



Privacy Commissioner
Te Mana Matapono Matatapu

Information Matching Bulletin

News from the Office of the Privacy Commissioner – December 2008

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Seasons best wishes

Our Office will be closed from 25 December and reopens on 5 January 2009. The Technology Team wishes you a safe and enjoyable holiday period.

2007/08 Annual Report

The 2007/08 annual report was published on 5 December in which we report on the operations of 46 programmes. Two new programmes, both involving deaths information, went live during the year while two Inland Revenue programmes involving student loan interest were cancelled following changes in policy which meant they were no longer required.

During the year a review of security on physically transferred information matching files found that 19 programmes involved sending information on unencrypted digital media. The Privacy Commissioner decided to require that these files be encrypted. At the end of the reporting, two transfers were being done on-line (with encryption), 14 physical transfers were being encrypted, and three remained unencrypted.

In response to concerns expressed last year about matching fines defaulters at the border, the Ministry of Justice brought forward a review of the Collection of Fines at Airports initiative. The detailed review concluded that while the computer matching of fines defaulters was working correctly, a number of procedural enhancements were desirable. Justice is in the process of making these changes.

Information matching workshops

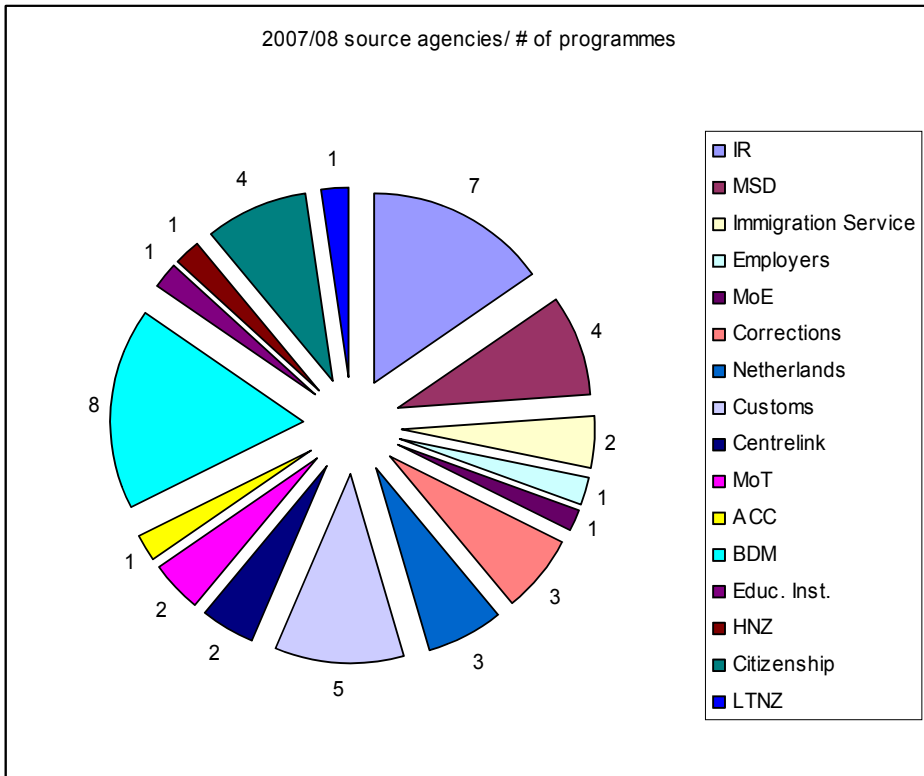
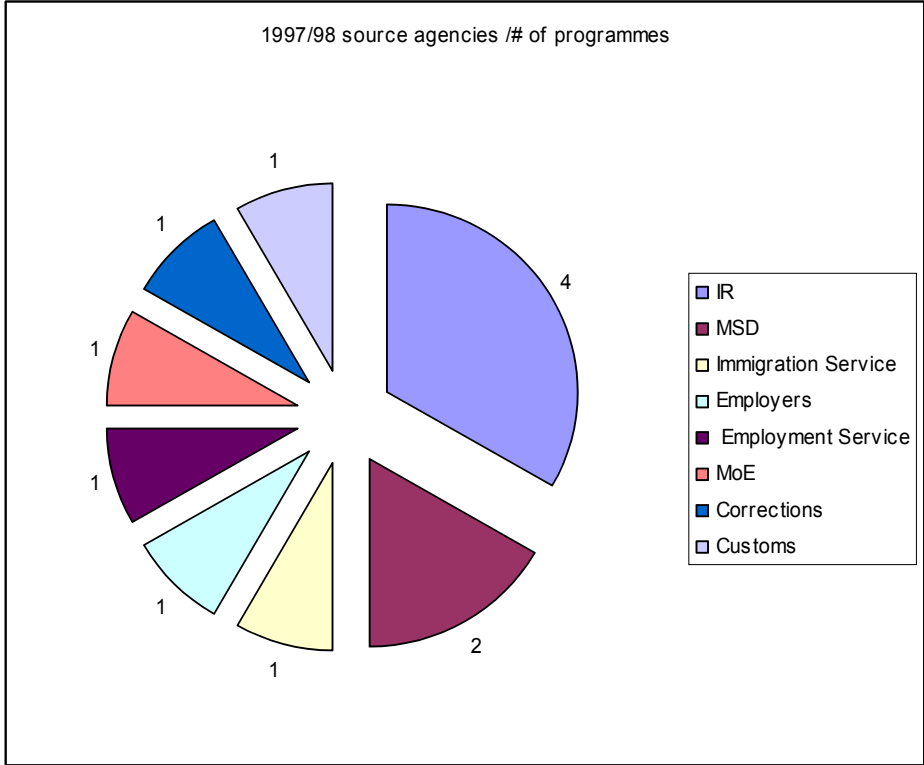
The half day workshops are designed to give some practical background knowledge about the Privacy Act along with more detailed information about preparing an Information Matching Privacy Impact Assessment. The next workshop is provisionally scheduled for early February 2009. To register interest in attending this workshop, contact Sharon Newton on (04) 4747590 or by email to sharon.newton@privacy.org.nz.

