

17 July 2014

Via www.fyi.org.nz

Dear Mr Rule

OIA Request #2258 - Response to your request under the Official Information Act 1982

1. I refer to your request of 20 June 2014 under the Official Information Act 1982 (OIA). I am responding to your request as I am the Commerce Commission's Privacy Officer. We set out your questions and our responses below.

Question 1

Any approved, pending approval or declined exemptions from the Privacy Act 1993 relating to the Commerce Commission which has either commenced, is due for commencement or is no longer in force.

2. We do not have any 'approved, pending approval or declined exemptions from the Privacy Act 1993'. Nor does the Commission have any exemptions due for commencement or any exemptions that are no longer in force.¹

Question 2

With whom, and by what method, and the specific nature of any personal information given by persons corresponding with the Commerce Commission is collated and/or shared with government and non-government agencies by the Commerce Commission and the frequency of that sharing.

3. The Commerce Commission does not have a regular programme under which we collate and/or share personal information given by persons corresponding with the Commerce Commission with other government or non-government agencies. While Part 9A of the Privacy Act enables agencies to enter into approved information sharing agreements, the Commission is not a party to any such approved information sharing agreement.

¹ As you may be aware, s 54 of the Privacy Act 1993, allows agencies to request an exemption from the Privacy Commissioner which would allow an agency to collect, use or disclose personal information otherwise in breach of privacy principles 2, 10 or 11.

4. Rather, any sharing of personal information occurs on an ad hoc basis and where we determine to share personal information with other agencies, we do so in accordance with Privacy Principles 10 and 11.
5. The enactments the Commission enforces also enable us to provide information (including personal information) to other agencies in certain circumstances. These are set out below in paragraphs 6 to 11.

Sharing with the Financial Markets Authority or Takeovers Panel under the Fair Trading Act

6. Under s 48A of the Fair Trading Act 1986, the Commission may provide the Financial Markets Authority (FMA) or the Takeovers Panel with any information that we have obtained in performing our functions if we consider that information may assist the FMA or Takeovers Panel with the exercise of their statutory powers. At times, this information may include personal information given to us by persons corresponding with the Commission.
7. However, s 48A does not limit the Privacy Act. Therefore, before disclosing any personal information under s 48A, we are required to consider privacy principles 10 and 11.
8. Since the section came into force in 2011, we have provided information regularly to the FMA in accordance with this provision.

Co-operation arrangements with overseas regulators

9. Where the Commission has entered into a formal co-operation arrangement with another agency, the Commission may share compulsorily acquired information with that agency, in specified circumstances.² Depending on what information has been compulsorily acquired, this may include an individual's personal information.
10. The Commission currently has one such arrangement, with the Australian Competition and Consumer Commission (ACCC), but we have yet to share information compulsorily acquired with the ACCC under these provisions.
11. For further information, see our guidelines on how we deal with requests from overseas agencies for information and assistance at:
<http://www.comcom.govt.nz/the-commission/commission-policies/guidelines-for-overseas-requests-for-compulsorily-acquired-information-and-investigative-assistance/>

Requests from government and non-government agencies for information

12. More generally if a government or non-government agency requests information that we hold, which at times may include personal information given to us by persons corresponding with the Commission, we:

² Sections 99C - 99P of the Commerce Act 1986, ss 48C - 48O of the Fair Trading Act 1986 and s 113(ea) of the Credit Contracts and Consumer Finance Act 2003. These provisions came into force in October 2012.

- 12.1 take the Official Information Act 1982 disclosure principles and privacy principle 11 into account when considering whether to disclose the information. This would include considering whether it is necessary to withhold the information in order to protect the person's privacy and whether this interest is outweighed by the public interest in making the information available; and
- 12.2 may discuss the request with the individual concerned in order to assist our assessment of whether the information should be withheld.

Question 3

The duration of retention of any such personal information held by the Commerce Commission and the lawful purposes for which information may be deemed necessary for indefinite retention.

13. The Commission does not keep information indefinitely.
14. The Commission's policy is not to keep personal information longer than is necessary for the purpose for which it was collected. Information obtained by us, which may include personal information, is generally held within the Commission for 1 to 10 years in accordance with the relevant legal framework.

Right to ask an Ombudsman to investigate

15. We trust that this information addresses your request. If you are not satisfied with the Commission's response to your request, s 28(1) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response.

Yours sincerely



Geoff Williamson
General Manager Organisation Performance