# THE USE AND CONTROL OF INFORMATION MATCHING IN NEW ZEALAND

*Throughout the world, governments are taking an increasing interest in adopting information matching programmes, sometimes known as data matching or computer matching, to increase efficiency and reduce fraud. While these goals are worthwhile in terms of ensuring that public money is properly spent, data matching programmes often raise questions of how far they should go in intruding on individuals' privacy.*

*A typical programme involves matching tax data with social security claimants. Should data matching be carried out on a mass scale or be restricted only to suspected fraudsters? What are the costs of the programme compared with the amount of money saved as a result? To what extent do the programmes have a deterrent effect? Do the financial benefits outweigh the costs in terms of privacy? To what extent are such programmes leading to an unacceptable degree of surveillance?*

*It is often the Privacy Commissioners who are in the lead in trying to strike a balance. Having spoken to a number of Privacy Commissioners from several countries and on reading DPA annual reports from other countries, it is clear that the issue is a high privacy priority in many societies. To discuss the issue, Privacy Laws & Business organised a workshop mainly for Data Protection Authorities (DPA's) on the day before the International Data Protection Commissioners' Conference in the Netherlands in September, to enable the DPA's to exchange their experience and views. At this workshop, one of the contributions which attracted the closest attention was that of the New Zealand Privacy Commissioner, Bruce Slane. He has specialised experience because the law which established his office was aimed primarily at regulating data matching. This is his report.*

## 1. The controls on data matching

Even before New Zealand's Privacy Act was brought into law in 1993, there were some controls put on information matching activities by the Privacy Commissioner Act 1991. That first Act set up my position and essentially required me to exercise a watching brief, reporting and recommending to government on privacy issues and the content of anticipated further legislation which was to incorporate into New Zealand law the OECD privacy principles. It also imposed specific controls on information matching activities between different government departments. At the same time, a number of other statutes which dealt in one way or another with information matching in the public sector were amended to provide the legal authority for those activities to be controlled by the Privacy Commissioner Act. The information matching controls of the 1991 Act were carried forward more or less unchanged to become Part X of the Privacy Act 1993 under which I now operate.

An "information matching programme" is defined as being the comparison by manual or electronic means of any one document containing personal information about 10 or more individuals with other such documents, for the purpose of producing or verifying information that may then be used to take adverse action against an individual. "Document" is widely defined so that it can refer to a computer record. The Act then lists, by reference to other statutes, certain information matching programmes which are "authorised" and it requires that every authorised information matching programme must be conducted in accordance with a written agreement which in turn must be in accordance with a set of information matching rules contained in the Fourth Schedule of the Privacy Act. A copy of every written agreement for these programmes has to be sent to me, and the agencies who carry out these programmes have to report to me in a regular and formal way on the information matching programmes which they have been conducting.

The information matching rules require detailed technical standards to be established to

govern the operation of the programme, and they prohibit any "on-line" transfers of information in these programmes without my express approval. The rules require reasonable procedures for the confirming of any discrepancies found before any adverse action is taken against the individuals concerned. No adverse action is to be taken unless the individual has first been sent written notice which specifies the discrepancy found and gives five working days in which to challenge or explain the discrepancy. There is an exception to this requirement of advance notice where it would prejudice an investigation into the commission of an offence.

In very broad terms, the New Zealand legislation sets out to control information matching programmes in the following ways, to:

- prevent the automatic updating of one database from another
- give the individual affected the chance to challenge the accuracy or the meaning of a discrepancy before adverse action is taken against her
- instil formal standards and procedures for the operation and checking of these activities
- require the organisations which carry out these programmes to report on the operations, their procedures, the costs incurred and results obtained
- require the destruction as soon as practicable of all personal information which has been disclosed or assembled for information matching purposes
- prohibit the creation of any new databank of the information used in or created by the information matching programme.

Above all, perhaps, the requirement that the agencies report to me upon their information matching activities, and that I in turn report publicly and at least annually on those activities, means that they are exposed to a considerable degree of parliamentary and media scrutiny.

Additionally, I am required to examine and advise on any new legislation which proposes further information matching activities. In doing so, I am obliged to have regard to certain matters including the public importance of the objective indicated for that programme, the need for such a programme to achieve that objective, and the balance between the public interest in allowing the programme and the public interest in the privacy rights affected by it. Every five years I am required to review the operation of every legislative provision which permits information matching activity and report to the Minister of Justice on whether or not I consider that the provision should continue or should be modified. The Minister is required to lay my report before Parliament.

## 2. The use of data matching

Information matching in New Zealand has so far been used predominantly by the Social Welfare agency to detect cases of over-claimed benefits. Regular programmes compare lists of *benefit recipients* with lists from:

1. the *income tax agency* showing new starters in employment,
2. the *customs agency* showing people leaving the country to travel overseas, and
3. the *education agency* of students getting grants for being in full time tertiary study.

