(1) ORDER PROHIBITING PUBLICATION OF TRUE NAMES, ADDRESSES AND IDENTIFYING PARTICULARS OF THE PLAINTIFF, HER BROTHER AND OTHER THIRD PARTIES

(2) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE TRIBUNAL OR OF THE CHAIRPERSON

IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2016] NZHRRT 32**

	Reference No. HRRT 056/2015
UNDER	THE PRIVACY ACT 1993
BETWEEN	WENDY TAN
	PLAINTIFF
AND	NEW ZEALAND POLICE
	DEFENDANT

AT WELLINGTON

BEFORE:
Mr RPG Haines QC, Chairperson
Dr JAG Fountain, Member
Hon KL Shirley, Member

REPRESENTATION:
Ms W Tan in person
Ms V McCall for New Zealand Police

DATE OF HEARING: 5 and 6 September 2016

DATE OF DECISION: 18 October 2016

DECISION OF TRIBUNAL[1]

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[1] [This decision is to be cited as: *Tan v New Zealand Police* [2016] NZHRRT 32. Due to publication restrictions this decision has been anonymised by the redaction of the true names of the plaintiff, of her brother and of other third parties.]

INTRODUCTION

The complaint

[1] At the relevant time Ms Tan was a Human Resources advisor employed by the Capital and Coast District Health Board (CCDHB). Following an allegation she had possibly accessed health records to locate the whereabouts of a relative, the New Zealand Police in September 2014 asked the CCDHB to advise whether Ms Tan had in fact accessed such records. That request was made under the Privacy Act 1993.

[2] Ms Tan alleges that in making this request the Police breached information privacy principles 1 to 4 and 11. The allegations are denied by the Police.

The recusal issue

[3] When Ms Tan made her closing submissions at about midday on the second day of the hearing she put several questions to Hon KL Shirley relating to his past involvement in politics. All questions were answered by Mr Shirley. As it appeared Ms Tan might be seeking the recusal of Mr Shirley, the Chairperson asked whether that was what Ms Tan was leading up to. Her response was that she was not seeking Mr Shirley's recusal "at this stage". The Chairperson responded that if any recusal application was intended, it was best made immediately and in the context of the hearing. Otherwise Ms Tan was at risk of a finding that the point had been waived. Ms Tan responded she would not be making a recusal application and that she would trust the Tribunal members to reach a decision uninfluenced by any sympathies they might hold.

Background

[4] On 1 November 2013 Ms Tan's brother, Henry Tan, was sentenced to 15 years imprisonment (with a minimum period of imprisonment of 7½ years) on 18 charges of sexual and physical abuse of his two step-children, including four counts of rape. He had previously been convicted of possession of objectionable material in the form of child pornography and was sentenced to 18 months imprisonment on those charges in early 2012.

[5] The sentencing judge also made a final order suppressing Mr Tan's name, noting it was made not for Mr Tan's benefit but because identification of Mr Tan could jeopardise the position of the two victims who were his step-children by virtue of his marriage to Mrs Green. Mr Tan and Mrs Green have three children of their own.

[6] Subsequent to Mr Tan's offending being discovered, Mrs Green and her children relocated to a secret address as Mrs Green was fearful for her safety and that of her children.

[7] In December 2013 the principal of the school attended by one of Mrs Green's children received a typewritten letter from a person purporting to be "Wendy Tan". The letter was said to have been written by Ms Tan on behalf of her brother. The letter asserted the child had been attending the school under the family name "[redacted]" and asked that the child be known by the "legal" name of Tan. A copy of the child's birth certificate was enclosed "to validate" the correct surname. The letter went on to say that at no time had Mr Tan agreed to the child using any surname other than Tan and that no other surname could be legally used without his express consent.

[8] The letter to the school principal enclosed a further letter addressed to the child in question. That letter purported to be from "Auntie Wendy". It stated (inter alia) that:

> You may or may not have heard some very horrible things about your Dad. These things are not true and are a result of your Dad trying so hard to get to see you ....

The letter concluded with a statement by "Auntie Wendy" that:

> We hope that some day you will want to know the truth and contact us.

[9] The principal did not respond to either letter, nor did he deliver the enclosed letter to the child. Instead he called Mrs Green to report what had happened. Mrs Green was extremely concerned that members of Mr Tan's family (and Mr Tan himself) probably knew where the child went to school. As Mrs Green was aware Ms Tan worked for the CCDHB she believed Ms Tan may have used her position to access a health database recording the family's address or the names of the schools attended by the children. One of the children had in fact recently received medical treatment through the school.

[10] On Mrs Green's lawyers making a complaint to the Police, Detective Sergeant DA Woodley (Mr Woodley) was assigned to conduct an investigation. He took the view that if Ms Tan had accessed the NHI database to find out where Mrs Green and the children were living, this may have been an offence under the Crimes Act 1961.

The request

[11] Because he did not, at that stage, consider he had enough evidence to obtain a search warrant or a production order to compel the provision of information from the CCDHB, Mr Woodley on 12 September 2014 telephoned Ms Donna Hickey, Director of Human Resources, to make a request under the Privacy Act 1993 and the Official Information Act 1982 that the CCDHB advise whether Ms Tan had accessed the child's NHI record. The request was made. Ms Hickey asked that Mr Woodley send her a detailed email outlining why the request was necessary.

[12] On 12 September 2014 Mr Woodley sent to Ms Hickey an email in which he outlined the purpose of the investigation and why the request was made.

[13] It is not intended to reproduce the email here. It is sufficient to note only the following points:

> **[13.1]** In the opening paragraph Mr Woodley informed Ms Hickey that the matter related to a complaint that Mr Tan "may have got his sister, Wendy Tan, to unlawfully access" a patient database to determine where the child in question was currently attending school.
>
> **[13.2]** The assistance of the CCDHB was sought to determine whether such unlawful access had occurred.
>
> **[13.3]** In making his request Mr Woodley was relying on s 12 of the Official Information Act and principle 11(e)(i) and (ii) of the Privacy Act.
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> **[13.4]** The email then referred to Mr Tan's conviction and sentence of one year and six months imprisonment for possession of child pornography and to his sentence of 15 years imprisonment on 9 charges of very serious historic sexual offending against his step-children, being the biological children of his then wife (Mrs Green).
>
> **[13.5]** Mrs Green had relocated her and her children with a view to starting a new life and that she had gone to great lengths to ensure Mr Tan and his family did

not know where she and the children were now living as she was very scared of him.

[13.6] In early 2014 the principal of a school attended by one of the children had received a letter which stated on its face it was from Wendy Tan, the sister of Henry Tan. Enclosed with that letter was a second letter addressed to the child in which Wendy told the child that the horrible things she may have heard about her dad were not true and the child was asked to contact Wendy when she felt ready to do so.

[13.7] Mrs Green did not know for sure how Wendy knew to write to the particular school and why the letters related to one child only.

[13.8] Mrs Green advised that Wendy Tan worked at Wellington Hospital and she (Mrs Green) understood Ms Tan had access to the NHI database by virtue of her employment.

