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Ombudsman Tasmania

Report after Investigation pursuant to section 21 of the Personal Information Protection Act 2004 - Northern Midlands Council

4 October 2023

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Complaint

1. On 21 September 2021 I received a complaint from the complainant, an employee of Northern Midlands Council (Council), concerning the way in which Council had handled their personal information. The substance of the complaint was that Council had breached its obligations under the *Personal Information Protection Act (PIP Act)*, by disclosing the complainant's personal and sensitive information.
2. The complainant stated they were in the process of making a workers compensation claim. Paperwork relevant to the claim had been lodged with Council, and included a psychologist's report, medical certificates indicating their medical condition and other information which identified them.
3. The complainant stated that on 1 September, a call was received from staff of a Launceston Post Office. The complainant was advised that confidential documents pertaining to their workers compensation claim had been found in a bin outside the post office. It was noted the documents contained medical information.
4. The complainant advised that during a subsequent phone conversation with another Council staff member on 1 September, the staff member disclosed that the documents had been taken home for work purposes and were inadvertently disposed of by another person while cleaning the staff member's home.
5. The complainant then emailed Council to advise what had occurred, and expressed the view that the documents should not have left Council's offices. The complainant suggested Council remind staff about this.
6. In response to the email, Council phoned the complainant to discuss the matter and advised the complainant it would follow up on the complaint.
7. The complainant formally complained to Council on 12 September, alleging a lack of compliance with the provisions of the *Personal Information Protection 2004 (PIP Act)*. Dissatisfied with the response received, the complainant complained to my office.

Investigation by Council

8. Council commenced an internal investigation to ascertain what had occurred. Based on the information provided by Council, I am satisfied that the actions taken and decisions made were appropriate, however there was a failure to advise the Complainant that the investigation had concluded (on 6 September) or its outcome. It is acknowledged that only limited information could have been provided to the Complainant for reasons of privacy.
9. There was also a failure by Council to investigate the matter pursuant to the provisions of the PIP Act. A complainant need not refer to the PIP Act when making a complaint to a public authority. Public authorities are expected to have publicly available policy which informs members of the public how it will handle their personal information and be able to identify when a potential breach has occurred and investigate the complaint accordingly.
10. On 21 September, Council received an email from the complainant in which it was alleged that Council may be in breach of the PIP Act. The complainant asked Council:
 - (i) Why were the documents taken outside the Council building?
 - (ii) Why do Council allow staff to take confidential information home?
 - (iii) Why were they dumped in a bin?
 - (iv) Why were they not stored securely?

11. Council advised this office that after seeking legal advice, it responded to the complainant on 23 September in accordance with the advice received. In response to the questions raised, Council advised the complainant:
- (i) It took the matter seriously and investigated the incident.
 - (ii) Information at Council is usually retained by the individual working on the matter and once the work is complete, all documentation is saved into Council's records management system (Technology One ECM) and any paper copies are destroyed appropriately.
 - (iii) On some occasions, employees take work home with them, when they have not been well and sent home from work (in the case of cold/flu symptoms) or where the employee has asked their manager if they could work from home, when they haven't been well enough to present to the office.
 - (iv) It is the expectation of Council that employees working from home, with Council information and/or documentation will keep the information/material confidential and securely held while in their possession and out of the office.
 - (v) On this occasion, there had been a failure, for which Council apologised.
 - (vi) Council has taken the appropriate steps to ensure this does not happen again. Two examples of these remedial actions are:
 - a. A direction to staff about the importance of maintaining Council information and documents confidentially and securely; and
 - b. Staff currently participating in online training developed by the Integrity Commission of Tasmania.
12. Council did not respond to the complainant's assertion that the incident may constitute a breach of the PIP Act.

Preliminary Assessment

13. I assessed the complaint pursuant to *section 19* of the PIP Act, and determined it was appropriate to refer the matter back to Council to investigate the complaint in accordance with the PIP Act.
14. Council had already taken steps to investigate the matter and respond to the complaint, but had omitted to refer to the provisions of the PIP Act, or any of the *Personal Information Protection Principles* (PIPP's) outlined in Schedule 1.
15. Under *section 20* of the PIP Act, I may refer a complaint for investigation or other action to any person, body or authority I consider appropriate in the circumstances. I may only refer a complaint after appropriate consultation with the complainant and the relevant person, body or authority.
16. This course was discussed with and agreed to by Council and the complainant. At the time, the complainant advised that she would like to see procedures implemented by Council to ensure the issue did not happen again in the future. I am of the view that a more fulsome response by Council at first instance may have resolved the complainant's concerns and this view was provided to Council.
17. Council advised that the failure was of significant concern to Council and it was content to provide any further information requested. A more extensive review process had been undertaken at the time, however Council had determined it could not disclose aspects of the investigation to the complainant for privacy reasons, insofar as some of the information pertained to other staff.