Information Matching Interest Group

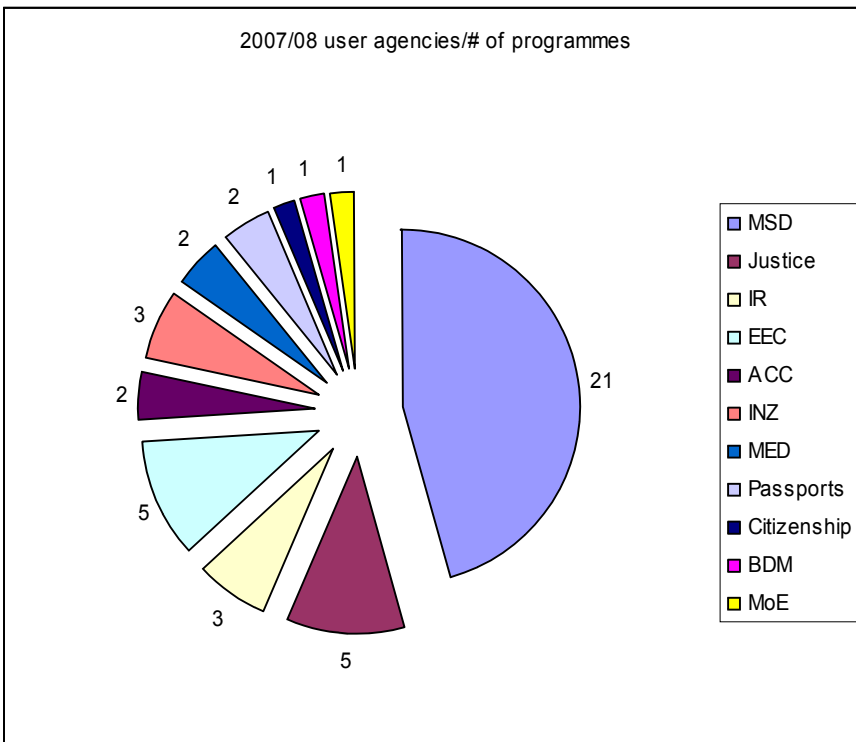
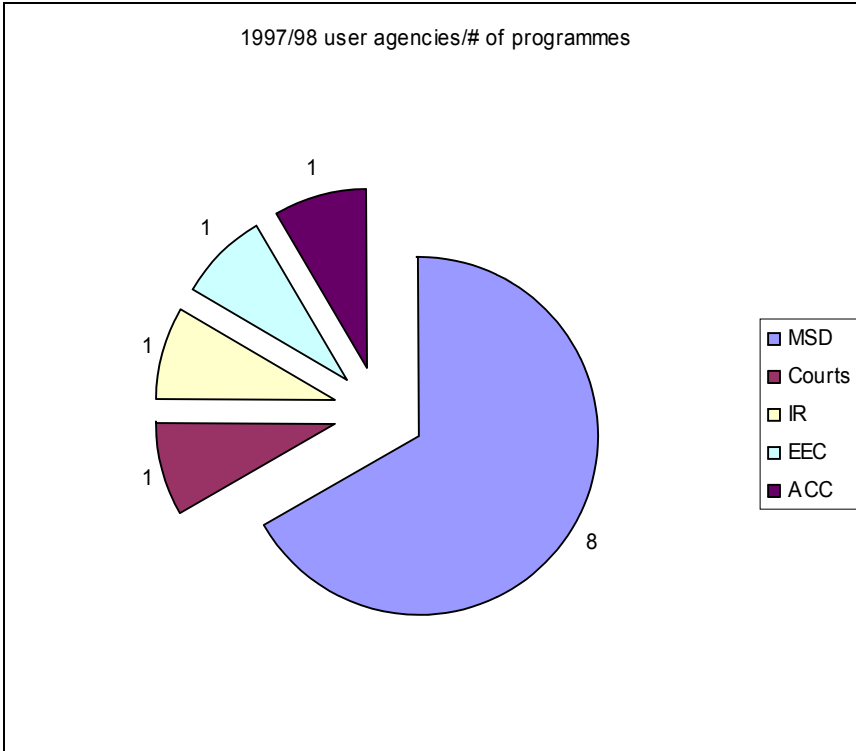
We are keen to receive suggestions about the topics/format of the next information matching interest group meeting (date to be advised). Think about a presentation you might present on behalf of your agency. Perhaps you have an information matching success story or cautionary tale to share? Please contact Neil or Colin with your ideas!

