

12 December 2019

Commissioner John Edwards
Office of the Privacy Commissioner
Level 8, 109-111 Featherston Street
Wellington,

By email: enquiries@privacy.org.nz

**Re. Privacy concerns from data privacy breach in Police firearms notification register
Implications for proposed Police firearm registry**

Dear Commissioner,

Introduction

1. We represent the Council of Licensed Firearm Owners [COLFO] in relation to matters of gun reform by the current Government. The organisation is the collective representative body for shooting sports organisations of New Zealand. Its membership includes Pistol New Zealand, the International Military Arms Society, New Zealand Deerstalkers Association, the New Zealand Antique and Historical Arms Associations, the National Rifle Association of New Zealand (which is not an offshoot of the US NRA; it is a longstanding association originating with NZ Defence force support for military rifle shooting competitions), Sports Shooters Association of New Zealand, the New Zealand Service Rifle Association, Target Shooting New Zealand, New Zealand Clay Target Association, New Zealand Shooting Federation and the New Zealand Black Powder Shooters Federation. COLFO is internationally accredited and is certified by the United Nations and has represented New Zealand at the UN Arms Trade Treaty and the UN Programme of Action.
2. When Parliament passed the immediate response to the Christchurch mosque terrorist attacks, the speeches and public explanations showed an intention to ban firearms that were particularly suited for mass murder terror attacks. In the shared climate of grief there was a common determination to help prevent further such atrocities in this country. COLFO and its members saw why there were moves to further restrict the availability of some semi-automatic firearms for public safety.
3. But that public consensus has been abused. As our client sees the political steps since, the Police have opportunistically expanded their powers and discretions. The Arms Legislation Bill, under consideration by a Select Committee, abandons one of the world's most successful firearms regimes. The Bill disregards severe practical risks to privacy. The privacy interests are closely tied to real safety concerns.
4. Public appreciation of the privacy risks has been overshadowed by media attention to the resistance of firearms users to the confiscation programme. That resistance has been branded by proponents of the Bill in terms that seem intended to evoke in New Zealand a previously alien partisan division on firearms regulation. COLFO noted with relief and appreciation your correspondence drawing attention to the privacy risks in the law changes. It now asks you to

look again, including at the deeper trade-offs being made between privacy and safety on the one hand, and political grand-standing on the other.

5. Many who support the proposed abandonment of privacy values for firearms owners appear to believe it is to increase public safety from terrorist attacks. COLFO urges that you investigate the information behind the slogans. For example, the so-called “buy-back” programme extends to the mandatory destruction of thousands of heirlooms (some over a century old) and sporting guns and equipment of no likely interest to any terrorist. We are told that for some items the compensation is derisory.
6. In this climate the government is likely to face substantial and prolonged resistance to proposed demands for submission to warrantless search and entry powers, and the recording and updating in real time of personal address and location data. The efforts the Police will be obliged to make to secure compliance are likely to become a permanent precedent for subordinating privacy rights to slogans claiming exigency.

Questions surrounding the proposed register’s adherence to the Privacy Act

7. We have seen no evidence that the proposed register has been analysed against the requirements and principles of the Privacy Act.
8. Principle 1 of the Privacy Act 1993, “Purpose for collection of personal information” - the provision lays out questions associated with the practical and lawful use of the information being collected including:
 - a) Is the lawful purpose of collection this information connected to the agency’s functions?
 - b) Is it necessary to collect this information to achieve that purpose?
9. The Government has stated that the purpose of their gun reform programme, including the Arms Legislation Bill is to prevent a March 15 massacre from occurring again.¹ Under Principle 1, the collection of data in the proposed registry is not justified if there is not a reasonable likelihood that the purpose will be achieved, and that the data collection is necessary for that achievement.
10. We have seen no evidence, in Cabinet papers or the Regulatory Impact Assessment that the proposed registry has undergone any testing examination to establish even a causal link to the terrorism protection purpose. COLFO considers that the registry does not serve that purpose. The Cabinet material is all assertion or assumption, to the extent there is any attempt whatsoever to link the registry with the purpose. Without meeting a requirement of necessity the Bill promoters have ignored Principle 1.
11. Principle 4 of the Privacy Act prohibits information from being collected by agencies:

“(b) by means that, in the circumstances of the case –

*...
(ii) intrude to an unreasonable extent upon the personal affairs of the individual concerned.”*

¹ Prime Minister Ardern, “Our gun laws will change.” (<https://www.stuff.co.nz/national/111322923/prime-minister-says-nz-gun-laws-will-change-in-wake-of-christchurch-terror-attack>)