18. On 30 November, I determined to refer the matter back to Council for its further review and investigation. Council agreed to investigate the complaint and provide me with a report outlining its findings. My office advised Council that it appeared there had been a clear breach of the PIP Act and that a complaint of this nature, investigated and properly responded to, should address and report on the following:

- an explanation of whether the PIP Act was contravened and which PIPP's apply;
- an outline of how the matter was investigated, steps Council undertook, processes followed and any determinations made;
- Council's analysis of existing systems, policies and procedures to determine how the contravention was able to occur, and safeguard the likelihood of contraventions occurring in the future;
- any changes required to ensure Council's future adherence to the principles outlined in the PIP Act and how these changes will be implemented, such as staff training, change in culture, practical considerations such as physical document or data security;
- how new staff are made aware of their obligations under the PIP Act, and any relevant policies and procedures;
- whether Council's privacy statement is consistent with the PIP Act;
- how information held by Council is protected from misuse, loss, unauthorised access, modification or disclosure; and
- any other actions taken by Council to address the issue.

Legislation

19. The relevant legislation in Tasmania is the *PIP Act*.

20. Schedule 1 outlines ten PIPP's that a personal information custodian must comply with in accordance with section 17(1) of the PIP Act.

21. The relevant PIPP in this instance is *PIPP 2 – Use and disclosure*.

22. The definition of *personal information custodian* includes a public authority such as Council.

23. Personal information is defined in section 3 of the *PIP Act* as, *any information or opinion in any recorded format about an individual whose identity is apparent or is reasonably ascertainable from the information or opinion*.

24. *Sensitive Information* is defined in section 3 of the *PIP Act* to include health information about an individual.

25. Section 10 of the PIP Act provides that a personal information custodian must not collect sensitive information about an individual unless –

- (a) *The individual has consented or*
- (b) *The collection is required or permitted by law...*

26. In relation to *PIPP 2*, section 2(1)(a)(i) of the PIP Act provides:

A personal information custodian must not use or disclose personal information about an individual for a purpose other than the purpose for which it was collected unless -

(a) *Both of the following apply:*

- (i) *that purpose is related to the primary purpose and if the personal information is sensitive information, that information is directly related to the primary purpose;*

- (ii) *the individual would reasonably expect the personal information custodian to use or disclose the information for that purpose; or*

(b) *the individual has consented to the disclosure.*

Council response to Ombudsman

- 27. I received a response from Council on 16 December, which again failed to reference the PIP Act or provide any determination as to whether the PIPP's had been contravened.
- 28. Council outlined its investigation to date and set out the response it had provided to the complainant as outlined above at paragraph 15. Council stated it had in place an *Employee Code of Conduct Policy*, *Information Management Policy* and *Privacy Policy* all of which relate to the proper use and protection of information in the workplace.
- 29. Council advised that all staff are made aware of the stated policies which are available on Council's website, and when new staff are engaged they are required to review the policies and sign a declaration confirming they have read and understood them.

Investigation by Ombudsman

- 30. I can decide to investigate a complaint in accordance with sections 21 and 22 of the PIP Act, and I determined to do so on this occasion, as the complaint had not been appropriately investigated under the PIP Act. Based on the information provided, I could not be satisfied Council understood its obligations in respect of the PIP Act or had adequate PIP processes in place to guide staff.
- 31. In accordance with the PIP Act, I will not accept a complaint unless it has first been raised with the public authority to which it relates. The complainant had satisfied this requirement.
- 32. If on completion of an investigation of a complaint (by my office or a public authority), I am of the opinion that a Personal Information Custodian has contravened a PIPP, I must advise the complainant and the personal information custodian in writing of that opinion and the reasons on which it is based, and make any recommendations considered appropriate. I must also provide the relevant Minister (The Minister for Justice) with a copy of the report and recommendations for tabling in parliament.
- 33. Further inquiries were made to Council about its relevant policies and procedures and steps it had taken in response to the contravention alleged.
- 34. I reviewed Council's Privacy Statement and its more comprehensive Privacy Policy which are publicly available on its website. It appears that both are due for update and could be strengthened, in relation to specificity, clarity, accuracy and the use of plain language. From a best practice perspective, the Privacy Policy should follow the format of the PIPP's.
- 35. The Privacy Policy does not currently outline how to make a complaint in relation to a suspected contravention of the PIP Act.
- 36. Council's Information Management Policy provides guidance and direction to staff about their responsibilities relevant to the creation and management of information and records. This policy is also due for update and could be strengthened upon review by ensuring it (and the procedures to which it relates) are no more complex than necessary and expressed clearly in plain language.
- 37. Council advised that the Employee Code of Conduct Policy sets out a definition of confidential information and employee responsibilities towards privacy and confidentiality. I have reviewed this policy and it appears that the purpose of the policy is to outline appropriate behaviour standards and expectations of staff in the workplace. It has a different focus to the obligations under the PIP Act and in my view is not on its own sufficient to inform staff of these obligations. Council may also wish to review this policy when it reviews its Privacy Policy, to ensure any overlap in information is consistent.

