

12 May 2022

Steven Ensslen  
Secretary  
New Zealand Council for Civil Liberties  
By FYI Request: [fyi-request-18942-e76e670b@requests.fyi.org.nz](mailto:fyi-request-18942-e76e670b@requests.fyi.org.nz)

Tēnā koe Steven,

**Official Information request - Reasons for not performing a Privacy Impact Assessment on the Data and Statistics Bill**

On 21 March 2022, you emailed Stats NZ requesting, under the Official Information Act 1982 (OIA), the following information in relation to the Data and Statistics Bill (the Bill), specifically, why no Privacy Impact Assessment (PIA) was produced for the Data and Statistics Bill, and why Part 5 of the Bill creates a regime for accessing information:

- 1. briefings, advice, aide memoire, or similar, that considers or analyses the issue of producing a Privacy Impact Assessment (PIA) for both the policy proposals underlying the Data and Statistics Bill, and the Data and Statistics Bill itself;*
- 2. any request for legal advice on production of a PIA for the Data and Statistics Bill or the underlying policy proposals, and the advice received in response to such a request;*
- 3. the minutes, and officials handwritten notes, of any meetings at which the decision was made to not produce a PIA;*
- 4. if the decision not to produce a PIA was taken by an individual, rather than in a meeting, the record of that decision produced by the decision-maker;*
- 5. correspondence (by email or other means) with any other government department about producing or not producing a PIA for the proposals and Bill;*
- 6. correspondence (by email or other means) and notes of meetings with the either the Privacy Commissioner or anyone working in or for the Privacy Commissioner about (i) the interaction of the Data and Statistics Bill with the Privacy Act and (ii) producing or not producing a PIA on the Bill or underlying policy; and*
- 7. correspondence (not including that relating to a formally notified investigation) with the Ombudsman or any of his staff relating to the Data and Statistics Bill and notes of any meeting with the Ombudsman or his staff.*

As you are aware, Stats NZ has developed the Data and Statistics Bill (the Bill) to update the Statistics Act 1975 (the Act). The Act was designed in the 1970s for a largely paper-based environment, and is inconsistent with the modern data environment and legislative approach, including data and statistical best practice, domestically and internationally.

The Bill provides a modern legislative framework that can support a well-functioning data and statistics system making the best use of data collected and held by government, while ensuring private and confidential information is held securely and used appropriately.

In March 2020, Cabinet agreed to a suite of policy changes and the drafting of a Data and Statistics Bill to replace the Act. In April 2021, Cabinet agreed to updated and modernised offences and penalties, and supplementary policy proposals.

The latest version of the Bill is publicly available on the Parliamentary Counsel Office – Te Tari Tohutohu Pāremata website here:

[www.legislation.govt.nz/bill/government/2021/0081/latest/LMS418574.html](http://www.legislation.govt.nz/bill/government/2021/0081/latest/LMS418574.html).

The Bill was informed by a review of Statistics legislation and public consultation. It intends to:

- recognise the Crown's responsibility to consider and provide for Māori interests in data and statistics
- enable more effective leadership of the official statistics system
- strengthen and future-proof the framework for collecting data for official statistics
- modernise the framework for accessing data for research
- continue to provide appropriate safeguards and protections to ensure public trust and confidence in the collection and use of data for official statistics and research.

The Bill has been before the Governance and Administration Committee (the Committee). A final report of the Committee is now publicly available on the Parliament website here:

[www.parliament.nz/en/pb/sc/reports/document/SCR\\_122725/data-and-statistics-bill](http://www.parliament.nz/en/pb/sc/reports/document/SCR_122725/data-and-statistics-bill).

In response to points one to six of your request, please be advised that Stats NZ did not consider a Privacy Impact Assessment (PIA) to be necessary, as while the Bill modernises the Statistics Act 1975 to reflect current practice, it does so while essentially maintaining the confidentiality and privacy requirements of the 1975 Act.

Stats NZ is confident it has taken a suitable approach to assess the Bill's impacts on privacy as part of policy development and advice to Cabinet. Privacy and confidentiality have been kept at the forefront of considerations at all stages of the Bill's development. Stats NZ has worked closely with Parliamentary Counsel and consulted relevant agencies. Cabinet papers published on the Stats NZ website show how privacy and confidentiality have been central considerations in our advice on the Bill: [www.stats.govt.nz/corporate/cabinet-papers-new-data-and-statistics-legislation-policy-proposals](http://www.stats.govt.nz/corporate/cabinet-papers-new-data-and-statistics-legislation-policy-proposals).

