

'Sorry, we can't tell you that . . .'

Enquiries staff at the Privacy Commissioner's Office have been following up cases where agencies have said, incorrectly, that they could not release information "because of the Privacy Act."

In many instances it turned out that the information was actually withheld because it was the agency's policy to do so, and not because of the Privacy Act at all.

In spite of training on the policy, some staff had still cited the Privacy Act. The problem, he noted, was often confined to frontline staff, and by contacting the agencies his officers had been able to let managers know that there was still a problem. Bruce Slane said some of the examples demonstrated any weakness in the Privacy Act itself. Agencies had acknowledged that references to it were inappropriate and it was generally due to poor training or supervision and lack of quality customer service.

Instances:

- When a child needed surgery, his father phoned the hospital to see how urgent it was. He was considering using a private hospital if there were going to be delays. He was told that the Privacy Act prevented any details being given. The hospital told the Office this was not its policy and contacted the father to sort it out.

- Another father asked a diagnostic laboratory for his infant son's test results. He was told they could not give him this information "because of the Privacy Act". The laboratory told the Office it had a policy of only giving results directly to the doctor (a common policy amongst diagnostic laboratories). The laboratory proposed to



review its procedures and talk to staff about the problem.

The Commissioner was concerned that some agencies cited the Privacy Act as the easier answer to give. "It implies the agency would really like to help but cannot because of the Privacy Act. This can be misleading, as the real reason might be because the agency does not have the information or does not want to give it out," he said.

Examples:

- A person contacted her telephone company about a new deal. The company would not

change the account because it was not in her name. As a matter of contract, it would only alter accounts with the account holder's authorisation. But the company did not explain that. Instead it claimed it could not change the account "because of the Privacy Act".

- A school put together some food parcels for elderly in need in the area and asked a volunteer organisation to give a list of suitable recipients. The organisation refused, citing the Privacy Act. It later told the Office that it did not hold any such list. Enquiries staff suggested it should have told the school this in the first place.

The Commissioner also noted that some agencies claimed the Privacy Act as a reason to withhold personal information even when the Act gave a right to request access to it. For instance:

- A person asked his insurance company for access to a medical report it had obtained about him. His request was refused "because of the Privacy Act" even though it was personal information about him. The company did not tell the man it did not want to give him the report or that it was relying on discretionary withholding grounds. The agency failed to tell him he had a right to complain to the Privacy Commissioner — a requirement of the Privacy Act.

Privacy issues on air

A range of issues are given an airing in the new radio programme, "Speaking Privately". In it, the Privacy Commissioner, Bruce Slane — himself a former talkback host, cum lawyer — talks with the National Programme's afternoon host Wayne Mowat, for about 30 minutes.

The Commissioner would welcome suggestions for topics to be discussed.

"Speaking Privately" can be heard on the National Programme starting at about 4.10pm on the second Tuesday of each month.

People who believe the Act may have been used incorrectly can call the privacy hotline on 0800 803 909 during working hours.

Workshops are conducted by the Privacy Commissioner's Office and materials on the Act and the office are available on the website: <http://www.knowledge-basket.co.nz/privacy/welcome.htm>