

Privacy Amendment Bill
Draft guidance on IPP3A

Submissions on behalf of
The Law Association of New Zealand
by the
Technology and the Law Committee

INTRODUCTION

The Law Association of New Zealand (TLANZ) is an independent membership organisation for the New Zealand legal profession with more than 7,500 members. TLANZ maintains expert law committees that support legal review and policy advocacy on important issues.

The Technology and Law Committee (We/Our) of TLANZ welcomes the opportunity to comment on the draft guidance on IPP3A issued by the Office of the Privacy Commissioner (OPC).

This submission builds on our prior submission dated 14 June 2024 to the Ministry of Justice on the Privacy Amendment Bill. We support the OPC's commitment to providing accessible, plain language guidance ahead of IPP3A's implementation and appreciate the invitation to comment on the consultation draft.

SUBMISSIONS

We commend the OPC for the clarity and structure of the guidance. The incorporation of examples and the decision flowchart is helpful and will likely aid agencies in interpreting and applying the new requirements. We especially appreciate the risk-based tone of the guidance and its practical alignment with international standards such as the GDPR.

That said, we consider that further clarification and expansion in several areas would enhance the guidance's usability, especially for smaller organisations and agencies navigating complex data ecosystems.

1. Clarification of Scope and Application

Indirect Collection Examples

The draft defines indirect collection clearly but could benefit from elaboration on borderline scenarios. For example:

- Where information is scraped or obtained from public online sources by automated tools.
- Where contact information is sourced via data brokers, and where the line between indirect and direct collection is unclear.

Recommendation:

- (i) Include worked examples covering digital marketing, automated services, and bulk third-party data integrations.

2. Reasonableness and Practicality

Reasonable Steps

We note that IPP3A requires agencies to take “reasonable” steps to make sure the individual concerned is aware of the collection of their information. A clear articulation of what is considered “reasonable” together with working examples would assist agencies.

Recommendation:

- (i) Provide clear examples of what is considered reasonable steps and what is not, taking into account a number of factors including costs, practicality, numbers of individuals etc.

3. Reasonably Practical Timing

We welcome the flexible interpretation of “as soon as reasonably practical.” However, a clearer articulation of what OPC would consider a reasonable delay (e.g., two days vs. three months) would assist agencies with compliance planning.

Recommendation:

- (i) Provide a model timeline for common use cases (e.g., insurance claim processing, cross-agency referrals) showing expected notification timeframes.

4. Method of Notification

The guidance suggests email or text may suffice. We agree, but where contact details are unavailable or invalid, there remains ambiguity.

Recommendation:

- (i) Clarify whether indirect notification via a public notification such as a partner website, in-store signage, can satisfy IPP3A in cases lacking contact details.

Exceptions: Scope and Evidentiary Burden

We support the inclusion and explanation of the exceptions, particularly:

- Where individuals have already been notified (IPP3A (3)).
- Where non-compliance won't prejudice the interests of the individual (IPP3A(4)(a))
- Where notification would prejudice the purpose of collection (IPP3A(4)(d)).
- Telling the individual is not reasonably practical in the circumstances (IPP3A(4)(e))

However, several areas require further clarification.

5. Notification Already Provided by Disclosing Agency (IPP3A (3))

The current guidance rightly emphasises that evidence that the specific individual has been made aware of the collection, and not mere assumptions are required. But it remains unclear:

- What sort of evidence would meet the threshold. The example given on page 11 that the disclosing agency could receive and file a copy of a form signed by an individual is not a realistic administrative burden to place on agencies in most instances.
- Whether generalised references to "third parties" in privacy policies meet the threshold.
- Whether agencies are expected to name specific recipients (e.g., "ABC Ltd") or if class-based disclosures (e.g., "IT service providers") suffice.

