



Inquiry into how government agencies protected personal information provided for the 2023 Census and COVID 19 vaccination purposes

Background

1. The media has recently reported allegations that personal information provided to government agencies as part of the 2023 Census, or for COVID 19 vaccination purposes during the pandemic, has been misused by third parties during last year's election (the allegations).
2. At a high level the allegations are:
 - a. That personal information collected for the 2023 Census was used for an improper purpose or purposes by a service provider.
 - b. That personal information collected for vaccination purposes during the COVID 19 pandemic was used for an improper purpose or purposes by a service provider.
 - c. That relevant government agencies were made aware of the allegations above, prior to the media reporting, and did not take appropriate action.
3. These are very serious allegations that have been strongly denied by the relevant third parties. The allegations go to the heart of trust and confidence in New Zealand's democratic processes and institutions. They relate to the use of personal information of a sensitive and confidential nature collected by government agencies under legislative powers. It is critical that New Zealanders can trust when their personal information is collected by government agencies, it is held securely, used only for proper authorised purposes, and any complaints about alleged misuse are properly dealt with. For these reasons the Prime Minister and the Minister for the Public Service have directed the Public Service Commissioner to conduct an inquiry.

Purpose

4. The purpose of the inquiry is to establish the facts and provide an independent assessment of government agency activity in relation to the allegations.

Related agency investigations and assurance activities

5. The agencies within scope will support the inquiry while also continuing to lead their relationships with relevant service providers and to take appropriate steps to manage their contractual arrangements with them.
6. Any investigations, reviews and other assurance processes (other investigation) that the agencies within scope are conducting in relation to the allegations will continue as planned. To the extent that the scope of any other investigation intersects with the terms of reference of this inquiry, the decision-maker or lead of the other investigation will, only as relates to the matters that intersect:
 - a. keep the inquiry leads updated on the other investigation
 - b. consult with the inquiry leads on any proposed findings, and

- c. take into account any feedback from the inquiry leads before making findings or recommendations, and
 - d. provide to the inquiry leads any information and analysis that supported the findings
7. Otherwise, any other investigation will retain its mandate. The inquiry leads will work with agencies to develop a process for how this will work in practice and to avoid any unnecessary duplication.

Scope

8. The agencies within scope of this inquiry are: Statistics New Zealand, the Ministry of Health, Health New Zealand, Te Puni Kōkiri, Oranga Tamariki, the Ministry of Social Development, as well as any other public service agency that the Public Service Commissioner considers appropriate to include or is directed to include by the Prime Minister and the Minister for the Public Service (the agencies). The relevant service providers include Whānau Ora Commissioning Agency, Te Whānau o Waipareira Trust and Manurewa Marae Trust Board.
9. This inquiry is to establish the facts in relation to the allegations (except any aspects that are outside of scope) including by considering, making findings and reporting on:
 - a. What relevant personal information was shared with the relevant service providers, and what mechanism was that information shared under.
 - b. What concerns were raised with the agencies, or were they aware of, prior to media reporting, and what was done in relation to those concerns.
10. The inquiry is to independently assess the appropriateness of the agencies' actions, including by considering, making findings and reporting on:
 - a. the safeguards and institutional arrangements that the agencies and relevant service providers had in place to ensure the appropriate collection and use of personal information in the circumstances surrounding these allegations and whether those safeguards were adequate and effective in the circumstances.
 - b. whether any complaints that were made, or referred, to agencies about these allegations (including any made using speak up or protected disclosures processes) were responded to appropriately.
 - c. the arrangements that the agencies had in place for the identification and management of any conflicts of interest of the relevant service providers (actual, potential or perceived) and whether those were appropriate and effective in the circumstances.
11. The findings should be informed by considering the expected controls that the agencies should have in place in relation to these matters including:
 - a. Privacy principles as set out in the Privacy Act 2020
 - b. The Health Information Privacy Code 2020
 - c. Health Information Governance Guidelines
 - d. Health Act 1956
 - e. Data and Statistics Act 2022

- f. The terms of any applicable agency data sharing contracts and/or Approved Information Sharing Agreements
- g. The Protected Disclosures (Protection of Whistleblowers) Act 2022
- h. The Ombudsman’s Protected disclosures – guidance on internal policies and procedures
- i. The Public Service Commission’s Speaking Up Model Standards, and any subject agency specific speak up policies
- j. The Public Service Commission’s Conflict of Interest Model Standards, and any subject agency specific conflict of interest policies
- k. The Government Model Contract Templates, issued by Government Procurement New Zealand

Out of scope

12. New Zealand Police and the Electoral Commission are considering, or have considered, related matters including:

- a. Whether inappropriate incentives were given to data collectors working at Manurewa marae and/or to members of the public to encourage them to complete enrolment forms, and/or to switch from the General electoral roll to the Māori electoral roll,
- b. Whether a text message campaign using the number 2661 required an authorisation statement and/or was otherwise inconsistent with the Electoral Act 1993,
- c. Whether funding provided by the agencies to any service provider was then used inappropriately by a political party for campaigning purposes in the 2023 election

13. The Electoral Commission has made referrals to New Zealand Police and is continuing to work with them on those matters. New Zealand Police and the Electoral Commission have statutorily independent law enforcement and regulatory functions.