Stats NZ has also been in communication and consulted with the Office of the Privacy Commissioner (OPC) throughout the Bill's development to ensure an independent, external and expert voice on the Privacy considerations of the Bill.

It may interest you to read the Privacy Commissioner's Submission to the Governance and Administration Committee on the Data and Statistics Bill (81-1), which is publicly available here: [www.privacy.org.nz/assets/New-order/Resources-/Publications/Reports-to-Parliament-and-Government-/2022-04-05-Select-Committee-Submission-on-Data-and-Statistics-Bill-A787034-002.pdf](http://www.privacy.org.nz/assets/New-order/Resources-/Publications/Reports-to-Parliament-and-Government-/2022-04-05-Select-Committee-Submission-on-Data-and-Statistics-Bill-A787034-002.pdf).

Stats NZ considers that this approach has been responsive and comprehensive. We note that PIAs, as a tool, usually focus on specific operational details such as how personal information is to be collected, stored, and used for specific projects or initiatives - and such details are not specified in the Bill.

Stats NZ routinely undertakes PIAs whenever it makes substantive changes to the way it collects or uses personal information – e.g., when adding data to our integrated databases and when sourcing administrative data. This practice will continue if the Bill becomes law. Many of these assessments are on our website here: [www.stats.govt.nz/privacy-impact-assessments/](http://www.stats.govt.nz/privacy-impact-assessments/), along with an overarching PIA carried out for our integrated database here: [www.stats.govt.nz/integrated-data/integrated-data-infrastructure/](http://www.stats.govt.nz/integrated-data/integrated-data-infrastructure/).

Because Stats NZ did not intend to produce a PIA during the development stages of the Bill, no such correspondence, briefings, advice, aide-memoires, notes, minutes or any other record exists about the production of a PIA, including advice, decisions, or reasons why a PIA was not produced. On this basis, points one to six are refused under 18(e) of the OIA as the information does not exist.

To meet the intent of your request, I have enclosed email correspondence (and the attachments) pertaining to consultations with relevant stakeholders on the privacy considerations of the Bill.

Please note, Government Communications Security Bureau (GCSB) and New Zealand Security Intelligence Service (NZSIS) staff identities are protected in the interests of national security. This is codified in section 227 of the Intelligence and Security Act 2017, which makes it an offence to publish or broadcast the names of NZSIS and GCSB employees (with the exception of the Director-Generals). In accordance with the OIA, these details are withheld under section 6(a) – as making this information available would prejudice the security or defense of New Zealand or the international relations of the Government of New Zealand.

Please note, some mobile phone numbers of some individuals are withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs the public interest in this information.

In response to point seven of your request, please find enclosed all correspondence between Stats NZ and the Office of the Ombudsman in relation to proposed changes to the Bill.

With regard to your concerns around part 5 of the Bill, please note, the OIA provides some protection to personal or commercially sensitive information by giving agencies responding to an OIA request some discretion to withhold information, and enabling them to apply non-enforceable conditions in relation to an OIA response. However, the OIA does not apply to the proactive release of information, nor does it require sensitive information to be kept confidential.

The Bill provides a higher level of protection for data collected for the purposes of official statistics and research under the Bill, by imposing strong non-negotiable confidentiality requirements on Stats NZ and researchers seeking to access it. This means, people can be confident that data provided to Stats NZ will be protected. The OIA applies as normal to other information created or collected by Stats NZ in the operation of their functions (e.g., decision making documents).


A more fulsome explanation will be proactively released in Stats NZ's departmental report, which will soon be made available on the Parliament website here:

[www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_116197/data-and-statistics-bill](http://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_116197/data-and-statistics-bill).

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

It is Stats NZ's policy to proactively release its responses to official information requests where possible. This letter, with your personal details removed, will be published on the Stats NZ website. Publishing responses creates greater openness and transparency of government decision-making and helps better inform public understanding of the reasons for decisions.

Ngā mihi nui, nā

A handwritten signature in black ink, appearing to be 'CL', written in a cursive style.

Christy Law  
**General Manager, External and Government Relations**  
**Office of the Chief Executive**