[13.9] Mrs Green had further advised that prior to the letter being received by the school principal the child had been immunised and a record of that immunisation had been made using the child's surname of Tan which Mrs Green believed was then cross-referenced to her NHI number.

[13.10] Mrs Green believed Ms Tan may have unlawfully used her employment to access the NHI database to locate the school attended by the child.

[13.11] If that was the case, Ms Tan's actions would constitute the offence of accessing a computer system for a dishonest purpose, contrary to s 249 of the Crimes Act 1961.

[13.12] The assistance of the CCDHB was requested in determining whether the child's NHI record had been accessed for a dishonest purpose by Wendy Tan and/or by any other person.

The response

[14] On 15 September 2014 Mr Woodley was telephoned by Ms Hickey who reported that two searches had been conducted of the CCDHB and NHI databases. Those searches determined that Ms Tan had not accessed the databases in relation to Mrs Green and the child in question.

[15] There being no evidence of an offence Mr Woodley closed the file in October 2014.

[16] Against this general background it is possible to turn to the conflicting evidence regarding events which unfolded some months later in March 2015.

THE EVIDENCE

[17] It is not intended to recite the evidence at length. The main points only will be noted.

The evidence given by Wendy Tan

[18] Ms Tan said she was employed by the CCDHB from July 2007 until November 2015 in a variety of HR roles, working her way up from HR Services Officer to HR Advisor.

[19] In late February 2015 her brother told her he had, in response to a Privacy Act request made by him to the Police, received a copy of Mr Woodley's email dated 12 September 2014 addressed to Ms Hickey. He provided Ms Tan with a copy of that email.

[20] Ms Tan, who denies being the author of the two letters, said she was distressed and mortified to see the level of detail provided by Mr Woodley to Ms Hickey. That is, detail regarding her brother's offending and convictions. It was not the investigation into the allegations made against her which caused her hurt and humiliation, but the 'unnecessary' disclosure of information about her brother. In her written statement of evidence she said:

> It is my firm belief that if Detective Sergeant Woodley had not mentioned my brother's convictions and had merely made a request to determine whether I had accessed [the child's] information, that the damage would have been limited to slight embarrassment. Although it would have been somewhat embarrassing to have been investigated by the NZ Police I would have considered it fair and reasonable. It was the unnecessary release of my brother's convictions that caused the degree of hurt, humiliation and subsequent stress, anxiety and employment problems that occurred.

[21] Ms Tan said her work gave her no access to clinical information and it would have been impossible for her to have conducted any search regarding any patients.

[22] Believing it to be a matter important enough to raise with her then manager (Ms Lisa Ternent) she gave to Ms Ternent a copy of the 12 September 2014 email. Ms Ternent then asked if she had Ms Tan's permission to telephone Mr Woodley to check if a search warrant or other order had been provided. Ms Tan agreed to that request and Ms Ternent telephoned Mr Woodley on his landline. Ms Ternent put her phone on speaker so that Ms Tan could hear both sides of the conversation.

[23] Ms Ternent identified herself to Mr Woodley and asked if he had a copy of the search warrant or "examination order". Mr Woodley allegedly replied "Oh yeah, that would be the Tan matter" and told Ms Ternent there was insufficient information to get either a search warrant or other order and that he had been relying on the Privacy Act and on the Official Information Act. Ms Ternent told Mr Woodley the request could not have been covered under the Official Information Act as it was not official information. Ms Ternent asked Mr Woodley to confirm there was no search warrant or "examination order". Mr Woodley gave such confirmation. Ms Ternent then ended the call.

[24] Later that morning Ms Ternent reported to Ms Tan that Mr Woodley had telephoned back. She said he had been derogatory regarding her brother and that when asked why he had felt the need to include in the email the information regarding Mr Tan, Mr Woodley had responded that "he felt it was important that the organisation made up their own mind about this Tan woman".

[25] Ms Tan claims that following Mr Woodley's communications with Ms Hickey she (Ms Tan) was subjected by Ms Hickey to further audits and was continually harassed by her, implying Ms Hickey had concerns about her trustworthiness. She believes that after she (Ms Tan) resigned from the CCDHB Ms Hickey questioned Ms Ternent on more than one occasion to ascertain where Ms Tan was now employed. The manner in which those requests were made implied Ms Hickey was prepared to telephone the new employer to discuss Ms Hickey's concerns regarding Ms Tan's suitability. Ms Tan went from being very social to withdrawing from her social networks, her drinking of alcohol increased, she gained weight, was unable to sleep well and suffered anxiety attacks at work.

The evidence of Lisa Ternent

[26] At the time of the events in question Ms Ternent was the HR Manager for the Medicine, Cancer and Community Directorate at CCDHB. She reported directly to Ms Hickey.

[27] Ms Ternent confirmed that on 2 March 2015 Ms Tan came into her office distressed and upset and gave her a copy of the 12 September 2014 email which Ms Tan reported had been received from her brother.

[28] After obtaining Ms Tan's consent Ms Ternent telephoned Mr Woodley. The phone was on speaker so Ms Tan could hear the full conversation. Ms Ternent explained who she was and said that she was calling in relation to a request Mr Woodley had made to the CCDHB under the Privacy Act and under the Official Information Act. He said "Oh yeah, that would be the Tan matter". Ms Ternent said she was requesting a copy of either the search warrant or the "examination order" as it appeared to be missing from the documentation provided to the CCDHB. Mr Woodley replied there was insufficient information for him to get a search warrant or other order and relied on the Privacy Act and the Official Information Act. Ms Ternent told the officer the request could not have been covered under the Official Information Act as it was official information.

[29] A short time later Mr Woodley telephoned Ms Ternent to continue the conversation which Ms Ternent felt had already been completed. She asked the officer why he felt the need to include in his request the information regarding Mr Tan. Mr Woodley replied that "he felt it was important that the organisation (CCDHB) made up their own mind about this Tan woman". He then went on to discuss Mr Tan's offending, including making comments such as "this is one of the worst paedophiles". Ms Ternent felt he was "very derogatory in his comments".

[30] Ms Ternent noted Ms Tan became very withdrawn after Ms Hickey had been made aware of her brother's convictions, observing Ms Tan to become anxious and agitated when she had to interact with Ms Hickey. She also believed Ms Hickey's attitude towards Ms Tan changed from September 2014 when Ms Hickey "seemed to focus on Wendy and her tone and attitude towards her changed". Ms Ternent believed Ms Tan had been an exemplary employee.

Detective Sergeant Woodley

[31] After setting out the background to the case as summarised earlier, Mr Woodley agreed that on 2 March 2015 he received a call from Ms Ternent in which she expressed concern that Mr Woodley did not have a search warrant or production order at the time of making his request to the CCDHB through Ms Hickey. He explained to Ms Ternent he did not have sufficient grounds to obtain such order as his request to the CCDHB was based on Mrs Green's suspicion. That was not sufficient to make an application for a search warrant or production order. Ms Ternent said she would take the matter up with the CCDHB. Mr Woodley asked her to elaborate but she did not. Mr Woodley recalls being surprised by the outraged tone of Ms Ternent's voice, which in his experience was not the norm when dealing with public service managers who routinely deal with requests for information.

