

19 June 2025

Office of the Privacy Commissioner  
**Wellington**

By email: [IPP3A@privacy.org.nz](mailto:IPP3A@privacy.org.nz)

## Privacy Amendment Bill draft guidance: IPP3A

### 1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to give feedback on draft guidance from the Privacy Commissioner on new Information Privacy Principle 3A (**IPP3A**), to be brought into force in 2026 by the Privacy Amendment Act.<sup>1</sup> This submission has been prepared with the assistance of the Law Society's Human Rights and Privacy Committee.<sup>2</sup>
- 1.2 The Law Society supports the proposal to prepare and publish IPP3A guidance early, and thanks the Office of the Privacy Commissioner (**OPC**) for the work put in to preparing this generally very clear draft. The Society's brief submission notes just several places where clarification of the draft is recommended, or where there are queries about the guidance that it provides.

### 2 Using a third-party provider

- 2.1 The guidance raises the question "What if I'm using a third-party provider?" and says "If you're using a third-party provider, then section 11 of the Privacy Act will apply."<sup>3</sup> In the Law Society's view, more explanation of this point is needed than presently given in the draft — for example, by adding another sentence to say: "Section 11 means that you, as collecting agency, would still need to meet the requirements of IPP3A even though there is a third-party provider collecting the information on your behalf."
- 2.2 The example that then follows describes hypothetical agency "Swiftstart" (a third-party provider, which is not obligated to notify its client's customers).<sup>4</sup> Because the text introducing the example has instead referred to the collecting agency ("you"), the shift in attention to the third party is potentially confusing and the Law Society queries whether this example and its covering text could be more clearly aligned.
- 2.3 Additional complexity is also introduced to the example by referring to another party — the external legal advisor. Introducing this aspect adds confusion and the Law Society

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<sup>1</sup> Privacy Commissioner "Draft guidance on IPP3A" (29 April 2025).

<sup>2</sup> More information about our law reform committees is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

<sup>3</sup> Draft guidance at 4.

<sup>4</sup> At 4–5.

queries its relevance. Consideration could be given to omitting this, to simplify the example.

### 3 The requirements of IPP3A

- 3.1 The guidance states that if an agency “has collected” personal information indirectly, IPP3A requires them to take reasonable steps to make sure that the individual concerned is aware of certain things.<sup>5</sup> The Law Society recommends slight revision of this wording, to use the exact wording of IPP3A: “[i]f an agency *collects*”.<sup>6</sup>
- 3.2 Where the guidance states that “An agency is required to inform an individual as soon as reasonably practical after the information has been collected, unless the notification steps have already been taken”,<sup>7</sup> clarity would be improved by adding: “... by the agency or by another agency (see example under IPP3A(3))”.

### 4 Timing of notification

- 4.1 The statement in this section that “[w]hat is reasonably practical will depend on the circumstances of the indirect collection, taking into consideration the available knowledge, cost, and effort involved”<sup>8</sup> seems more focused on the burden on the agency that is required to notify, than on the reason for notification (that is, making sure individuals are properly informed). To the Law Society, there appears some risk that the guidance and examples as currently written in this timing section will have the effect of telling agencies they only have to notify when it is suitable or achievable for them, instead of emphasising that the purpose is to ensure individuals know what happens with their personal information in a timely manner, even if it is challenging to achieve. The Law Society recommends strengthening the guidance here to communicate clearly to agencies the importance of prompt communication, to achieve the intended purpose of IPP3A.

### 5 Notification steps

- 5.1 In a couple of places,<sup>9</sup> principally at 8–9 regarding the intended recipients of collected information, the guidance describes the need to be specific about identifying recipients, including their name and address. It says, for example: “If you know you will be sharing the information, you need to tell the individual who you’re sending it to. *It’s not enough to only say the type or class of agency, such as ‘we may share your information with a credit reporting agency’*”; and illustrates with the example of a bank providing information to a financial services company: “The bank needs to tell the individual *the name of the company it is sending the information to.*”
- 5.2 The wording of IPP3A repeats existing wording from IPP3 of the Privacy Act, which already says you must say who the intended recipients of information are. However, the guidance on this point, indicating a requirement to say exactly which third party will receive information, seems unexpectedly precise. It is not consistent with common

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<sup>5</sup> At 5.

<sup>6</sup> Privacy Amendment Bill, IPP3A(1); see too Privacy Act 2020, IPP2(1).

<sup>7</sup> At 6.

<sup>8</sup> At 6.

<sup>9</sup> See the bullet points at 5 (“the name and address of ... the agency that holds the information”) and 8–9 (the intended recipients of the information).

practice as it presently applies to IPP3, and there seems to be no reason why the requirements for IPP3A would be stricter, given the language of the provisions is the same. To the Law Society's knowledge, privacy policies in giving effect to IPP3 commonly say (for example): "we will share your information with our third-party services providers" or "we may disclose your information to the providers we engage to provide credit reporting services". Such an approach seems consistent with the fact that both IPP3 and IPP3A require the agency to tell the person the name and address of the person or agency that has collected the information, but not the name and address of intended recipients. This seems to indicate that less precision with respect to intended recipients is (presumably) needed.

- 5.3 The Law Society recommends changing the guidance here, if it is in error; or alternatively, considering whether comparable guidance on IPP3 is needed, given the desirability of promoting consistent practice. We acknowledge that it is possible that the OPC's expectations on this point are in fact stricter than what is occurring in practice.

## 6 Exceptions to notification

- 6.1 Regarding exceptions, the guidance says: "It's important to note that the exceptions apply to the act of notification, not to the act of the indirect collection."<sup>10</sup> The Law Society queries whether this slightly technical point could be confusing for some people and may need either better explanation or (by way of an example) an illustration.
- 6.2 In the subsequent list of dot points, inserting: "... of the notification requirements, either by the agency or by another agency on its behalf" after the words "The individual has already been made aware" would assist in clarifying the first list item.

## 7 Next steps

- 7.1 We hope this feedback is useful. Please feel free to get in touch with me via the Law Society's Senior Law Reform and Advocacy Advisor, Claire Browning ([claire.browning@lawsociety.org.nz](mailto:claire.browning@lawsociety.org.nz)), if you have any questions or wish to discuss this feedback further.

Nāku noa, nā



Jesse Savage  
**Vice-President**

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<sup>10</sup> At 10.