that compliance would prejudice the purposes of the collection; or

- (e) that compliance is not reasonably practicable in the circumstances of the particular case; or
- (f) ~~that compliance would prejudice—~~
 - (i) ~~the security or defence of New Zealand; or~~
 - (ii) ~~the international relations of the Government of New Zealand; or~~
- (g) ~~that compliance would reveal a trade secret; or~~
- (h) that compliance would cause a serious threat to—
 - (i) public health or safety; or
 - (ii) the health or safety of another individual; or

Example relating to IPP 3A(4)(h)(i)

An agency (C) has collected from another agency personal information about an individual who has a contagious disease. C needs to take immediate action to contain the spread of the disease. C would not have to comply with **subclause (1)** if C believes on reasonable grounds that the delay caused by compliance would cause a serious threat to public health or safety.

- (i) that the information—
 - (i) will not be used in a form in which the individual concerned is identified; or
 - (ii) will be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned.
- (5) It is not necessary for an agency to comply with **subclause (1)** if—
 - (a) the agency collects personal information for the purpose of determining whether the information is of enduring value for general public interest and should be archived for public reference, study, or exhibition; and
 - (b) compliance is likely to seriously impair the agency's achievement of the purpose in **paragraph (a)**.
- (6) It is not necessary for an agency to comply with **subclause (1)** if compliance would be likely to prejudice—
 - (a) the security or defence of New Zealand, the Cook Islands, Niue, Tokelau, or the Ross Dependency; or
 - (b) the international relations of the Government of New Zealand, the Cook Islands, or Niue; or
 - (c) the relations between any of the Governments of—
 - (i) New Zealand; or
 - (ii) the Cook Islands; or

- (iii) Niue; or
- (d) the entrusting of information to the Government of New Zealand on a basis of confidence by—
 - (i) the Government of any other country or any agency of the Government of any other country; or
 - (ii) any international organisation.
- (7) It is not necessary for an agency to comply with **subclause (1)** if compliance would—
 - (a) disclose a trade secret; or
 - (b) be likely to unreasonably prejudice the commercial position of—
 - (i) the person who supplied the information; or
 - (ii) the individual concerned.

5 Section 25 amended (IPPs 1 to 4 do not apply to personal information collected before 1 July 1993)

- (1) In the heading to section 25, replace “IPPs 1 to 4” with “IPPs 1, 2, 3, and 4”.
- (2) In section 25, replace “IPPs 1 to 4” with “IPPs 1, 2, 3, and 4”.

6 New section 25A inserted (IPP 3A does not apply to personal information collected before 1 June 2025) 5

After section 25, insert:

25A IPP 3A does not apply to personal information collected before 1 June 2025

IPP 3A does not apply to personal information collected before **1 June 2025**. 10

7 Section 27 amended (Restricted application of IPPs to personal information collected or held for personal or domestic affairs)

In section 27(1), replace “1 to 3” with “1 to **3A**”.

8 Section 28 replaced (IPPs 2, 3, and 4(b) do not apply to personal information collected by intelligence and security agencies) 15

Replace section 28 with:

28 IPPs 2, 3, 3A, and 4(b) do not apply to collection of personal information by intelligence and security agencies

IPPs 2, 3, **3A**, and 4(b) do not apply to the collection of personal information by an intelligence and security agency. 20

9 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in the Schedule of this Act as the last Part; and

- (b) make all necessary consequential amendments.

9A Amendment to Policing Act 2008

Section 9B amends the Policing Act 2008.

9B Section 57 amended (Application of Privacy Act 2020 to assessment for suitability of employment)

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In section 57, after “3,”, insert “**3A**.”

Part 2

Other amendments to principal Act

10 Section 18 amended (Other functions of Commissioner)

After section 18(2), insert:

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- (3) For the purpose of providing advice to the responsible Minister under sub-clause (2), the Commissioner may assess the privacy laws of a particular country on an individual basis or on the basis of the country being a member of a bloc of countries however described (for example, the specified country being a member of the European Economic Area and therefore subject to the General Data Protection Regulation).

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11 Section 22 amended (Information privacy principles)

In section 22, information privacy principle 3, replace the heading above sub-clause (1) with:

Collection of personal information from individual concerned

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12 Section 44 amended (Responding to IPP 6 request)

In section 44(1), replace “If an agency does not transfer an IPP 6 request under section 43,” with “If an agency receives an IPP 6 request and section 43 does not apply,”.

13 Section 49 amended (Protection, etc, of individual as reason for refusing access to personal information)

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- (1) Replace section 49(1)(c) with:

(c) the disclosure of the information would be contrary to the interests of—

(i) the individual concerned who is under the age of 16 years; or

(ii) another individual to whom the information relates who is under the age of 16 years; or

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- (2) Replace section 49(1)(d) with:

(d) the disclosure of the information would be likely to prejudice the safe custody or the rehabilitation of—

- (i) the individual concerned who has been convicted of an offence or is or has been detained in custody; or
- (ii) another individual to whom the information relates who has been convicted of an offence or is or has been detained in custody.

14 Section 63 amended (Decision on request to correct personal information) 5

In section 63(1), replace “As soon as is reasonably practicable after receiving a request under IPP 7(1), and in any case not later than 20 working days after receiving the request, an agency must—” with “If an agency receives a correction request under IPP 7(1) and section 62 does not apply, the agency must, as soon as is reasonably practicable after receiving the request and in any case not later than 20 working days after receiving the request,—”. 10

Schedule
New Part 2 inserted into Schedule 1

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<p>Part 2</p> <p>Provisions relating to Privacy Amendment Act 2023</p>	
<p>16</p>	<p>Approved information sharing agreements</p>
<p>(1)</p>	<p>IPP 3A does not apply to any personal information collected before, on, or after 1 June 2025 under an approved information sharing agreement that is in force immediately before that date.</p>
<p>(2)</p>	<p>In this clause, information sharing agreement means an information sharing agreement made under—</p>
	<p>(a) Part 9A of the Privacy Act 1993; or</p>
	<p>(b) subpart 1 of Part 7 of this Act.</p>
<p>16</p>	<p>Interpretation</p>
	<p>In this Part,—</p>
	<p><u>approved information sharing agreement</u> means an information sharing agreement—</p>
	<p>(a) entered into under—</p>
	<p>(i) Part 9A of the Privacy Act 1993; or</p>
	<p>(ii) subpart 1 of Part 7 of this Act; and</p>
	<p>(b) approved by an Order in Council</p>
	<p><u>commencement date</u> means the date on which this Part comes into force</p>
	<p><u>information matching agreement</u> means an information matching agreement entered into under—</p>
	<p>(a) Part 10 of the Privacy Act 1993; or</p>
	<p>(b) subpart 4 of Part 7 of this Act.</p>
<p>17</p>	<p>Approved information sharing agreements</p>
	<p>IPP 3A does not apply to any personal information collected before, on, or after the commencement date under an approved information sharing agreement that was in force immediately before the commencement date.</p>
<p>18</p>	<p>Information matching agreements</p>
	<p>IPP 3A does not apply to any personal information collected before, on, or after the commencement date under an information matching agreement that was in force immediately before the commencement date.</p>

Privacy Amendment Bill

Legislative history

6 September 2023
2 May 2024

Introduction (Bill 292–1)
First reading and referral to Justice Committee