



# Privacy Commissioner

## Te Mana Mātāpono Matatapu

11 May 2020

### **Expressions of interest sought – Privacy Bill 2020 - developing model contractual privacy clauses for cross border disclosures**

The Office of the Privacy Commissioner is seeking expressions of interest from commercial practitioners with a strong emphasis on privacy and data protection, to develop model contractual privacy clauses.

This would suit a practitioner with previous experience of model clauses in other contexts, including under the GDPR.

The use of model clauses is one option for an agency to demonstrate compliance with new Information Privacy Principle (IPP) 12 in clause 19 of the Privacy Bill. New IPP 12 places obligations on agencies when disclosing personal information to agencies outside New Zealand. Such disclosures will need to comply with one of the conditions in IPP 12(1).

IPP 12(1)(f) requires that the recipient must protect the information in a way that overall provides comparable safeguards to those in the (new) Privacy Act. Suitable contractual clauses between the parties is one means of meeting this condition.

OPC wishes to provide a suite of “boilerplate” clauses for New Zealand agencies transferring data overseas, in order to provide certainty, and to reduce the overall cost to the economy of compliance with the new regulation.

Providers may propose a range of possible responses, however compatibility with European standards will be important for maintaining New Zealand’s “adequacy” under the EU GDPR.<sup>1</sup> OPC expects providers to be mindful of the European Commission’s standard contractual clauses for controller to controller transfers.

The clauses will need to be drafted to be readily incorporated into, or to constitute a standalone a binding legal contract between the New Zealand disclosing agency and the overseas recipient.

#### **The brief**

OPC is seeking to brief an experienced practitioner with specialist knowledge of privacy and data protection regimes to draft suitable model clauses for New Zealand agencies disclosing

---

<sup>1</sup> <https://www.privacy.org.nz/blog/providing-an-adequate-level-of-data-protection/>

personal information under IPP 12, that would appropriately meet the condition in IPP 12(1)(f).

We are not seeking advice or guidance on other ways in which NZ agencies might effect cross border transfers, such as obtaining explicit consumer consent, or assessments of the destination country's data protection or privacy law.

The brief is to provide OPC with an initial draft set of clauses, and further iterations following feedback from OPC, and feedback from selected consultation with external stakeholders. Brief guidance on the use of each clause is required, as well as a short introductory guidance statement (see for example the Information Commissioner's Office (UK) template).

This will include certain obligations on the recipient to manage the information securely and appropriately limit the use, disclosure and retention of the information. The obligations of the recipient should include an obligation to promptly inform the disclosing agency about any relevant privacy breach affecting the personal information (in addition to any legal obligation to notify individuals and the relevant authority).

Certain obligations will need to be expressed for the benefit of the individuals the information relates to (such as access and correction, and complaint rights), regardless of the nationality of those individuals.

As well as the specific contractual obligations and specifications, the recipient is required to select applicable laws or principles to apply to managing the personal information:<sup>2</sup>

- A. the New Zealand Privacy Act, or
- B. the recipient's own data protection law, if it can warrant that its own law (a) provides comparable safeguards to New Zealand law or (b) implements the General Data Protection Regulation; or (c) has been assessed as adequate under the GDPR, or
- C. the basic OECD principles (see Sch 9 of the Privacy Bill).

Details of the personal information disclosure would be completed and attached to the clauses and would include a description of the individuals the information relates to, the type of information, the purpose of the disclosure, the purposes for which the information will be used by the recipient, and any further recipients of the information.

The clauses should be as brief as is practical to achieve their aim, and expressed in plain language, able to be readily understood by the parties, and the individuals whose interests they are designed to protect.

## **Questions**

Please direct questions about the brief to the contact below. Questions raised and answers provided will be circulated to all interested parties for information before OPC selects a preferred provider and commissions this work.

---

<sup>2</sup> See concept in clause II(b) of the European Commission Decision 2004/915/EC.

## Estimated timeline

- Interested parties notify interest to OPC by: 18 May
- Questions from interested parties to OPC by: 25 May
- OPC responses to questions to all interested parties by: 1 June
- Confirmation of interest and proposal from each interested party including fee estimate to OPC by: 8 June
- OPC questions to interested parties on their proposals by: 15 June
- OPC selects chosen provider by: 22 June
- First draft model contractual clauses and draft guidance by selected provider to OPC by: 6 July
- OPC feedback on first draft to selected provider: 20 July
- Second draft model contractual clauses and draft guidance to OPC by: 27 July
- Consultation on model contractual clauses and draft guidance: 10 August
- OPC and consultation feedback on second draft and guidance by: 24 August
- Final draft model contractual clauses and guidance to OPC by: 31 August
- Public release of model contractual clauses and guidance by: 14 September

## Information required

When confirming an expression of interest, please provide a short outline of your proposal including a summary of your proposed approach to this brief, an indication of the types of clauses to be included, and the proposed form to deliver guidance on the model clauses.

## OPC contacts

Michael Harrison, Manager, Policy

Email: [policy@privacy.org.nz](mailto:policy@privacy.org.nz)

## Additional information available

The Bill – latest drafting of IPP 12 and related definitions – see SOP released 17 March 2020: <http://www.legislation.govt.nz/bill/government/2018/0034/latest/versions.aspx>

A recent blog introduces the new privacy principle 12 here:

<https://www.privacy.org.nz/blog/privacy-2-0/>

OPC is developing guidance to assist agencies understand their obligations under IPP 12. This is currently being finalised and will be provided to interested parties.