133 Molesworth Street
PO Box 5013
Wellington 6140
New Zealand
T+64 4 496 2000

4 September 2024

s 9(2)(a)

By email: s 9(2)(a)
Ref: H2024045440

Tēnā koe s 9(2)(a)

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health – Manatū Hauora (the Ministry) on 1 July 2024 for information regarding the Whānau Ora Commissioning Agency. For ease of reference, a copy of your full request is appended to this letter along with an overview of the key steps the Ministry took in considering your request (refer to Appendix 1).

On 10 July 2024, the Ministry contacted you to acknowledge your request for urgency and to seek clarification on some aspects of your request. We did not receive a response from you to our correspondence of 29 July 2024, so the Ministry has progressed your request according to the following scope, which we deem to be closely aligned with the intent of your request. Please note agencies are permitted to do this in accordance with section 16 of the Act[1]:

> *All information held by the Ministry, since October 2023, pertaining to the Whānau Ora Commissioning Agency, including references to the Whānau Ora Commissioning Winter Wellness Contract*

Information identified within scope is itemised in Appendix 2 to this letter, including my decisions on release. Where information is withheld under section 9 of the Act, I have considered the public interest in release of this information and do not consider that it outweighs the need to withhold it in this case.

As you were advised on 15 July 2024, the Ministry also transferred your request to Health New Zealand – Te Whatu Ora pursuant to section 14(b)(i) of the Act. As you will be aware, functions previously delivered by the Ministry, including the responsibility for administering the data-sharing agreements relating to vaccination data, transferred to Health New Zealand as part of

[1] Section 16 of the OIA notes that agencies may provide information in an alternative form to that requested if meeting the requester's preference would 'impair efficient administration'.

the 2022 health and disability system reforms. You can expect a response from Health New Zealand for any relevant information it holds in due course.

If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on: oiagr@health.govt.nz.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Nāku noa, nā

Sarah Turner
Deputy Director-General
Government and Executive Services | Te Pou Whakatere Kāwanatanga

Appendix 1: Processing of your request for information

On 1 July 2024, the Ministry received the following request from you:

> *Our requests for continuing anonymised Data sets made specifically from October 2023 up to and inclusive of today's date in regard to The Whanau Ora Commissioning Agency Winter Wellness Contract with your Agency*
>
> *In terms of the above subject matter we require all correspondence, meeting notes , txt messages , emails , reports provided , including ministerial memoranda over the above timeframe involved in any communications and any discussions , involving our request for the release of Data .*
>
> *Please also release all and any documentation, including requests for information and communications involving the Whanau Ora Commissioning Agency, Te Whanau O Waipareira and your responses if any along with any internal reports or communications, txts or Memoranda to Ministers or other Crown Agencies, entities and / individuals .*
>
> *The Whanau Ora Commissioning Agency made Application to become a North Island based PHO following the legislative removal of Te Aka Whaiora. Please release all and any communications that occurred in response to this request including reports to Ministers, internal memoranda, txts, reports, notes and any other documentation discussing this request .*

On 10 July 2024, the Ministry contacted you to acknowledge your request for urgency and to seek clarification on some aspects of your request. Specifically, the Ministry wanted to identify if the following part of your request pertained to winter wellness data exclusively, or if this was intended as an independent request:

> *Please also release all and any documentation, including requests for information and communications involving the Whanau Ora Commissioning Agency, Te Whanau O Waipareira and your responses if any along with any internal reports or communications, txts or Memoranda to Ministers or other Crown Agencies, entities and / individuals .*

On 25 July 2024, you responded to confirm that:

> *…the following request is independent, though may include Winter Wellness data also. Please apply the timeframe of the last three years to today's date for the applicable scope.*

In response, the Ministry advised that a refinement to the scope is required to allow the Ministry to effectively manage your request and provide the most relevant information to you in a timely manner. On 1 August 2024, the Ministry followed up on this refinement request.

To date we have not received a response from you.

Appendix 2: List of documents for release

#	Date	Document type	Document details	Decisions on release
1	13 June 2024	Email correspondence	More info re vax data sharing: date data was shared in Dec 21 and new Data Sharing Agreements from July 2022	Released with some information withheld under the following sections of the Act: • 9(2)(a) – to protect personal privacy; and • 9(2)(h) – to maintain legal priviledge. Please note, email attachments that are deemed out of scope of your request have been excluded. The following documents are also more appropriate for Health New Zealand to consider for release: • Agreement for supply of information to support the National Immunisation Programme (Document 1A) • NIP – All Hands (Judicial Review 2021 and beyond) (Document 1C)
1B		Email attachment	Court document: Te Pou Matakana Limited v Attorney-General [2021] Nzhc 2942 [1 November 2021]	Refused under section 18(d) of the Act as the document is publicly available: https://www.courtsofnz.govt.nz/assets/Uploads/2021-NZHC-2942.pdf
1E	8 February 2022	Email attachment	Memo: Approach to COVID-19 vaccination data sharing for 5 to 11 year-olds (8 February 2022)	Relevant excerpts released under section 16(1)(e) of the Act
1F	24 February 2022	Email attachment	Memo: Talking points on data-sharing meeting with Chairs of interim Māori Health Authority and interim Health New Zealand	
1G	9 February 2022	Email attachment	Letter to John Tamihere (Whānau Ora Commissioning Agency)	Released in full

#	Date	Document type	Document details	Decisions on release
2	6 June 2024	Email correspondence	Data sharing ages for vaccination for 5-11s	Released with some information withheld under section 9(2)(a) of the Act, to protect personal privacy
2A	15 December 2021	Email attachment	Memo: Whānau Ora Commissioning Agency (WOCA) Data Request (15 December 2021)	Released with some information withheld under the following sections of the Act: • 9(2)(ba)(i) – to protect information that is subject to an obligation of confidence; and • 9(2)(h) – to maintain legal privilege
2B	9 February 2022	Email attachment	Letter to John Tamihere (Whānau Ora Commissioning Agency)	Refer to Document 1G
2C	24 February 2022	Email attachment	Memo: Talking points on data-sharing meeting with Chairs of interim Māori Health Authority and interim Health New Zealand	Refer to Document 1F
3	6 June 2024	Email correspondence	Further docs on data sharing for COVID-19 vax	Released with some information withheld under sections 9(2)(a) and 9(2)(h) of the Act.
3A	19 October 2021	Email attachment	Memo: Sharing of data to support COVID-19 vaccination uptake in individuals who are unvaccinated	Released in full
3B	5 November 2021	Email attachment	Memo: Reconsideration of WOCA data request	Released with some information withheld under section 9(2)(ba)(i) of the Act, to protect information that is subject to an obligation of confidence
3C	5 November 2021	Email attachment	Letter to John Tamihere (Whānau Ora Commissioning Agency)	Released in full
3D	5 November 2021	Email attachment	Talking points: Dr Ashley Bloomfield's meeting with John Tamihere (5 November 2021)	

#	Date	Document type	Document details	Decisions on release
4	14 December 2021	Email attachment	Memo: Iwi Data Requests (14 December 2021)	Released in full
5	9 December 2021	Email attachment	Letter to John Tamihere (Whānau Ora Commissioning Agency)	
6	7 – 10 June 2024	Email correspondence	Escalation steps	Withheld in full under section 6(c) of the Act, where the release of information may prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
7	5 – 6 June 2024	Email correspondence	Emailing: Letter to Director-General of Health regarding alleged mis-use of COVID-19 vaccination data	Released with some information withheld under section 9(2)(a) of the Act, to protect personal privacy
7A		Email attachment	Letter from OPC to the Director-General of Health: Allegations of inappropriate re-use of COVID-19 data (5 June 2024)	Released in full

From: Jo Williams <Jo.Williams@health.govt.nz>
Sent: Thursday, 13 June 2024 5:08 pm
To: Phil Knipe <Phil.Knipe@health.govt.nz>; Kristy Powell <Kristy.Powell@health.govt.nz>
Subject: RE: More info re vax data sharing: date data was shared in Dec 21 and new Data Sharing Agreements from July 2022

Ah, thanks!

s 9(2)(h) [redacted]

Jo Williams
Principal Advisor
Regulation and Monitoring
s 9(2)(a) [redacted]
+64 4 496 2000
jo.williams@health.govt.nz
Manatū Hauora, 133 Molesworth Street Thorndon, Wellington 6011

From: Phil Knipe <Phil.Knipe@health.govt.nz>
Sent: Thursday, 13 June 2024 4:42 pm
To: Jo Williams <Jo.Williams@health.govt.nz>; Kristy Powell <Kristy.Powell@health.govt.nz>
Subject: RE: More info re vax data sharing: date data was shared in Dec 21 and new Data Sharing Agreements from July 2022


TWO + WOCA - All NIP DSA - Sept 2022


WOCA HC 1.pdf

Refer to Documents 1A and 1B

s 9(2)(h) [redacted]

Ngā mihi

Phil Knipe
Chief Legal Advisor

Ministry of Health
DDI: 04 496 2137
s 9(2)(a)

http://www.health.govt.nz
mailto: phil.knipe@health.govt.nz

From: Jo Williams <Jo.Williams@health.govt.nz>
Sent: Thursday, 13 June 2024 4:34 pm
To: Kristy Powell <Kristy.Powell@health.govt.nz>; Phil Knipe <Phil.Knipe@health.govt.nz>
Subject: More info re vax data sharing: date data was shared in Dec 21 and new Data Sharing Agreements from July 2022

DG Panui awareness weeks w | All Hands Judicial Review V3 (003).pdf | Data request template for WOCA. | Talking points for Ashley on 5-11 data | RE Decision on data sharing 5-11s.r

DG Panui Transfer of functions to inter

Refer to Documents 1C – 1G

Hi both,

Kirsty, you asked me about:

- The date that responsibility for data and the sharing of it moved to Te Whatu Ora.
    - I would say that responsibility remained with the Ministry (as part of the CVIP which then became the National Immunisation Programme) until 1 June 2022 when NIP moved to Health NZ (see attached panui). Jim Brown (Digital supplier and sector engagement CVIP) was the main contact for WOCA through the first half of 2022, Gail Thomson (Operations Team, NIP) was the lead of the team managing the process of data requests, agreements and data sharing
    - I have also attached a pdf authored by Jim Brown in Oct 2022 (by this time in Te Whatu Ora). I wanted to highlight the timeline slide which under July 2022 says, *'New future-proofed DSAs [data sharing agreements] sent and signed. August -MMR data sharing commences'.* So, even if the initial Ministry contracts required WOCA to destroy data by 30 June 2022, we don't know what terms the updated contracts may have included
- The date we started sharing data after the high court decision on 6 December 21
    - I can't remember off the top of my head what the specifics are in the 6 Dec decision, but the email entitled 'Data request template for WOCA' dated 22 December 2021 states, *'Jim has confirmed to me that the data the DG agreed to share with Whānau Ora on 9 December 2021 (for Northland, Hawkes Bay, Whanganui, Wairarapa, Lakes and Bay of Plenty DHB areas) has been shared.'*

I've also added in here:

- A reminder that Ministry functions were being shifted to Health NZ and the MHA from 1 March 2022
- Information on the sharing of vaccination data that was being shared by the DG with the interim boards of HNZ and MHA in Feb 2022
- Communications on final decisions on the sharing of vax data for 5-11s that went to stakeholders (incl John Tamihere) on 9 Feb

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Manatū Hauora, 133 Molesworth Street Thorndon, Wellington 6011

MANATŪ HAUORA
MINISTRY OF HEALTH

Excerpt of: Memo – Approach to COVID-19 vaccination data sharing for 5 to 11 year-olds (8 February 2022)

Purpose

1. This memo records the background and considerations for your decision on the sharing of personal and identifiable data for the purposes of vaccinating children aged 5-11 years.
2. This memo follows from your decisions to share data with with the Whānau Ora Commissioning Agency (Whānau Ora/WOCA) and Whānau Tahi Limited from the Ministry of Health's COVID-19 Vaccine and Immunisation Programme datasets, including the COVID-19 Immunisation Register (CIR), for the purposes of reaching unvaccinated Māori ages 12 and over.
3. The recommendations in this memo apply to all ethnicities (children and requesting organisations), although to date we have only received requests from iwi and Māori organisations, for data relating to tamariki Māori
4. The approach outlined in this memo incorporates the guidance provided by the High Court cases in Te Pou Matakana Ltd v Attorney-General.

Background and context

6. The Ministry currently shares personal and vaccination information to support the delivery of the COVID-19 vaccine programme for those aged 12 years and over by providing organisations that demonstrate they meet the legal, security and privacy requirements with the following types of information:

b. Personal information about individuals to iwi about Māori who live in their rohe, and to WOCA for Māori living in the North Island

Current requests for data

31. About 20 requests have been received to date from various organisations and researchers, including requests for individual level data, most applications have been for geospatial/ meshblock-level data.
32. A request for data was received on 13 January 2022 from Te Pou Matakana Limited, trading as Whānau Ora Commissioning Agency (WOCA), and its information systems provider, Whānau Tahi Ltd. WOCA requested name, NHI, date of birth and vaccination status information (dose 1 and 2) relating to the child, and the name, address and phone number of the parent/guardian. WOCA has been informed that the Ministry does not hold data linking parents/guardians with children. It's currently understood WOCA maybe submitting an amended request (note the data request is for North Island tamariki Māori data only).

33. For the 13 January 2022 request, WOCA has asked for information, noting that:

> *"The data will be used to target non vaccinated and 'one dose only' vaccinated Māori children. The Whānau Ora Commissioning Agency and Whānau Tahi Ltd will analyse the data daily and contact respective parents/guardians to support them to have their children vaccinated. If the individual agrees to get vaccinated, they will link them up to their local provider within their community. Identifiable information for individuals will only be shared with our community partner organisations if the individual called elects to get vaccinated and seeks support in doing so".*

34. WOCA also state they will use the data to:

> *"identify particular areas (at street level) with high rates of unvaccinated children where we will send our Mobile Vaccination Units and to focus our communication strategy including*
>
> *'Road and Community Bombing', Social Media, Radio, Texts and Emails leveraging a range of collateral and connections within our communities."*

Recommended approach

Recommendation one

45. Providing mesh block/ address information alongside name and date of birth provides sufficient information for larger providers such as WOCA to be able to link a child and their vaccination status to a whānau using the datasets and knowledge they already hold. It also enables linkage with a provider in the locality who would be most appropriate to connect with the whānau. For other groups such as the Data Iwi Leaders Group, anonymised geospatial data is sufficient to target vaccination efforts.

Next steps

54. Pending your decision correspondence will be drafted for you to reply to the 13 January request from WOCA and provided to you on Tuesday 8 February 2022.

Recommendations

It is recommended that you:

1.	note	the work done to engage with stakeholders and that the sharing of data to increase vaccination outreach for children 5-11 is supported.	✓
2.	agree	to sharing demographic individual and identifiable data (name, date of birth, NHI **and address**) for unvaccinated (or have not received a second dose more than 9 weeks following their first dose) 5-11 year olds with providers they are enrolled with or have a relationship with AND organisations/ services that may be effective in reaching whānau, but where there is no existing relationship. Or to sharing demographic individual and identifiable data (name, date of birth, NHI and **meshblock address information**) for unvaccinated (or have not received a second dose more than 8 nine weeks following their first dose) 5 to 11 year olds with providers they are enrolled with or have a relationship with AND organisations/ services that may be effective in reaching whānau, but where there is no existing relationship.	Yes/No Yes/No AB (given the interval is 8 minimum)
3.	agree	To not releasing the phone or email contact details contained in a child's health record.	Yes/No
4.	note	Data sharing agreements will be updated and strengthened in the light of advice from the Office of the Children's Commissioner.	✓
5.	note	The strong feedback received from stakeholders regarding being transparent with whānau and children on how and why data is being shared. Work is underway to have clear and easy to understand information available on Ministry's website and for providers to share that support this	✓

Signature: _____ Date: 9/2/22

Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health

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Purpose

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3.	agree	To not releasing the phone or email contact details contained in a child's health record.	Yes/No
4.	note	Data sharing agreements will be updated and strengthened in the light of advice from the Office of the Children's Commissioner.	✓
5.	note	The strong feedback received from stakeholders regarding being transparent with whānau and children on how and why data is being shared. Work is underway to have clear and easy to understand information available on Ministry's website and for providers to share that support this	✓

Signature: _____ Date: 9/2/22

Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health

133 Molesworth Street
PO Box 5013
Wellington 6140
New Zealand
T+64 4 496 2000

9 February 2022

John Tamihere
Chief Executive
Whānau Ora Commissioning Agency
By email: John.Tamihere@waiwhanau.com

Tēnā koe John,

Further to my email of 2 February 2022, I write to inform you that the Ministry of Health has now developed a vaccination data sharing approach for the purposes of increasing vaccination uptake amongst 5–11-year-old tamariki.

