

Taking a case to the Human Rights Review Tribunal

This note explains what the Human Rights Review Tribunal is, and when the Tribunal can hear a case under the Privacy Act.

1. What is the Human Rights Review Tribunal?

The Tribunal is an independent judicial body that considers and decides on claims brought before it. It is completely separate from the Office of the Privacy Commissioner ('OPC').

The Tribunal is limited in what it is allowed to consider. It only has legal authority to hear a privacy case when OPC has already carried out an investigation.

The Tribunal can award money for any harm caused by a breach of the Privacy Act. These awards are often called damages. It can also make a declaration or statement about what it has found to have occurred. It can order a party to do something or to stop doing something.

The Tribunal will look at a case on its own merits. Any earlier legal opinions, such as those from OPC, are not taken into account. The only thing the Tribunal needs to know is whether OPC investigated the matters that you are bringing to it.

It may cost you money to bring a case in the Tribunal if the Tribunal orders you to pay costs.

2. When can I take a case to the Tribunal?

You can take your case to the Tribunal only after OPC has notified the agency, investigated your complaint and has closed your case file. If OPC has **not** notified the agency and investigated your complaint, you will **not** be able to take a case to the Tribunal. During an investigation, OPC looks at:

- the privacy principles you believe have been breached
- the events you say happened
- the agency you want to bring a case against.

OPC needs to tell the agency:

- that a complaint has been made
- what events we are investigating
- the privacy principles that are involved.

We will ask the agency for its response to your complaint and give it a reasonable time to respond. If we have a good reason for refusing to investigate, you have no right to bring the case to the Tribunal. You

cannot take a case to the Tribunal if you have already settled the complaint with the agency concerned.

3. How do I take a case to the Tribunal?

Only the person who complained to OPC can take a complaint to the Tribunal. You can ask a lawyer to represent you if you prefer, but having a lawyer is not compulsory. You can also ask a friend or support person to help you with your case.

If you are representing a complainant, the case will be filed under the complainant's name, not your name.

The Ministry of Justice website has a guide to filing a claim with the Tribunal. <https://www.justice.govt.nz/tribunals/human-rights/make-a-claim/>

4. Who is the case against?

When you take a case to the Tribunal, your case is against the agency that you say has breached your privacy. It is not against OPC.

Once your case reaches the Tribunal, the view OPC formed during the investigation does not matter any more. Occasionally one of our staff may appear in Tribunal proceedings to assist the Tribunal and the parties with particularly complex or new legal issues. In those instances, we are only there to help the Tribunal.

5. What information do I have to provide to the Tribunal?

You will need to give the Tribunal a certificate of investigation from OPC. That certificate is the only piece of information that the Tribunal looks at from our investigation. If you do not have a certificate, please ask us for one. If we have investigated your complaint we can give you one.

The Tribunal will not have access to OPC's investigation file. You will have to provide the Tribunal with all the information it needs to be able to make a decision about whether your privacy has been breached. The agency you are taking the case against will do the same. When you file your case with the Tribunal, use the information from OPC's certificate of investigation to help you. The certificate will show what you can raise with the Tribunal. The certificate includes:

- the name of the complainant
- the name of the agency that was complained about
- the privacy principles involved.

For instance, if your certificate of investigation says OPC considered your complaint under principle 6, then your statement of claim with the Tribunal can refer to principle 6.

You cannot bring a case to the Tribunal about different privacy principles, different events or different people from those we investigated because the Tribunal will not be able to consider them.

6. What happens if the Privacy Commissioner didn't investigate one part of my complaint?

If OPC didn't investigate an aspect of your complaint, you cannot bring that aspect to the Tribunal. Just because you raised something in your complaint (or would have liked to) does not mean the Tribunal can consider it.

OPC will not necessarily investigate all aspects of a complaint. For instance, we will not investigate matters that very clearly do not breach the Privacy Act.

We can also refuse to investigate matters for other reasons. If you are interested, these are listed in section 71(1) of the Act and can be found here:

<http://www.legislation.govt.nz/act/public/1993/0028/latest/whole.html#DLM297448>

Contact details

If you have any queries, contact the Office of the Privacy Commissioner:

Call free on 0800 803 909 (Monday to Friday, 10.00 am - 3.00 pm) or

send us your enquiry <https://privacy.org.nz/about-us/contact/enquiry-form/>

or email enquiries@privacy.org.nz

or try AskUs <https://privacy.org.nz/further-resources/knowledge-base/>

www.privacy.org.nz