Recommendations:

- (i) Confirm what sort of evidence is required, noting that the example given (that the disclosing agency could receive and file a copy of a form signed by an individual) is not realistic.
- (ii) Confirm that notification using **categories of recipients** is acceptable, consistent with IPP3(3) and international standards such as GDPR Articles 13–14.
- (iii) For the examples given in relation to this exception, it would be useful to see some examples that relate to technology-based businesses where we are talking about the large scale, indirect collection of personal information.

6. Non-Compliance won't prejudice the interests of the individual (IPP3A(4)(a))

- The "No Surprises Test" detailed here will always be subject to other obligations on agencies under the Privacy Act.

Recommendation:

- (i) Make it clear that the "No Surprises Test" is always subject to other obligations on agencies under the Privacy Act, e.g. the obligation to obtain consent

7. **Prejudice to Interests of the Individual (IPP3A(4)(a))**

This clause is vague and could be misused without guidance. The examples provided are helpful but limited.

Recommendation:

- (i) Expand this section to clarify what constitutes “no prejudice,” and reiterate that it should not be used to circumvent legitimate notification obligations.

8. **Telling the individual is not reasonably practical in the circumstances (IPP3A(4)(e))**

This exception is potentially very widely applicable, in that many instances of large scale data collection is conducted where the agency does not hold contact details for the individuals concerned. For example, targeted advertising is a very large industry, but it would be rare that the collecting agency holds actual contact details for individuals such as a phone number or email address. An unintended consequence of the guidance in this section is that it could apply to many large-scale data sets.

Recommendation:

- (i) Consider providing an example that is directly applicable to personal information that is collected indirectly over the internet, and that is applicable to very large data sets, so that agencies can understand how this exception might be applicable to more complex scenarios.

9. **Operational Considerations**

Notification Fatigue

We agree that over-reliance on generic or voluminous notices (e.g. privacy policies with exhaustive lists of data recipients) risks notification fatigue and undermines the objective of meaningful transparency.

Recommendation:

- (i) Include examples of layered notices, modular privacy messaging, or “just-in-time” disclosures as best practice. A particular focus on sectors that include large scale data sets, e.g. technology, health, education, would be helpful.

Contractual Reliance

We note and support the guidance's suggestion that contractual arrangements between disclosing and collecting agencies may allocate responsibility for notification.

Recommendation:

- (i) Provide a sample clause or reference model for such contractual delegation to assist with operational consistency.

Compliance Timeframe and Sector Readiness

While IPP3A will not come into effect until 1 May 2026, we reiterate our view that compliance preparation will require significant operational changes for many agencies, particularly those reliant on legacy systems or without centralised contact databases.

Recommendations: We encourage OPC to:

- (i) Publish a compliance roadmap for agencies by sector, particularly focusing on data-heavy sectors such as technology.
- (ii) Host webinars and case studies for specific industries (technology, health, education, financial services); and
- (iii) Provide templated resources for smaller agencies or NGOs.

10. Alignment with International Standards

We support OPC's intention to align IPP3A with global privacy standards. The guidance strikes a fair balance between flexibility and compliance. However, we encourage clearer references to how the guidance aligns with:

- **GDPR Article 14(1)(e)** on indirect collection notification.
- The **Australian Privacy Principles**, particularly APP 5 on notification; and
- Guidance from international counterparts like the UK ICO or Office of the Australian Information Commissioner (OAIC).

CONCLUSION

The Technology and Law Committee reiterates its support for the OPC's proactive work in preparing the sector for IPP3A. The draft guidance is a strong foundation. Subject to the clarifications and enhancements suggested above, we believe it will significantly assist agencies in meeting their obligations and building public trust.

We remain available to meet with OPC staff or provide further feedback as the guidance is finalised.

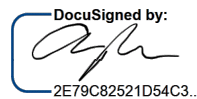
ACKNOWLEDGMENTS

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The views represented in this submission are not necessarily representative of the views of all TLANZ members but are those of individual TLANZ members or TLANZ committees who have responded to the consultation.