Changes in agency participation 1998 / 2008

The following four pie charts illustrate some interesting changes in agency participation that have occurred between 1998 and 2008. The number of source agencies has doubled over this time. Births, deaths, and marriage information, not a source of records in authorised programmes in 1998, is now the most commonly used source of information.



The user agency picture has become equally diverse. MSD are still the most prolific agency operating information matching programmes. However, since 1998 the number of user agencies involved has more than doubled. This is set to continue with the Ministry of Health, Government Superannuation Fund Authority, and the Board of Trustees of National Provident Fund becoming user agencies from 24 January 2009.



Technological Due Process¹

Colin Trotter

In the last Bulletin, we commented on an article about data matching and Ohio voters written by Danielle Citron. A link in that article lead us to an interesting research paper by Citron titled "Technological Due Process". We thought it would be useful to summarise some of the most relevant ideas, but as the 65 page research paper includes 420 footnotes, referencing the sources of information used, it is not practical to restate those sources in the context of this short article. Please see the footnoted link below to access the original article (and all the footnotes that credit the sources of information).

Citron's research paper focuses on the automation of decision making processes in the twenty-first century and how in some cases this has limited the ability of people to assert their rights to challenge those decisions and demand that their information be corrected.

Citron writes that in the past, computer systems helped people apply rules to individual cases and that now, automated systems have become the primary decision makers. Supporters of automated systems point to the cost savings and argue that automation ensures consistent decisions. Citron cautions that automation also risks dismantling critical procedural safeguards. She goes further to say that the opacity of automated systems shields them from scrutiny and result in a loss of transparency, accuracy, and political accountability of rulemaking is lost.

Every week, approximately 1500 travellers are reportedly mislabelled as terrorists due to errors in the data-matching programme known as the "No Fly" list. Citron points out those innocent travellers face questioning and missed flights, never knowing why the automated system targeted them because authorities will not reveal whether a particular person is on the terrorist watch list. Unsophisticated algorithms and faulty data generate high rates of false positives that might result in flawed and baseless investigations.

However, the public demand for services and the increasing complexity of regulatory regimes is a driver for agencies to increasingly automate their decision making processes. Citron believes that administrative law must evolve to face these changes.

Citron explains that sometimes policy gets distorted when programmers translate it into code. While this may have been by mistake, the result is that inaccurate decisions could result. An example quoted was that from September 2004 to April 2007, code writers embedded over 900 incorrect rules into Colorado's public benefits system. The nature of these systems also prevents easy analysis when things have gone wrong and a decision is challenged. Because the policies embedded in code are invisible, administrators cannot detect when the rules in an automated system depart from formal policy.

Citron talks about different types of mixed systems where people along with computers combine to execute policy. While involving humans in the decision making process might seem a good idea, Citron points out that some workers' intuitive trust in computer systems tends to reduce the value of human participation. Studies show that people rely on automated decisions even when they suspect system malfunction. Citron introduces the

¹ Citation: Citron, Danielle Keats, *Technological Due Process*. U of Maryland Legal Studies Research Paper No. 2007-26; *Washington University Law Review*, Vol. 85, pp. 1249-1313, 2007. Available at SSRN: <http://ssrn.com/abstract=1012360>

idea of “automation bias” where the computer programmes suggested answer becomes the trusted final decision.

The basic right to be given notice of an agency’s intention to act is endangered by automated decision systems according to Citron. Clear notice decreases the likelihood that an action will rest upon incorrect or misleading factual premises or on the misapplication of rules. Citron goes on to say that inadequate notices are particularly common in systems that do not maintain audit trails, and as a result affected individuals lack the information they need to effectively challenge an agency’s claims.

Citron mentions a number of ways that individual rights can be maintained despite the use of automated systems. Automated systems should generate audit trails that record the facts and rules supporting their decisions. This encourages administrators to critically assess the computer’s findings. Citron believes that agencies should design systems with transparency and accountability as their primary objectives to prevent inadvertent and procedurally defective rulemaking.

Citron concludes that automation has huge potential to eliminate human errors and produce consistent decisions, however today’s decision systems fail to take advantage of the potential for error correction and can become devices for error propagation themselves.

Clearly these ideas are relevant to what we do here in NZ when information matching. Fortunately, the Privacy Act information matching controls go some way towards putting into practice the ideas Citron talks about to safeguard individual rights where automated decision systems are increasingly common.

Publications

There are a number of other publications and reports available from the Privacy Commissioner that may be of interest to those involved in information matching. These are listed on the Privacy Commissioner’s website, www.privacy.org.nz.

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