



**MINISTRY OF SOCIAL
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

15 JUL 2020

Dear

On 17 June 2020, you emailed the Office of Hon Carmel Sepuloni, the Minister for Social Development, requesting, under the Official Information Act 1982, the following information:

- *Copies of any briefings and/or advice of correspondence received from the Privacy Commissioner regarding the Wage Subsidy data.*

On 18 June 2020, your request was transferred to the Ministry of Social Development (the Ministry) under section 14 of the Official Information Act 1982.

In determining the most appropriate way to present COVID-19 Wage Subsidy information to the public whilst ensuring privacy of applicants was appropriately maintained, the Ministry had multiple phone conversations with the Office of the Privacy Commissioner.

In addition to these phone conversations, the Ministry has located the following emails in scope your request:

- Email – *RE: Wage Subsidy Query Tool [updated content – read this one please]*, received 7 April 2020
- Email – *RE: OPC Position on publication of MSD Wage Subsidy information*, received 11 June 2020
- Email attachment – *RE: OPC Position on publication of MSD Wage Subsidy information*, received 11 June 2020

Please find copies of the above emails attached.

You will note the names and email addresses of some individuals are withheld under section 9(2)(a) of the Official Information Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

To expedite a response, information that is not in scope of 'briefings, advice, or correspondence received from the Privacy Commissioner' has not been included.

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The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response regarding correspondence received from the Privacy Commissioner by the Ministry in regard to COVID-19 Wage Subsidy data, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely



Nadine Kilmister
Deputy Chief Executive
Organisational Assurance and Communication

Out of Scope, s 9(2)(a)

From: Liz MacPherson <s 9(2)(a) @privacy.org.nz>

Sent: Tuesday, 7 April 2020 1:33 PM

To: Pennie Pearce <s 9(2)(a) @msd.govt.nz>; Jon Duffy <s 9(2)(a) @privacy.org.nz>

Subject: Re: Wage Subsidy Query Tool [updated content - read this one please :)]

Hi Pennie

Thanks for coming back with a detailed rationale for the application of the register to employers with 2 or more employees, including the use of a personal name where this is the business name registered with IR (no trading name is registered). From your note it appears that the defining characteristic you are using for inclusion in the register is the presence of employees (who are not the sole trader themselves). Given the policy rationale (to provide some assurance that the wage subsidy is being passed on appropriately to employees) and the declaration the employer signed, we are comfortable with this approach from a privacy perspective.

It is good to have it confirmed that you are considering the rationale for employers with one employee separately. As you note this could include employers with one employee and self-employed traders who are "paying themselves a wage or salary". As previously discussed, the rationale for including the "self-employed traders" does not appear to fit with the original policy problem and we will be therefore be particularly interested in your rationale for their inclusion. Happy to continue to our conversations with you in this area as you test your thinking.

Thanks for following up with s 9(2)(a) - it is good to know that she is feeling more reassured.

Take care Pennie - I know MSD is under a huge amount of pressure.

Best regards

Liz

From: Pennie Pearce

Sent: Tuesday, April 7, 2020 11:48 AM

To: Jon Duffy ; Liz MacPherson

Subject: Wage Subsidy Query Tool [updated content - read this one please :)]

Hi Jon / Liz

Furhter to our chat last night Jon I have outlined below what we are doing this week, and our rationale for each tranche. I will come back to you seperately, hopefully tomorrow, on the non-employing sole traders.

- When employers applied for the wage subsidy they agreed to a set of conditions (detailed in a "declaration"). These conditions included the fact that information about their business, including the amount and duration of the subsidy payment, would be published in a register.
- Employers can take many legal forms (eg companies, charities, partnerships, sole traders) and depending on the entity structure their official "business name" with Inland Revenue may be an individual's personal name. We have no way of knowing with certainty the entity structure for employers. Sole traders may be employers and as such the list of employers may include sole trader's names.
- We have now gone live with a searchable query form on our website that allows people to search for their employer.
- The search returns up to 5 similar results and shows the business name, number of employees claimed for and the amount of money paid.
- The query searches on a new table we created for this purpose that only contains the information returned in the search. There is no other informatoin in this table, importantly the table (and the search result) does not include location or contact information and does not link trading names with personal names.
- The table we originally created for the online search form is a modified set of data from the applications - the business name included is the IR business name, which may not be the name the applicant used on their application, and may not be their trading name. We did this because many applicants actually just entered their IR number in the business name field and this won't help people searching for their employer.
- We modified the table last night for the initial tranche for publication so that we included only employers with a trading name recorded with IR and more than 5 employees. (Note only about 40,000 of the 100,000 employers have a trading name recorded iwth IR). There is a risk that the trading name includes an individual's name, but as this is the name they trade with, the risk associated with that was seen as low and therefore accepted.
- Today we intend to add employers with a trading name recorded with IR and 2-4 employees.
- Tomorrow we intend to add employers with no trading name recorded with IR (this is where we expect to see personal names come into it – we will use the business name registered with IR) with 5 or more employees.
- The following day we intend to add employers with no trading name recorded with IR with 2-4 employees.
- We anticipate that updates by approximately 5pm daily will be made to the database which include payments from the day before.
- This means we are left with a group of employers with one employee (we are looking into these ones, they are possibly sole traders who have listed themseves as employees), and sole traders with no employees. We are leaving this group until last, and will come back with separate rationale for making this information available in the search register.
- Our rationale for publishing the names of employers, even if the business name registered with IR is a person's name, is that if they employ people their employees have a right to