[32] As to the content of his email dated 12 September 2014 Mr Woodley said:

> **[32.1]** He included a certain amount of detail so he could be reasonably sure the CCDHB would understand the purpose and importance of the request and would

not decline to provide the information on the basis that the request contained insufficient information.

[32.2] He wanted to ensure the CCDHB was fully informed about the wider context of the case so that it was in a position to justify the decision to make the necessary inquiries and to release the information as to whether their databases had been inappropriately accessed. The allegation that Ms Tan may have accessed the databases was a serious one but in Mr Woodley's view, the safety of the child (or children) was also an issue.

[32.3] He was also mindful that without the information sought the inquiry would be seriously compromised along with his ability to assess and mitigate potential risks to the children involved. If he had provided a reduced amount of information he believed the request would have been declined and he would then have had to go back to Ms Hickey with additional information to satisfy her of the basis of the request. He did not believe "negotiation" of this kind appropriate.

[33] As to Ms Tan's complaint that the Police did not disclose to her the existence of the investigation, Mr Woodley said the Police do not usually put the existence of an investigation of this kind to the person being investigated as there is a risk that person may seek to destroy evidence or to take other steps to frustrate the investigation. Even if the allegation were put to the person under investigation it was likely he or she would deny it, even if it was true, and further investigation would still be necessary.

[34] Ms Tan's cross-examination of Mr Woodley focused on her criticism that he had provided to the CCDHB too much information about her brother, his offending and convictions. Mr Woodley reiterated that the agency to whom the Police direct a request under the Privacy Act must have sufficient information to form a view as to whether the information should be released. It was difficult for the Police to assess whether too much, too little or just enough information had been provided. It was inherently difficult for Mr Woodley to know, at the beginning of the investigation, the point at which the agency concerned would consider it had sufficient to make an informed decision. Mr Woodley did not provide the information gratuitously or as a way of getting at either Ms Tan or her brother. Here there were two letters in the name of Ms Tan, the first explicitly stating she was writing on behalf of her brother. It was necessary to make a connection between Ms Tan, her brother and the reasons for the Police holding concerns for the safety of the children.

[35] In response to questions from the Tribunal Mr Woodley said that when Ms Ternent telephoned she did not identify her role at the CCDHB. It was, however, obvious she was privy to the email. Nevertheless Mr Woodley was surprised by her angry tone and by the fact that she was calling long after the CCDHB had advised the Police there was no evidence of unlawful access to the NHI database. Ms Ternent had not explained that Ms Tan was listening to the conversation by speakerphone.

[36] As to the allegation by Ms Ternent that Mr Woodley had said that "he felt it was important that the organisation (CCDHB) make up their own mind about this Tan woman" the Tribunal notes that in an email sent by Mr Woodley on the same day to Detective Senior Sergeant Sloane, Mr Woodley's account of the discussion with Ms Ternent gives no support to Ms Ternent's version. Given Mr Woodley's report was contemporaneous with the discussion we conclude it is more likely to be accurate than the one advanced by Ms Ternent:

> She also asked why I had provided all the detail [in the email of 12 September 2014]. I explained that I had done this to allow the Hutt Valley DHB to make an informed decision about whether they were comfortable to provide the information sought per the provisions of Section 12 of the Official Information Act 1982 and Principle 11(e)(i) and (ii) of the Privacy Act 1993 which I was relying on.

Ms Donna Hickey

[37] Ms Hickey is the Director of Human Resources for three District Health Boards (the Hutt Valley District Health Board, the CCDHB and the Wairarapa District Health Board), a position she had held for two years and seven months as at the date of the hearing.

[38] In view of the conflict of evidence given by Ms Tan and Ms Ternent on the one hand and Ms Hickey on the other, it is relevant to note Ms Hickey's description of the roles in which she has been employed prior to her current appointment:

> Prior to my current role I was employed by the Hutt Valley DHB to undertake some change management, and prior to that to act as Acting GM HR for Hutt Valley DHB. My career prior to that has included working at MFAT supporting change management on a number of projects and for some of the time managing the HR services team. Prior to that I was the GM HR for the Ministry of Education for approximately six years and prior to that I was the Head of Human Resources for the Reserve Bank of New Zealand for approximately two years. Before that I was the Manager of HR Strategy for the Treasury for approximately two years and before that I was the HR Manager for the Porirua City Council for approximately three years. Prior to that I was an HR Manager at Income Support and before that I was an Industrial Officer for New Zealand School Trustees Association.

[39] While Ms Tan reported directly to Ms Ternent, Ms Ternent reported directly to Ms Hickey.

[40] Ms Hickey advised that when on 12 September 2014 she received the call from Mr Woodley she asked him to set out the request in writing so she could, in turn, provide it to the appropriate people within the CCDHB for a decision to be made. The requested email was received that afternoon.

[41] Ms Hickey said the required practice in the CCDHB is that all information provided to the Police must go through Legal Services to ensure compliance. Reference was made to the CCDHB policy document *Disclosure of Information to Police*. That policy relevantly provides that when information is sought from the CCDHB, the person seeking the information must provide "enough reasons for requesting the information to enable C & CDHB to believe on reasonable grounds that disclosure is allowed" under the relevant Act or under one of the exceptions to Rule 11 of the Health Information Privacy Code 1994.

[42] When Ms Hickey received the email she placed it in a secure folder in her Inbox so only she and her Executive Assistant could access it. She then sent a copy to the Chief Executive of the CCDHB (who is her direct manager) and to the Chief Legal Counsel for the DHB. The Chief Legal Counsel, in turn, forwarded it to the Privacy Officer who has information as to who has access to the different databases.

[43] A few days later the Privacy Officer informed Ms Hickey that a check of the DHB and NHI databases showed Ms Tan had not accessed either in relation to the child in question. On 15 September 2014 Ms Hickey telephoned Mr Woodley and passed on this information.

[44] Ms Hickey disagrees with Ms Tan's allegation that she (Ms Hickey) thereafter treated Ms Tan differently. Ms Hickey did not think that anything Ms Tan's brother may have done reflected badly on Ms Tan. It did not affect her views as to Ms Tan's fitness

to work in HR at the CCDHB or anywhere. Ms Hickey understood the allegations of wrongdoing were all against Ms Tan's brother, not Ms Tan. Ms Hickey offered to meet with Ms Tan to discuss her concerns but Ms Tan did not take up the offer.

[45] As to Ms Tan's claim that she was subjected to further audits by Ms Hickey following receipt of the email, Ms Hickey told the Tribunal that at a much later point in time (September 2015) she wrote separate letters to Ms Tan and to Ms Ternent asking them to explain why sick leave taken had not been recorded in the required manner. While the letters were formal letters, they were not disciplinary letters and were not in any way related to the email received from Mr Woodley. As can be seen from the timeline, the letters were sent almost a year after the email from Mr Woodley.