Over the past week we have met with a variety of key stakeholders to inform our proposed approach. That included meeting with members of your data and digital team, Data Iwi Leadership Group Technicians, Te Arawhiti, Te Puna Ora o Mataatua (Eastern BOP), TPK, the Children's Commission, Human Rights Commission, Disability Rights Commission, Oranga Tamariki, Ministry of Education and Ministry of Pacific Peoples.

We listened to what each stakeholder brought to the table including considerations we should be taking into account, risks, issues and benefits of data sharing for the 5–11-year-old age group. Some clear themes emerged in regards a strong appetite to share data in a safe way with local and community-based trusted providers and leaders such as iwi leaders and local health providers.

Given the High Court's findings on the release of personal information to address a serious threat to public health, and following on from engagement on the sharing of data personal to tamariki specifically, I have decided to share identifiable data with iwi and service providers, including the Whānau Ora Commissioning Agency, for the purpose of supporting outreach activities to whānau of unvaccinated tamariki.

Your data request of 13 January 2022 requested the names and contact details of parents or guardians of each tamariki. As you know, the Ministry does not hold details on familial relationships and so we are unable to provide you with these details. I acknowledge that in many cases, your agency and associated service providers will have a greater understanding of the nature of these relationships than the Ministry.

The Ministry is also unable to confirm who the contact details associated with a child's health record belong to and whether a child's circumstances remain the same now as when the record was made. Because of this uncertainty, and to avoid making direct contact with a child, the Ministry does not use this information to invite tamariki to receive a vaccination. The dataset shared with you will not include phone numbers, email addresses, or street addresses associated with a child's record.

However, I have decided to accompany each child's identity with a meshblock-level address and DHB of residence to help your agency link each tamariki with their whānau and an

appropriate service provider. My expectation is that outreach activities aimed at encouraging vaccination will engage whānau rather than the child individually.

This information will be provided for all tamariki Māori in Te Ika a Māui who have not had a first vaccination or have not received a second dose more than nine weeks following their first dose.

Conversations have begun with your agency to update your data request and amend your data sharing agreements to reflect this decision and proceed with this important mahi so as not to further delay providers in their vaccination outreach.

I would like to again acknowledge and thank the Whānau Ora Commissioning Agency for its patience while we have worked through this process and your significant contribution to the overall effort to raise Māori vaccination rates across Te Ika a Māui.

Nāku noa, nā

Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health

From: Phil Knipe <Phil.Knipe@health.govt.nz>
Sent: Thursday, 6 June 2024 1:50 pm
To: Lisa McPhail <Lisa.McPhail@health.govt.nz>
Subject: FW: Data sharing ages for vaccination for 5-11s

s 9(2)(h) [redacted]

Ngā mihi

Phil Knipe
Chief Legal Advisor
Ministry of Health
DDI: 04 496 2137
s 9(2)(a) [redacted]

http://www.health.govt.nz
mailto: phil.knipe@health.govt.nz

From: Jo Williams <Jo.Williams@health.govt.nz>
Sent: Thursday, 6 June 2024 1:45 pm
To: Phil Knipe <Phil.Knipe@health.govt.nz>
Subject: Data sharing ages for vaccination for 5-11s

woca decision paper - outstanding decisior | Letter to John Tamihere data sharing | Signed DG memo -approach to C-19 va

Refer to Documents 2A – 2C

Here is additional correspondence related to data sharing for vaccination of ages 5-11

Jo Williams
Principal Advisor
Regulation and Monitoring
s 9(2)(a) [redacted]
+64 4 496 2000
jo.williams@health.govt.nz
Manatū Hauora, 133 Molesworth Street Thorndon, Wellington 6011

MANATŪ HAUORA
MINISTRY OF HEALTH

Memo

Whānau Ora Commissioning Agency (WOCA) Data Request

Date:	15 December 2021
To:	Dr Ashley Bloomfield, Director-General of Health
Copy to:	John Whaanga, Deputy Director-General, Māori Health Phil Knipe, Chief Legal Advisor, Health Legal
From:	Astrid Koorneef, Director, National Immunisation Programme
For your:	Decision

Purpose of report

1. This memo records the background and considerations that informed your decision to share information with the Whānau Ora Commissioning Agency (Whānau Ora/WOCA) and Whānau Tahi Limited from the Ministry of Health's COVID-19 Vaccine and Immunisation Programme datasets, including the COVID-19 Immunisation Register (CIR), for the purposes of reaching unvaccinated Māori in the Bay of Plenty, Hawkes Bay, Lakes, Northland, Wairarapa and Whanganui areas respectively.
2. It also records the background and considerations that informed your decision on the sharing of individual data for Māori who have received one dose of a COVID-19 vaccine for the regions outlined above, and for the regions in which there are already individual data sharing agreements with Whānau Ora, including the Waikato, Tāmaki Makaurau (Auckland, Counties Manukau, Waitematā DHBs), Taranaki, Tairāwhiti, Wellington (Capital & Coast, Hutt Valley DHBs) and MidCentral areas.
3. This memo follows from your decisions to share data with WOCA and Whānau Tahi Limited for the Waikato, Tāmaki Makaurau (Auckland, Counties Manukau, Waitematā DHBs), Taranaki, Tairāwhiti, Wellington (Capital & Coast, Hutt Valley DHBs) and MidCentral areas.
4. The approach outlined in this memo incorporates the guidance provided by the High Court in *Te Pou Matakana Ltd v Attorney-General*, which requires the Ministry to both complete its decision-making processes for the provision of datasets in areas where it has not yet agreed to share data to the applicants, and to review its decision to provide data in relation to those Māori in Te Ika-a-Māui who have had only a first dose.

Information request

5. The background to the information request is canvassed in previous papers setting out the Director-General's decisions on 5 November, and subsequent decisions on specific regions.
6. This paper records the background to decisions on two requests. The first request is to share data for purposes of reaching Māori who have not yet had a first dose of COVID-19 vaccine, and who live in the Bay of Plenty, Hawkes Bay, Lakes, Northland, Wairarapa and Whanganui DHB areas. For these individuals, the data would include their:

- name
- personal contact details such as address, phone number
- National Health Index number (NHI).

7. The second request is to share data for purposes of reaching Māori who have had a first dose of COVID-19 vaccine, but who have not yet had a second dose. The request from Whānau Ora Commissioning Agency (Whānau Ora/WOCA) and Whānau Tahi is for this data for all people who are identified as Maori in the health data sets, and who live in the North Island. For each person it would include their:
   - name
   - personal contact details such as address, phone number
   - National Health Index number (NHI).

The COVID-19 pandemic constitutes a serious threat to public health and safety

8. As described in previous advice papers on this topic, the COVID-19 pandemic, and particularly the Delta variant, constitutes a serious threat to public health and safety. The issuing of an epidemic notice and the ongoing advice from the Ministry of Health makes it very clear that COVID-19 represents a serious ongoing threat to public health.

9. It is the Ministry's view that COVID-19 vaccination is critical to prevent or lessen the threat of COVID-19. Being fully vaccinated provides a high level of protection against Delta infection and a very high degree of protection against severe illness, hospitalisation and death.

10. In New Zealand, the percentage of Māori who have received COVID-19 vaccinations is materially lower than the percentage of other eligible populations; the percentage of Māori who are enrolled with primary healthcare providers is also materially lower than the general population. Māori are more at risk of adverse outcomes from COVID-19 due to a higher rate of poorer health including respiratory disease. It is critical to take steps to reach everyone in New Zealand, including Māori whānau, hapū and iwi, in order to support access to vaccination.

Rule 11(2)(d) of the Health Information Privacy Code

11. Rule 11(2)(d) allows the Ministry to disclose information if it believes on reasonable grounds that the following three considerations are met:
    - It is not desirable or practicable to obtain authorisation for the disclosure from the individual concerned.
    - There is a serious threat to public health or public safety, or the life or health of the individual concerned or another individual.
    - Disclosure of the information is necessary to prevent or lessen that threat.

12. Even if all of these criteria are met, there is a residual discretion as to whether the information should be released.

13. As discussed in the previous decision papers of 19 October and 5 November 2021, the first two considerations are satisfied. Despite a reduced number of individuals captured by the request, it remains impractical to obtain the consent of the individuals concerned.

14. The serious threat to public health also remains. Although vaccination rates have increased since that time, Māori vaccination rates continue to lag behind the general population. Māori

are also disproportionally impacted by the current Delta outbreak in those locations where it is occurring. As at 7 December 2021, 45% of the cases reported in the delta outbreak are Māori.

15. The remaining consideration to be satisfied of is whether disclosure is necessary to prevent or lessen the threat and, then, whether in the Ministry's discretion it should, in all the circumstances, disclose the information requested. The High Court has noted that the discretion needs to be exercised in line with the Code and the Privacy Act and its purposes. The Privacy Act's purposes are concerned with the protection and use of private information.

Rule 11(2)(d) – Necessity threshold

16. As noted, the key issue is whether disclosure is necessary to prevent or lessen the threat presented by COVID-19.

17. The High Court's first judgment in the *Te Pou Matakana Ltd v Attorney-General* proceedings sets out the three relevant factors for the consideration of whether the disclosure of the information "is necessary to prevent or lessen that threat". An evidence-based approach must be taken to each of these factors. As the High Court noted in both its judgments in *Te Pou Matakana Ltd v Attorney-General*, "necessary" means only "needed or required". While this standard requires more than merely "desirable or expedient", it does not require "indispensable or essential".

18. The first factor is the anticipated effectiveness of disclosure and use of the requested information. This requires me to consider what the applicants would be able to do with the requested data (as opposed to only what they are doing currently with present resources). The second factor is the anticipated adverse consequences, in terms of the protection of life and health, or other material and relevant harm, of that same disclosure and use. The third factor whether there are other options to address the health risk that lessen the privacy intrusion and resulting harms, but are nonetheless effective to address the risk (including in light of the urgency of that risk), and so whether it is possible to await the outcome of lesser measures.

19. The applicants have stated to the High Court that they intend to use the individual data in their outreach process. This process involves the data provided by the Ministry being stored in the Secured Navigator Datastore and then used in two different ways:

    - Call lists would be extracted and provided to Whānau Ora's Whānau Tahi Navigator system so Whānau Ora's call centre can directly contact individuals by text or call. Direct contact by WOCA would involve obtaining consent from individuals to refer them to a WOCA partner organisation for vaccination. Following the referral, the WOCA partner organisation would make contact with the individual to initiate the Whānau Ora process, including wraparound vaccination services. If the individual has opted out of the vaccination programme or is deceased, their information would be updated and fed back into the Secured Navigator Datastore and the Ministry notified.

    - The data is fed through Whānau Tahi's GIS mapping system to generate maps, which highlight streets/zones to target and do not hold any individual data. Those maps are given to Whānau Ora partner organisations to provide vaccination resources in the target areas. The information would be held in those providers' respective Whānau Tahi Navigator systems. Whānau Ora's partners make contact with individuals and initiate the Whānau Ora process, including vaccination offers.

20. As summarised in the decision paper of 5 November, we have previously heard a range of views which have expressed concern about the erosion of trust and confidence in the health system, and the Crown more generally, associated with sharing individual level Māori personal information. We recognise these concerns.

Treaty/Te Tiriti and Tikanga

21. The COVID-19 Vaccine and Immunisation Programme is guided by the principles of the Treaty/Te Tiriti o Waitangi. The relevant principles are:

    - ***Partnership***: the Crown is required to work with Māori in partnership in the governance, design, delivery, and monitoring of the response to COVID-19.
    - ***Tino rangatiratanga****:* this provides for Māori self-determination and mana motuhake. This means that Māori are key decision makers in the design, delivery, and monitoring of health and disability services and the response to COVID-19.
    - ***Options***: the Crown is required to provide for and properly resource kaupapa Māori services and ensure that all health and disability services are provided in a culturally appropriate way that recognises and supports the expression of hauora Māori models of care.
    - ***Equity****:* the Crown is required to commit to achieving equitable health outcomes for Māori and to eliminate health disparities resulting from COVID-19. This includes the active surveillance and monitoring of Māori health to ensure a proportionate and coordinated response to health need.
    - ***Active Protection****:* the Crown is required to act, to the fullest extent practicable, to protect Māori health and achieve equitable health outcomes for Māori in response to COVID-19. This requires the Crown to implement measures to equip whānau, hapū, iwi, and Māori communities with the resources to undertake and respond to public health measures to prevent and/or manage the spread of COVID-19.

22. The tikanga principles engaged to have regard to are: mana, whānaungatanga, and kaitiakitanga, manaakitanga, and tapu.

23. In light of these principles, we have consulted with local iwi facilitated by Te Arawhiti. We followed-up after the meeting, through Te Arawhiti, to invite any further comments or feedback that iwi, providers and/or Whānau Ora wished us to take into account. We have had further follow-up discussions with iwi and hapu via phone and email where they have wanted to discuss their views on the sharing of data.

24. This consultation was carried out in order to ascertain the range, content and extent of Māori views and interests, which may be affected by the disclosure sought, and how those interests may be affected, in order to inform your decision on data-sharing in light of the principles of the Treaty/Te Tiriti and relevant tikanga.

25. This paper includes an indication of the views of iwi in relation to data sharing about Māori in their regions. Guided by the High Court judgement issued on 6 December, the recommendations in the paper do not intend to introduce an authorisation step for iwi. However, in recognition of our role as part the Crown and our treaty relationships, it includes the views of iwi as a relevant consideration, amongst others.

Further correspondence from WOCA

26. Our lawyer received correspondence from the lawyer for Whānau Ora Commissioning Agency and Whānau Tahi Limited on 7 December, following the High Court judgement. A copy of that letter is attached.

27. Amongst other matters, the letter indicates they understand that that some iwi have further corresponded with the Ministry and have indicated they do not support the request for data. It goes on to signal they understand that the Ministry has offered to either data match to remove their iwi members from the data set or exclude all whānau who reside in that Iwi's Treaty Settlement region.

28. The letter indicates that the parties would accept data matching to exclude an iwi's members from data shared with WSOCA so long as:

    - the iwi in question agree to provide the information necessary for data matching with the Ministry; and
    - the data matching exercise is completed within two further working days; and
    - only whānau who live within the iwi's rohe are excluded as part of the data matching; this is on the basis that whānau who live outside the rohe are likely to whakapapa to multiple iwi and, given their geographic location, are not likely to be provided with kanohi kit e kanohi services from that iwi.

29. The letter goes on to say that in the view of WOCA: "the Ministry cannot lawfully or rationally exclude whānau based on geography. This would recognise not only an exclusive interest in Maori health data about an iwi's own whānau, but also other whānau living within their rohe who do not whakapapa to that iwi or who whakapapa to multiple iwi. It is also impracticable given the often overlapping role of iwi."

s 9(2)(h)

[redacted]

Considerations and recommendations by DHB region

31. The attached appendix (Appendix 1) outlines considerations relevant to the sharing of individual Māori data for each DHB region respectively, including current vaccination rates, current COVID-19 cases, the work currently being undertaken on the ground to increase vaccination uptake, and iwi consultation. Considerations are summarised by DHB region below. The recommendations outlined throughout the rest of this paper regarding the provision of data in each case have been formed by the weighing of these considerations.

Northland

32. We recommend the sharing of individual level data for unvaccinated Māori who live in the Northland DHB area with Whānau Ora.

33. This recommendation is made, taking into account that, as at 7 December 2021, 80 percent of Māori in Northland have had a first dose. While Northland has made good progress in getting to 80%, it will take significant effort for Māori vaccination rates to reach over 90%. In addition, as at 7 December 2021, there are 27 active Delta cases in the region.

34. We have engaged with iwi and taken their views into account in making this recommendation. A full summary of engagement is included in Appendix 1. Based on our discussions with iwi, we understand that Te Rarawa, Ngātiwai, Ngāti Hine,Te Rarawa, Ngāi Takoto, Te Aupōuri and Ngāti Whātua are in support of individual data being shared with WOCA. s 9(2)(ba)(i) [redacted]

35. s 9(2)(ba)(i) [redacted]

36. Attempts have been made to contact Ngāti Kahu to elicit their views as to data sharing with WOCA. All attempts, including those by phone and email, have been unsuccessful.

