

PRACTICE BRIEFING

Privacy Considerations When Communicating with Third Parties

INTRODUCTION

Lawyers have obligations under both the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and the Privacy Act 1993 to protect clients' personal information. More information about this is available in the Practice Briefing "Protecting Clients' Personal Information".

Lawyers may also have some obligations in relation to a third party's personal information. This Practice Briefing looks at these and offers some practical steps for managing those obligations.

COMMUNICATING WITH THE THIRD PARTIES

A Legal Complaints Review Officer decision (BO v DE LCRO 297/2012 and available on the LCRO website, <https://www.justice.govt.nz/search/SearchForm?Search=297%2F2012+lcro>) reflects the inherent risks lawyers may face when communicating sensitive personal information to third parties, particularly by email.

In the LCRO case a lawyer communicated with a client's ex-partner via a work email address. The communication contained sensitive personal information. The ex-partner was very upset that this communication may have been accessible to her employer. She complained to the Lawyers Complaints Service and the case was reviewed by the LCRO.

The LCRO declined to make any disciplinary findings. However, the decision highlights that lawyers not only owe obligations of privacy and confidentiality to clients but may also owe these duties to third parties.

The decision did not specifically refer to the Privacy Act 1993. However, an individual lawyer or law firm is an "agency" for the purposes of that legislation. As a result, the provisions of the Privacy Act and the Information Privacy Principles apply and outline how a lawyer must treat

personal information, relating not only to clients, but to any other person.

Certain rules of professional conduct may also apply under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC) when communicating with third parties.

For example, communications with a represented person must be through that person's lawyer except in limited circumstances (see r10.2 RCCC). A lawyer has a duty to conduct dealing with others, including self-represented individuals, with integrity, respect and courtesy. Rule 8.8 also provides for a duty of confidentiality which may arise outside of a lawyer-client relationship.

PRACTICAL COMMUNICATION STEPS

Any lawyer who needs to communicate with or about any person must take care to ensure that they are familiar with their obligations under the Privacy Act and the RCCC. This applies equally to clients and third parties alike.

In practical terms this includes:

- » Be aware that “personal information” is defined as any information about an identifiable individual.
- » Train all staff about privacy and confidentiality.
- » Ensure that the lawyer has consent to communicate with the person via a particular medium, especially if the address does not appear individualised to that person (such as a generic email or business address). This may also include checking that there is permission to leave a telephone message for someone.
- » If the only address available for a person is a shared address, consider making a brief contact (without any detail of what the matter is about), asking the recipient to provide a preferred contact address or to make direct contact.
- » Be wary of communicating via social media messaging – consider if it is appropriate in the circumstances and whether the communication channel is private and secure.
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- » Communicate in a professional tone in light of obligations of respect and courtesy - even when communicating by traditionally less formal means such as email.
- » Step back and briefly consider the content of a particular communication. Is it potentially sensitive or embarrassing? How might the intended recipient react if the information was incorrectly accessed by someone else? Consider whether extra care needs to be taken to ensure it safely reaches the intended recipient.
- » Check that all the contact details are correctly recorded when sending out any communication.
- » Consider using abbreviated names or “code names” to save frequently-used email



addresses, or disable the email “auto-fill” function to avoid sending information inadvertently to the wrong recipient.

- » Avoid sending sensitive information by fax and call the recipient before sending to ensure information is not left lying on the fax machine at the other end.
- » Ensure that disclosure of any personal information about a third party to another person or organisation is authorised by that person or is otherwise permitted at law.

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Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

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