

26 January 2024

To: Anon

By email only to: fyi-request-25064-b21ac11f@requests.fyi.org.nz

Tēnā koe

Official Information Act Request (Our Ref: OIA/0322)

This responds to your Official Information Act request of 7 December 2023.

Your request

You have asked for privacy complaints data that the Office of the Privacy Commissioner holds relating to the Accident Compensation Corporation (ACC):

1. For each year calendar year since 01/01/2010, the total number of complaints the OPC has:
 - (1) received about ACC; and
 - (2) declined to investigate; and
 - (3) referred to another agency after first consulting with that agency; and
 - (4) referred to another agency without having consulted with the other agency; and
 - (5) mediated a settlement; and
 - (6) investigated to completion and provided an investigation certificate; and
 - (7) partially investigated but did not complete for what ever reason; and
 - (8) otherwise fobbed the person's complaint off; and
 - (9) found there had been a breach of the persons privacy; and
 - (10) found there had been no breach of the persons privacy.
2. The number of complaints pertaining to ACC's use of "communication plans".
3. The number of complaints the OPC has received about ACC engaging in communication plans where emails are not received by the intended recipient, but are re-routed electronically, through the use of interception capabilities by ACC employees.
4. All case notes and decisions regarding complaints against ACC, specifically ACC's use of broad brushed forms (e.g. ACC6300 or ACC45 or ACC46 forms), to obtain or disclose health records without having:
 - (1) attempted to seek the information from the claimant (rules 2, 3);
 - (2) providing reasons why it was necessary for ACC to seek records directly from a third party rather than from the claimant (rules 2-4, 8);
 - (3) notifying the claimant that ACC was going to obtain records or disclose records or who will have access (rules 3, 4, 5, 8, 10, 11)

- (4) ensured that the information was relevant to the claim (rule 1, 3, 4, 5, 8);
- (5) notified the claimant that ACC had obtained information about the claimant to allow them access and to make corrections (rules 6, 7) and
- (6) used and maintained unrelated or unskillfully obtained information in their decision making (rule 1, 4, 5, 8, 9, 10).

Your request is granted in part and refused in part as set out below.

My response

Having considered your request, I am able to grant your request to the extent that we have been able to readily locate and compile the complaints data requested. Please note that this varies in some respects to your questions due to the manner in which OPC complaints data is maintained and recorded. Please also note that some complaints may overlap across different data categories where multiple actions apply to the same complaint.

Otherwise, I have set out below where your request has been refused.

1 Requests for complaints data

1.1 Numbers of ACC complaints received by OPC

The total number of complaints OPC received about ACC during the period 1/1/2010 and 31/12/2023 is 613. This is broken down by year as follows:

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
# of Complaints	61	52	205	32	41	55	28	26	26	27	20	13	15	12	613

1.2 Numbers of ACC complaints declined for investigation by OPC

The total number of ACC complaints that OPC declined to investigate is 302. Please note that this relates to complaints where a file was opened and does not include complaints that were received and declined through our triage process.

This total is broken down by year as follows:

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
# of complaints	18	17	158	8	12	26	14	11	9	17	11	0	1	0	302

1.3 Numbers of ACC complaints referred to another agency with consultation

The total number of ACC complaints that OPC referred to another agency after first consulting with that agency was 3, broken down by year as follows:

Year	2010	2012	2016	Total
# of complaints	1	1	1	3

1.4 Numbers of ACC complaints referred to another agency without consultation

No information is held about the numbers of complaint referrals without consultation. Please note that the referral process requires prior consultation. This part of your request is therefore declined under section 18(e) as the information requested does not exist.

1.5 Numbers of ACC complaints resulting in settlement (including by mediation)

The total number of ACC complaints that were settled or resolved was 289 (including by mediation). Please note that it is not possible to provide specific data as to mediation as this is not specifically tracked.

This total is broken down by year as follows:

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
# of complaints	14	16	135	14	17	29	8	12	9	9	8	9	9	0	289

1.6 Numbers of ACC complaints investigated and certification of investigation provided

The total number of ACC complaints that were investigated and were eligible for a certificate of investigation being provided was 304. Please note that a certificate of investigation is provided on a case-by-case basis for purposes of proceedings in the Human Rights Review Tribunal, rather than being automatically provided on closure of an investigation.

