

10 February 2016

Lee M

fyi-request-3493-727113d0@requests.fyi.org.nz

Dear Lee M

Official Information Request

I refer to your email of 18 December 2015 to the Accident Compensation Corporation (ACC), requesting information under the Official Information Act 1982 (OIA). As the ACC did not hold any information relating to your request, some of the questions were transferred to the Ministry of Justice on 24 December 2015.

Our response to the questions that were transferred to us can be seen below:

1) “Which government department or official is the Privacy Commissioner answerable to and does this department or official receive and investigate complaints about the Privacy Commissioner’s office not complying with the Privacy Act and other relevant legislation, and not exercising the authority provided under the former enactment?”

The Office of the Privacy Commissioner is an Independent Crown Entity. It is funded by the State, but is independent of government or Ministerial control. The Ombudsman handles complaints and investigates the administrative conduct of state sector agencies, including the Privacy Commissioner. However, complainants are expected to attempt to resolve the complaint with the agency concerned first.

2) “Where an employee of the Privacy Commissioner’s office refuses to exercise the authority provided under the Privacy Act in terms of finding a breach of this enactment, and where there is irrefutable evidence providing same, what recourse does the complainant have other than complaining to the ombudsman?”

Any concerns regarding an investigation by the Office of the Privacy Commissioner should first be raised with the Commissioner.

If the complainant is not satisfied with this outcome, they could then go to:

- The Office of the Ombudsman, if their issue is the agency not following process; or
- The Human Rights Review Tribunal (HRRT), if they are unhappy with the decision made not to investigate a potential privacy breach.

A complainant may also seek independent legal advice.

3) **“If the abovementioned recourse is to apply for Judicial Review, given that the approximate minimum \$10,000 legal costs associated with such applications are affordable to a very small minority of New Zealanders, why is there no free Public Protector’s Office’s in New Zealand (such as in “third world” South Africa where the Public Protector may investigate, on the basis of a complaint or on his or her own initiative, any level of government, including national, provincial and local government, any public office bearer, any parastatal and any statutory council or body)?”**

The Ministry of Justice does not hold any information that falls within the scope of this part of your request. The Ministry of Justice is not obliged to form an opinion or create information to answer a request for official information. Consequently I decline your request under section 18(g) of the Official Information Act 1982 – that the information requested is not held by Ministry of Justice and I have no grounds for believing that the information is either—

- (i) held by another department or Minister of the Crown or organisation, or by a local authority; or
- (ii) connected more closely with the functions of another department or Minister of the Crown or organisation or of a local authority.

11) *“Of the complaints received and investigated by the Privacy Commissioner’s Office in Auckland and Wellington over the past 10 years that are related to ACC, where breaches of the Privacy Act have been found and HRRT certificates have been issued to the complainants, how many complaints proceeded to hearings that were funded by the HRRT?”*

12) *“Of the complaints received and investigated by the Privacy Commissioner’s Office in Auckland and Wellington over the past 10 years that are related to ACC, where breaches of the Privacy Act have been found and HRRT certificates have been issued to the complainants, how many complaints proceeded to hearings that were not funded by the HRRT (but were funded by the complainants)?”*

The Ministry of Justice does not hold information about whether the Privacy Commissioner has found (or did not find) a breach. This is because the information is not necessary for the Ministry to collect as the Tribunal hears matters afresh and is not influenced by the Privacy Commission. The Ministry does not know how many ACC cases are investigated by the Privacy Commission each year, as we only know about those where a complainant decides to seek a review through the Human Rights Review Tribunal.

A Privacy Act complaint may proceed to a hearing in Human Rights Review Tribunal even if the Privacy Commissioner did not find a breach. However before a hearing can be initiated, a complainant must first be issued a certificate of investigation by the Privacy Commissioner’s Office.

All hearings undertaken by the Human Rights Review Tribunal are funded by the Tribunal.

In answering these questions, we contacted the Privacy Commissioner’s Office to see if they had the information that you are seeking. They advised us that they do not.

13) “If an ACC complainant is dissatisfied with the action or inaction of the Privacy Commissioner and consequently complains to the Ombudsman, it is highly probable that the Ombudsman will not investigate the complaint or the related complaint about the Privacy Commissioner’s action or inaction, and that the file will be closed even before the complainant has had an opportunity to comment on this decision. Is this an acceptable standard of practice given that the Principles of Natural Justice require that an affected person must be given a fair opportunity to comment on a decision that is likely to affect them before that decision is made?”

14) “Why are the Privacy Commissioner and the Ombudsman routinely writing to complainants – and have been doing so for over a year now – saying that their offices are overloaded with complaints, that they cannot cope, and that it will take some months before a response is forthcoming, and, what is the government doing to address the worsening backlog which is seeing complainants waiting many months, even years, for a simple letter which more often than not advises complainants that there are no grounds for an investigation and that the file has been closed?”

The Ministry of Justice does not hold any information that falls within the scope of this part of your request. The Ministry of Justice is not obliged to form an opinion or create information to answer a request for official information. Consequently I decline your request under section 18(g) of the Official Information Act 1982 – that the information requested is not held by Ministry of Justice and I have no grounds for believing that the information is either—

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Further, we are not able to transfer these questions to the Ombudsman under the Official Information Act, as the Ombudsman is not subject to this Act.

In essence you appear to be seeking comment from the Ombudsman. While they are not subject to the Official Information Act, they usually respond to questions put to them. You can contact them via free-phone 0800 802 602 or by email info@ombudsman.parliament.nz.

15) Part one: “Is there any sort of agreement, policy, procedure or guideline applicable to the Government, the Privacy Commissioner and/or the Ombudsman that provides any sort of limit on the number of ACC complaint investigations undertaken and conducted by the aforementioned offices?”

There is no agreement, policy, procedure or guideline applicable to the Privacy Commissioner or Ombudsman that provides a limit on the number of ACC complaint investigations undertaken.

15) *Part two: "If not, why is there an increasing appearance of political interference in the actions and inactions of the aforementioned offices, and why is there a growing number of disgruntled ACC complaints saying the same thing viz-a-viz there is no justice to be had by complaining to the Privacy Commissioner and/or the Ombudsman no matter how serious the complaint, the strength of the evidence supporting complaints about clear and irrefutable breaches of the Privacy and Official Information Acts, the Privacy and Official Information Acts providing the necessary authority to conduct investigations and establish findings of breaches etc."*

16) *"ACC complainant sentiment generally is that the Privacy Commissioner and/or Ombudsman are refusing to exercise their Authority under the Privacy and Official Information Acts in response to the growing number of ACC complaints because this would result in record numbers of investigations being conducted with equal numbers of breaches being found, and, which would obviously attract attention to the failings of the ACC in terms of how it is not complying with the Privacy and Official Information Acts in response to request made under both of these enactments. What is the Government's view of this situation?"*

The Ministry of Justice does not hold any information that falls within the scope of this part of your request. The Ministry of Justice is not obliged to form an opinion or create information to answer a request for official information. Consequently I decline your request under section 18(g) of the Official Information Act 1982 – that the information requested is not held by Ministry of Justice and I have no grounds for believing that the information is either—

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Conclusion

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or free phone 0800 802 602.

Yours sincerely



Aphra Green
General Manager – Sector Strategy
Ministry of Justice

cc: Gary Bulog, General Consul, Office of the Privacy Commissioner
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