37. As noted in paragraph 30, The High Court's judgment together with the problems associated with multiple whakapapa connections therefore make adopting a geographical exclusion approach risky from a litigation perspective.

38. We have given careful considered to the use of geographic mapping to remove data relating to particular iwi in opposition to data-sharing and their rohe within DHB boundaries from the datasets. However, due to overlapping areas of interest in the Northland DHB region, we do not consider this option to be sufficiently accurate or suitable to use as a basis for removing individuals from a dataset in this region. This means that the considerations that have been given to iwi preferences through the Ministry's engagement process are unable to be given effect.

39. As summarised in Appendix 1, we recognise that there is a great deal of activity in Northland to lift its vaccination rates and that a wide range of providers and organisations are contributing to this effort.

40. While the High Court has offered guidance that the Privacy Act does not require iwi authorisation to share individual level data for Māori in their rohe with Whānau Ora, views expressed by iwi continue to be an important consideration in the Crown's decision to share individual Māori data.

41. The Ministry has given careful consideration to a range of factors relevant to the necessity to share data for Northland, including the range of views expressed by local iwi, the number of Māori left to vaccinate in the region, active COVID-19 cases in the community, and the work that is currently being undertaken on the ground to increase vaccination uptake. On balance, we recommend the sharing of individual level data for unvaccinated Maori who live in the Northland DHB area with Whānau Ora.

42. This recommendation is made noting that such a data sharing arrangement with Whānau Ora would not be exclusive nor agreed to in perpetuity. Iwi retain the ability to request individual level data for Māori in their rohe from the Ministry. Data shared with WOCA would only be used for the purposes of reaching Māori to increase vaccination uptake and should only be retained until 30 June 2022 unless otherwise specified (for example, through an additional data sharing agreement at a later date).

Whanganui

43. We recommend the sharing of individual level data for unvaccinated Maori who live in the Whanganui DHB area with Whānau Ora.

44. Although Whānau Ora communicated an intention to rescind its request for individual level data for Māori in the Whanganui DHB region as a result of the views shared in the hui, Whānau Ora has since re-submitted its request for this data, citing a range of factors including low vaccination rates in the area.

45. The recommendation to share data is made taking into account that, as at 7 December 2021, 80 percent of Māori in Whanganui have had a first dose. While Whanganui has made progress to get to 80%, it will take significant effort for Maori vaccination rates to reach over 90%. In addition, as at 7 December 2021, there is 1 active case in the Whanganui area.

46. The daily rate of Māori vaccination in Whanganui in September was 81 per day. While this has increased, it is still relatively low at 119 vaccinations per day. While we recognise there is a great deal of activity in Whanganui to lift its vaccination rates, the rates are not increasing quickly, and will take some time to reach a high rate of vaccination for Māori in the region.

47. We have engaged with iwi and taken their views into account in making this recommendation. A full summary of engagement is included in Appendix 1. Based on our discussions with iwi, we understand that in general there is a preference for the data relating to Whanganui to not be shared with Whānau Ora, largely because local providers are able to access the data they need through their relationships with local PHOs and the DHB.

48. While the High Court has offered guidance that the Privacy Act does not require iwi authorisation to share individual level data for Māori in their rohe with Whānau Ora, views expressed by iwi continue to be an important consideration in the Crown's decision to share individual Māori data.

49. The Ministry has given careful consideration to a range of factors relevant to the necessity to share data for Whanganui, including the range of views expressed by local iwi, the number of Māori left to vaccinate in the region, active COVID-19 cases in the community, and the work that is currently being undertaken on the ground to increase vaccination uptake. On balance, we recommend the sharing of individual level data for unvaccinated Maori who live in the Whanganui DHB area with Whānau Ora, with an expectation of working with WOCA providers, relevant iwi and other providers to co-ordinate out-reach and support to access COVID-19 vaccination for Māori who are not fully vaccinated.

50. This recommendation is made noting that such a data sharing arrangement with Whānau Ora would not be exclusive nor agreed to in perpetuity. Iwi retain the ability to request individual level data for Māori in their rohe from the Ministry. Data shared with WOCA would only be used for the purposes of reaching Māori to increase vaccination uptake and should only be retained until 30 June 2022 unless otherwise specified (for example, through an additional data sharing agreement at a later date).

Lakes

51. We recommend the sharing of individual level data for unvaccinated Maori who live in the Lakes DHB area with Whānau Ora. We further recommend the data shared would not include

the registered members of s 9(2)(ba)(i) who reside in the Lakes DHB area as this iwi has entered into a data matching arrangement with the Ministry.

52. This recommendation is made, taking into account that, as at 7 December 2021, the vaccination rate for Māori in the Lakes DHB area is 83 percent of Māori have had a first dose. Delta cases are present in the Lakes DHB area. As at 7 December 2021, there are 10 active cases in the region.

53. We have engaged with iwi and taken their views into account in making this recommendation. Based on our discussions with iwi, s 9(2)(ba)(i) [redacted]

54. s 9(2)(ba)(i) [redacted]

55. s 9(2)(ba)(i) [redacted]

56. While the High Court has offered guidance that the Privacy Act does not require iwi authorisation to share individual level data for Māori in their rohe with Whānau Ora, views expressed by iwi continue to be an important consideration in the Crown's decision to share individual Māori data.

57. The Ministry has given careful consideration to a range of factors relevant to the necessity to share data for Lakes DHB area, including the range of views expressed by local iwi, the number of Māori left to vaccinate in the region, active COVID-19 cases in the community, and the work that is currently being undertaken on the ground to increase vaccination uptake. On balance, we recommend the sharing of individual level data for unvaccinated Maori who live in the Lakes DHB area with Whānau Ora, with an expectation of working with WOCA providers, relevant iwi and other providers to co-ordinate out-reach and support to access COVID-19 vaccination for Māori who are not fully vaccinated.

58. This recommendation is made noting that such a data sharing arrangement with Whānau Ora would not be exclusive nor agreed to in perpetuity. Iwi retain the ability to request individual level data for Māori in their rohe from the Ministry. Data shared with WOCA would only be used for the purposes of reaching Māori to increase vaccination uptake and should only be retained until 30 June 2022 unless otherwise specified (for example, through an additional data sharing agreement at a later date).

Bay of Plenty

59. We recommend the sharing of individual level data for unvaccinated Māori who live in parts of the Bay of Plenty DHB area with Whānau Ora.

60. As at 7 December 2021, the vaccination rate for Māori in the Bay of Plenty area is 81 percent of Māori have had a first dose. The daily rate of Māori vaccination in Bay of Plenty in September was 377 per day. As at the end of November, the daily vaccination rate for Māori in the region had increased to 454 per day. While Bay of Plenty has made progress to get to 81%, it will take significant effort for Maori vaccination rates to reach over 90%.

61. We have engaged with iwi and taken their views into account in making this recommendation. s 9(2)(ba)(i) [redacted]

62. All iwi in Bay of Plenty not in support of data sharing have asked for their area of interest to be not included in data sharing with Whānau Ora.

63. s 9(2)(ba)(i) [redacted]

64. We anticipate that other iwi may request similar arrangements, and propose that WOCA and the Ministry agree to work in good faith to agree similar arrangements in the event that any other iwi seeks a bespoke data sharing arrangement akin to what is reflected for s 9(2) [redacted]

65. We have carefully considered the use of geographic mapping to remove data relating to particular iwi and their rohe within DHB boundaries from the datasets. However, as noted in paragraph 30, The High Court's judgment together with the problems associated with multiple whakapapa connections therefore make adopting a geographical exclusion approach risky from a litigation perspective. Due to overlapping areas of interest in the Bay of Plenty DHB region, we do not consider this option to be sufficiently accurate or suitable to use as a basis for removing individuals from a dataset in this region. This means that the considerations that have been given to iwi preferences through the Ministry's engagement process are unable to be given effect.

66. While the High Court has offered guidance that the Privacy Act does not require iwi authorisation to share individual level data for Māori in their rohe with Whānau Ora, views expressed by iwi continue to be an important consideration in the Crown's decision to share individual Māori data.

67. The Ministry has given careful consideration to a range of factors relevant to the necessity to share data for Bay of Plenty DHB area, including the range of views expressed by local iwi, the number of Māori left to vaccinate in the region, active COVID-19 cases in the community, and the work that is currently being undertaken on the ground to increase vaccination uptake. On balance, we recommend the sharing of individual level data for unvaccinated Maori who live in the Bay of Plenty DHB area with Whānau Ora, with an expectation of working with WOCA providers, relevant iwi and other providers to co-ordinate out-reach and support to access COVID-19 vaccination for Māori who are not fully vaccinated.

68. This recommendation is made noting that such a data sharing arrangement with Whānau Ora would not be exclusive nor agreed to in perpetuity. Iwi retain the ability to request individual level data for Māori in their rohe from the Ministry. Data shared with WOCA would only be used for the purposes of reaching Māori to increase vaccination uptake and should only be retained until 30 June 2022 unless otherwise specified (for example, through an additional data sharing agreement at a later date).

Hawkes Bay

69. We recommend the sharing of individual level data for unvaccinated Maori who live in the Hawkes Bay DHB area with Whānau Ora.

70. As at 7 December 2021, the vaccination rate for Māori in the Hawkes Bay DHB area is behind the overall coverage for the rohe; 83 percent of Māori have had a first dose compared with 93 percent for the Hawkes Bay DHB area overall.

71. s 9(2)(ba)(i) [redacted]

72. s 9(2)(ba)(i) [redacted]

73. s 9(2)(ba)(i) [redacted]

74. We have carefully considered the use of geographic mapping to remove data relating to particular iwi and their rohe within DHB boundaries from the datasets. However, as noted in paragraph 30, the High Court's judgment together with the problems associated with multiple whakapapa connections therefore make adopting a geographical exclusion approach risky from a litigation perspective. Due to overlapping areas of interest in the Hawkes Bay DHB region, we do not consider this option to be sufficiently accurate or suitable to use as a basis for removing individuals from a dataset in this region. This means that the considerations that have been given to iwi preferences through the Ministry's engagement process are unable to be given effect.

75. While the High Court has offered guidance that the Privacy Act does not require iwi authorisation to share individual level data for Māori in their rohe with Whānau Ora, views expressed by iwi continue to be an important consideration in any decision to share individual Māori data.

76. The Ministry has given careful consideration to a range of factors relevant to the necessity to share data for Hawkes Bay, including the range of views expressed by local iwi, the number of Māori left to vaccinate in the region, active COVID-19 cases in the community, and the work that is currently being undertaken on the ground to increase vaccination uptake. On balance, we recommend the sharing of individual level data for unvaccinated Maori who live in the Hawkes Bay DHB area with Whānau Ora.

77. While the High Court has offered guidance that the Privacy Act does not require iwi authorisation to share individual level data for Māori in their rohe with Whānau Ora, views expressed by iwi continue to be an important consideration in the Crown's decision to share individual Māori data.

78. The Ministry has given careful consideration to a range of factors relevant to the necessity to share data for Hawkes Bay DHB area, including the range of views expressed by local iwi, the number of Māori left to vaccinate in the region, active COVID-19 cases in the community, and the work that is currently being undertaken on the ground to increase vaccination uptake. On balance, we recommend the sharing of individual level data for unvaccinated Maori who live in the Hawkes Bay DHB area with Whānau Ora, with an expectation of working with WOCA providers, relevant iwi and other providers to co-ordinate out-reach and support to access COVID-19 vaccination for Māori who are not fully vaccinated.

79. This recommendation is made noting that such a data sharing arrangement with Whānau Ora would not be exclusive nor agreed to in perpetuity. Iwi retain the ability to request individual level data for Māori in their rohe from the Ministry. Data shared with WOCA would only be used for the purposes of reaching Māori to increase vaccination uptake and should only be retained until 30 June 2022 unless otherwise specified (for example, through an additional data sharing agreement at a later date).

Wairarapa

80. We recommend the sharing of individual level data for unvaccinated Māori who live in the Wairarapa DHB area with Whānau Ora.

81. As at 15 December 2021, using the population estimates from the Health Service Users (HSU) dataset, the vaccination rate for Māori in the Wairarapa is 89 percent of Māori have had a first dose. As at 15 December 2021, vaccination of a further 51 individual Māori is required for the DHB to achieve 90% for first doses. We recognise the high rate of vaccination in this area.

82. Iwi in the Wairarapa established s 9(2)(ba)(i) as a response to COVID-19. This s 9(2)(ba) is made up of local iwi and hauora providers and has been part of vaccination efforts in the area providing support for their iwi members and mātāwaka (those Māori who don't whakapapa to local iwi) in their takiwā.

83. We have engaged with iwi and taken their views into account in making this recommendation. s 9(2)(ba)(i) [redacted].

84. s 9(2)(ba)(i) [redacted]

85. In discussions with iwi, they have noted that further intervention and support from Whānau Ora is not necessary as Whānau Ora has previously undertaken limited engagement with local iwi and Hauora providers who sits outside the WOCA provider network in their rohe and iwi have noted that those who form part of the WOCA provider network also form part of the s [redacted] and those providers would work through this s 9(2)(ba) to support efforts to increase vaccination rates.

86. s 9(2)(ba)(i) [redacted] have lodged a request for data with the Ministry to progress their own efforts to increase vaccine uptake in their rohe. s 9(2)(ba)(i) [redacted] have been successful in an application to the Māori Communities COVID-19 Fund administered by Te Arawhiti.

87. We are in ongoing discussions with s 9(2)(ba)(i) [redacted] as to a data-sharing agreement to give effect to their request.

88. While the High Court has offered guidance that the Privacy Act does not require iwi authorisation to share individual level data for Māori in their rohe with Whānau Ora, views expressed by iwi continue to be an important consideration in the Crown's decision to share individual Māori data.

89. The Ministry has given careful consideration to a range of factors relevant to the necessity to share data for Wairarapa DHB area, including the range of views expressed by local iwi, the number of Māori left to vaccinate in the region, active COVID-19 cases in the community, and the work that is currently being undertaken on the ground to increase vaccination uptake. On balance, we recommend the sharing of individual level data for unvaccinated Maori who live in the Wairarapa DHB area with Whānau Ora, with an expectation of working with WOCA providers, relevant iwi and other providers to co-ordinate out-reach and support to access COVID-19 vaccination for Māori who are not fully vaccinated.

90. This recommendation is made noting that such a data sharing arrangement with Whānau Ora would not be exclusive nor agreed to in perpetuity. Iwi retain the ability to request individual level data for Māori in their rohe from the Ministry. Data shared with WOCA would only be used for the purposes of reaching Māori to increase vaccination uptake and should only be retained until 30 June 2022 unless otherwise specified (for example, through an additional data sharing agreement at a later date).

Request for data relating to Maori who have had first dose

91. The second request is to share data for purposes of reaching Māori who have had a first dose of COVID-19 vaccine, but who have not yet had a second dose. The request from Whānau Ora Commissioning Agency (Whānau Ora/WOCA) and Whānau Tahi is for this data for all people who are identified as Maori in the health data sets, and who live in the North Island. For each person it would include their:
    - name
    - personal contact details such as address, phone number
    - National Health Index number (NHI).

92. The Ministry already provides this information to WOCA for its enrolled population. WOCA is able to directly follow-up with its enrolled population to remind them to have a second dose. It is generally expected that all providers will be taking such steps to follow-up with its enrolled population.

93. The current advice is that a period of at least 3 weeks between doses is required. It is not possible for individuals to receive a second dose of the vaccine earlier than 21 days after their first dose. The Ministry of Health currently shares some individual information with Whakarongorau between the third and fourth week following an individual's first dose in instances where they do not have a second dose booked. Whakarongorau makes phonecalls to support people to make a booking for a second dose.

94. Many individuals are still utilising a 6-8 week gap, and in some cases this is on the basis of the specific clinical advice to individuals, based on their personal health situation.

95. It is noted that the time between first and second dose vaccinations is slightly longer for Māori in comparison to other ethnicities. By 8 weeks since a first dose, only 18% of Maori have not yet had a second dose.