This total is broken down by year as follows:

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
# of complaints	43	35	47	24	29	29	14	15	17	10	9	13	14	5	304

1.7 Numbers of ACC complaints where investigation was discontinued

The total number of ACC complaints where OPC's investigation was discontinued was 109, broken down by year as follows:

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
# of complaints	10	12	11	11	9	11	5	2	8	5	6	12	7	0	109

1.8 Numbers of ACC complaints not otherwise investigated

No information is held about the numbers of complaint that were not investigated for reasons not covered by the data in 1.2 above (declined to investigate). This part of your request is therefore declined under section 18(e) as the information requested does not exist.

1.9 Numbers of ACC complaints where investigation resulted in breach of privacy finding

To the extent that this information is held, the total number of ACC complaints where OPC's investigation found a breach of privacy was 83. Please note that as OPC's focus is on resolving complaints, an investigation may not result in a finding as to breach of privacy, in the interests of reaching resolution.

This total is broken down by year as follows:

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
# of complaints	11	6	20	4	5	4	6	8	8	7	2	0	2	0	83

1.10 Numbers of ACC complaints where investigation resulted in no breach of privacy finding

The total number of ACC complaints where OPC's investigation found no breach of privacy was 171, broken down by year as follows:

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
# of complaints	32	22	27	11	21	19	9	7	10	5	3	2	3	0	171

2 Requests for complaints data pertaining to ACC's use of "communication plans"

Your questions 2 and 3 ask for information about privacy complaints about ACC's use of "communications plans".

OPC's complaints data is organised around the privacy principles that are engaged, rather than the specific facts of the complaint. The data you have requested at points 2 and 3 is not collected or recorded for internal management or reporting purposes and cannot be compiled without substantial collation and research.

Therefore, this part of your request is refused under section 18(f) of the OIA on the ground that OPC cannot make this information requested available without substantial collation or research.

To collate this information, staff would need to manually sort through many complaint files over the specified time periods. The amount of time this would take a staff member would have a negative impact on OPC's operations and could compromise our other statutory functions.

For completeness, I have considered under section 18A of the OIA whether affixing a charge or extending the timeframe for response would enable the request to be granted, however, these options would not assist us to collate the information you request in a manner that does not unduly impact on our limited resourcing.

Please note that as an agency has the discretion about how it uses communication channels to manage communications from members of the public, this is not a matter that raises privacy concerns under the Privacy Act or the Health Information Privacy Code.

3 Case-notes

Your question 4 asks for all case notes and decisions regarding complaints against ACC, specifically ACC's use of broad brushed forms (e.g. ACC6300 or ACC45 or ACC46 forms), to obtain or disclose health records in a number of different scenarios.

Your request for case-notes is refused under section 18(d) of the Official Information as OPC's case notes are publicly available on the OPC website and on the NZ Legal Information Institute (nzlii.org) website. Please note that only a selection of OPC decisions become the subject of case notes. Case notes are developed on a case-by-case basis to highlight particular complaints and decisions.

Apart from published outcomes, the Privacy Commissioner is subject to an obligation of secrecy under section 206 of the Privacy Act and is not able to provide information about specific investigations of agencies. The investigation process is confidential to ensure that the Privacy Commissioner can effectively carry out his role and exercise his functions under the Privacy Act, including the confidential resolution of complaints.

Your request for OPC's decisions about ACC complaints is therefore refused under section 18(c)(i) of the Official Information Act as making this information available would be contrary to another enactment, in this case, section 206(1) of the Privacy Act 2020, which requires the Commissioner and their staff to maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions under the Privacy Act 2020.

Conclusion

I hope that the data we have been able to provide answers most of your questions.

If, however, you are not satisfied with this response, under section 28 of the Official Information Act, you have the right to ask the Ombudsman to investigate and review my decision on your request.

Nāku iti noa, nā



Liz MacPherson
Deputy Commissioner