12. The Commission's website, lists criteria for appraising compliance with Principle 4. This includes whether the collection of the information is unreasonably intrusive. The relevant factors call into question the purpose of the collection and the degree of intrusion.
13. The Government has stated that the proposed register will provide essentially a census of the number of firearms in New Zealand. It ignores the unknown number that will not be registered, and the numbers that will be smuggled. Without a starting number in an open-ended system, what useful purposes will the census serve? What is the value of a census anyway, other than to tidy minds? The RIS has not identified the consequences of having a census, and not having one. This collection of information is already satisfied by the licensing process for prohibited and restricted firearms, which are those firearms the Government has deemed as most harmful. There is no connection between the March 15 event and the need to collect data on other firearms.
14. The proposed register goes beyond this purpose of a census by requiring detailed real time updates by LFOs on their parts and magazines, and the exact location of each of these items. There is no attempt to show a functional connection between the March 15 event and preventing repetition, or even other criminal misuse, and this information. Current real time location data is much more than is required for a "census".

Balancing test, the registry is not necessary to serve the purpose of the Act

15. The principles of the Privacy Act elaborate on elements of a balancing test. We suggest that you expressly subject the provisions of the proposed register to an express balancing test. If a register that is so intrusive on personal privacy of innocent people does not demand the most rigorous examination, it will be difficult ever to take seriously claims that our government agencies, or even the Commission really value privacy.
16. The balancing test could indicate whether the assembled personal and sensitive information, compulsorily supplied at the cost of reluctant suppliers, is a disproportionate intrusion when weighed against a realistic assessment of the community enhancements in safety, or reduction of cost, to be secured.
17. Whether the registry is necessary and essential for the purpose of the Bill is a classic circumstance for applying a balancing test. The common law applies balancing tests for numerous instances where there are competing interests, especially of a seriousness as the information being collected under the registry.
18. Your submission to the Select Committee used the balancing test language. You refer to the justification and proportionality of adding or altering the mandatory requirements of the register. We hope that you consider applying this question overall to the register considering the points raised in this letter.
19. Proper factors in a balance include:
 - a) the quality of the information and whether it is of a sensitive nature;
 - b) the harm that may be likely to come to identified persons in a breach;
 - c) the value of the purpose for which the information is collected;
 - d) the likelihood and degree of achievement of that purpose with that information;

- e) the cost and efficacy of alternative means of collection of the information for the purpose; and
- f) whether the overall good practically arising out of the collection of the information is greater than the probability weighted harm potentially cause. In this regard it is proper for the balance to include harm to trust in the promises of the state, and harm to mutual respect and voluntary cooperation with the state.

Privacy issues now at the core of gun law reform success or failure

- 20. The privacy risks regained public attention last week. It has been reported that you are “working with Police” on the improper access to data in the Police prohibited firearm notification system. The breach was reported by the Police on Monday, 2 December 2019.
- 21. Our client asks you to consider this incident in its highly charged context. The most important issue may not be any consequence for people affected directly. It appears to COLFO that the incident could destroy the remaining prospects of achieving the claimed objectives of the current firearms law reform. Without compelling evidence of genuine respect for privacy and safety interests, our government could be heading for a massive collapse in trust of the kind that resulted in the failure and abandonment of the Canadian gun registry scheme early this century. That failure cost over \$1bn. But the more long term effect is said to be a corrosion of the mutual trust between police and citizens that is an essential part of peaceful living without vesting dangerous powers in the Police.
- 22. Before the incident it was becoming likely that the surrender scheme would fall well short of its objectives. If the Police and public are to place any material reliance on a lack of terrorist and criminal access to prohibited firearms, any significant shortfall is disqualifying. All concerned will have to continue to assume ready access.
- 23. If the scheme cannot secure its primary objective, it has much less weight in the balance against any privacy and other human rights interests that it may compromise.
- 24. COLFO can report from member organisation anecdote that reported delays and the possibility of non-compliance were largely attributed to perceptions of unfairness by people including:
 - a) the underlying unfairness of law-abiding users being ‘blamed’ for the actions of a terrorist possibly enabled by Police maladministration, and
 - b) the unfairness of a compensation regime with gaps that means it does not match the Australian model, and leaves some people bearing losses.
- 25. After the data security breach resistance to the programme has a more problematic foundation – fear of personal and family risk, and deep mistrust of official assurances. COLFO asks that you keep this latter problem to the fore in your investigation. COLFO would be happy to try to help you with access to representative firearms users, to help your investigation.

The data privacy breach

- 26. The Police have stated that 35 people had their personal data, including their names, their physical addresses, their firearm license numbers, their bank account details, and the types of firearms they possess, provided to people who were not authorised to see this data. A further 500 people had their names and addresses exposed on a list of licensed firearm owners.

