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1976
Wanganui Computer Centre
Act 1976

(Privacy Commissioner,
1998: 337-338)

Necessary and Desirable

Privacy Act 1993 Review

HIGHLIGHTS FROM THE REPORT OF
THE PRIVACY COMMISSIONER ON THE
FIRST PERIODIC REVIEW OF
THE OPERATION OF THE PRIVACY ACT

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Part XI

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“Hailed as a beacon at the time of its enactment in 1976, the Wanganui Computer legislation was simply not geared to cope with the broader spectrum of privacy issues that arose during the years that followed. Those issues went far beyond the scope of such a limited statute as the *Wanganui Computer Centre Act 1976* and had already drawn a response from the New Zealand Government when it signed the ‘guidelines agreement’ in Rome as far back as 1980. The new Privacy Act is an endorsement of that response.”

- P L Molineaux, *Final Report of the Wanganui Computer Centre Privacy Commissioner*, 1993

“Part XI of the Act and the Fifth Schedule should be retained. They represent a balance between the spirit and intention of the Privacy Act and the needs of an efficient criminal justice system by allowing on-line access to information where it would not be practicable to process individual requests for information because of the volume of cases involved. The Fifth Schedule also has the potential to act as an aid to transparency and accountability in terms of the information handling practices of justice sector agencies.”

- Ministry of Justice, submission H14

“The Group favours a principled and flexible approach as opposed to a prescriptive approach. Part XI of the Act and the Fifth Schedule should be repealed.”

- NZ Law Society Privacy Working Group, submission H15

“The Ministry does not consider the repeal of Part XI and the Fifth Schedule to be practical. It is impossible to assess whether each on-line collection or disclosure of information fits within one of the exceptions to the information privacy principles. It is only practically possible to assess types or classes of information.”

- Ministry of Transport, submission S58

11.1 INTRODUCTION

11.1.1 Part XI makes special provision for certain law enforcement information. It incorporates, in a modified form, the Schedule to the *Wanganui Computer Centre Act 1976* which was repealed by the Privacy Act.

11.1.2 The purpose of Part XI was described in the explanatory note to the Privacy of Information Bill as follows:

“The purpose of Part XI is to authorise access by certain

Government departments and local authorities to law enforcement information stored by other Government departments on the Wanganui computer. In the absence of this authority, access that is available now might not be permitted under the Bill because it would not otherwise be permitted by the information privacy principles. It was considered preferable to continue in a modified form the provisions of the schedule to the Wanganui Computer Centre Act 1976 rather than provide wide exceptions to the information privacy principles in order to preserve such access."

11.1.3 Although Part XI, and its associated schedule, were carried forward into the Privacy Act 1993 as enacted, the Select Committee did make certain changes. As outlined below, one of those changes - concerning the method of amendment to the schedule - has been brought forward as a significant issue in the review.

11.1.4 In reviewing Part XI and the Fifth Schedule, it has been necessary to consider, amongst other things:

- whether the purpose of Part XI, as described above, was indeed an appropriate approach to the issue of law enforcement information sharing;
- whether the process for amending the Fifth Schedule, introduced by the Select Committee, should continue;
- what method of amendment to the Fifth Schedule should be adopted if change is to be made;
- how well Part XI and the Fifth Schedule have met the challenges of justice sector reorganisation, technological change and, in particular, the migration of law enforcement agencies off the Wanganui computer.

11.1.5 Thirty one submissions were received on the discussion paper from a wide range of respondents, including local and central government and business amongst others.

11.1.6 Before turning to the detail of Part XI it will be helpful to canvass two matters to gain a full appreciation of the issues. First, I will say something about the Wanganui Computer Centre Act 1976 which was New Zealand's first information privacy law. Then I will comment upon the nature of on-line access to personal information which is authorised by this part.

Wanganui Computer Centre Act 1976

11.1.7 This is not the place to offer a definitive history of, or guide to, the Wanganui Computer Centre Act 1976. Instead, some background information is provided here to set the discussion of Part XI in context. Perhaps at some stage the definitive history of privacy and freedom of information law in New Zealand will evaluate the importance of the 1976 law - whether it was a significant precursor to the Privacy Act and Official Information Act or simply a minor sideshow in the early years of major computerisation which distracted attention from the lack of privacy or open government legislation.¹

11.1.8 In 1971 an amendment to the Transport Act 1962 established a central register of all driver licences as a precursor to a central computer system. In 1972 the Government announced that it was to investigate a specially designed electronic data processing system for law enforcement agencies. Privacy concerns were already in consideration and it was stated that the proposed system:

"Would not be designed as a reference file on every New

¹ I am unaware of any published review of the Wanganui Computer Centre Act's 15 year operation. Some information is to be found in the annual reports of the Wanganui Privacy Commissioner from 1977 through to 1993 and, concerning the Act's first 6 years, in T J McBride, *Privacy Review*, 1984.