[46] When Ms Hickey found out Ms Tan was going to leave the CCDHB she asked her to reconsider and offered to meet with her to discuss her resignation but that offer was never taken up. Ms Hickey never intended calling Ms Tan's new employer for any reason, and certainly not to warn that employer about Ms Tan.

Credibility assessment

[47] In one sense credibility should not play a significant role in a case such as this. The findings of fact required by information privacy principles 1 to 4 and 11 are within a narrow compass and the basic facts concerning the receipt of the 12 September 2014 request and the 15 September 2014 reply are not in dispute. However, both Mr Woodley and Ms Hickey were challenged as unreliable witnesses.

[48] The basic criticism made of Mr Woodley is that he included in his email request of 12 September 2014 extraneous information regarding Mr Tan's offending and convictions with a view to prejudicing both Ms Tan and her brother. In addition, Ms Tan and Ms Ternent alleged that when Mr Woodley was telephoned by Ms Ternent on 2 March 2015 he became flustered and artificially played for time by telling a lie, namely "I've got a very bad line, can you phone me on my landline". The lie rested in the fact Mr Woodley was in fact speaking to Ms Ternent on a landline. Further, when he telephoned back he allegedly justified the inclusion of information regarding the brother on the grounds it was important the CCDHB "make up its own mind about this Tan woman". This suggested ill-will or malice in relation to Ms Tan and her brother.

[49] Having seen and heard Mr Woodley give evidence we do not accept these criticisms. His evidence was given in careful, balanced, measured and accurate terms. When asked by Ms Ternent for a copy of the search warrant or production order he responded (without hesitation) there had been insufficient evidence to obtain such orders. He did not equivocate on the essential question posed by Ms Ternent.

[50] Mr Woodley said the reason why he telephoned back to Ms Ternent was because the original call kept cutting out and he thought the conversation had not been completed. As we believe Mr Woodley we do not accept the claim he was flustered, played for time or told a lie.

[51] As to the alleged comment regarding "this Tan woman" attributed to him by Ms Ternent and Ms Tan, the ill-will or hostility suggested by this comment cannot be found in the email request of 12 September 2014 or in Mr Woodley's dealings with Ms Hickey or in his evidence to the Tribunal. In addition his contemporaneous report of 2 March 2015 to Detective Senior Sergeant Sloane is more congruent with the subject of the discussion between Ms Ternent and Mr Woodley, namely the Police justification for obtaining the information. As can be seen from Mr Woodley's report to Mr Sloane he

(Mr Woodley) had explained to Ms Ternent the inclusion of detail about Ms Tan's brother had been necessary to allow the CCDHB to make an informed decision whether the requested information was to be provided under (inter alia) principle 11 of the Privacy Act.

[52] In accepting Mr Woodley as a reliable witness we additionally find that in significant respects both Ms Tan and Ms Ternent lacked objectivity. Their evidence was characterised by an ill-disguised hostility to Mr Woodley and Ms Hickey, to the degree that the narrow lens through which they have viewed events has resulted in the giving of unreliable evidence.

[53] By way of illustration we refer first to the circumstances of the telephone call made by Ms Ternent to Mr Woodley on 2 March 2015:

> **[53.1]** When she made the call Ms Ternent knew her direct manager (Ms Hickey) had six months earlier received and responded to Mr Woodley's email request of 12 September 2014. Ms Ternent had no proper justification for telephoning Mr Woodley out of the blue to demand a copy of a search warrant or production order. As Ms Hickey said in her evidence, if Ms Ternent had any concerns about the information provided to the Police, the correct way to deal with the issue was to have contacted Ms Hickey or the CCDHB Privacy Officer.
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> **[53.2]** While Ms Ternent introduced herself to Mr Woodley as HR Manager at the CCDHB the context shows she was in truth telephoning Mr Woodley as Ms Tan's friend, not as a person with responsibility regarding Privacy Act requests from the Police. Mr Woodley was not made aware of this fact:
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> > **[53.2.1]** Ms Ternent confirmed she called Mr Woodley only after getting Ms Tan's permission to do so.
> >
> > **[53.2.2]** Unbeknown to Mr Woodley, Ms Tan was listening to the conversation by speakerphone.
> >
> > **[53.2.3]** Ms Ternent used her position in the DHB to give weight to the demand that the Police produce to her a search warrant or production order. She did not disclose she was acting outside the scope of her authority.
> >
> > **[53.2.4]** Mr Woodley remarked he was surprised by the outraged tone of Ms Ternent's voice which in his experience is not the norm when dealing with public service managers who routinely deal with requests for information.

[54] Ms Tan's at times unwarranted hostile reaction to people and events is illustrated by her response to Ms Hickey's straightforward September 2015 request that she (Ms Tan) provide information as to the days on which she had taken unrecorded sick leave. In an email of 8 September 2015 to Ms Hickey, Ms Tan replied by stating (inter alia) that until Ms Hickey provided the dates on which Ms Tan had taken sick leave, Ms Tan was unable to advise whether she had taken sick leave on those dates. As Ms Hickey said in her evidence, this was a surprising response as it was Ms Tan who knew whether sick leave had been taken and not recorded. It was not for Ms Hickey to provide the information.

[55] In this same email Ms Tan alleged the person who had raised the sick leave issue had done so to bully her. Ms Hickey was herself accused (without evidence) of auditing

Ms Tan's computer. Ms Tan also attempted to link Ms Hickey's interest in Ms Tan's sick leave to the information disclosed by Mr Woodley in his email of 12 September 2014.

[56] When Ms Hickey by letter dated 21 September 2015 responded that the tone and approach in Ms Tan's email was less than helpful to a speedy resolution of the leave issue, Ms Tan responded by email of 30 September 2015 in terms which can only be described as grossly unprofessional. In fairness, Ms Tan conceded in cross-examination the email had been sent by her in the heat of the moment and had not been professional.

[57] Given Ms Ternent's glowing recommendation of Ms Tan she was asked in cross-examination for her views on the email in question. Her surprising response was she found no reason to be concerned about what Ms Tan had said to Ms Hickey. She added that a "HR person" would not be insulted and would not take personally what had been said. In our view this is indicative of a degree of hostility on Ms Ternent's part to Ms Hickey and of loyal support for Ms Tan. Any reasonable person reading the email would find it insulting. As mentioned, Ms Tan conceded as much in acknowledging her lack of professionalism.

[58] Ms Ternent's impartiality as a witness was further brought into question when after she had given evidence, she was (at Ms Tan's request) permitted to sit beside Ms Tan as a support person. It was evident from their interaction that she and Ms Tan are friends, if not close friends.

[59] The Tribunal is mindful the issue for determination is whether, in requesting and obtaining information from the CCDHB, the Police interfered with Ms Tan's privacy. The appropriateness of Ms Tan's responses to the questions concerning her sick leave is relevant only to the extent it sheds light on the credibility issues. It is also of potential relevance to the claim for damages.

[60] It will be apparent from what we have said that Ms Tan did not impress as a witness. Unfortunately she has become largely blind to any point of view other than her own. She hears only what she wants to hear and sees only that which she wants to see.