96. The Ministry had previously offered to provide datasets to WOCA for the purposes of reaching Māori who have not yet received their second dose of COVID-19 vaccine, on the condition

that it was for individuals who had no future vaccine booking for their second vaccine and where it had been 8 weeks or more since their first vaccine. This timeframe was in recognition that a very high proportion of Maori are having second doses, supported by existing follow-up systems and processes, so it has been questionable as to whether it is necessary to share this data with WOCA at an earlier point.

97. The Ministry recognises that COVID-19 vaccination is critical to prevent or lessen the threat of COVID-19. As such, it is important to follow up with people who have received a first dose but not their second to ensure that as many people as possible across the motu are fully vaccinated against COVID-19. Being fully vaccinated provides a high level of protection against Delta infection and a very high degree of protection against severe illness, hospitalisation and death. Vaccination helps to reduce transmission of the virus. Evidence currently shows:
    - the effectiveness of two doses of the Pfizer vaccine against symptomatic illness is 64–95%
    - the effectiveness of two doses of the Pfizer vaccine against hospitalisation or severe disease due to Delta infection is about 90–96%
    - the Pfizer vaccine can reduce transmission of the virus.

98. With the above considerations in mind, and in light of the Court's guidance for the Ministry to review its decision to provide data in relation to those Māori in Te Ika-a-Māui who have had only a first dose, we recommend the sharing of individual level data for Māori in the North Island who have had a first dose of COVID-19 vaccine, but who have not yet had a second dose, in the following tranches:

    - at 3-4 weeks following a first dose of vaccine, who are not enrolled with a primary care provider and do not have a booking
    - at 6 weeks following a first dose of vaccine, including those who are enrolled with another primary care provider and who do not have a booking for a second dose. This is because people who are enrolled with a provider often have an established relationship with that provider. Many providers will be using their own systems and processes to follow-up and arrange for a second dose of vaccine.

99. We consider it important to reduce the potential for Māori to receive multiple phone calls from multiple service providers, including Whakarongorau, Whānau Ora, as well as their own primary healthcare provider.

100. Our expectation is that Whānau Ora will use this data to assist Māori to access a second dose of vaccine. Where bespoke data sharing arrangements are in already place for iwi in relation to data about people who have not yet had a dose, we recommend that these arrangements be replicated in relation to people who have had a first dose, but not a second.

Data Sharing Arrangements

101. A number of iwi across Te Ika a Māui remain opposed to the sharing of people's individual-level data with WOCA. A range of reasons have been expressed for this, including that individual consent should be sought from those individuals who may be contacted from WOCA; and that iwi have a legitimate interest in the protection of the data relating to their people, and those living in their takiwā. The data being requested is Māori data.

102. Further Māori data is subject to the rights articulated in the Treaty of Waitangi and the UN Declaration on the rights of Indigenous peoples. Recognising these obligations and the

Crown's relationship with iwi, we recommend that the data sharing agreement between WOCA and the Ministry includes the following provisions:

- data provided may only be used to support COVID-19 vaccination service planning, monitoring, invitation, delivery and quality improvement for Māori who are not fully vaccinated
- an expectation of working with WOCA providers, relevant iwi and other providers to co-ordinate out-reach and support to access COVID-19 vaccination for Māori who are not fully vaccinated
- a requirement to have a clear answer when people who are contacted (and who aren't enrolled with the provider) if they ask where they provider got their details, and how they know the person is unvaccinated
- WOCA will need to delete information relating to anyone who advises they do not want their data to be held by the Applicant and advise the Ministry of this
- data supplied is to be retained until no later than 30 June 2022. After that date the information is to be securely destroyed.

Recommendations

1. We recommend you record your decision to:

a. **note** the decision provided by High Court on 6 December that the Ministry complete its decision-making processes for the provision of datasets in areas where it has not yet agreed to share data to the applicants, and to review its decision to provide data in relation to those Māori in Te Ika-a-Māui who have had only a first dose

b. **agree** to provide Whānau Ora Commissioning Agency and Whānau Tahi Limited data from the Ministry of Health's COVID-19 Vaccine and Immunisation Programme datasets, including the COVID-19 Immunisation Register (CIR), for the purposes of reaching unvaccinated Māori and promoting vaccination uptake in Māori who reside in the DHB areas of:

i.	Northland	**Yes / No**
ii.	Whanganui	**Yes / No**
iii.	Bay of Plenty	**Yes / No**
iv.	Lakes	**Yes / No**
v.	Hawkes Bay	**Yes / No**
vi.	Wairarapa	**Yes / No**

c. **note** these recommendations are made with careful consideration of a range of relevant factors, including vaccination rates, active COVID-19 cases, the work currently being undertaken on the ground to increase vaccination uptake and iwi consultation in the Bay of Plenty, Hawkes Bay, Lakes, Northland, Wairarapa and Whanganui DHB regions respectively, and in light of the High Court decision

d. **agree** that in relation to the Wairarapa data set, the expectation is that WOCA will work closely with iwi on the ground to ensure efforts are coordinated and considerate of community mahi.

e. **agree** that the data set for the Lakes DHB area will exclude the data for s 9(2)(ba)(i) [redacted], with this data removed through a data-matching agreement with the Ministry. This data matching exercise is underway, and only whānau who live within the iwi's rohe will be excluded as part of the data matching. **Yes / No**

f. **agree** that WOCA be asked to implement an arrangement to inform s 9(2)(ba)(i) [redacted] where providers identify that a person is affiliated with s 9(2)(ba)(i) [redacted], including that: the provider has been in contact with the person/whānau; the result of that contact; and relevant information so that s 9(2)(ba)(i) [redacted] can decide whether to follow-up with the whānau and seek to engage with them based on their connections and relationships. **Yes / No**

g. **note** the Court's requirement that the Ministry review its decision to provide data in relation to those Māori in Te Ika-a-Māui who have had only a first dose, and who have not yet had a second dose; **Yes / No**

h. **agree to** provide WOCA and Whānau Tahi with data relating to Māori in the North Island who have had a first dose of COVID-19 vaccine, but who have not yet had a second dose, in the following tranches:

i. 3-4 weeks following a first dose of vaccine for those who are not enrolled with a primary care provider and do not have a booking; and

ii. 6 weeks following a first dose of vaccine for those who are enrolled with another primary care provider and who do not have a booking for a second dose.

Yes / No

i. **note** that we will work with WOCA, Whānau Tahi Limited to enter into a data sharing agreement, and that agreement will have privacy protections including:

- the data provided is only to be used for the purpose agreed, such as to contact unvaccinated individuals and those individuals who are not fully vaccinated;
- data will be destroyed by 30 June 2022
- the Ministry will be informed if an individual declines engagement with the provider for the purposes of recording it in CIR, and the Ministry will endeavour to inform other organisations who may be involved in a coordinated approach for the same population where possible;
- the data will not be shared with any person or agency not authorised by the agreement;
- will be transferred, stored, and used in a way which protects the privacy of individuals, and keeps the data safe from accidental or malicious disclosure;
- no data will be made public which would allow the identification of individuals; and
- only people directly involved in contacting people who have not been vaccinated will have access to identifiable data
- an expectation that WOCA will coordinate their effort with others providing vaccination services locally to reduce the likelihood that an unvaccinated person is approached in an ad-hoc way by multiple, different providers.

Yes / No

j. **note** that a number of iwi remain opposed to the sharing of their people's individual-level data with Whānau Ora. While a solution has been agreed to with s 9(2)(ba)(i) to share the information necessary to enable the Ministry to complete a data match, these solutions have not been able to be discussed with other iwi due to time constraints.

Yes / No

k. **note** that we will work with iwi and Whānau Ora in the event that iwi request a clause similar to the clause provided for s 9(2)(ba)(i) in the original Tāmaki Makaurau data-sharing agreement **Yes / No**

l. **agree** the Ministry continues engagement with iwi, Hauora providers and other Māori organisations to enable access to both meshblock level, and, where appropriate, individual level data to support vaccination of Māori across Aotearoa.

Yes / No

Signature: _____

Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health

Date:

From: Jo Williams <Jo.Williams@health.govt.nz>
Sent: Thursday, 6 June 2024 1:01 pm
To: Phil Knipe <Phil.Knipe@health.govt.nz>
Subject: Further docs on data sharing for COVID-19 vax

Signed memo_ Sharing of data_WOC

WOCA decision paper.DOCX

Letter to Whanau Ora Commissioning Agen

Talking points - Ashley Bloomfields me

Refer to Documents 3A-3D

s 9(2)(h)

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MINISTRY OF HEALTH

MINISTRY OF HEALTH
MANATŪ HAUORA

Memo

Sharing of data to support COVID-19 vaccination uptake in individuals who are unvaccinated

Date:	19 October 2021
To:	Jo Gibbs, National Director, COVID-19 Vaccine and Immunisation Programme
Copy to:	John Whaanga, Deputy Director-General, Māori Health Phil Knipe, Chief Legal Advisor, Health Legal
From:	Caroline Greaney, Group Manager Office of the National Director, COVID-19 Vaccine and Immunisation Programme
For your:	Decision

Purpose of report

1. This memo seeks your decision to share information with the Whānau Ora Commissioning Agency (WOCA) from the Ministry of Health's COVID-19 Vaccine and Immunisation Programme datasets, including the COVID-19 Immunisation Register (CIR), for the specific purposes of reaching unvaccinated populations. Insofar as it sketches out general considerations relevant for considering WOCA's request, the wider decision-making framework is also applicable to similar requests the Ministry is currently processing which will shortly reach you for decision or which we expect to receive and process in the coming days.
2. The Ministry has consulted the Office of the Privacy Commissioner in developing this memo and its comments have been incorporated.

Obligations under the Treaty/Te Tiriti o Waitangi

3. The Ministry has a responsibility to contribute to the Crown meeting its obligations under the Treaty/Te Tiriti o Waitangi. This involves acting in a way that is consistent with the guarantee of tino rangatiratanga; working in partnership with Māori in the governance, design, delivery and monitoring of health and disability services; and giving effect to the Crown's duty of active protection in delivering, to the fullest extent possible, equitable health outcomes for Māori. The approach and outcomes sought by the proposals outlined in this paper are intended to give effect to the Crown's commitments under the Treaty/Te Tiriti.

The COVID-19 pandemic constitutes a serious threat to public health and safety

4. The COVID-19 pandemic, and particularly the Delta variant, constitutes a serious threat to public health and safety. Over ten million people around the world have died from COVID-19.

5. A large British study has reported one in three diagnosed COVID cases are still experiencing at least one long COVID symptom three to six months after recovery. In another British study, more than half admitted to hospital had long COVID symptoms three months after discharge, with worse symptoms among those aged under 50, women, and those with higher pre-COVID fitness levels. There are many other papers with similar findings.

6. Evidence suggests that the Delta variant of COVID-19 may present both a greater threat to the health of individuals who contract the infection and a greater challenge to containing the spread of the virus in an outbreak. With the August community outbreak of the Delta variant of COVID-19, it is critical that we now reach all eligible people so that they can receive two doses, appropriately spaced, as soon as possible.

7. The issuing of an epidemic notice and the ongoing advice from the Ministry of Health makes it very clear that COVID-19 represents a serious ongoing threat to public health.

8. It is the Ministry's view that COVID-19 vaccination is critical to prevent or lessen the threat of COVID-19. Being fully vaccinated provides a high level of protection against Delta infection and a very high degree of protection against severe illness, hospitalisation and death. Vaccination helps to reduce transmission of the virus. Evidence currently shows:

    a. the effectiveness of two doses of the Pfizer vaccine against symptomatic illness is 64–95%;

    b. the effectiveness of two doses of the Pfizer vaccine against hospitalisation or severe disease due to Delta infection is about 90–96%;

    c. the Pfizer vaccine can reduce transmission of the virus.

9. In New Zealand, the percentage of Māori who have received COVID-19 vaccinations is materially lower than the percentage of other eligible populations; the percentage of Māori who are enrolled with primary healthcare providers is also materially lower than the general population. Māori are more at risk of adverse outcomes from COVID-19 due to a higher rate of poorer health including respiratory disease. It is critical to take steps to reach everyone in New Zealand, including Māori whānau, hapu and iwi, in order to support access to vaccination.

Significant steps have been taken to reach unvaccinated people

10. The Ministry has used contact details previously provided by individuals to invite them to be vaccinated through a range of methods, including letters, phone calls and text messages. For example, in early September, the Ministry undertook a nationwide maildrop of approximately 1.9 million flyers containing information about the vaccine and how to book an appointment. Material in 26 additional languages was included, advising individuals of where they can go to find information to book their vaccination appointment, including information in alternate formats such as New Zealand Sign Language. Additionally, the Government has invested significantly in a COVID-19 vaccine mass media campaign.

11. Primary Health Organisations (PHOs) have also taken steps to contact their enrolled populations. This has been a successful approach for many people who are receptive to

messages from central government agencies and organisations. This was a broad scale approach, and was not personally tailored at individual level.

12. District Health Boards (DHBs) have approval from the Ministry to share records relating to vaccination and booking status for enrolled populations with PHOs and other healthcare providers. In addition, the Ministry has established agreements with Whānau Tahi (the data arm of the Whānau Ora Commissioning Agency, "WOCA") and the National Hauora Coalition (NHC) to share information regarding the vaccination and booking status data of their enrolled populations.

13. This information is supplemented by publicly available reporting on vaccination rates on the Ministry's website. This includes:

    a. population-based data by DHB, age, and ethnicity;

    b. maps and associated data showing uptake rates of the COVID-19 vaccine across the country by small geographic areas: Stats NZ Statistical Areas or Statistical Area 2 (SA2). Equivalent maps are published showing the uptake of the COVID-19 vaccine among Māori and Pacific communities at an SA2 level.

14. The Ministry has supplied data from the COVID-19 Immunisation Register to the Integrated Data Infrastructure (IDI) which will provide additional information about the success of the vaccination programme, and identify areas which require targeted programmes to support access to vaccines. The IDI is a large research database managed by Stats NZ. It contains de-identified person-level data submitted by many government agencies including health, housing, income, education, benefits and demographic information. Adding vaccination data from the CIR data will allow analytics which are not possible using Ministry data alone. IDI research will identify groups with low vaccine uptake, including hard-to-reach groups and those with barriers to vaccination, such as Māori.

15. However, as the IDI contains de-identified data, research in the IDI can identify areas and communities for focus. It will not be possible to identify specific individuals who require support to access vaccinations. This work requires data available outside the IDI.

Further steps are needed to reach the unvaccinated

16. The Ministry recognises the urgent need to reach unvaccinated individuals and whānau to support vaccine access. Additional approaches are needed where existing pathways and systems have not proved successful at this point. For maximum effect, it is critical to engage organisations which, through their community networks, are positioned to contact individuals who are unvaccinated. To this end a number of community and iwi organisations have expressed interest in accessing the Ministry's various data sets to support the COVID-19 Vaccine and Immunisation Programme.

17. The Ministry is committed to sharing data appropriately and safely with organisations so as to harness community and whānaungatanga connections and empower organisations with social and kaitiakitanga obligations for particular groups. At the same time, it is important that the Ministry respects that providers' authority and capacity to service constituencies may not be exclusive. Therefore, any proposed disclosure of health information must be assessed on a case-by-case basis, ensuring that the scope and level of data shared is proportionate to each organisation's community and whānaungatanga connections and capacity to deliver.

Lawful disclosure of information

18. Legal rules regarding the collection, use and disclosure of health information are set out in the Health Information Privacy Code 2020. The Code has been developed with the characteristics of the health sector and health information in mind, noting that most health information is collected in a situation of confidence and trust in the context of a health professional / patient relationship; health information is often highly sensitive in nature; and that health information collected as part of one episode of care is often required by the health agency and other health providers in the future.

19. Rule 11 places limits on the disclosure of health information. Generally, information can be shared where it was a purpose of collection, or where the disclosure is authorised by the individual concerned. However, a number of exceptions are set out in Rule 11(2) which recognise that other interests may be engaged and take precedence.

20. The relevant exception here is sharing health information in order to prevent or lessen a serious threat to public health or public safety, or to the life or health of the individual concerned or another individual. To share individual information in reliance on this exception, MOH must be satisfied that:

    a. it is either not desirable or not practical to obtain authorisation from the individual concerned;

    b. the disclosure of the information is necessary to prevent or lessen a serious threat to public health or public safety; ie,

        i. the proposed recipient is in a position to take effective action to prevent or lessen the threat;

        ii. the information shared is limited to that which is necessary to enable the recipient to take action.