know if they have claimed the subsidy but not passed it through to them. While people could ask us for this information directly, that is a far more resource intensive way to respond and would take resources away from frontline services processing applications. We have at the same time implemented a complaints process with MBIE, and a way for people to ask if they are one of the employees their employer has claimed for; we direct people to their employer first, so we are hoping this will be a smaller more manageable group of people.

If you could let me know if you have any concerns with this approach that would be great.

Thanks

Pennie

PS On a related note I spoke with s 9(2)(a) and assured her that the information available will not include location, contact, or occupation information, and we will not publish both the registered IR business name (which for sole traders is their personal name) and the trading name. She seemed relieved to hear this and didn't raise any other concerns with the approach.

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RELEASED UNDER THE OFFICIAL INFORMATION ACT

Out of Scope, s 9(2)(a)

From: Liz MacPherson s 9(2)(a) @privacy.org.nz>
Sent: Thursday, 11 June 2020 1:24 PM
To: Pennie Pearce s 9(2)(a) @msd.govt.nz>
Cc: Charles Mabbett s 9(2)(a) @privacy.org.nz>
Subject: OPC position on publication of MSD Wage Subsidy information

Dear Pennie

Thanks for your call last night regarding OPC's position on the publication of Covid-19 wage subsidy information. There seems to be some confusion about our position so I thought it would be useful to clarify it further in writing. The speed with which the wage subsidy, associated register and publication mechanism were established and the fact that there has been a change of personnel at our end may have meant that we were talking past each other. My apologies if this has been the case.

Happy to discuss this further if need be.

Best regards

Liz

Liz MacPherson
Assistant Commissioner

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s 9(2)(a)

s 9(2)(a) privacy.org.nz

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RELEASED UNDER THE
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Office of the Privacy Commissioner (OPC) position on publication of Covid-19 Wage Subsidy Information

The original Covid-19 Wage Subsidy (available up to 10 June 2020) was designed to support employers and sole traders if they were impacted by COVID-19 and faced potentially laying off staff or reducing hours.

The MSD Wage Subsidy Query Tool is a means through which MSD publishes information regarding payments made under the scheme to improve transparency and accountability to the public. It allows members of the public to search the database of businesses who have received a Covid-19 wage subsidy. Search is undertaken by business name. The details publicly available are business name, number of employees claimed for, total amount received, and the date the information was last updated.

The OPC accepts the policy rationale that, particularly given the speed with which the wage subsidy was put in place and its primary purpose, publishing names of employers with two or more employees was an effective additional means of providing assurance that the wage subsidy was achieving its purpose (that the subsidy was being passed on to employees). The standard methods of providing assurance employed by MSD include information-matching with IRD.

OPC does not accept that the same policy rationale applies to the self-employed/sole traders where the only "employee" for whom the wage subsidy is being claimed is the business owner.

Publishing information where the sole recipient of the wage subsidy is the business owner provides insights into the finances of the individual which is privacy intrusive. New Zealanders do not expect that their ACC entitlements, sickness benefits, accommodation supplements, unemployment benefits and Working for Families tax credits are published to the world.

OPC's primary concern with respect to the publication of the wage subsidy data is that the individual privacy of self-employed/sole traders where the only employee is the business owner is protected. The approach used to ensure the privacy of these individuals is protected is a matter for MSD. We are comfortable with the current approach which limits the information available through the query tool to employers (including sole traders) with three or more employees. We would be equally comfortable with different methods of providing access to this publicly available data as long as the privacy of individuals where the only employee is business owner can be guaranteed. This includes the publication of a single dataset.