



Te Kawa Mataaho

Public Service Commission

18 February 2025

Professor Lester Levy CNZM
Health NZ Te Whatu Ora Commissioner

By email: lester.levy@tewhatauora.govt.nz

Tēnā koe Lester

Inquiry into the protection of personal information

In June 2024, following a direction from the Prime Minister and the Minister for the Public Service, Acting Public Service Commissioner Heather Baggott appointed Pania Gray and Michael Heron KC to conduct an Inquiry into allegations that personal information provided to government agencies as part of Census 2023, or for Covid-19 vaccination purposes, had been misused by third-party service providers during the 2023 general election.

Under the [terms of reference](#), the inquiry was to establish the facts and provide an independent assessment of government agency activity in relation to the allegations.

The final report will be available on the Commission's website from 2pm today.

Thank you for the support that you, your senior leaders and staff gave the inquiry leads during this process. I also acknowledge your agency's co-operation in providing the inquiry leads with access to all relevant documents and Health NZ staff to complete the inquiry.

The findings and my expectations

The inquiry has found that there were serious failures by several public service agencies to protect personal information and that those failings effectively left the door open to possible misuse. That is not an outcome we can accept.

I recognise that the broader context for your data sharing agreements included addressing significant challenges around achieving equitable COVID 19 vaccination coverage for some population groups, and that this function transferred to Health NZ as a result of the Pae Ora reforms. Whilst the inquiry found the terms of the Data Sharing Arrangements (DSAs) adequately and appropriately set out the expectations of third party providers Te Pou Matakana and Whānau Tahi, it also identified some significant gaps in the auditing and assurance arrangements, including that:

- Health NZ did not implement a systematic means for assuring itself that the service providers were meeting the expectations set out in the agreements. There were no mechanisms available to make sure that systems for receiving, storing, using and disposing of data complied with the terms of the DSAs.
- There were no controls in place once the files were downloaded by the provider's authorised staff.

- Health NZ does not appear to have further recourse available beyond halting the further supply of personal health information.
- The possibility of conflicts of interest arising from the sharing of personal information with the relevant service providers was not adequately identified or managed.

Given the sensitivity of the COVID 19 vaccination data, it was not appropriate to simply rely on an assurance model of high trust and commercial incentives to ensure that personal information was protected. Whether the information was misused or not was outside the scope of this inquiry and is beside the point. Whenever personal health information is shared with a third party, robust audit and assurance controls must be in place and those controls must be activated to make sure the information is protected. That is what the public rightly expects from Health NZ and what occurred did not meet their expectations or mine.

I acknowledge that Health NZ has an action plan underway to address these findings, including:

- revising standard information sharing terms to include audit, retention and disposal provisions,
- developing an assurance framework for monitoring the use and security of personal information shared with external parties including any subcontractors to these external parties, and
- introducing information handling protocols and regular training.

Given the seriousness of these matters, the action plan also needs to include:

- Health NZ's legal team working with Crown Law, to explore all available avenues to seek recourse to obtain assurance that the terms of DSAs have been complied with in this case.
- a process to make sure DSAs align with the new standard for Information sharing with third parties which will be issued by the Government Chief Digital Officer in April. This will ensure that in the future you have the means to gain assurances and enforce remedies if they are not to your satisfaction. This includes making sure any DSAs have auditing provisions in them that can be utilised should concerns be raised, and
- Health NZ considering how conflicts of interest are identified and managed even when the agency only has a DSA and is not the funder of the relevant contract. In the event there is no contract for services, any DSA should include appropriate integrity provisions, such as a conflict of interest clause. You should also ensure appropriate safeguards and contractual controls exist, including clear responsibility for exercising those controls when multiple agencies are involved.

I also ask that you temporarily suspend, with immediate effect, entering into any new contracts, renewals and/or extensions of contracts with the relevant service providers¹ until you provide me with assurance to my satisfaction that your contracts are fit for purpose and contain provisions for the adequate protection of personal information. I ask that you personally oversee how those matters are being addressed.

I want to be clear that I'm not asking you to pause or cancel existing contracts with these providers and there should be no disruption to service delivery in undertaking this assurance work. However, it's really important that you take immediate steps to learn from the findings of the Inquiry and make sure you have your contractual and implementation settings right going forward. If you have concerns

¹ As named in paragraph 30 of the Report (excluding any subsidiaries of the named service providers or related parties).

about how to action this in accordance with any existing contractual obligations, I recommend you seek specific legal advice.

Immediate steps to provide assurance

I would appreciate written confirmation today that you fully accept the inquiry findings and that you will take timely and decisive action to address them. Please also report back to your responsible Minister on how you intend to address the findings of the report, and keep me informed, via your Assistant Commissioner, Martin Kessick.

I will release the inquiry's final report today. When I do, I will write to Public Service chief executives, as this is a timely opportunity for every Public Service agency to ensure that they have robust policies and practices in place to address the issues highlighted in the report. My expectation is that you will also consider the matters set out in that letter.

Thank you for your personal leadership in relation to these matters.

Nāku noa, nā



Sir Brian Roche KNZM
Public Service Commissioner | Head of Service
Te Tumu Whakarae mō Te Kawa Mataaho

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