

ICDPPC Global Privacy and Data Protection Awards

2019

Entry Form

Deadline 29 July 2019

To submit an entry to the ICDPPC Global Privacy and Data Protection Awards please complete and email this form to ExCoSecretariat@icdppc.org no later than 29 July 2019.

Note: ICDPPC member authorities can submit as many entries as they wish, but a separate form should be used for each different entry, submitted by the deadline of 29 July. Languages: the conference documentation rule 6.2¹ applies:

1. Contact details for this entry:

- a. Name and email address of person completing this form: [REDACTED]
- b. Name of Data Protection or Privacy Authority: Office of the Privacy Commissioner New Zealand

2. Eligibility: By submitting this entry I confirm that:

- a. The Authority is a member of the International Conference of Data Protection and Privacy Commissioners.
- b. The initiative described in this entry was undertaken since the last edition.
- c. I am aware that the information in the entry (other than the contact details in 1(a) above) will be publicised by the ICDPPC Secretariat.

3. Please indicate which **category you wish to enter (delete those that do not apply; you can enter multiple categories but please use separate forms for each entry):**

- a. Accountability
- b. Dispute resolution and enforcement
- c. People's Choice

4. Description of the initiative

- a. Please provide a brief summary of the initiative (no more than 75 words):

The Office of the Privacy Commissioner (OPC) launched an own motion inquiry into the Ministry of Social Development's (MSD) use of its information compulsion powers. OPC found that MSD had been misusing its powers and unjustifiably intruding on the privacy of thousands of New Zealanders. OPC's inquiry resulted in widespread public reporting. MSD also agreed to change their practice to comply with their legal obligations and undertake a review of their legislation to ensure consistency with recent privacy and other human rights jurisprudence.

¹ 6.2 Conference documents

Without prejudice to section 4.2, conference documents, including accreditation and observer applications may be submitted in English or in another language. In the latter case, the documents shall be accompanied by an English version. Members with the ability and the resources to do so are encouraged to translate proposed resolutions and other conference documents such as the Conference Rules and Procedures.

- b. Please provide a full description of the initiative (no more than 350 words):

OPC's inquiry found that the MSD had been unjustifiably infringing on the privacy of individuals by failing to meet their legal obligation to first ask individuals for information before seeking it from other sources. This failure led to overly broad requests for information that was oftentimes unnecessary and sensitive (eg domestic violence records, hospital notes, text messages etc).

The MSD administers New Zealand's social security regime, administering benefits to thousands of New Zealanders from superannuates to solo parents. As part of this role they are responsible for ensuring the integrity of the social security system through investigating potential instances of fraudulent activity. MSD have the power under the Social Security Act to require individuals or agencies to provide information to them for the investigation of potential benefit fraud. This power is governed by a Code of Conduct which requires that before seeking information from anyone other than the individual to whom the information relates, MSD must ask the individual for that information first. The only exception to this requirement is if requesting the information from the individual concerned would likely cause a prejudice to the maintenance of the law.

The Code of Conduct is designated an Information Privacy Code for the purposes of the Privacy Act, meaning that any breach of the Code provisions is considered a breach of the Privacy Act and able to be investigated by the Privacy Commissioner.

The Privacy Commissioner can inquire into any matter that may infringe upon the privacy of an individual. OPC launched an inquiry into MSD following a letter of concern being sent to our office by a community group. The community group stated that it was their belief that MSD were acting unlawfully by failing to ask individuals for their information before seeking it from other parties, including telecommunications companies, banks, hospitals and the Police. OPC felt that the concerns raised were so serious and potentially affected so many individuals that it was a matter of importance for the Commissioner to inquire into.

Following OPC's inquiry MSD changed its practices to comply with its legal obligations, it also agreed to review its legislation in light of relevant human rights jurisprudence that had developed since the law was enacted in 1964. OPC is continuing to monitor MSD's progress on this issue but has seen positive change in the two months following the inquiry reports release.

- c. Please explain why you think the initiative deserves to be recognised by an award (no more than 200 words)

MSD's failure to act consistently with their legal requirements affected vulnerable members of New Zealand society - those reliant on the state for support and assistance. OPC's inquiry gave a voice to those affected by MSD's failures and affected positive change for them.

OPC successfully brought about this change despite only having recommendatory powers, demonstrating OPC's ability to successfully influence government through persuasive reporting.

- d. Include a photograph or image if you wish (note this will be published with your entry on the ICDPPC website; the image can be pasted into the entry or send as an attachment or a link may be provided):



- e. Please provide the most relevant link on the authority's website to the initiative (if applicable) (The website content does not need to be in English): <https://privacy.org.nz/news-and-publications/commissioner-inquiries/inquiry-into-msd-exercise-of-section-11-social-security-act-1964-and-compliance-with-the-code-of-conduct/>
- f. Please provide any other relevant links that you wish that help explain the initiative or its impact or success (e.g. links to news reports or articles):
- <https://www.msd.govt.nz/about-msd-and-our-work/newsroom/media-releases/2019/msd-accepts-privacy-commissioners-recommendations.html>
 - <https://www.stuff.co.nz/business/112747021/msd-investigators-systematically-misused-their-powers-hunting-down-fraudsters--privacy-commissioner>
 - <https://www.tvnz.co.nz/one-news/new-zealand/urgent-review-ordered-after-privacy-commissioner-finds-msd-misused-powers-while-investigating-benefit-fraud>
 - <https://www.rnz.co.nz/news/political/389301/ministry-of-social-development-systematically-misusing-powers-inquiry>
 - <http://www.scoop.co.nz/stories/PO1905/S00274/the-nation-privacy-commissioner-john-edwards.htm>