

30 May 2024

Erika Whittome

By email only to: [fyi-request-26617-6f94163e@requests.fyi.org.nz](mailto:fyi-request-26617-6f94163e@requests.fyi.org.nz)

Tēnā koe

**Official Information Act Request (Our Ref: OIA/0357)**

We refer to your Official Information Act request of 3 May 2024.

Your request:

This website <https://www.privacy.org.nz/resources-2/privacy-and-covid-19/> of yours says that:

"Employers that have a legitimate need to know an employee's vaccination status"

Would you please share the minutes, emails and any correspondence and policy documents for the decision to publish the above saying that an employer has a legitimate reason to ask health status of a worker.

Please include any legal discussions and legal advice, and also refer to the specific sections of the Health and Safety at Work Act 2015 as the basis for this statement.....especially any discussions around section 168 (4) of the Health and Safety at Work Act 2015.

I would like all the memos, correspondence and meeting minutes including legal advice that occurred prior to this advice being published on your website in 2021.

Please share any inter agency correspondence regarding the decision for this eg with Worksafe, MBIE, the MoH, Crown Law etc.

In Sep 2021, this statement or similar was nowhere on the same "Covid" webpage (<https://web.archive.org/web/20200901054927/https://privacy.org.nz/resources-2/privacy-and-covid-19/>)

So I assume this "covid" advice came about later in 2021 or early 2022 on the Privacy Commission's webpage.

Your request has been considered under the Official Information Act 1982, and my response is set out below.

## Our response

We note that you have asked for “the minutes, emails and any correspondence and policy documents for the decision to publish the above *saying that an employer has a legitimate reason to ask health status of a worker*” (emphasis added).

However, to clarify, the statement on our website does not say that an employer **has** a legitimate reason to ask about the health or vaccination status of a worker. Rather, it confirms that **if** an employer has a legitimate need to know an employee’s vaccination status, it is lawful for them to collect that information, and provides two examples of when that may be the case.

The full text on our website page that you refer to (<https://www.privacy.org.nz/resources-2/privacy-and-covid-19/>) is set out below:

### ***Privacy and vaccination status in the workplace***

*Employers that have a legitimate need to know an employee’s vaccination status can ask the employee for that information; for example, where the employee’s role is subject to a vaccine mandate, or where the information is material to a health and safety plan.*

This website page has been updated a number of times as the COVID-19 response evolved, as follows:

12 July 2021

### **3. Vaccination and privacy at the workplace**

Vaccination issues at work involve health and safety law, employment law, and privacy law considerations, among others.

We recommend you visit the [Ministry of Business Innovation and Employment’s \(MBIE\) guidance](#), which provides guidance and general assistance to businesses and workers about vaccines and the workplace, and includes privacy advice.

15 December 2021

### **3. Vaccination and privacy at the workplace**

Vaccination issues at work involve health and safety law, employment law, and privacy law considerations, among others.

We recommend you visit the [Ministry of Business Innovation and Employment’s \(MBIE\) guidance](#), which provides guidance and general assistance to businesses and workers about vaccines and the workplace, and includes privacy advice.

Visit [this section of the Ministry of Health website](#) for further information about COVID-19 at the workplace.

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17 December 2021

### 3. Vaccination and privacy at the workplace

Vaccination issues at work involve health and safety law, employment law, and privacy law considerations, among others.

We recommend you visit the [Ministry of Business Innovation and Employment's \(MBIE\) guidance](#), which provides guidance and general assistance to businesses and workers about vaccines and the workplace, and includes privacy advice.

Visit [this section of the Ministry of Health website](#) for guidance for workplaces that have a case of COVID-19.

8 August 2022

#### Privacy and vaccination status in the workplace

Employers that have a legitimate need to know an employee's vaccination status can ask the employee for that information; for example, where the employee's role is subject to a vaccine mandate, or where the information is material to a health and safety plan.

Information collected for the purpose of determining whether a person is vaccinated is protected by section 34B of the COVID-19 Public Health Response Act 2020 and can only be used for the purposes of the COVID-19 response. In particular, the employer can only hold, store, use or disclose the information for the purpose of:

1. Ascertaining with the individual is vaccinated;
2. Demonstrating or ascertaining compliance with the COVID-19 Public Health Response Act 2020 or a COVID-19 Order;
3. Enforcing the Act or Order; or
4. The Health Act.

A breach of this restriction can attract significant penalties and is considered to be an interference with the privacy of the individual for the purposes of the Privacy Act.

Visit the [Ministry of Business Innovation and Employment's \(MBIE\)](#) for general assistance to businesses and workers about vaccines and the workplace, which includes privacy advice.

Visit [this section of the Ministry of Health website](#) for guidance for workplaces dealing with cases of COVID-19.

A copy of the documentation held relating to the development and publication of the updated material on 8 August 2022 is **enclosed**.

### Consistent with earlier OPC guidance

For completeness, I also note that the statement that you have expressed interest in – that: “Employers that have a legitimate need to know an employee’s vaccination status can ask the employee for that information” – is consistent with other guidance that our Office developed to assist agencies and individuals in understanding and navigating their privacy obligations and rights in the context of the evolving COVID-19 pandemic.

For example, and while predating the development, approval and government roll-out of the COVID-19 vaccinations, [OPC's blog post of 30 March 2020<sup>1</sup>](#) (which was based on an article published in the March 2020 edition of NZ Doctor) addressed the issue of employee privacy rights, and noted the following:

***What does the Privacy Act say?***

*The Privacy Act permits employers to collect information about their employees’ health status if it is needed for a lawful purpose such as health and safety.*

Another example is our July 2021 blog post: [The COVID-19 vaccination and privacy rights<sup>2</sup>](#) that, among other things, explained that:

*A person’s vaccination status is personal information and so falls under the protections laid out in the Privacy Act 2020. However, as we have outlined [previously](#), there are limited situations where an employer can ask for the vaccination status of an employee where they have a legitimate need to know. Justifiable reasons to ask for this can include a legitimate health and safety concern, or where certain roles must be performed by a vaccinated worker, such as staff at an MIQ facility.*

That blog was updated in November 2021, however, this statement remained the same.

The two redactions in the enclosure relate to DDI numbers of two staff members redacted under s9(2)(a) of the OIA.

We trust that this response is helpful. If you are not satisfied with this response, you have the right to ask the Ombudsman to review my decision on your request.

Nāku iti noa, nā



Liz MacPherson  
**Deputy Privacy Commissioner**

Encl.

<sup>1</sup> <https://www.privacy.org.nz/blog/employee-health-privacy-for-gps-in-a-covid-19-world/>

<sup>2</sup> <https://www.privacy.org.nz/blog/the-covid-19-vaccination-and-privacy-rights/>