[61] By contrast we found Ms Hickey to be highly professional in her dealings with Mr Woodley, with Ms Tan and with Ms Ternent. She impressed as a careful, conscientious witness fully aware that her senior position carries the responsibility to be at all times professional in her dealings with others. These qualities, combined with her measured, conciliatory responses to the provocations needlessly offered by Ms Tan, lead us to the view her evidence can be relied on and that her evidence is to be preferred to that of Ms Tan and of Ms Ternent.

[62] In the result, having preferred the evidence given by Mr Woodley and Ms Hickey we will determine the case on the basis of their accounts.

[63] Reference is now made to the relevant law to be applied to the facts as found.

THE RELEVANT LAW AND FINDINGS OF FACT

[64] It is necessary to first deal with two contentions advanced by Ms Tan. First, that the Police ought to have obtained the information by way of a search warrant or a production order. Second, that the Police ought to have asked Ms Tan for the information or at least given notice to her the information was being requested from her employer.

Whether application should have been made for a search warrant or a production order

[65] The effect of ss 6 and 72 of the Search and Surveillance Act 2012 is that a search warrant can only be issued or a production order made if there are (inter alia) reasonable grounds to suspect that an offence has been committed:

> **6 Issuing officer may issue search warrant**
>
> An issuing officer may issue a search warrant, in relation to a place, vehicle, or other thing, on application by a constable if the issuing officer is satisfied that there are reasonable grounds—
> (a) to suspect that an offence specified in the application and punishable by imprisonment has been committed, or is being committed, or will be committed; and
> (b) to believe that the search will find evidential material in respect of the offence in or on the place, vehicle, or other thing specified in the application.
>
> **72 Conditions for making production order**
>
> The conditions for making a production order are that there are reasonable grounds—
> (a) to suspect that an offence has been committed, or is being committed, or will be committed (being an offence in respect of which this Act or any enactment specified in column 2 of the Schedule authorises an enforcement officer to apply for a search warrant); and
> (b) to believe that the documents sought by the proposed order—
> (i) constitute evidential material in respect of the offence; and
> (ii) are in the possession or under the control of the person against whom the order is sought, or will come into his or her possession or under his or her control while the order is in force.

[66] In the present case Mr Woodley properly acknowledged that at the time the information was requested from the CCDHB the Police could not establish reasonable grounds to suspect Ms Tan had committed any offence. All they had was a statement by Mrs Green that it was her belief Ms Tan may have used her position at the CCDHB to access the NHI database. Such belief fell well short of providing the requisite reasonable grounds to suspect.

[67] While the prerequisites of the Search and Surveillance Act precluded the Police from obtaining an order compelling the disclosure of the requested information, they were lawfully entitled to request the information under the Privacy Act. We accept as correct the following submissions made by the Police:

> **[67.1]** Voluntary requests for information are a routine feature of criminal investigations. Such requests form an important preliminary step in most investigations and are voluntary in the sense they require the cooperation of the disclosing agency. By contrast, where the Police obtain a search warrant or production order, the party against whom the order is made must comply with it. The disclosure of information is no longer voluntary in this sense.
>
> **[67.2]** Voluntary requests are often necessary prerequisites to obtaining compulsory orders. In a case like the present, for example, at an early stage of the investigation the Police will often have insufficient information or grounds to apply for a compulsory order to compel the release of the relevant information, making it difficult (if not impossible) to progress any criminal investigation.
>
> **[67.3]** The inclusion of the maintenance of law exceptions in several information privacy principles indicates Parliament contemplated that such requests would be made by law enforcement agencies. Relevantly, Principles 2, 3 and 11 expressly permit non-compliance if the agency believes, on reasonable grounds, that non-compliance is "necessary ... to avoid prejudice to the maintenance of the law by

any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences".

[67.4] To the extent the disclosing agency decides to act as a "good corporate citizen" it may, subject to the requirements set out in those exceptions, disclose personal information for the purposes of assisting the Police with their investigations. See *R v Harris* CA16/00, 1 August 2000 at [15] and [16].

[67.5] As this is a case where, on the facts, a compulsory order was not and could not be obtained the correctness of the majority decision in *R v A* [2015] NZCA 628 does not have to be addressed and it is not necessary for our decision to be delayed pending delivery by the Supreme Court of its reserved decision in that case.

[68] The submission that the Police should have obtained the information by way of a search warrant or production order must accordingly fail. There was insufficient evidence to obtain a compulsory order and it would be absurd were the Police to be also precluded from using the Privacy Act in such circumstances given information privacy principles 2, 3 and 11 specifically contemplate that a request of the kind seen in the present case will be made by law enforcement agencies.

The request should have been addressed to Ms Tan

[69] Ms Tan submits the information request should have been directed to her. No authority for this proposition has been cited and the Tribunal is not aware of any such authority. Provided the Police act within the law, it is for the Police, not the Tribunal, to decide what investigations are to be made, how those investigations are to be conducted and which evidence-gathering tools are to be used. As Mr Woodley explained in his evidence, the Police do not usually put the existence of an investigation of this kind to the person being investigated. He or she could seek to destroy evidence or to take other steps that might frustrate the investigation. Even if the allegation was put it was likely he or she would deny it, even if it was true, and further investigation would still be necessary.

[70] In any event, given Ms Tan's uncooperative, unprofessional and angry response to Ms Hickey's straightforward request for information about Ms Tan's sick leave, it was probably just as well Mr Woodley approached the CCDHB for the information, not Ms Tan.

[71] Information privacy principles 1 to 4 and 11 are now separately addressed.

[72] As Principles 1, 2, 3, 5, 10, 11 and 12 all employ the term "necessary" the meaning of that term in the context of the information privacy principles is addressed first.

Meaning of the term "necessary" in the information privacy principles

[73] Although the word "necessary" is used in seven of the twelve information privacy principles, the Act contains no definition of the term. Applying the Interpretation Act 1999, s 5, the main guiding factors when interpreting the word must accordingly be text, purpose and context.

[74] The following are relevant factors in the interpretation exercise:

[74.1] The Long Title to the Privacy Act declares that it is an Act to promote and protect individual privacy in general accordance with the Recommendation of the

Council of the Organisation for Economic Co-operation and Development Concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.