21. The Rules provide a discretion to disclose not an obligation to do so. Agencies are therefore expected to consider whether and how the discretion should be exercised. The risks of sharing without authorisation are a relevant consideration as is the need to maintain the trust and confidence of affected individuals and the wider public.

22. Our advice is that the COVID-19 pandemic constitutes a serious threat to public health and safety. COVID-19 vaccination is critical to prevent or lessen the threat of COVID-19, and data may be needed to contact unvaccinated individuals to lessen this serious threat to public health.

23. Insofar as the Ministry is invited to consider requests for the sharing of individual identifiable data with organisations that can take effective action to support unvaccinated people to be vaccinated in order to lessen the threat of Delta outbreaks, due to the number of unvaccinated individuals, their range of geographic locations, and the time pressure, it is not practicable to obtain individual consent to disclose affected individuals' information. Bulk use of data in various forms is likely to be necessary.

Trust and confidence in the system: risks and safeguards

24. As a result of specific requests for data, the Ministry has been engaging with, and receiving feedback from, a range of stakeholders and providers who are either themselves seeking access to specific data sets to support outreach activities, or otherwise interested in the

Ministry's provision of data to others. These groups include iwi (through the Data Iwi Leaders Group), WOCA, social services networks delivering services to vulnerable people (including those confronting mental health and addiction issues, family violence, and homelessness), District Health Board Chairs as well as the Office of the Privacy Commissioner.

25. There are a range of views within Māori and among others about the appropriateness of sharing data and at what level. At one end of the spectrum, it has been suggested only individual level data will suffice to achieve appropriate outreach activities and, at the other, it is suggested that not only will the sharing and use of SA1 level data be sufficient, but the provision of individual-level data would in fact serve only to erode trust and confidence in the health system and thereby cut against the overall efficacy of the vaccination effort.

26. In addition to targeted consultation, we are aware from OIA requests, media enquiries, and correspondence with Ministers that, in terms of system risks, there is likely to be significant public interest in the Ministry sharing personal health data. We apprehend this may be particularly acute if the information is at an individual identifiable level and is shared with organisations/providers the individuals have not had a previous relationship with.

27. People may be interested in why their information is being shared with a particular organisation, for what purposes the organisation can use the information and whether its provision is time-limited and needs to be deleted. For some constituencies, who may already consider the Covid response to represent an undue encroachment on individual rights and liberties, the sharing of personal information may be considered particularly intrusive over-reach. There is potential for significant privacy complaints to follow. There may also be worries this represents a 'slippery slope' of information sharing, and that having shared data for this purpose the Ministry may be more likely to share it for a wider government purposes in less compelling contests in the future.[1]

28. The inclusion of data about unvaccinated Māori may also draw questions about the extent to which this sharing is in accordance with the Crown's Treaty/Tiriti o Waitangi obligations. Some may feel the speed with which decisions are being made does not accord with sufficiently early and pro-active involvement of Māori across all relevant decisions.

29. On the other hand, it is the Crown's responsibility to protect the health of all in Aotearoa, with specific Treaty/Te Tiriti commitments to active protection and the delivery of equitable health outcomes for Māori. The Crown should be open to taking, or facilitating, all available steps to reach the unvaccinated population, given the public health emergency and the risks to individuals, whānau, hapu, and iwi communities. It is also clear that a perceived failure to confront the pandemic equitably, with disproportionate impacts on Māori and vulnerable communities, may itself serve to erode trust and confidence in the health system.

30. In terms of mitigations, it is critical that any data shared must be no more than is necessary to effectively reach people who are unvaccinated, and that it may be shared only with organisations who can effectively achieve this outcome. Strict privacy safeguards will be built into individual data use agreements with any organisation we agree to share data with.

31. Specific requests for individual data will be considered against the requirements that:

[1] In this respect, note that the data sets in question in relation to WOCA's request would include people who have actively chosen to not participate in vaccination and who are opposed to the COVID-19 vaccination. This group is unlikely to be accepting of the sharing of their data with providers for the purposes of encouraging vaccination. (While the data set does not identity individuals who are opposed to vaccination in those terms, only those who have asked not to be contacted, it is not possible to exclude their data from sharing).

a. it is not desirable or practicable to obtain the consent of individuals to sharing the relevant data;

b. the disclosure is necessary to prevent or lessen the serious threat to public health or safety, or the life or health of an individual, represented by the pandemic; and as to that:

   i. what other outreach steps are presently in train by the Ministry or others with respect to particular populations, regions, and time periods;

   ii. the geographical location, reach, and capacity of applicants to achieve the purpose of preventing of lessening the threat; and that

   iii. disclosure is necessary to achieve that purpose;

c. wherever an escalation approach that involves the disclosure of more limited data sets progressively or in tranches is practicable, such an approach should generally be preferred.

32. There is also a role for effective communications in mitigating risks to trust and confidence in the health system, in particular:

a. the Ministry will publish details about the information being shared with organisations on our website and the public will be clearly advised of what data is being shared, with whom, and for what purpose;

b. the uses and disclosures of personal information, particularly noting that information cannot be used or retained for other purposes;

c. the security requirements we require to be in place to ensure that personal information is protected from misuse, and from further disclosure;

d. what will happen to personal information once it has been shared by the Ministry; and

e. how individuals can complain about or opt out of the use or sharing of their information.

33. The Ministry will update its public-facing privacy statements about how data is used to reflect the decisions outlined in this memo.

34. Trust and confidence will also be supported by continuing to insist on partnering only with credible organisations, and requiring the assessment of:

a. the degree to which an organisation can effectively contact unvaccinated individuals in their area and facilitate their access to vaccination;

b. the level of information disclosed is no greater than that required for the geographic and technical reach of the organisation;

c. the accuracy and possible limitations of the available data and the organisation's capacity to navigate these limitations;

d. that appropriate privacy impact and security risk assessments are completed;

e. that all data shared is stored in a platform which has a completed privacy impact assessment and security risk assessments to reduce risks for malicious access and disclosure; and

f. that security roles and data partitioning systems ensure that access to data without authorisation is not possible, and that access is auditable.

35. Recipient organisations would be required to sign specific data access conditions, which would include that:

    a. the data provided is only to be used for the purpose agreed, such as to contact unvaccinated individuals in specific areas with low uptake;

    b. data will be destroyed on a date agreed with the Ministry;

    c. the Ministry will be informed if an individual declines engagement with the provider for the purposes of recording it in CIR, and the Ministry will endeavour to inform other organisations who may be involved in a coordinated approach for the same population where possible;

    d. the data will not be shared with any person or agency not authorised by the agreement;

    e. data will be transferred, stored, and used in a way which protects the privacy of individuals, and keeps the data safe from accidental or malicious disclosure;

    f. no data will be made public which would allow the identification of individuals; and

    g. only people directly involved in contacting people who have not been vaccinated will have access to identifiable data.

Decision: Whether to share data with the WOCA for the purposes of reaching unvaccinated populations

36. As you are aware the Ministry is currently in High Court proceedings with WOCA in relation to its requests to access data and this decision-making has been brought forward to accommodate the High Court process. Discussions between our technical analysts and the representatives of WOCA and Whānau Tahi have continued following the initiation of the High Court process and have proved fruitful.

37. We do recommend providing some of the information WOCA seeks, subject to the refinement of certain technical details we anticipate are resolvable through further discussions between the analysts. However at this time, and notwithstanding the Court proceedings, we are still not comfortable recommending the release of all of the data WOCA requests.

38. As you know, WOCA has previously been granted access to individual level data for populations enrolled with its own providers (and so on the basis of consent provided to share the relevant information). In addition to that reasonably focussed data set, WOCA has also emphasised the importance of receiving various individual level data in order to effectively execute its proposed outreach activities for Māori.

39. At the time of submitting this paper, WOCA's request has been sharpened through a process of engagement to the point it now constitutes two separate requests (or data use cases), one requiring identifiable individual data and the other enabling small area anonymised mapping data. Providing more detail on these requests:

    a. One request styled as "Direct contact by WOCA".

        i. This requests identifiable data for individuals who are not vaccinated or who have received only 1 dose, excluding those who are deceased or have Opted Out of receiving communications.

ii. It is intended the requested data be received and ingested into the WOCA Navigator system for WOCA to then use contact channels such as telephone or text outreach service to contact the individuals and to offer vaccination support services.

iii. When individuals accept the offer WOCA will (with the consent of the individual) raise a referral to its local Whānau Ora provider. This will add contact details to the local Whānau Ora provider's Navigator system. The local Whānau Ora provider will then engage with the individual/whānau and follow the established Whānau Ora protocols for obtaining consents and connecting them with vaccination and/or other services as required.

b. The other request styled as "Targeted vaccination resources".

i. This requests data to be received and ingested into the WOCA Geospatial system to provide anonymised (to street level) mapping representations that show areas with unvaccinated cohorts.

ii. Whānau Tahi will distribute maps showing aggregated data to providers (down to street level) allowing them to target Māori and other population areas with low vaccination uptake. No personal identifiable data will be disclosed in this use case.

iii. Whānau Ora providers may target these areas in multiple ways, e.g. with mobile vaccination sites, door to door contact, etc. Individuals who accept these approaches will be engaged following Whānau Ora practices, which includes consenting to having their data stored and receiving services.

40. On balance, we recommend agreeing to sharing data required for the "Targeted vaccination resources" request, but we are not satisfied that it is appropriate or necessary to share individually identifiable data to the level of specificity required under the "Direct Contact with WOCA" use case at this stage.

41. We accept that Covid-19 represents a serious threat to public health, and that, were we recommending the disclosure of the individual identifiable information, it would not be practical to obtain authorisation from the individuals concerned. However, we are not satisfied disclosure of individual level data is appropriate at this point or that it is necessary to lessen the threat presented by Covid-19 at this time.

42. We have weighed a number of factors in arriving at this recommendation, including the gravity of the threat to public health, the divergent views of Māori as to the appropriateness of sharing individual-level data, the (related) need to maintain confidence in the health system and the vaccine programme, and the possibility that alternative, less invasive, approaches may serve to reduce the threat to public health. The presence of other providers, including iwi organisations, who also seek anonymised mapping-level data informs part of this picture, as it may enable providers (including WOCA providers) to make considerable headway in reaching the unvaccinated in the coming weeks.

43. We also draw confidence from the significant individual-level data already provided to WOCA as well as what the analysts consider to be the very impressive technical capability demonstrated by WOCA and Whānau Tahi's current data-handling systems and personnel. Given the already built systems used to share data relating to WOCA's enrolled populations, we consider, and we understand WOCA may be open to exploring, a less invasive approach which could include:

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a. The Ministry providing anonymised small unit data – SA1 or similar – that can be used by WOCA providers "street by street" to identify unvaccinated or partially vaccinated people.

b. WOCA through its providers thereby navigates the particular community in question and identifies individuals who may wish to be served by a WOCA provider for kai, vaccines or other services, etc.

c. Each engaged individual or whānau then enrols with the relevant WOCA provider and the enrolment is recorded in Whānau Tahi's Navigator application with the consent that that person's data can be shared for the provision of health and social services.

d. Whānau Tahi then requests individual data using the NHI matching and vaccination reporting process already established for WOCA enrolled people, and that has operated successfully since 27 September.

44. On the whole, we consider that it is preferable at this time to share more limited data sets and encourage providers to work with that data to support vaccine outreach activities. We may revisit this approach with providers as the programme develops. As such, we recommend that you:

a. **agree** to authorise the sharing with WOCA of anonymised (to street level) mapping representations that show areas with unvaccinated communities (SA1 or similar, in accordance with WOCA's "Targeted vaccination resources" request), subject to the resolution of technical issues, and the execution of a data sharing agreement that meets the Ministry's due diligence requirements as set out above.

Yes / No

b. **decline** to authorise the sharing of individual identifiable data for individuals who are not vaccinated (ie, the "Direct contact with WOCA" request).

Yes / No

Signature: _____

Date: 20 October 2021

Jo Gibbs, National Director, COVID-19 Vaccine and Immunisation Programme

Noting that in reaching this decision, I have discussed with:

- Ashley Bloomfield, DG Health who supports the caution in use of individual data
- Cassandra Crowley Chair of DHB Chairs who confirms DHB Chairs have emphasised concerns about sharing individual data who feel this would undermine efforts to reach these people.

Memo

Reconsideration of WOCA data request

Date:	5 November 2021
To:	Ashley Bloomfield, Director General of Health
Copy to:	John Whaanga, Deputy Director-General, Māori Health Phil Knipe, Chief Legal Advisor, Health Legal
From:	Jo Gibbs, National Director, COVID-19 Vaccine and Immunisation Programme
For your:	Decision

Purpose of report

1. This memo seeks your decision to share information with the Whānau Ora Commissioning Agency (WOCA) and Whānau Tahi Limited from the Ministry of Health's COVID-19 Vaccine and Immunisation Programme datasets, including the COVID-19 Immunisation Register (CIR), for the purposes of reaching unvaccinated populations.
2. The High Court Judge in *Te Pou Matakana Ltd v Attorney-General* [2021] NZHC 2942 found that the Ministry had made an error of law by approaching whether disclosure of the information was "necessary" to prevent or lessen the threat of COVID-19 in the context of rule 11(2)(d) of the Health Information Privacy Code without adequately considering the specifics of the applicants' request. An evidence-based assessment is required in which the decision is exercised in accordance with the principles of the Treaty/Te Tiriti o Waitangi and tikanga.
3. Attached to this memorandum is a set of the evidence that was before the High Court together with a copy of the Court's judgment. We also attach correspondence from iwi and others consulted on the decision who were comfortable expressing views on the record as well as some data visualisations illustrating Māori vaccine uptake around the North Island and WOCA partner locations.

Information request

4. The request began life seeking vaccination data for all Māori including clinical information not directly relevant to vaccine outreach activities. Following refinement, the request is at this point for personally identifiable data for people recorded as domiciled in the North Island and identifying as Māori in the CVIP dataset. Specifically it is for the data of all Māori in the North Island who have had no vaccine dose and those who have had only one dose. The data required for each person includes NHI number, name, demographics, contact details and vaccination status.
5. As at 5 November 2021, the number of Māori in the North Island captured by this information request is 252,548.

Rule 11(2)(d) of the Health Information Privacy Code

6. Rule 11(2)(d) allows the Ministry to disclose information if it believes on reasonable grounds that the following three considerations are met:

   a. It is not desirable or practicable to obtain authorisation for the disclosure from the individual concerned.

   b. There is a serious threat to public health or public safety, or the life or health of the individual concerned or another individual.

   c. Disclosure of the information is necessary to prevent or lessen that threat.

7. The Rule confers a discretion to release the relevant information, not an obligation to do so.

Approach to decision

8. The background to the request is set out in the decision paper of 19 October 2021 and the affidavits. Although vaccination rates have increased since that time, the threat presented by COVID-19 remains and Māori vaccination rates continue to lag behind the general population. COVID-19 represents a serious threat to public health, and Māori are disproportionally impacted by the current Delta outbreak in those locations where it is occurring. As at 3 November 2021, 35.9% of the cases reported in the delta outbreak are Māori, and of the cases reported in the past twenty-four hours 46.8% are Māori.

9. The situation requires appropriate responses that have the best chance of bringing about equity in outcomes for Māori. It remains the Ministry's goal to reach all eligible people so that they can receive two doses, appropriately spaced, as soon as possible. The Ministry also remains committed urgently to support alternative approaches where existing pathways and systems have not proved successful at this point, and to engage organisations, including the applicants, which, through their community networks, are positioned to reach individuals who are unvaccinated. Given the breadth of the personal information sought by the request, it remains impractical to obtain the consent of the individuals concerned.

10. As the serious threat threshold is satisfied and it remains impracticable to obtain individual consent, the key issue for your decision is whether disclosure is necessary to prevent or lessen the threat and, then, whether, in the Ministry's discretion it should, in all the circumstances, disclose the information.

11. The recommendations in this paper are therefore framed around the following headings:

    a. Should the Ministry be satisfied that the conditions of rule 11(2)(d) of the Health Information Privacy Code are met, considering:

       i. the information the applicants seek;

       ii. how it is going to be used and whether it will be effective to address the risks associated with the COVID-19 pandemic;

       iii. any anticipated health-related disadvantages of the disclosure;

       iv. other less privacy-intrusive options that are still effective to address the risks; and

    b. if the conditions in rule 11(2)(d) are met, should the Ministry exercise the discretion to release the requested information.