27. We are currently seeking to document claims of access to personal information of third parties that are inconsistent with the Police assurance that it was confined to one dealer. We are not sure whether any will amount to verification though it will record what we assess to be genuine beliefs.
28. The enquiries we are pursuing are unlikely to touch on causation. The Police have stated that the data was exposed by SAP making an unauthorised change to the permissions on the system that took effect 5 days before the platform was closed.

Seriousness of breach

29. COLFO considers the exposed information to be of the highest sensitivity. They compare it with the data exposed by the Ministry of Culture and Heritage earlier this year. That breach included the passports, driver's licenses, birth certificates and residency visas of roughly 300 young people who applied to take part in the Tuia 250 commemorations. The Police breach had the bank accounts, physical addresses, and the types of prohibited firearms they possessed. The information locates each firearm owner and indicates that they possess potentially deadly force.
30. The fact of notification takes the individuals out of the large and innocuous class of firearms owner. The notifying individuals are indicating possession of firearms now deemed so dangerous as to be prohibited. If any firearms are a target to criminally minded individuals they will be those of the people whose data was exposed last week. We ask you to take that into account when you report on this incident. The purpose of the notification system was not just for LFOs to notify of firearms they intended to hand in but also to notify when they intended to hold on to them for exempted purposes or when they were being modified. Additionally, those that have prohibited firearms, that they have notified, are also likely to have non-prohibited firearms. Therefore, it cannot be said that the security risk is minimised as the firearms have been handed in.

The Bill before Parliament

31. The Arms Legislation Bill, currently before Select Committee, proposes a firearms register that would require licensed firearm owners [LFOs] to input similar data to what is required in the notification system. The proposed register will also require the input of much more sensitive data, such as the precise location of firearms.
32. The notification system was only used by those LFOs who had prohibited firearms. The proposed register would require access for all LFOs; reported to be approximately 280,000 people. The external provider permission changes could have significantly more impact if the same happens if the proposed register is implemented.
33. You have previously written to the Prime Minister raising concerns about the proposed register and the potential for privacy breaches. No doubt you will reconsider your advice on this issue, including to the Select Committee in person in light of the notification system breach.
34. To assist you we assess the Bill in two ways. The first is through the principles of the Privacy Act 1993 set out in section 6. The second is through a balancing test where the factors associated with the sensitivity of the information are weighed against the benefits reasonably to be expected from the register. As you will appreciate that is not the same thing as the hoped-for benefits of the register.

Risks of holding the information in the proposed register

35. The proposed register requires details of the Licensed Firearm Owners (LFOs) including their name, date of birth, residential address, every endorsement on their license, location of the firearm, particulars on the types of firearms, parts and magazines they possess, photo identification (under s 93(2)(a)) or other such materials that Commissioner of Police deems necessary.
36. The Bill requires constant updates of the firearm's location, who is using the firearm, who is in "possession" of the firearm. The net effect will be frequent communication with the Police to update the registry. For example when going hunting, the intended moving location of the firearm will have to be logged in the registry to comply with the Bill. A firearm lent to an authorised LFO will require that person's name, their residence and their physical location to be notified. Temporary locations such as vehicles are to be notified. Changes of plan or exigencies forcing changes would result in requirements for updating location and custody data.
37. This requirement of frequent access by LFOs carries inherent risks. Hundreds of thousands of people may have to get access rights. A system of such characteristics presents immense security problems. In addition, access must be readily available to Police personnel, if it is to serve the operational reference purposes described by Police. A system that depends on unrealistic assumptions that no personnel will misuse the access, nor corruptly provide it to third parties, cannot be a secure system.
38. We understand that it is trite in cyber-security circles that multiple access systems are almost impossible to defend completely from hostile penetration. In another context Police acknowledge the risk of corrupt improper access by Police personnel.²
39. We understand that the Select Committee did not get authoritative reassurance on the danger of hacking penetration. We assume that the Police intend to rely on supplier obligations and representations. The events of last week highlight how unreliable that may be.
40. We assume that you will look into the terms of the SAP contract. It would be astonishing if it did not contain fulsome promises of security. But it is irresponsible for review agencies to rely on such formalities. The likelihood of hostile penetration, or accidental exposure should be the subject of specifically commissioned risk assessments and probability calculations from independent reputable experts.
41. Such an appraisal, essentially of the likelihood of privacy breaches, should occur after the experts know how much in capital cost, and annual running cost will be available to maintain adequate data security. New Zealand Police will largely get what they can pay for. Though even the best specified and resourced systems can still be penetrated.
42. The information contained in a register will obviously be valuable to those with criminal intent, if the Police are correct that criminals largely obtain firearms from burglary. That is among their justifications for the register. We pause to record that that claim is not consistent with international data, and nor does it appear to fit NZ data. In addition there has been no persuasive explanation of how the register will reduce the burglary losses to criminals.
43. But if it is assumed for the moment that they claimed purposes are genuine, there are strong incentives to obtain address and type information from the register. Regardless whether a

² <https://www.stuff.co.nz/national/crime/117976366/corrupt-auckland-cop-who-sold-police-database-information-to-gangs-jailed>

breach occurs through hacking or through human error, the information puts New Zealand families at risk.