[74.2] The information privacy principles make a distinction between an agency's belief "on reasonable grounds" and "necessity". For example Principle 2 permits the collection of information otherwise than directly from the individual concerned if the agency believes, "on reasonable grounds" (inter alia) that non-compliance is "necessary" to avoid prejudice to the maintenance of the law. Principle 3 stipulates that when an agency collects personal information directly from the individual the agency shall take such steps as are, in the circumstances, "reasonable" to ensure the individual concerned is aware of (inter alia) the fact the information is being collected. But clause (4) provides it is not necessary for an agency to comply with this requirement if the agency believes "on reasonable grounds" that non-compliance is "necessary" to avoid prejudice to the maintenance of the law. Principle 4 prohibits collection of personal information in circumstances which are unfair or which intrude to an unreasonable extent upon the personal affairs of the individual concerned. Principle 5 employs an obligation to protect personal information by such security safeguards "as it is reasonable" in the circumstances to take but if it is "necessary" for the information to be given to anyone the agency must do "everything reasonably within the power of the agency" to prevent unauthorised use or disclosure of the information. Principle 8 employs a reasonableness test to ensure that personal information is not used unless a check is made to ensure the information is accurate, up to date, complete, relevant and not misleading. Principles 10 and 11 employ the standard formulation of a belief on reasonable grounds that non-compliance is "necessary" to avoid prejudice to the maintenance of the law. Finally, Principle 12 prohibits the assignment of a unique identifier to an individual unless the assignment of that identifier is "necessary" to enable the agency to carry out any one or more of its functions efficiently.

[74.3] Because "reasonableness" and "necessity" are uniformly contrasted throughout the information privacy principles the terms cannot be conflated. This points to a conclusion that "necessity" has a higher threshold than "reasonableness".

[74.4] Proper weight must be given to the fact that "necessity" has been a uniformly employed test for conduct which derogates from principles designed to ensure personal information is collected, stored and used according to safeguards designed to promote and protect individual privacy.

[75] The principles could conceivably have employed the term "expedient" in preference to "necessary" but did not. "Expedient" would have set a lower threshold. See *R v Leitch* [1998] 1 NZLR 420 (CA) at 428-429. While that decision was given in the context of the provisions of the then Criminal Justice Act 1985 relating to the imposition of a sentence of preventative detention, it nevertheless illustrates the point that "expedient" is not necessarily a synonym of "necessary".

[76] In the more recent *Canterbury Regional Council v Independent Fisheries Ltd* [2012] NZCA 601, [2013] 2 NZLR 57 the context was s 10 of the Canterbury Earthquake Recovery Act 2011 which permitted the Minister for Canterbury Earthquake Recovery to "exercise or claim a power, right, or privilege under this Act where he or she reasonably considers it necessary". The Minister argued the word "necessary" should in that

context be interpreted to mean "expedient or desirable" while the respondents supported "indispensable, vital, essential". The Court of Appeal took into account that the purpose of s 10 was to provide a safeguard against the exercise by the Minister of powers which carried significant consequences, including the overriding of normal processes, procedures and appeals under the Resource Management Act 1991. In its opinion the context required that "necessary" was to be understood as "needed" or "requisite" or "required by circumstances":

> We prefer the primary, ordinary meaning of "needed" or "requisite", which in turn is defined as "required by circumstances". It seems to us unlikely that Parliament would have intended either of the more extreme definitions here. If Parliament had intended a different standard, it would have said so expressly. [Footnote citations omitted]

[77] In the present context the information privacy principles have as their purpose the promotion and protection of individual privacy. Those principles are not absolute and are subject to limits sometimes framed in terms of the agency holding a belief on reasonable grounds and sometimes in terms of the agency concluding non-compliance is "necessary". From this we conclude the term "necessary" as used in the information privacy principles indicates a higher threshold than "reasonableness" and "expedient". We therefore intend employing the *Canterbury Regional Council v Independent Fisheries Ltd* meaning of "needed or required in the circumstances, rather than merely desirable or expedient".

[78] We believe this approach to be consistent with *Commissioner of Police v Director of Human Rights Proceedings* (2007) 8 HRNZ 364 (Clifford J, S Ineson and J Grant), a decision on Principle 11. We understand this decision to mean that while the term "necessary" sets a higher threshold than "expedient", it does not set the highest of thresholds. The Court at [53] to [54] agreed with a submission that something would be necessary when it was "required for a given situation, rather than that it was indispensible or essential":

> [53] As regards the use of the word "necessary" Mr Martin submitted that what Parliament was to be taken to have intended was that something would be necessary when it was "required for a given situation, rather than that it was indispensable or essential".
>
> [54] If what Mr Martin meant by that submission was that it should not be necessary, in order for an agency to bring itself within exception 11(e)(i), to show that without the disclosure some event would occur which would constitute a breach of law, then we agree with him. In our view, that balancing is achieved by the agency's belief being subject to the objective criteria that it has to have been formed on reasonable grounds. In other words, the exception will be available where there are reasonable grounds for the agency to form the view that non-compliance or disclosure is necessary to avoid prejudice to the maintenance of the law. The necessity might arise in many different ways, including both:
>
> a) By reference to the likely occurrence of events which of themselves involve or threaten the maintenance of law; and
> b) By reference to the reasonableness of the conclusion that disclosure by the agency, in the circumstances, is necessary to draw attention to the matter being disclosed, rather than that matter coming to the attention of the intended recipient in some other way.

Burden of proof

[79] Brief reference to the burden of proof must be made before the terms of Privacy Principles 1 to 4 and 11 are examined.

[80] As will be seen, Principles 2, 3 and 11 provide for exceptions to the circumstances in which each of these principles apply. In such cases the burden of proof rests on the agency. Section 87 of the Act provides:

87 Proof of exceptions

Where, by any provision of the information privacy principles or of this Act or of a code of practice issued under section 46 or section 63, conduct is excepted from conduct that is an interference with the privacy of an individual, the onus of proving the exception in any proceedings under this Part lies upon the defendant.

Principle 1

[81] Principle 1 provides:

Principle 1
Purpose of collection of personal information

Personal information shall not be collected by any agency unless—

(a) the information is collected for a lawful purpose connected with a function or activity of the agency; and

(b) the collection of the information is necessary for that purpose.

[82] It is beyond dispute the functions of the Police include law enforcement. See *MA v Attorney-General* [2009] NZCA 490 at [37] to [42] and ss 9 and 22 of the Policing Act 2008. Section 9 states:

9 Functions of Police

The functions of the Police include—

(a) keeping the peace:

(b) maintaining public safety:

(c) law enforcement:

(d) crime prevention:

(e) community support and reassurance:

(f) national security:

(g) participation in policing activities outside New Zealand:

(h) emergency management.

[83] In the circumstances which have been earlier described the Police were understandably concerned for the safety of Mrs Green and her children and had good reason to investigate the allegation that Ms Tan, as the apparent author of the two unsolicited letters sent to the school, had used her position at the CCDHB to locate the whereabouts of Mrs Green and her children. It is unrealistic to suggest the Police did not have a lawful purpose in collecting the information from the CCDHB or that that purpose was not connected with a function of the Police, namely the investigation of possible criminal offending. The narrative of events given by Mr Woodley establishes the collection of the information was necessary for that purpose in the circumstances

Principle 2

[84] Principle 2 relevantly provides:

Principle 2
Source of personal information

(1) Where an agency collects personal information, the agency shall collect the information directly from the individual concerned.

(2) It is not necessary for an agency to comply with subclause (1) if the agency believes, on reasonable grounds,—

...

(d) that non-compliance is necessary—

(i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or

...

(e) that compliance would prejudice the purposes of the collection; or

...