12. The COVID-19 vaccination and immunisation programme is guided by the principles of the Treaty/Te Tiriti o Waitangi. The Judge directed that the power to disclose must be exercised in accordance with the relevant principles, being:

    a. ***Partnership***: the Crown is required to work with Māori in partnership in the governance, design, delivery, and monitoring of the response to COVID-19.

    b. ***Tino rangatiratanga****:* this provides for Māori self-determination and mana motuhake. This means that Māori are key decision makers in the design, delivery, and monitoring of health and disability services and the response to COVID-19.

    c. ***Options***: the Crown is required to provide for and properly resource kaupapa Māori services and ensure that all health and disability services are provided in a culturally appropriate way that recognises and supports the expression of hauora Māori models of care.

    d. ***Equity****:* the Crown is required to commit to achieving equitable health outcomes for Māori and to eliminate health disparities resulting from COVID-19. This includes the active surveillance and monitoring of Māori health to ensure a proportionate and coordinated response to health need.

    e. ***Active Protection****:* the Crown is required to act, to the fullest extent practicable, to protect Māori health and achieve equitable health outcomes for Māori in response to COVID-19. This requires the Crown to implement measures to equip whānau, hapū, iwi, and Māori communities with the resources to undertake and respond to public health measures to prevent and/or manage the spread of COVID-19.

13. The tikanga principles engaged to have regard to are mana, whanaungatanga, and kaitiakitanga, manaakitanga, and tapu.

Consultation

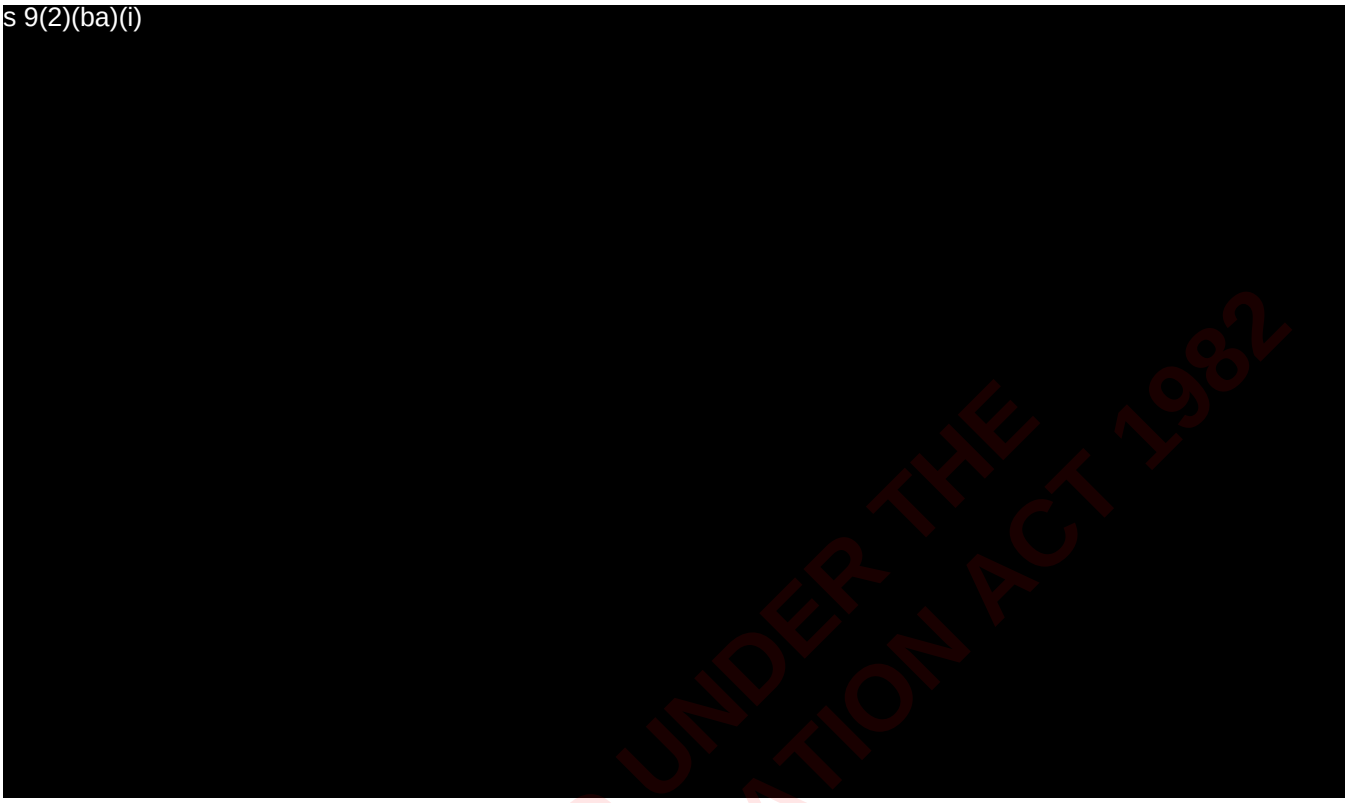
14. We have invited the applicants to provide any further evidence they wish us to take into account in re-considering the request and they have provided some further information. We have also consulted with some of the group of iwi leaders that Ministers have met with regarding the pandemic response as well as with a range of Māori health experts and representatives from Māori organisations. Participants included the New Zealand Māori Council, the New Zealand Māori Authority, FOMA, Drs Rawiri Jensen and Rawiri Taonui, and the representatives of eight iwi for the Pandemic Response Group.

15. We endeavoured to invite a broad representation of Māori leaders, recognising the tight timeframes within which the conversations could take place. The engagement was with the intention that we hear from Māori leaders in order to ascertain the range, content and extent of the Māori rights and interests which may be affected by the disclosure sought, and how those interests may be affected, in order to inform your decision in light of the principles of the Treaty/Te Tiriti and relevant tikanga.

16. Some members of the Iwi Leaders Pandemic Response Group expressed a view that the appropriate tikanga recognises that information about individuals is taonga, and that there is a data sovereignty interest in play. For each iwi there is a data sovereignty relationship, with the information about the individuals who are whanau and Māori in their rohe. That personal data should not be shared with organisations that do not have a mandate for iwi information on the basis they are not partners with the Crown. Some iwi leaders indicated they have a greater interest in meshblock-level information so that we can work out which areas to focus

on together. Since the meeting, we have received a number of requests for individual level data for particular rohe.

s 9(2)(ba)(i)



19. Some Māori health experts expressed views that in the circumstances it was both appropriate and necessary for individual level data to be shared with Māori organisations and providers that are directly mandated to work with Māori in their communities. There was acknowledgement that the serious threshold required to share data at an individual level is high but that, in light of the COVID-19 pandemic and the particular risk the Delta variant poses to Māori, the necessity threshold has been met in a general sense. There was a consistent view that the community and the people need to be protected, that Delta could be devastating for Māori, and that what counts is protecting the community and the people and making good decisions to support and protect whanau.

20. We heard that data is needed to ensure that Māori families are safe, healthy, and alive. Access to the data for providers needs to be managed to ensure access to vaccination for Māori families. COVID-19 and the likely variants have been known about for a long time. Māori are tired of feeling invisible. We also heard that the approach that will make a difference for the 20 to 34 age group is sitting down and talking to them. People want face to face conversations, and for people to answer their questions.

21. Different views were expressed about the appropriate level of data sharing. In contrast to the focus on iwi, the New Zealand Māori Council for example emphasised the role of hapu and the need to work with and empower (through funding and data) Māori agencies that represent or are directly mandated by communities on the ground, and which empower those communities to respond to the issue by talking whanau to whanau.

22. I have attached the notes from the relevant hui for you to consider.

23. In relation to views expressed that the Crown should not share Māori health information with those who are not Treaty partners, I note the Crown accepts that it contracts WOCA and its

providers in part on the basis of their reach and relationships within the relevant areas, and we are aware that the Waitangi Tribunal in the *Waipareira* report has acknowledged that in certain circumstances urban non-kin based groups exercise rangatiratanga in relation to their groups, and in that sense can be considered Treaty partners.

24. In terms of what can be taken from the consultation more broadly, it is clear that information at both an individual and collective level is viewed as taonga by iwi and hapu. It is also clear that data is required to support vaccination outreach, including on an individual level in some cases. That individual and collective level data is viewed as taonga engages mana and rangatiratanga concepts and applies both to the rohe of iwi and to affiliated individuals who are part of the relevant collective. The issue we are invited to consider is not simply the Treaty and tikanga considerations about whether the information should be disclosed, but also the question of to whom.

Rule 11(2)(d) – Necessity threshold

25. As noted, the key issue is whether disclosure is necessary to prevent or lessen the threat presented by COVID-19. As the Judge noted, that question falls to be considered under the following headings.

How is the information going to be used?

26. The applicants have stated to the High Court that they intend to use the individual data in their outreach process. WOCA has a network of 96 Whānau Ora partner providers across the North Island. These providers have 200 COVID-19 vaccinations sites. The providers based in Auckland have provided services through establishing semi-permanent vaccination centres for large-scale vaccinations, clinic-based appointments at existing healthcare services, and mobile vaccination clinics. The latter service allows for the location of the mobile clinics to be widely advertised in the local community, for Māori to be vaccinated close to their homes at a time that suits them, and for other COVID-19 services to be offered as well (including saliva testing, hygiene packs and kai packs).

27. The outreach process proposes to help target these vaccination strategies further. The process involves the data provided by the Ministry being stored in the Secured Navigator Datastore, which is only accessed by Whānau Tahi staff working directly on the data. The data is then used in two different ways:

    a. Call lists would be extracted and provided to WOCA's Whānau Tahi Navigator system so WOCA's call centre can directly contact individuals by text or call. Direct contact by WOCA would involve obtaining consent from individuals to refer them to a WOCA partner organisation for vaccination. Following the referral, the WOCA partner organisation would make contact with the individual to initiate the Whānau Ora process, including wrap around vaccination services. If the individual has opted out of the vaccination programme or is deceased, their information would be updated and fed back into the Secured Navigator Datastore and the Ministry notified.

    b. The data is fed through Whānau Tahi's GIS mapping system to generate maps, which highlight streets/zones to target and do not hold any individual data. Those maps are given to WOCA partner organisations to provides vaccination resources in the target areas. The information would be held in those providers' respective Whānau Tahi Navigator systems. WOCA's partners make contact with individuals and initiate the Whānau Ora process, including vaccination offers.

28. Identifiable individual data is required for the first part of the "outreach process". SA1 level maps support the second part of the "outreach process", but identifiable individual data is also necessary to narrow the target areas. WOCA maintains that both parts of the process are necessary for an effective strategy.

What evidence is there that the proposed use will be effective to address the risks associated with COVID-19?

29. Since 27 September 2021, the Ministry has provided vaccination status data to WOCA for people enrolled with their providers. WOCA has reported, using CIR data, that in the period from 27 September to 29 October:

    a. "The number of our eligible clients who have received dose one increased from 36,106 to 51,398, an increase of 15,292 or 42%."

    b. "The number of our eligible clients who have received dose two increased from 17,562 to 33,470, an increase of 15,908 or 91%."

30. Further, WOCA reports, "On average, our providers in the North Island administered 1,486 doses per day to Māori (over the 21-day period). Across the country, Ministry data shows that 4,642 doses per day were administered to Māori. This means that in the period WOCA providers administered 32% of the doses delivered to Māori." This indicates that in areas where WOCA providers are present, it plays a material role in the vaccination rates.

31. However, when broken down to a more granular level, the data suggests that WOCA's reach and coverage is not spread evenly across the North Island. Evidence also indicates that the effectiveness of phone calls from people without an existing relationship has diminishing effect. Whakaronogorau outreach was implemented from call centres based in contact centres in Auckland, Kaikohe, Ōtara, Rotorua, Heretaunga, Wellington, and Christchurch and from homes across Aotearoa, including speakers of te reo Māori. Evidence suggested the progressively diminishing effectiveness of the calls.

32. WOCA's proposal is that call lists would be extracted and provided to WOCA's Whānau Tahi Navigator system so WOCA's call centre can directly contact individuals by text or call. Mr Tamihere has stated that the lack of trust Māori have in government services, including Whakarongorau, and the fear of judgement can be overcome by the Whānau Ora approach when directly contacting Māori. However, the proposal does not indicate what would be different between the approach that WOCA is proposing and the approach taken by Whakarongorau for many parts of the North Island. So it is not clear at this stage its approach to phone-based outreach to people without any existing relationship with a provider is likely to be materially more effective for Māori.

33. Ministry data also shows Māori vaccination rates are improving quickly, as evidenced by the timescale of the last four weeks. We have mapped the vaccination uptake rates for Māori and can identify areas where approaches to drive uptake are working well, and areas where there is more work to do. In particular, there seems to be a need for a focus on increasing vaccination rates in large rural and remote areas. When we overlay the location of WOCA providers, as shown in the attached data visualisation maps, the information indicates they have presence in multiple locations across the North Island, but the coverage is patchy. Moreover, there are areas where considerable progress has been made without the provision of the individual person data requested by WOCA. The significant progress is due to many

vaccination partner agencies working with DHB's and the Ministry. The intent of the Ministry is to continue to work with many vaccine delivery partners, including Māori providers.

34. We have viewed the WOCA request in the context of what is happening across the North Island at the current time. Below are several examples of regions in the North Island where there are existing arrangements and approaches in communities, working together to deliver vaccinations, using data at a granular level.

    a. **Tairawhiti/East coast:** Hauora, Iwi, Council and community organisations have recently implemented a partnership to vaccinate communities. The Tairāwhiti region includes pockets of geographically isolated areas, rurally dispersed communities, low socio-economic areas that are heavily influenced by gangs, and vast areas of sparsely populated hill country and coastlines. Areas of low vaccination uptake include: Ruatoria-Raukumara, Waipaoa, East Cape , Kaiti South, Outer Kaiti, Elgin and Tamarau. Since the onset of the vaccination programme, Tairāwhiti has taken a 'community response to a community issue' approach working with the two local iwi providers and the DHB. They have a five-way partnership agreement between four health providers, including PHO, and the Tairawhiti DHB, supported by all regional agencies such as education, performing arts and led by local government using emergency management partnerships. This approach crosses DHB boundaries and includes the Wairoa community. Providers in Tairawhiti already have access to individual level data about their people, as well as small area unit data about areas where people are unvaccinated. The approach is designed to achieve the wellbeing aspirations of Ngāti Porou, Te Aitanga a mahaki, Ngai Tamanuhiri, Rongo Whakata, Te Aitanga-a-Hauiti, Te Whanau a Kai.

    b. **Wairarapa:**

        i. Te Whaiora: Tekau Mā Iwa is a COVID-19 vaccination clinic born out of an iwi-led kaupapa centred on a pandemic resurgence response for Wairarapa mana whenua. In recent times the clinic has been a static model contributing to the wider strategy which has helped to enable 44.2% of Wairarapa Māori to be vaccinated against COVID-19. Whaiora has strong network links into multiple communities in Wairarapa, which includes an established trusting relationship with local (and national) gang leaders they intend to use as champions of the kaupapa within their whanau as the Mongrel Mob and Black Power have been affected by COVID-19 in Hauraki, Auckland and Waikato – they are aware of the impact COVID-19 has on their whanau and their whakapapa. Their pop up at McJorrow Park at the beginning of October was successful, and it is their intention to have a regular presence in the neighbourhood to increase the opportunity for whānau to ask questions, get clarity and trust – with the outcome being increased wellness and engagement with health providers.

        ii. Te Hauora Runanga o Wairarapa Inc (Te Hauora) has been providing kaupapa Māori services to Māori since 1985, when a group of Māori community workers noticed the service delivery gaps. They deliver community alcohol & other drug addiction counselling, mental health support, Whānau Ora navigation partnered with Te Hauora whānui and Te Pou Matakana, a collective impact to reduce childhood obesity in a Kura Kaupapa, Oral Health and Whānau direct for small contributions to whānau aspirations, Kaimahi Rongoā (mirimiri, Rongoā) health strategies for Whānau, Youth Justice support Rangatahi, Whānau Resilience, Peer support, and Parenting and Family safety advocacy for women in violence.

iii. The delivery of services across the Wairarapa is two-fold – covering a geographic of 2,500km ranging from Lake Ferry to Pukaha, Mt Bruce, included the three Territory Local Authorities: Masterton (25,200), Carterton (9,060), and South Wairarapa (9,528). Te Hauora is located in the Masterton CBD where they can direct the right resources to where they are needed and be more fluid and flexible in their approach. Being a kaupapa Māori provider enables them to take a holistic approach to wellbeing. They engage with tupuna and atua Māori. This engagement is using traditional Māori values and clinical expertise to navigate their whānau to better world views for themselves in today's society. They provide services to all New Zealanders who require their support; where 90% of their clients are Māori, and a further 5% are Pacific, with the remaining 5% being European or other ethnicities. Last year, they engaged with over 3,500 whānau across their services.