44. The National Cyber Security Centre's 2018/19 report confirms that there is a growing number of state-sponsored cyber-attacks in New Zealand and the majority of the attacks detected are "post-compromise". It now seems that with the skill of hackers, a sanctioned cyber-attack is eventually likely to succeed. It is therefore vital to avoid collecting prejudicial data without established value to the Police or other voluntary participants. Sensitive data that can be readily collected as and when needed might be best collected in that way, using the register effectively mainly for its contact address efficiency.

Is each required category of data necessary or useful? Does the value outweigh the risk?

45. You will have seen the warnings by cyber-security experts that all data systems can be breached and most large and attractive targets will be penetrated. That makes it imperative to review very carefully the categories of data that are to be compulsorily gathered and kept in an inherently attractive and vulnerable repository. We have not seen any attempt in any regulatory impact statement for the Bill to evaluate the proposed required data for usefulness. We have seen no disciplined value/risk assessment that takes each data category individually, or even overall. We think that is a proper and urgent function for your office to demand such an assessment in this case. It should be obtained from an independent and expert supplier.

Extraterritorial examples and the effectiveness of a registry

46. We applaud other points you raised in your submission to the Select Committee concerning the firearms registry. You mention several extra-territorial examples of firearms registries that had not fulfilled their objectives for a variety of reasons. You brought the Committee's attention to the ineffectiveness of the Canadian and Australian schemes.
47. COLFO shares your concern about the adequacy of a poorly funded registry. You will be aware of how readily organisations sacrifice privacy necessities if they think they can get away with it in times of financial stringency. The proposed real time collection of highly sensitive, private information should not proceed without cast iron budget assurances.
48. A budget shortfall, and failure to reach a minimum level of success, could guarantee that privacy (data security) risks could mature, without any commensurate improvement in public safety. There has been no serious inquiry into the efficiency of the funds allocated to the establishment and maintenance of a registry of this quality. We question whether this is an appropriate use of resources.
49. South Africa saw no material decrease in the number of arms held by non-licensed people after the establishment of a registry. COLFO draws upon this point in its submission to the Select Committee by citing a study undertaken by the Small Arms Survey.³ South Africa has one of the worst crime and murder by use of a firearm in the world. The role of a registry has not mitigated this fact. So highly intrusive information is being collected and held in vain.
50. Similarly, the Canadian Government established a registry in 1995. The particular goals of the Canadian registry, quite similar to the proposed New Zealand Bill, were to allow for the monitoring of safe storage and maintenance of firearms after the École Polytechnique Massacre.⁴ However, in 2012 the Canadian registry was dissolved (Canadian Bill C-19 2012)

³ Small Arms Survey 2018 (<http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>)

⁴ Rathjen, Heidi; Charles Montpetit (1999). *December 6: From the Montreal Massacre to Gun Control*.

because it became clear that it could not achieve its policy objectives.⁵ Using the Canadian example of a highly likely failure in New Zealand, you should ask whether the privacy risk associated with the highly sensitive information collected is worth collection for a potentially redundant scheme.

Our request of your Office

51. COLFO asks the Privacy Commission to inquire into the usefulness of the collection of the private and sensitive data proposed in the Bill. That inquiry should review sceptically the benefits and dangers of this register in light of this recent data-breach.
52. The Commission should re-evaluate the purpose of the proposed registry as against the principles of the Privacy Act. The Commission is asked to balance the marginal benefit, the sensitive nature of the information, and the clear risk of harm of a breach of this information as we have seen already.
53. We also, respectfully, ask that you reconsider your submission the Select Committee on the Arms Legislation Amendment Bill in light of recent events. While raising some concerns, your representations did not call for changes to safeguard the privacy of licensed firearm owners. The Select Committee and Parliament may be conclusive in balancing considerations, the Commission should ask the Committee to accept a late submission of its own carefully balanced conclusions.

Yours faithfully
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⁵ Mauser, Gary A; (2007) *Hubris in the North: The Canadian Firearms Registry*