38. Council advised that employment contracts also set out employee confidentiality and privacy responsibilities. Council may also wish to review these documents for consistency of information.
39. I have provided this feedback to Council by letter and suggested it may wish to contact the Office of Local Government (OLG) for assistance. OLG provides policy advice and support to Local Government Authorities, to ensure consistency with legislative provisions.
40. Council advised that a verbal reminder regarding the expectation of confidentiality of Council information was provided to all staff at their recurring fortnightly staff meeting.
41. Council advised that its staff currently undertake the Tasmanian Integrity Commission's training program *Integrity in Public Service*. It appears that this training does not specifically include awareness or responsibilities relevant to the PIP Act.

Compliance with legislation

42. I am satisfied Council collected personal information from the complainant in the exercise of its employer functions pursuant to the *Workers Rehabilitation and Compensation Act 1988*. Pursuant to that Act, an employer is liable to compensate workers when injuries are suffered in the course of their employment. Pursuant to sections 33 and 34 of that Act, an employee must give notice of the injury alleged to their employer, and a claim for compensation on a form approved by the WorkCover Tasmania Board (the form).
43. The form states that the information provided will be managed in accordance with the PIP Act and may be accessed on request to the WorkCover Tasmania Board. The form is signed by the person making the claim.
44. In this instance the complainant consented to Council collecting the sensitive information that was disclosed, and the collection of that information was required or permitted by law in accordance with section 10 of the PIP Act.
45. I have determined based on the information provided by Council and the complainant that the disclosure was not related or directly related to the primary purpose for which the information was collected, and accordingly, contravention of PIPP 2 has occurred.
46. I am satisfied that the complainant did not consent to the disclosure of her personal and sensitive information or reasonably expect Council to use or disclose the information in the manner which occurred.

Analysis

47. While it appears this was an isolated incident, the complaint has identified a number of areas for improved practice.
48. Council does not currently have a working from home policy which sets out guidelines and procedures staff must follow when permitted to work from home.
49. I am of the view that Council policy, practice and training in respect of the PIP Act is currently insufficient and requires improvement.
50. Council's existing relevant policy needs to be strengthened as outlined.
51. No PIP Act specific training is currently being offered to staff and may safeguard similar contraventions re-occurring in future.
52. There was a failure to respond to the complaint at first instance.

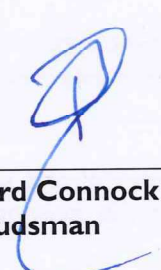
53. Council's failure to investigate the alleged contravention after it agreed to do so upon referral from my office, resulted in unreasonable delay to the complainant and impacted the resources of my office.

Conclusion

54. For the reasons outlined, I have determined PIPP 2 has been contravened.
55. In accordance with *section 22* of the *PIP Act*, I have advised Council and the complainant in writing of that opinion and the reasons on which it is based, and make the following recommendations.
56. A copy of this report will be provided to the Minister for Justice for tabling in parliament pursuant to *section 22(3)* of the *PIP Act*.

Recommendations

- Recommendation 1: That Council review and update its Privacy Policy, Privacy Statement, Information Management Policy, Code of Conduct Policy, and all relevant policies and procedures, to ensure they are up to date, accurate, comprehensive and clear.
- Recommendation 2: That Council develop and implement a working from home policy which provides guidelines and expectations for staff who are permitted to work remotely.
- Recommendation 3: That Council arrange PIP Act specific training for all staff, to increase awareness of the PIP Act and support appropriate handling of personal information in the workplace.
- Recommendation 4: That Council nominate a Privacy Officer to receive, investigate and report on complaints involving suspected breaches of the PIP Act.



Richard Connock
Ombudsman