35. As with the support provided to the applicants, to progress these sorts of initiatives we have entered into an agreement to share meshblock level vaccination data with the Data Iwi Leaders Group. The Data ILG is part of the Iwi Leaders Group and one of its objectives is to enable the wellbeing of Māori people by enabling iwi, hapū and whānau Māori to access, collect and use Māori data to measure and identify areas of Māori wellbeing that require change. The roles include facilitating access to strategic level information for iwi groups through Te Whata, its data platform tailored specifically by iwi for iwi. The support provided through Te Whata is able to provide iwi, hapū and whanau Māori with access to insights from the vaccination data. This is important as many currently lack their own data infrastructure and capability and require government investment in those areas.

36. In terms of the necessity of sharing individual information with WOCA, the specific examples noted above relating to Tairawhiti and Wairarapa demonstrate that in some areas where WOCA provider coverage is more limited very positive progress is being made. In contrast, some urban areas – including areas where the current Delta outbreak is occurring in parts of Auckland and Hamilton – where WOCA providers have better coverage, there is real need for targeted resource to support further progress. It would be difficult to justify the "necessity" of providing WOCA individual data in the former examples whereas in the latter the case may be particularly strong. These regional variances in terms of WOCA coverage, threat level, and coverage by alternative providers supports a more granular "rohe by rohe", "provider by provider" approach. It suggests viewing the entire North Island as a single rohe so far as urban or rural "unaffiliated" Māori are concerned is too blunt a tool. Overall, we consider there is evidence to suggest WOCA's proposed use of the information, given its breadth, may be effective to address the risks associated with COVID-19 in relation to some areas, but the evidence is not so clear it would have an impact in all others.

Are there any health-related disadvantages of the disclosure?

37. We have heard a range of views which have expressed concern about the erosion of trust and confidence in the health system, and the Crown more generally, associated with sharing individual level Māori personal information. DHB Chairs were particularly concerned about the risks involved with public perceptions that sensitive health information was to be disclosed without consent. They were concerned about precedent setting. They also noted that vaccine hesitancy among Māori, including within whanau, was a controversial issue and highlighted the risks associated with bullying and vilification of the unvaccinated if they could be

identified individually. Related concerns involved saturation and overload in terms of individuals receiving repeated contact from different providers. Anxiety and avoidance (of the health system) were highlighted as concerns for those with mental health and addiction issues who may feel bombarded or targeted. Generally, any loss of trust in the health system could be expected to produce health-related disadvantages, both in relation to vaccine uptake and engagement with health services more generally.

38. However, we would not recommend placing too much weight on these concerns in the current context. The Judge directed an evidence-based assessment and, beyond the authoritative status of some of those consulted within the Māori health professional community, the risks identified relate to matters which are difficult to measure at all let alone in the time available. For the same reason, however, we would not recommend placing great weight on the notion that protections provided by privacy law induce any comfort among relevant populations. We see little evidence to support that. Indeed, the number and tone of the complaints received by the Ministry since delivery of the High Court's judgment suggest the prospect of sharing individual Māori health information with the applicants has given rise to considerable anxiety for some.[1] So at best we would see these risks as neutral factors.

Are there other less privacy-intrusive options that are still effective to address the risks?

39. Any data sharing agreement would be subject to stringent controls. Given the concerns expressed by iwi and others, a potential weakness of Whanau Tahi's process in this space arises from its lack of iwi oversight in governance terms. It is a private company operating in accordance with ordinary commercial incentives. Further consideration could be given to requiring through data sharing agreements some form of iwi oversight in relation to the use of any Māori health information provided for the duration it is held. While these sorts of options are available to explore, it is preferable in our view to restrict sharing of information to that which is necessary to achieve the purpose of confronting the risks associated with COVID-19.

40. A less privacy intrusive alternative to the applicants' broad request is to share smaller sets of personal information with trusted locally-based organisations, with an expectation they work together to reach the unvaccinated populations, as with the Tairawhiti example. Sharing information with providers who work locally on the ground, with local relationships and who can engage face to face with individuals, is a model that can be built with the consent and partnership of the relevant local iwi, hapu and whanau, and the evidence suggests it is more likely to build trust and confidence in the way information is used. Sharing datasets with local organisations, with an expectation that they work together and coordinate their effort, as with the Tairawhiti example, also reduces the likelihood that an unvaccinated person is approached in an ad-hoc way by multiple, different providers. This work is being progressed urgently and

[1] The Ministry has received correspondence from some individuals who explicitly withdraw their authorisation for the sharing of their personal information with the Whanau Ora Commissioning Agency. The authorisation to share health information in line with the Health Information Privacy Code is sought at the time that people enrol in health services. Where people have communicated to the Ministry that they revoke that authorisation, the Ministry would need to implement a process to remove them from any information to be shared. It is likely there will be other individuals who similarly would revoke their authorisation but will not know how to communicate it.

the Ministry is currently processing a rapidly growing number of data sharing requests from Iwi and health and social services providers servicing Mori communities (with 4 processed today alone covering populations of more 100,000 people).

Conclusions

41. Taking these considerations into account, we do not consider that it is necessary to share the North Island individual level Māori health information sought by the applicants on the broad basis it has been sought. Although the request has been narrowed from its original focus on the entire country and information which was not relevant to vaccine outreach activities, it remains over-broad. It seeks information about people and in relation to areas the evidence suggests the applicants are not well placed to reach, or which are already well serviced by other providers.

42. As the Judge suggested, an assessment of the evidence would bring the Treaty issues into sharper relief and indeed the relevant Treaty and tikanga considerations reinforce our recommendation.

43. As to equity and active protection, the Crown has committed to achieving equitable health outcomes for Māori and to eliminate health disparities resulting from COVID-19. We are not there yet, but the Crown is implementing measures to equip whānau, hapū, iwi, and Māori communities with the resources to undertake and respond to public health measures to prevent and/or manage the spread of COVID-19. The Māori Communities COVID-19 Fund is a big part of that and data resources also play a role. Both support access to kaupapa Māori services, in order to reach Māori who may not engage with mainstream health services, and also efforts to reach Māori who are not engaged with their iwi or live outside of their traditional rohe. But as with prudent and targeted deployment of financial resources, the principles do not support the broad-brush sharing of personal information.

44. Referring to relevant tikanga considerations, feedback we received suggested whanaungatanga was key. In that respect, the applicants' connections to urban Māori and those who do not affiliate with any particular iwi or rohe must be recognised and the significant sharing of individual level data for the applicants' own enrolled populations which has occurred to date supports this. At the same time, it is necessary to recognise the limits on the applicants' relationships and the whanaungatanga, rangatiratanga and kaitiakitanga obligations of others. This includes those iwi who expressed strong views about the Treaty implications of the Crown disclosing information of those who whakapapa to those iwi to the applicants. The proper process and consultation requirements were emphasised.

45. In relation to partnership and tino rangatiratanga it is also clear the Crown is working with Māori in the governance, design, delivery, and monitoring of the response to COVID-19. While the Judge framed partnership in terms of how WOCA participates in the design of the COVID-19 response for Māori and how not providing the requested information undermined WOCA's ability to target its COVID-19 response, the principles apply more broadly. The Crown is partnering with Māori on a number of levels across many regions of New Zealand to design and deliver the response. It is empowering self-determination, as seen in some of the regional examples set out above. In this instance, the mapping level data the Ministry has already agreed to provide to the applicants goes a long way to supporting them to target their response. As it has with a range of Māori providers on the ground, the Crown will continue to work with the applicants, including in encouraging them to focus their request for information. In that respect, it is worth noting the obligations of partnership apply to both

partners and may require compromise, particularly where competing Māori views about what is appropriate and effective require accommodation.

46. As to options, as the Judge said, adequate resourcing necessarily includes sharing information which would enable WOCA to best link culturally appropriate vaccination services with those who have not accessed, or will not access, mainstream health services. That is true as well for the range of other Māori providers in the field. The Crown's financial and data resourcing of the applicants and others is significant and on a practical level makes kaupapa Māori services available in a culturally appropriate way. It does not follow that it is appropriate for the applicant to access personal health information for individuals beyond the practical reach of its providers or who are supported by others in accordance with kaupapa Māori.

47. On balance we consider tikanga and Treaty/Te Tiriti principles mandate continuing to share data, including, where appropriate, individual level data, with the applicants, but not on anything like the scale they currently seek. Instead, the Crown should continue to work urgently with providers and support the targeted distribution of data sets to those who can meaningfully use them to best effect to confront the risks associated with COVID-19. This approach is more likely to support equitable outcomes and honour the Crown's commitment to active protection than the overbroad and unnecessary sharing of information which could in turn see the Crown breaching the Treaty interests of others.

48. Together, these Treaty/Te Tiriti considerations support our view that even if we had concluded North Island wide sharing of personal Māori health information with the applicants was "necessary" in accordance with Rule 11(2)(d) of the Code, we would not, in the face of the credible and more Treaty/Te Tiriti-compliant alternatives, recommend exercising the discretion to release all North Island individual level Māori health information as sought by the applicants. As advised above, however, we would support providing the applicants with further data in relation to particular rohe and enjoin them to work with the Ministry in partnership towards that outcome.

Recommendations

49. We recommend you:

    a. **propose** providing the applicants with further data for Māori in particular rohe and to work with the Ministry in partnership towards that outcome;

    Yes / No

    b. **decline** the request for access to all North Island individual level Māori health information sought by the applicants;

    Yes / No

c. **continue** Ministry engagement with iwi, Hauroa providers and other Māori organisations to enable access to both meshblock level, and, where appropriate, individual level data to support vaccination of Māori across Aotearoa in support of the data sharing agreement with the Iwi Leaders Group.

Yes / No

Signature: _____
Date:
Ashley Bloomfield, Director-General of Health

MINISTRY OF HEALTH
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5 November 2021

John Tamihere
Chief Executive
Whānau Ora Commissioning Agency
By email: John.Tamihere@waiwhanau.com

Tēnā koe John

I write on behalf of the Ministry of Health to inform you of the outcome of the Ministry's reconsideration of the information request from the Whānau Ora Commissioning Agency (WOCA) and Whānau Tahi following the High Court's judgment in Te Pou Matakana Ltd v Attorney-General [2021] NZHC 2942.

The Ministry has considered the evidence provided by WOCA as well as the views of Māori leaders, Māori health experts and representatives from Māori organisations. These views have demonstrated that there are multiple interests at play in the provision of individual identifiable Māori health data. The Ministry has also considered current evidence as to vaccine uptakes, WOCA's providers' coverage and the work currently being undertaken across Te Ika-a-Maui by iwi and other providers.

Treaty principles require the Crown to act as a reasonable partner and to provide options to Māori. The Crown is committed to the principles and in particular, in this context, active protection and equity. At the same time the Crown must recognise and uphold the mana and rangatiratanga of distinct groups across the motu. In seeking to ascertain the Māori rights and interests that could be impacted by the disclosure of information for the entirety of Te Ika a Maui, and in light of the evidence of vaccine uptake and coverage, we have concluded that it would not be appropriate to adopt a blanket approach to the sharing of the Māori health information you have requested on a North Island-wide basis.

The Ministry has also considered the significant efforts by WOCA and its partners to increase vaccination rates not only for Māori but all New Zealanders, with particular success in regions where the challenges of DELTA are greatest. On that basis, the Ministry has recommended, and I have agreed, to invite the Whānau Ora Commissioning Agency and Whānau Tahi urgently to work in partnership with the Ministry, relevant iwi, and local Service delivery providers to identify those rohe where vaccination outreach to Māori is most needed, and to identify the necessary and appropriate scope of data sharing in each case.

Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health

Talking Points

Date:	5 November 2021
To:	Dr Ashley Bloomfield, Director-General of Health
From:	Caroline Greaney, Group Manager Office of the National Director, COVID-19 Vaccine and Immunisation Programme
Subject:	Talking points: Dr Ashley Bloomfield's meeting with John Tamihere, 5 November 2021
For your:	Information

This memo provides you with talking points to support your discussion with John Tamihere about the Ministry of Health's reconsideration of Whanāu Ora Commissioning Agency's data request.

Talking points

Summary of application and decision taken

- Your initial request for data was for all Māori including clinical information not directly related to vaccine outreach activities.
- After refinement, the request at this point is for personally identifiable data for all Māori in Te Ika a Maui from the Vaccine Programme's dataset.
- The data requested is for Māori who have had one or no vaccine dose, and includes NHI, name, demographics, contact details and vaccination status.
- On the 20 October, Jo Gibbs took the decision to authorise the sharing of anonymised, street-level mapping representations that would show areas with unvaccinated communities.

Summary of Judgement and request for reconsideration

- The Judge found that the Ministry made an error of law by approaching whether disclosure of the information was "necessary" to prevent or lessen the threat of COVID-19 in the context the Health Information Privacy Code.[1]
- Specifically, the Judge found that the Ministry's focus on wider policy matters came at the expense of the weighing of benefits and risks specific to your data request.
- The Judge noted that there was no specific evidence from Māori, iwi providers or others on the concerns identified or the effectiveness of the less invasive approaches proposed in the decision.
- The Ministry is required to reconsider the specifics of WOCA's data request, and to work out whether disclosure of the information requested is "necessary" for the purposes of the Code.

[1] specifically, this is for the purposes of 11(2)(d) of the Health Information Privacy Code.

- In this reconsideration, the Ministry is required to adequately consider the specifics of your request through an evidence-based assessment, taking into account the principles of tikanga and Te Tiriti o Waitangi – in particular, the principles of partnership and options.[2]

Summary of the Ministry's reconsideration of WOCA's request

- In reconsidering, we found that regional variances in terms of WOCA's coverage, threat level, and coverage by alternative providers supports a more granular "rohe by rohe", "provider by provider" approach.

- WOCA's proposed use of the information, given its breadth, would be effective to address the risks associated with COVID-19 in relation to some regions but not in others.

- The Ministry is therefore declining WOCA's formal request for access to individual level health information related to COVID-19 vaccination status for all Māori in Te Ika a Maui.

- On balance, we consider tikanga and the principles warrant being open to continuing to share data, including individual level data with you where appropriate, but not on the scale you are currently seeking.

- Sharing smaller sets of personal information with trusted locally-based organisations, with an expectation they work together to reach the unvaccinated populations, is a less privacy intrusive alternative.

- Sharing information with providers who work locally on the ground, with local relationships and who can engage face to face with individuals, is a model that can be built with the consent and partnership of the relevant local iwi, hapu and whanau, and the evidence suggests it is more likely to build trust and confidence in the way information is used.

- This approach also reduces the likelihood that an unvaccinated person is approached in an ad-hoc way by multiple, different providers.

- This approach is more likely to support equitable outcomes and honour the Crown's commitment to active protection than the sharing of information at the level of your current request.

- This decision has been reached following consultation with Māori leaders whose people and interests may be affected by the sharing of individual information.

[2] As per the judgement, the Ministry is required undertake an "evidence-based assessment, either of the disclosure and use of the individual identifiable data requested by WOCA, or of what [the Ministry] concluded was an adequate alternative by way of disclosure of the anonymised street-level mapping data."