A new programme is just about to start comparing the list of benefit recipients with those who are *in prison!*

Another being planned is to compare the people receiving a family support payment as a tax credit against their employment earnings and those receiving the corresponding benefit as a social welfare payment on the grounds that they don't have any earnings.

All of these are examples of situations where the same individual should not be on both lists unless some express exception has been made, and that is the only type of matching programme which is presently being carried out in New Zealand.

### Substantial financial savings?

Even the few information matching programmes which I have examined have shown some characteristics which I gather are common in other countries. First, there is a tendency to justify the introduction of each new programme by pointing to substantial financial savings, and to confirm those savings by under-reporting the costs involved and by over-estimating the financial results.

Typically, the costs reported have failed to pick up the time involved in checking apparent discrepancies and chasing detected over-payments. Usually, the claimed savings have assumed that all over-payments identified will be fully recovered from the individuals concerned, and have also assumed that if the over-payment had not been detected by the information matching programme, it would have continued at the wrong rate for a long period into the future.

I don't think that these cost and saving distortions are deliberate; it just happens that the most accessible figures and estimates all tend to distort the truth in the same direction. There is no obvious incentive for the agency itself to devote extra efforts to get more and better information. When I have pointed out the doubtful nature of the figures, the agencies have quite readily accepted my points and have then tended to justify the programme more on the grounds of fairness and the deterrence of cheating than on the grounds of demonstrable monetary savings.

### Accuracy of the apparent discrepancies?

The second area of concern for me has been the accuracy or reliability of the apparent discrepancies thrown up by the information matching programmes. I know that some of the staff in the agencies concerned have been unpleasantly surprised by what they have discovered about the accuracy of their own data from trying to compare it with that from another agency.

It is because of the potential for such inaccuracies that the Privacy Act requires the sending of a warning notice to the individual concerned before adverse action is taken. However, it is still very undesirable for people to receive such warning notices when they have done nothing wrong or - even worse - when the information which generated the apparent match was clearly wrong. I can illustrate this by using some figures from the New Zealand experience.

In the year ended 30 June 1993, there was a regular weekly "run" of an information match between the details (supplied by Customs) of people departing from and returning to New Zealand through the country's various international airports, and the details of the people who receive various social security benefits. There would have been about 3,800,000 passenger movements and half of those would have been departures.

During the year, 8,943 social welfare benefit recipients were spotted as being in both lists and were sent notices telling them that they had to explain matters, otherwise their benefit would be withdrawn. In 6,584 cases there was an "adverse action" taken, which probably meant stopping the benefit and creating a debt back to Social Welfare of the overpaid benefit. Those are the Department of Social Welfare's own figures.

What I see as significant is that apparently 2,359 (which is 26%) of the people who received these notices were able to respond and convince the Department that no action ought to be taken against them. All of those people were subjected to alarm, annoyance and inconvenience for perhaps no good reason at all, and this is a "cost" which is never taken into account in looking at the costs and benefits of an information matching programme such as this.

When Departments who carry out information matching programmes report to me on the overpayments which their programmes have detected and established, I require them to give some breakdown of the total monetary figures. I have asked for median, upper and lower quartile figures. For over a year, they have been telling me that they were not able to give those figures until they had developed a

new reporting procedure or written some new computer programs.

The Department of Social Welfare claims that benefit over-payments totalling over NZ$11,200,000 were established from the matches with Inland Revenue of returns put in by employers. They say that:

- just NZ$2,000,000 of that was recovered during the year.
- The over-payments were detected in respect of 13,814 people, and this was out of over 87,000 apparent matches which remained unexplained after their "quality checks". They have not yet given me the number of the warning notices which were sent out.
- The largest single over-payment detected was $73,000, the smallest was 48 cents.
- The upper quartile was $1,403, the median was $230 and the lower quartile was $85.

I think this shows that it is worthwhile to look for the details behind the total savings figure of $11 million.

### 3. Conclusion

Information matching is an attractive weapon to use in what has become a battle to lower government welfare spending and to detect welfare cheats. It looks at first to be a clean and precise weapon which will pay for itself many times over, and that is the justification normally given for using it over the complaints of the privacy advocates. We are still learning in New Zealand about how to control this weapon, but I am finding that it is neither as sharp nor as cost-effective as many people have thought. Like many initiatives which impact upon individual privacy in the name of the public good, it is perhaps a technological fix attempting to deal with a broader social problem.

I am pleased to say the present New Zealand government seems committed to being open about the use it makes of information matching. It has also insisted that departments obtain specific statutory authority for Parliament for any new information matching proposals.

In my function of monitoring and periodically reporting on existing matching activities and reporting on new proposals I will be aiming a questioning spotlight into its more doubtful corners.

**This edited paper was delivered by Bruce Slane, Privacy Commissioner, New Zealand, at the *Privacy Laws & Business* Data Protection and Data Matching Workshop which took place in the Hague, the Netherlands, September 5th, 1994. The workshop papers are available from the *Privacy Laws & Business* office.**