

10 December 2024

Erika Whittome

By email only to: fyi-request-29217-e6e95bed@requests.fyi.org.nz

Tēnā koe

Official Information Act Request (Our Ref: OIA/0414)

We refer to your Official Information Act request received on 18 November 2024.

You request:

I refer to a "news" communication dated 15 October 2021 from the Waikato DHB called Staff Advisory - Order Requiring Healthcare Workers to be Vaccinated Against COVID-19

This "news" says:

The DHB received permission from the Ministry of Health to access the Covid Immunisation Register for those staff where we did not have a vaccination status. It has been agreed it is essential for us to understand our workforce's vaccination status so we can rapidly and safely deploy staff to where they are needed most for our public health response to this outbreak and to manage the risk of a wider community outbreak. This access was granted after the Ministry of Health consulted the Office of the Privacy Commissioner, which confirmed the Ministry could apply Rule 11(2)(d) of the Health Information Privacy Code to allow disclosure of this private health information to DHBs to support the public health response for this current outbreak.

Would you kindly share the memos, consultation documents, correspondence, emails and any other communications regarding this consultation back in October 2021 to the Privacy Commissioner.

Our response

Your request is refused under section 18(c)(i) of the Official Information Act 1982 on the grounds that making available the information would be contrary to the provisions of a specified enactment, i.e. section 206 of the Privacy Act 2020. Section 206 of the Privacy Act requires the Privacy Commissioner and his Office, to maintain secrecy in respect of all matters that come to our knowledge in the exercise of the Commissioner's functions under the Privacy Act.

Our Office is regularly engaged by public agencies, including health agencies, on a wide range of matters that impact on individual privacy and provides expert advice on compliance with the

Privacy Act 2020. However, as per section 206 of the Privacy Act, there is an obligation upon the Privacy Commissioner and staff at the Office of the Privacy Commissioner to maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions under the Act.

While the obligation of secrecy applies to the Office's engagement with the Ministry in relation to its request for advice, in response to your request, a summary of OPC's advice is set out below. This is an exercise of the Privacy Commissioner's discretion to disclose information under section 206(2) of the Privacy Act.

Summary of information requested

On 19 August 2021, the Ministry of Health approached OPC for advice in response to multiple requests it was receiving from DHBs for access to staff vaccination status through the Covid Immunisation register (CIR).

The Ministry advised that the DHBs are at different stages of the vaccine roll out and access to employee vaccination status varied. In the current outbreak, vaccination information was seen as critical to the ability of DHBs to service their communities and keep staff safe. The Ministry advised that the normal process to obtain individual consent was unrealistic due to the need to rapidly redeploy staff.

The Health Information Privacy Code (the Code) permits the collection, use and disclosure of personal information by health agencies where there is a serious threat to public health or safety (similar provisions are set out in the Privacy Act). These provisions can, in exceptional circumstances, justify the sharing of information without consent.

Throughout the COVID-19 pandemic, OPC's advice has been that any reliance on the serious threat exception must be based on a reasonable belief that it is necessary on health grounds and based on current best practice epidemiological or clinical advice. This should be guided by public health advice and scientific evidence from the Ministry of Health, which has the lead role in advising the Government and New Zealand on whether a situation represents a serious threat to public health, and what actions are needed to effectively prevent or lessen that risk.

OPC's feedback to the Ministry on 19 August 2021 was that it would need to consider the latest public health advice from within the Ministry and consider each request on a case-by-case basis. Based on the information that OPC had, including the recent move to Alert Level 4, the existence of community transmission in Auckland, the particular threat posed by the Delta variant, and rostering issues at the DHB arising from the need to ensure that staff and patients were kept safe, we expressed the view that there is likely to be an arguable case for the Ministry to provide the employee vaccination information for health staff in those areas of known community transmission of the Delta variant, under the serious threat exception.

We recommended that the Ministry should give consideration as to how it would communicate any decision that it made to the health workforce, and that it should act urgently to regularise the approach to vaccination information with all DHBs in the future.

Conclusion

If you are not satisfied with my response to your request, under section 28 of the Official Information Act 1982 you have the right to ask the Ombudsman to investigate and review my

decision on your request, although we would welcome the opportunity to discuss this with you first.

Nāku iti noa, nā

A handwritten signature in blue ink that reads "Liz MacPherson". The signature is written in a cursive style and is contained within a thin black rectangular border.

Liz MacPherson
Deputy Privacy Commissioner