14. The Public Service Commissioner’s integrity and conduct and performance mandate only extends to public service agencies and, in some cases, to Crown entities. It does not extend to political parties. Nor does it extend directly to other private organisations or individuals.

15. Any matters that are actively being investigated, or are being considered for possible investigation, by the New Zealand Police or the Electoral Commission are outside of the scope of this inquiry. Similarly, the appropriateness of any decisions made in respect of these matters by either of these agencies is also outside scope of the inquiry. The inquiry will work with New Zealand Police and the Electoral Commission to ensure that there is a clear understanding by the agencies and the relevant service providers as to the matters that are outside scope.

16. For the avoidance of doubt, the inquiry will not determine the civil, criminal or disciplinary liability of any person. This does not prevent the inquiry from making a referral to an appropriate oversight body as outlined below or making recommendations that further steps be taken to determine liability. The inquiry may only make findings of fault in relation to the agencies and, to the extent necessary to achieve the purpose of the inquiry, the relevant service providers.

The Privacy Commissioner and the Ombudsman

17. The Privacy Commissioner has been formally notified of the allegations and will consider whether their regulatory powers should be initiated based on information sought from relevant parties. This includes the agencies, the findings of this inquiry, information referred to them by any person or entity, and any complaints received from any person or entity.
18. Similarly the Ombudsman may need to consider whether their statutory powers should be initiated based on information sought from relevant parties. This includes the agencies, the findings of this inquiry, information referred to them by any person or entity, and any complaints received from any person or entity.
19. The inquiry may refer any matter to the Privacy Commissioner or the Ombudsman if there is evidence of a breach of duty, legal obligations or misconduct by any person or agency or any other matter that warrants consideration by that oversight body. This can occur at any time during the inquiry. The oversight bodies will determine whether further action by them is warranted.
20. The inquiry may seek expert views from any person they consider appropriate and may consult the Privacy Commissioner and the Ombudsman on, the whole or part of, a draft of the inquiry report.

Process

21. The inquiry may request and consider all information that it sees as relevant and available from the agencies. This information gathering process will include obtaining and assessing material from the investigations and other internal assurance activities that the agencies have underway in relation to this matter. The inquiry may also interview any relevant public servants and request and consider relevant documentation from any government agency.
22. The inquiry may develop a process for hearing from other relevant parties, as considered necessary, to achieve the purpose of this inquiry. For the avoidance of doubt this will not include public hearings.
23. The inquiry will meet natural justice obligations, including by providing the draft report to the relevant service providers, and any private individuals and/or organisations named in the report who are the subject of adverse comment or findings.
24. The inquiry must:
 - a. avoid prejudice to the maintenance of the law, including the prevention, investigation and detection of offences
 - b. ensure that any future criminal, civil, disciplinary or other proceeding is not prejudiced (to the extent possible)

The Public Service Commissioner's functions

25. The Prime Minister and the Minister for the Public Service have directed the Public Service Commissioner to conduct the inquiry under clauses 2(2) and 5(2)(a) of Schedule 3 of the Public

Service Act 2020 (the Public Service Act). The direction under clause 5(2)(a), relates to the following general functions of the Commissioner, as set out in section 44 of that Act:

- (b) to promote integrity, accountability, and transparency throughout agencies in the State services, including by setting standards and issuing guidance
- (d)(ii) to act as the employer of public service chief executives, including by— to the extent relevant in each case, reviewing the performance of the public service agency that the chief executive leads or carries out some functions within.

26. The Commissioner may undertake an inquiry to assist in exercising these functions. This inquiry is appointed to assist the Commissioner in the promotion of these functions and will be conducted accordingly.

Appointment

27. The Public Service Commissioner appoints Michael Heron KC and Pania Gray of Kororā Consulting to lead the inquiry.

Powers

28. Pursuant to schedule 3, clause 6 of the Public Service Act and, for the purposes of the Inquiry, the Public Service Commissioner delegates their functions and powers under schedule 3, clauses 2 to 4 and 8 to 11 of the Public Service Act jointly to the appointed inquiry leads.

Application of provisions of the Inquiries Act 2013

29. The Public Service Commissioner certifies it is reasonably necessary that the provisions of the Inquiries Act 2013, specified in schedule 3, clause 8(2) of the Public Service Act, apply in relation to the inquiry because of the nature and seriousness of the allegations and the need to ensure the inquiry has the powers necessary to investigate and report on them.

Deliverables, timeframe and reporting

30. The inquiry will commence immediately on the appointment of the inquiry leads and must be carried out as soon as practicable, with an indicative reporting date of 16 September 2024. The inquiry leads can make interim findings and/or refer matters to other oversight agencies before that date, as they consider appropriate.

31. The intention is for the final report to be made publicly available, subject to any applicable privacy or other legal considerations.



Heather Baggott
Acting Public Service Commissioner
14 June 2024