"When the Wanganui Computer Centre Act 1976 was introduced it provided for the first time an opportunity for the general public to examine information stored about them by a government agency and have it amended or corrected where necessary. In achieving this, the Act made a contribution in the field of human rights jurisprudence that has been justifiably claimed as being not only innovative but also unique. It broke new ground. It is of interest to note that when the OECD Guidelines were adopted several years later the principle of individual participation was included as being basic to any scheme for the legislative protection of privacy."

- PL MOLINÉAUX, REPORT
OF THE WANGANUI COMPUTER
CENTRE PRIVACY COMMISSIONER,
1985

1992
(in
Notes
Privacy
already)

Privacy Commissioner's Review of the Privacy Act

Reports

Section 26 of the Privacy Act required the Privacy Commissioner to review the operation of the Act as soon practicable after it had been in force for three years. This review was completed in November 1998 and resulted in a 420 page report *Necessary and Desirable: Privacy Act 1993 Review* (generally referred to as *Necessary and Desirable*). This contained 154 recommendations for amendment or further study.

Section 26 also requires further periodic reviews. The Commissioner has submitted several short supplementary reports noting developments that might affect the recommendations. These reports included a number of supplementary recommendations.

Necessary and Desirable made some recommendations in relation to information matching but anticipated that a further specialised review of the information matching rules would be needed. The Commissioner undertook a supplementary review and submitted a further report in June 2001.

It is expected that some of the Commissioner's recommendations will be addressed in an amendment bill that may be introduced to Parliament during 2008.

To download documents please click the following links:

- ***Necessary and Desirable*** – highlights document (PDF file 42 pages 3.61MB)

- ***Necessary and Desirable*** – the 1998 report (Warning: large document, PDF file 434 pages, 2.44MB)

- *Necessary and Desirable* – the 1998 report in separate chapters (**Content**, **Preface**, **Introduction**, **Background**, **Part I**, **Part II**, **Part III**, **Part IV**, **Part V**, **Part VI**, **Part VII**, **Part VIII**, **Part IX**, **Part X**, **Part XI**, **Part XII**, **Schedules**, **Summary of**

Recommendations, Appd A, Appd B, Appd C, Appd D, Appd E, Appd F, Appd G, Appd H, Appd I, Appd J)

• The Commissioner's supplementary reports from **April 2000, January 2003, December 2003** and **May 2008 (Media release report)**

• **Consolidated list of Recommendations from the 1998 and supplementary reports**

• **2001** and **2003** report recommending amendments to the information matching rules

Printed copies of *Necessary and Desirable* can be purchased from the Office of the Privacy Commissioner (**enquiries@privacy.org.nz**) for \$40.00, for as long as stocks last.

Other material on the 1998 review

The 1998 review involved a series of stages of research, consultation and analysis. In the public phase of the review, the Office of the Privacy Commissioner released 12 discussion papers:

- **DP1 Structure and Scope**
- **DP 2 Information Privacy Principles**
- **DP 3 Access and Correction**
- **DP 4 Codes of Practice and Exemptions**
- **DP 5 Public Register Privacy Issues**
- **DP 6 Complaints and Investigation**
- **DP 7 Information Matching**
- **DP 8 Law Enforcement Information**
- **DP 9 Compliance and Administration Costs**

• **DP 10 Interaction with other Laws**

• **DP 11 Intelligence Organisations**

• **DP 12 New Privacy Protections**

Four volumes of submissions; volume 1 (**DP1, DP2, DP3, DP4, DP5**), volume 2 (**DP6, DP7, DP8, DP9, DP10, DP11, DP12**), volume 3 (**Part 1, Part 2, Part 3**) and volume 4 (**Part 1, Part 2**) were received. The Office of the Privacy Commissioner compiled complete sets of all the submissions and some specialist compilations in particular areas (such as **complaints, compliance costs, public registers** and **intelligence organisations**).

Photocopies of these compilations are available for purchase for \$12.50 from the Office of the Privacy Commissioner (**enquiries@privacy.org.nz**).

Journal articles

In December 1998 the journal Privacy Law & Policy Reporter devoted a special issue to the Privacy Commissioner's report:

• **The review process — taking on the critics -- [1998] PLPR 75; (1998) 5 PLPR 101**

McBride, Tim

• **Editorial -- [1998] PLPR 76; (1998) 5 PLPR 102**

Waters, Nigel

• **Themes in the report -- [1998] PLPR 77; (1998) 5 PLPR 104**

Slane, Bruce

• **Threshold issues and the principles of the Act -- [1998] PLPR 78; (1998) 5 PLPR 110**

Evans, Katrine

• **News media and the Privacy Act -- [1998] PLPR 79; (1998) 5 PLPR 113**

McBride, Tim

· **Privacy Act Review: access and complaints -- [1998] PLPR 80; (1998) 5 PLPR 115**

Roth, Paul

· **Coerced release of criminal history information — urgent change required -- [1998] PLPR 81; (1998) 5 PLPR 119**

McBride, Tim

· **The Review's treatment of the Information Privacy Principles - [1998] PLPR 82; (1998) 5 PLPR 120**

Stevens, Bob

· **A local authority perspective -- [1998] PLPR 83; (1998) 5 PLPR 122**

Murphy, Geraldine

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