[85] While Principle 2 opens with a statement that information should be collected directly from the individual concerned (in the present case, from Ms Tan), the Privacy Principles are, as mentioned, not absolute and are subject to limits. Clause (2) makes this point abundantly clear.

[86] In the present case Mr Woodley gave good reason for not approaching Ms Tan directly for the information. See the section of this decision under the heading "Whether the request should have been addressed to Ms Tan". We are satisfied non-compliance with Principle 2, clause (2)(d)(i) and (e) was necessary to avoid prejudice to the maintenance of the law and that compliance would prejudice the purposes of the collection. We find the Police have discharged their s 87 onus and demonstrated that the exceptions in Principle 2, clause (2) applied, particularly (2)(d)(i) and (e).

Principle 3

[87] Principle 3 relevantly provides:

> Principle 3
> *Collection of information from subject*
>
> (1) Where an agency collects personal information directly from the individual concerned, the agency shall take such steps (if any) as are, in the circumstances, reasonable to ensure that the individual concerned is aware of—
>
> (a) the fact that the information is being collected; and
>
> (b) the purpose for which the information is being collected; and
>
> (c) the intended recipients of the information; and
>
> (d) the name and address of—
>
> (i) the agency that is collecting the information; and
>
> (ii) the agency that will hold the information; and
>
> (e) if the collection of the information is authorised or required by or under law,—
>
> (i) the particular law by or under which the collection of the information is so authorised or required; and
>
> (ii) whether or not the supply of the information by that individual is voluntary or mandatory; and
>
> (f) the consequences (if any) for that individual if all or any part of the requested information is not provided; and
>
> (g) the rights of access to, and correction of, personal information provided by these principles.
>
> (2) The steps referred to in subclause (1) shall be taken before the information is collected or, if that is not practicable, as soon as practicable after the information is collected.
>
> ...
>
> (4) It is not necessary for an agency to comply with subclause (1) if the agency believes, on reasonable grounds,—.
>
> ...
>
> (c) that non-compliance is necessary—
>
> (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
>
> ...
>
> (d) that compliance would prejudice the purposes of the collection; or
>
> ...

[88] The principle is that the individual (whose personal information is collected) is to be made aware of the collection of the information. However, that principle is subject to specific exceptions. As submitted by the Police:

> **[88.1]** For good reason there is no requirement in law for the Police to advise a person that they are the subject of an investigation and it is generally not good practice to warn a suspect (particularly where an investigation is in its infancy) as the suspect might have access to witnesses, victims and other evidence. It is therefore routine for the Police not to advise a person that they are the subject of

an investigation until enquiries have been completed in order to avoid them attempting to hide, destroy or tamper with relevant evidence before it is secured.

[88.2] In the present case the Police considered that contacting Ms Tan would also have had the effect of confirming for her (and her brother) that one of the children did in fact attend the school in question. Further, as Mr Woodley stated in evidence, it was likely a suspect who is approached would deny his or her offending and a further investigation would still be necessary.

[89] The collection of information in this case fell within the identified exceptions to Principle 3. We find the Police have discharged their s 87 onus and demonstrated that non-compliance with Principle 3 was necessary and that Principle 3, clause (4)(c)(i) and (d) applied.

Principle 4

[90] Principle 4 provides:

> Principle 4
> *Manner of collection of personal information*
> Personal information shall not be collected by an agency—
> (a) by unlawful means; or
> (b) by means that, in the circumstances of the case,—
> (i) are unfair; or
> (ii) intrude to an unreasonable extent upon the personal affairs of the individual concerned.

[91] We see nothing in the evidence accepted by us to suggest any aspect of this principle has been breached. At all times Mr Woodley acted entirely reasonably, responsibly and within the law. Neither he nor the CCDHB acted unfairly towards Ms Tan. As will be seen in the context of our examination of Principle 11, the information provided by Mr Woodley to the CCDHB fell squarely within the relevant exception to Principle 11. There was no intrusion (to an unreasonable extent) upon the personal affairs of Ms Tan.

Principle 11

[92] Principle 11 relevantly provides:

> Principle 11
> *Limits on disclosure of personal information*
> An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds,—
> ...
> (e) that non-compliance is necessary—
> (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
> ...

[93] The allegation here is that the Police disclosed to the CCDHB information about Ms Tan's brother which went beyond what was "necessary". As expressed in Ms Tan's evidence in the passage cited earlier in this decision, it is her belief that if Mr Woodley had not mentioned her brother's convictions and had merely made a request to determine whether Ms Tan had accessed information about any of the children, the damage would have been limited to "slight embarrassment" at being investigated by the Police. Ms Tan would have considered the Police action fair and reasonable. Her complaint is that it was the unnecessary release of her brother's convictions that caused

the degree of hurt, humiliation and subsequent stress, anxiety and problems with her employer.

[94] Allied to this submission is the claim that disclosure of Mr Tan's name was a breach of the suppression order made by the District Court on 1 November 2013 at the conclusion of Mr Tan's sentencing.

[95] The Tribunal accepts that the information in Mr Woodley's email of 12 September 2014 relating to Mr Tan was, in terms of the s 2 definition of "personal information" not only "about" Mr Tan but also "about" his sister, Ms Tan. The information about her family members revealed details about her family circumstances, which is information about her. Such was not disputed by the Police. The issue is whether at the time the disclosure was made by way of the 12 September 2014 email the holder of the information (the Police) believed on reasonable grounds that non-compliance with Principle 11 was "necessary" to avoid prejudice to the maintenance of the law, including the prevention, detection, investigation, prosecution, and punishment of offences.

[96] The application of Principle 11 was summarised in *Geary v Accident Compensation Corporation* [2013] NZHRRT 34 at [190] as follows:

> **[190]** Applying this provision to Principle 11, it was established in *L v L* HC Auckland AP95-SW01, 31 May 2002, Harrison J at [20] (and see the Tribunal decisions collected in *Harris v Department of Corrections* [2013] NZHRRT 15 (24 April 2013) at [43]) that the sequential steps to be followed are:
>
> > **[190.1]** Has there been a disclosure of personal information. The plaintiff carries the burden of proving this threshold element on the balance of probabilities.
> >
> > **[190.2]** If the Tribunal is satisfied that personal information has been disclosed, the burden shifts to the defendant to establish to the same standard that that disclosure fell within one of the exceptions provided by Principle 11.
> >
> > **[190.3]** Third, if the Tribunal is satisfied that the personal information was disclosed and that the defendant has not discharged his or her burden of proving one of the exceptions in Principle 11, the Tribunal must then determine whether the disclosure constituted an interference with the individual's privacy as defined in s 66 of the Privacy Act. That is, has the plaintiff established one of the forms of actual or potential harm contemplated by [s 66(1)]. The burden of proof reverts to the plaintiff at this stage.
> >
> > **[190.4]** Fourth, if the Tribunal is satisfied to this stage, then its final task is to determine whether, in its discretion, it should grant any of the statutory remedies identified in s 85 of the Act.
>
> [191] It is not a defence that the interference was unintentional or without negligence on the part of the defendant. See s 85(4) and *L v L* at [13] and [99].

[97] Given our findings of fact the first of the sequential steps mandated in *L v L* has been established to the probability standard. There was a disclosure by the Police to the CCDHB of Ms Tan's personal information.

[98] The essential question is whether the Police have established to the same standard the disclosure fell within the exception provided by Principle 11(e)(i). That is, that Mr Woodley held a belief on reasonable grounds non-compliance was necessary to avoid prejudice to the maintenance of the law.

[99] For the reasons explained in *Geary v Accident Compensation Corporation* at [201] to [203], the subjective component (the belief) as well as the objective component (the reasonable grounds) in Principle 11 must exist at the date of disclosure. There must be

an actual belief based on a proper consideration of the relevant circumstances. An explanation devised in hindsight will not suffice:

> **[201]** Returning to Principle 11, it is to be noted that to escape the statutory prohibition on disclosure of personal information, an agency must establish that at the time of disclosure, it possessed the requisite belief on reasonable grounds:
>
> > An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds,....
>
> **[202]** There is a subjective component (the belief) and an objective component (the reasonable grounds). It must be established that both elements existed as at the date of disclosure.
>
> **[203]** The need for reasonable grounds for belief requires the agency to address its mind to the relevant paragraph of Principle 11 on which it intends to rely. See by analogy *Geary v New Zealand Psychologists Board* [2012] NZHC 384, [2012] 2 NZLR 414 at [63]:
>
> > We consider that the need for reasonable grounds for belief in the necessity of disclosure requires the agency concerned to first inspect and assess the material being disclosed. The exception is not engaged where there is a failure to check the contents of the disclosure material before transmission.
>
> There must be an **actual** belief based on a proper consideration of the relevant circumstances. An explanation devised in hindsight will not suffice.

[100] Our finding of fact (based on acceptance of the evidence given by Mr Woodley) is that when on 12 September 2014 he spoke to Ms Hickey and subsequently sent to her the email in question he honestly and sincerely believed, on reasonable grounds, that disclosure of Mr Tan's offending, conviction and sentence was necessary in order to provide the CCDHB with proper grounds to provide the requested information about Ms Tan. Unless such grounds were provided the request under the Privacy Act would inevitably be declined. Disclosure of Ms Tan's connection to her brother along with the brother's offending and convictions was needed or required in the circumstances and was not merely desirable or expedient.

[101] The Police have therefore established that at the time of disclosure Mr Woodley genuinely held the requisite belief on reasonable grounds non-compliance with Principle 11 was necessary in terms of Principle 11(e)(i).

[102] Ms Tan submitted too much information was provided about her brother. In cross-examination she suggested Mr Woodley could have referred to the 15 year sentence but to no other details.

[103] As to this, the complaint to the Police by Mrs Green was that being in fear of Mr Tan, she and her children had relocated to a secret address and that Mr Tan, aided by his sister, was endeavouring to find the family. Bearing in mind Mr Tan's offending was against his two step-children and that it was offending at the serious end of the scale, the concern of the Police was understandable. Given Ms Tan is the sister of Mr Tan, is the apparent author of the two letters to the school and that she then worked in a hospital environment, it was entirely logical the Police would endeavour to ascertain whether Ms Tan had accessed the NHI database.

[104] In these particular circumstances it was inevitable the Police request to the CCDHB would necessarily have to include (inter alia) a summary of Mr Tan's offending, his conviction and sentence, the arrival of the two letters at the school in question, Ms Tan's connection to her brother and the belief by the complainant that Ms Tan might have had access to the NHI database in the course of her employment.

[105] In conveying this information the email sent by Mr Woodley to Ms Hickey at the CCDHB struck an appropriate balance between under-disclosure and over-disclosure of Ms Tan's personal information. In our view the document cannot on any objective view be criticised as to its content.

[106] The response by the CCDHB was likewise entirely appropriate. The most minimal information about Ms Tan was disclosed. The Police were told two searches had been conducted of the CCDHB and NHI databases. Those searches had determined Ms Tan had not accessed the databases either in relation to Mrs Green or in relation to the child attending the school in question.

[107] We conclude the Police have established all the criteria which govern application of the exception in Principle 11(e)(i).

[108] We have not overlooked Ms Tan's claim that in requesting information from the CCDHB the Police were in breach of the suppression order attaching to the identity of Mr Tan. If this submission were correct the Police inquiry would have been seriously hampered if not made futile. Fortunately the law does not require such outcome. It was established in *ASG v Hayne* [2016] NZCA 203, [2016] 3 NZLR 289 at [42] to [45] that suppression orders made by a criminal court do not preclude persons with a genuine interest in conveying or receiving the information covered by the suppression order. Information can be passed to persons who either need to know or who have a genuine interest in knowing. In our view it is beyond dispute that the Police had a genuine interest in conveying the information to the CCDHB and the CCDHB, in turn, needed to know that information in order to decide whether the information requested by the Police concerning access to health information databases was to be provided.

OVERALL CONCLUSION

[109] Ms Tan has failed to establish there has been a breach of Principles 1 and 4 while the Police have discharged their burden of proving the relevant exceptions in Principles 2, 3 and 11. As there has been no breach of any information privacy principle there has consequently been no interference with Ms Tan's privacy as that term is defined in s 66 of the Act.

[110] Ms Tan's claim is accordingly dismissed.

NON-PUBLICATION ORDERS

[111] As mentioned earlier in this decision at the time Mr Tan was sentenced the following suppression was made:

> There is a final order for suppression of your name and anything that may lead to your identification. Rest assured, it is not made for your benefit at all. It is made because identification of you could jeopardise the position of your 2 victims through family connections.

[112] It is self-evident that to protect the efficacy of that order the Tribunal, in turn, must order non-publication of the names and identifying particulars of Ms Tan, her brother, Mrs Green and her children as well as any other details which might lead to their identification. Such order will not prevent publication of an anonymised version of this decision.

[113] In the anonymised form of this decision released for publication, the plaintiff is to be referred to as "Wendy Tan". Her brother, is to be referred to as "Henry Tan". Mr Tan's former partner is to be referred to as "Mrs Green" and her children are not to be identified.

The anonymised decision is to be published as *Tan v New Zealand Police* [2016] NZHRRT 32.

FORMAL ORDERS

[114] For the foregoing reasons the decisions of the Tribunal are that:

[114.1] Ms Tan's claim is dismissed.

[114.2] Pursuant to s 107 of the Human Rights Act 1993 a final order is made prohibiting publication of the names, addresses and identifying particulars of Ms Tan, of her brother Henry Tan, of Mrs Green and of her children as well as of any other details which might lead to their identification. In the case of Mrs Green and her children, this includes any information regarding their past, present or future location.

[114.3] There is to be no search of the Tribunal file without leave of the Tribunal or of the Chairperson. Ms Tan and the New Zealand Police are to be notified of any request to search the file and given opportunity to be heard on that application.

.....	.....	.....
Mr RPG Haines QC	**Dr JAG Fountain**	**Hon KL Shirley**
Chairperson	**Member**	**Member**