Memo

Iwi Data Requests

Date:	14 December 2021
To:	Astrid Koornneef, Director, National Immunisation Programme
Copy to:	John Whaanga, Deputy Director-General, Māori Health Phil Knipe, Chief Legal Advisor/Privacy Officer, Health Legal
From:	Caroline Greaney, COVID-19 Vaccine and Immunisation Programme
For your:	Decision

Purpose of report

1. This memo seeks your agreement to our approach to share with iwi information from the Ministry of Health's COVID-19 Vaccine and Immunisation Programme datasets, including the COVID-19 Immunisation Register (CIR), for the purposes of reaching unvaccinated Māori.
2. As a result of discussions and consultation with local iwi as part of the Whanau Ora Commissioning Agency (WOCA) data request, we have received data requests from multiple iwi. A number of iwi have requested to be provided the same information made available to WOCA in their iwi takiwā (tribal boundary).
3. We will consider iwi requests on a case-by-case basis, applying the considerations as set out in this paper, where iwi are asking for data relating to their own people and/or Maori who reside in their iwi takiwā. When looking at the request we will apply the following considerations:
    a. It is not desirable or practicable to obtain authorisation for the disclosure from the individual concerned.
    b. There is a serious threat to public health or public safety, or the life or health of the individual concerned or another individual.
    c. Disclosure of the information is necessary to prevent or lessen that threat.
4. This paper doesn't cover the approach to considering requests for data relating to 5–11-year-olds, booster doses, requests for data covering areas outside of an iwi takiwā or outside the iwi membership. The approach to responding to those requests is still to be formulated and considered appropriately by the Ministry of Health.
5. The approach also incorporates the guidance provided by the High Court in *Te Pou Matakana Ltd v Attorney-General* [2021] NZHC 2942 on rule 11(2)(d) of the Health Information Privacy Code. An evidence-based assessment is required in which the decision is exercised in accordance with the principles of the Treaty/Te Tiriti o Waitangi and tikanga.

Information request

6. Following discussions with Iwi as to the data request from WOCA, a number of iwi have made data requests to the Ministry and have requested to be provided the same information made available to WOCA for the purposes of reaching Māori who are not yet fully vaccinated.

7. These requests tend to include one or more of the following components:

   a. to share data for purposes of reaching Māori who have not yet had a first dose of COVID-19 vaccine, and who live in the particular iwi takiwā. For these individuals, the data would include their:
      - name
      - personal contact details such as address, phone number
      - National Health Index number (NHI).

   b. to share data for purposes of reaching Māori who have had a first dose of COVID-19 vaccine, but who have not yet had a second dose. Where iwi request this data, it involves data for all people who are identified as Maori in the health data sets, and who live in the particular iwi takiwā. For each person it would include their:
      - name
      - personal contact details such as address, phone number
      - National Health Index number (NHI).

Rule 11(2)(d) of the Health Information Privacy Code

8. Rule 11(2)(d) allows the Ministry to disclose information if it believes on reasonable grounds that the following three considerations are met.

   a. It is not desirable or practicable to obtain authorisation for the disclosure from the individual concerned.

   b. There is a serious threat to public health or public safety, or the life or health of the individual concerned or another individual.

   c. Disclosure of the information is necessary to prevent or lessen that threat.

9. Even if all of these criteria are met, there is a residual discretion as to whether the information should be released.

10. Prior to the COVID-19 pandemic, this rule was rarely used as a mechanism to release health information. In last few months, this rule has been used relatively frequently to share information and data with a range of organisations to support COVID-19 vaccination efforts, and there has been consultation with the Office of the Privacy Commissioner about its use (as well as guidance published by that Office). It is appropriate and fit for purpose to use this mechanism given the known consequences of widespread circulation of COVID-19 and especially in respect of vulnerable populations.

11. As discussed in the previous decision papers of 19 October and 5 November 2021, the first two considerations are satisfied. Despite a reduced number of individuals captured by the request, it remains impractical to obtain the consent of the individuals concerned. It is noted that those individuals who are yet to be fully vaccinated often do not engage in the health system and may lack trust and confidence in the health system, and the Crown more generally, therefore it is further impractical to obtain consent from these individuals. It is noted that those individuals who are yet to be fully vaccinated often do not engage in the

health system and may lack trust and confidence in the health system, and the Crown more generally, therefore it is further impractical to obtain consent from these individuals.

12. The serious threat to public health also remains. Although vaccination rates have increased since that time, Māori vaccination rates continue to lag behind the general population. Māori are also disproportionally impacted by the current Delta outbreak in those locations where it is occurring. As at 6 December 2021, 45% of the cases reported in the delta outbreak are Māori.

13. The remaining consideration to be satisfied of is whether disclosure is necessary to prevent or lessen the threat and, then, whether in the Ministry's discretion it should, in all the circumstances, disclose the information requested. The High Court has noted that the discretion needs to be exercised in line with the Code and the Privacy Act and its purposes. The Privacy Act's purposes are concerned with the protection and use of private information.

14. The recommendations in this paper are therefore framed around the following headings:

    a. Should the Ministry be satisfied that the conditions of rule 11(2)(d) of the Health Information Privacy Code are met, considering:

        i. the information the applicants seek;

        ii. how it is going to be used and whether it will be effective to address the risks associated with the COVID-19 pandemic;

        iii. any anticipated health-related disadvantages of the disclosure;

        iv. other less privacy-intrusive options that are still effective to address the risks; and

    b. if the conditions in rule 11(2)(d) are met, should the Ministry exercise the discretion to release the requested information.

Rule 11(2)(d) – Necessity threshold

15. As noted, the key issue is whether disclosure is necessary to prevent or lessen the threat presented by COVID-19. As the Judge noted, that question falls to be considered under the following headings.

How is the information going to be used?

16. In discussion with iwi as to their requests, iwi leaders have stated that they intend to use the individual data in their outreach process. Iwi have advised they intend to use information to directly contact individuals and have a discussion about their whanau's wellbeing and whether they need any support.

17. On the back of making a connection based on general wellbeing, they will broach the discussion of immunisation and talk through any questions or concerns the person has. They will offer the opportunity to be vaccinated. If an individual has opted out of the vaccination programme or is deceased, their information would be updated and fed back to the Ministry.

What evidence is there that the proposed use will be effective to address the risks associated with COVID-19?

18. As part of determining necessity and appropriateness of sharing with particular iwi, we will consider the ways the iwi will use the data. For example:

a. iwi in the Wairarapa established Ko Wairarapa Tēnei collective as a response to COVID-19. This collective is made up of local iwi and hauora providers and has been part of vaccination efforts in the area providing support for their iwi members and mātāwaka (those Māori who don't whakapapa to local iwi) in their takiwā.

b. Te Arawa iwi established within hours of the Alert Level 4 Lockdown being announced on 23 March 2020, the Te Arawa COVID-19 Response Hub which since August 2021 been focussed on supporting vaccination efforts.

19. Some Iwi organisations have highlighted as part of discussions that they do not have strong working relationships with WOCA and would like access to the data, so they are able to provide and enhance their own community vaccination responses.

20. While this may duplicate efforts by WOCA, we expect this will be minimised as the data sharing agreement with WOCA expects that WOCA "will co-ordinate with relevant iwi and other providers in the DHB areas across the North Island to provide out-reach and support to access COVID-19 vaccination for Māori who have not yet received a first dose of vaccine and those Māori who have not yet received their second dose of vaccine." We anticipate a similar clause will be added to any data sharing agreements with iwi.

21. In general, given the current cases of Delta across the country, and that those who are not yet vaccinated may benefit from a different approach (e.g., other than phone call campaigns and mass media), we consider there is merit in sharing data with iwi, where appropriate privacy and security safeguards are in place, to address the risks associated with COVID-19.

Are there any health-related disadvantages of the disclosure?

22. As summarised in the decision paper of 5 November, we have previously heard a range of views which have expressed concern about the erosion of trust and confidence in the health system, and the Crown more generally, associated with sharing individual level Māori personal information.

23. We recognise these concerns. The views we heard in our consultation hui and phone calls with Māori leaders, they indicated strongly that Māori leaders and health providers consider the risks involved in Delta reaching their unvaccinated population outweigh other potential adverse consequences.

Are there other less privacy-intrusive options that are still effective to address the risks?

24. We do not consider that there is a viable alternative to further constrain the data provided in a way that would protect privacy as well as being administratively straight forward to produce and useful for iwi in their vaccination campaigns.

25. Iwi in discussions have highlighted the benefits of small area sharing arrangements already in place and use of platforms such as Te Whata. Iwi have also highlighted that small area data has served its purpose and different approaches are now required.

26. Iwi have also noted those individuals who are not yet fully vaccinated often do not engage in the health system and lack trust and confidence in the health system, and the Crown more generally and therefore require personalised follow up and for discussions to be held with and facilitated by trusted sources such as iwi and hapū.

27. The Ministry has received correspondence from individuals who are aware of these requests including WOCA's request for individual data, and who have asked they be personally removed from any dataset that is shared. These requests reflect a variety of reasons, from distrust of providers to safety concerns.

28. We have implemented a process of extracting these individuals from any dataset. This correspondence does highlight the need to balance the rights of individuals where possible.

Treaty/Te Tiriti and Tikanga

29. The COVID-19 vaccination and immunisation programme is guided by the principles of the Treaty/Te Tiriti o Waitangi. The relevant principles are:

    a. ***Partnership***: the Crown is required to work with Māori in partnership in the governance, design, delivery, and monitoring of the response to COVID-19.

    b. ***Tino rangatiratanga***: this provides for Māori self-determination and mana motuhake. This means that Māori are key decision makers in the design, delivery, and monitoring of health and disability services and the response to COVID-19.

    c. ***Options***: the Crown is required to provide for and properly resource kaupapa Māori services and ensure that all health and disability services are provided in a culturally appropriate way that recognises and supports the expression of hauora Māori models of care.

    d. ***Equity***: the Crown is required to commit to achieving equitable health outcomes for Māori and to eliminate health disparities resulting from COVID-19. This includes the active surveillance and monitoring of Māori health to ensure a proportionate and coordinated response to health need.

    e. ***Active Protection***: the Crown is required to act, to the fullest extent practicable, to protect Māori health and achieve equitable health outcomes for Māori in response to COVID-19. This requires the Crown to implement measures to equip whānau, hapū, iwi, and Māori communities with the resources to undertake and respond to public health measures to prevent and/or manage the spread of COVID-19.

30. The tikanga principles engaged to have regard to are: mana, whānaungatanga, and kaitiakitanga, manaakitanga, and tapu.

31. In light of these principles, we have discussed data sharing with many iwi. As a result of these discussions, iwi have asked as treaty partners to be provided access to vaccination data to compliment or enhance their community vaccination efforts.

32. Some iwi have requested to access the data to compliment approaches from WOCA in their takiwā, while some iwi have requested the data to be able to deliver their own vaccination responses instead of WOCA.

33. As data requests from iwi are received, discussions are held with iwi and hapū organisations as to their capacity, capability, and infrastructure to be able to meet the privacy and security expectations to handle and use this type of data. A number of iwi have acknowledged that they lack infrastructure to be able to meet the privacy and security expectations of the Ministry for this type of data. It is not sought that these expectations be an unreasonable barrier to disrupting Covid-response actions by these organisations, but they do need to be considered.

34. Ongoing work is taking place to address these issues including the establishment of the Te Puna Rarauora fund to enable iwi and hapū based organisations to develop and build their capacity, capability and infrastructure to enable access the insights and value of COVID-19 vaccination data.

Conclusions

35. On balance, we consider it appropriate in the circumstances, to share the individual level Māori health information sought by iwi, where they can use it to reach people who are not fully vaccinated and have appropriate privacy and security safeguards in place.

36. The relevant Treaty and tikanga considerations reinforce our recommendation. As to equity and active protection, the Crown has committed to achieving equitable health outcomes for Māori and to eliminate health disparities resulting from COVID-19.

37. We are not there yet, but the Crown is implementing measures to equip whānau, hapū, iwi, and Māori communities with the resources to undertake and respond to public health measures to prevent and/or manage the spread of COVID-19. We have heard from groups in the area that preserving of Māori lives is in the most important thing. Iwi supported by the Ministry through the provision of individual level data, can work to achieve that goal.

38. The use and disposal of any data will be captured by appropriate controls around the use, disclosure of data, including a date for deletion. This approach is likely to support equitable outcomes and honour the Crown's commitment to active protection, while maintaining appropriate privacy protections and sharing only the information that is necessary.

Recommendations

1. We recommend you:

   a. **agree** to the approach to share with iwi information from the Ministry of Health's COVID-19 Vaccine and Immunisation Programme datasets, including the COVID-19 Immunisation Register (CIR), for the purposes of reaching Māori who are not fully vaccinated

   Yes / No

   b. **Note** that where iwi can use the data to reach people who are not fully vaccinated, and have appropriate privacy and security safeguards in place, we will work with iwi to enter into data sharing agreements, and that these agreements will have privacy protections including:
      - the data provided is only to be used for the purpose agreed, such as reaching Māori who are not fully vaccinated
      - data will be destroyed by 30 June 2022 or earlier if agreed as part of the data-sharing agreement;
      - the Ministry will be informed if an individual declines engagement with the provider for the purposes of recording it in CIR, and the Ministry will endeavour to inform other organisations who may be involved in a coordinated approach for the same population where possible;
      - the data will not be shared with any person or agency not authorised by the agreement;
      - will be transferred, stored, and used in a way which protects the privacy of individuals, and keeps the data safe from accidental or malicious disclosure;
      - no data will be made public which would allow the identification of individuals; and
      - only people directly involved in contacting people who have not been vaccinated will have access to identifiable data
      - an expectation that iwi will coordinate their effort with others providing vaccination services locally to reduce the likelihood that an unvaccinated person is approached in an ad-hoc way by multiple, different providers.

   Yes / No

   c. **Note** that specific details as to catchment of any data sharing agreement such as DHB areas, iwi area of interest or data matching with individual iwi will be negotiated on an iwi-by-iwi basis.

   Yes / No

Signature: _____

Astrid Koornneef
Director, National Immunisation Programme

Date:

MINISTRY OF HEALTH
MANATŪ HAUORA

133 Molesworth Street
PO Box 5013
Wellington 6140
New Zealand
T+64 4 496 2000

9 December 2021

John Tamihere
Chief Executive
Whānau Ora Commissioning Agency
By email: John.Tamihere@waiwhanau.com

Tēnā koe John

I write to inform you of the outcome of the Ministry's decision on the provision of data to the Whānau Ora Commissioning Agency (WOCA) and Whānau Tahi. This follows the High Court's judgment in Te Pou Matakana Ltd v Attorney-General [2021] NZHC 3319.

First request

I have carefully considered the provision of data for purposes of reaching Māori who have not yet had a first dose of COVID-19 vaccine, and who live in the Bay of Plenty, Hawkes Bay, Lakes, Northland, Wairarapa and Whanganui DHB areas. For these individuals, the data would include their:

- name
- personal contact details such as address, phone number
- National Health Index number (NHI).

In considering this request, I have taken into account the guidance of the High Court, vaccination data for Māori in those areas, our engagement with WOCA, Whānau Tahi, iwi, and Māori service providers, and the progress that is being made to increase vaccination rates.

I have agreed to provide WOCA and Whānau Tahi with individual identifiable Māori health data for the remaining DHB areas in the North Island:

- Northland
- Hawkes Bay
- Whanganui

I have agreed to provide WOCA and Whānau Tahi with data relating to Māori living in the Wairarapa DHB area. I note that Rangitāne Tū Mai Rā and Ngāti Kahungunu ki Wairarapa Tamaki nui-a-Rua expressed opposition to data sharing with WOCA and have also requested this data through their Ko Wairarapa Tēnei Collective. I want to note that 88 percent of those individuals that identify as Maori in the Wairarapa have received their first dose of vaccination and that there are only 98 individuals left in the Wairarapa to be vaccinated in order to achieve a 90 percent first vaccination rate for Māori. This achievement has been as a result of Ko Wairarapa Tēnei Collective efforts to increase their vaccination rates. In agreeing to share the data with WOCA, my expectation is for WOCA to work closely with iwi on the ground to ensure efforts are coordinated and considerate of community mahi.

I have agreed to provide WOCA and Whānau Tahi with data relating to Māori living in the Lakes DHB area, who have not yet had a first dose of COVID vaccine, with the exclusion of data for the people of Ngāti Tarāwhai Iwi Trust Board. This iwi has entered into a data-matching agreement with the Ministry to have its data excluded from the dataset shared with WOCA. In agreeing to this, I have taken into account that vaccination rates for Māori in Lakes DHB are

rapidly improving, the views and aspirations of this iwi. This data matching exercise is underway, and only whānau who live within the Lakes DHB boundary will be excluded as part of the data matching. I understand this approach is acceptable to you, as communicated by your lawyer on 7 December.

I have agreed to provide WOCA and Whānau Tahi with data relating to Māori living in the Bay of Plenty DHB area who have not yet had a first dose of COVID Vaccine. In making this decision, I also note opposition from five iwi in the area to data sharing with WOCA. Ngāi Tai Iwi Authority has requested an arrangement similar to what has been agreed in relation to Ngāti Whatua Orakei. Where WOCA commissioned providers identify that a person is affiliated with Ngāitai Iwi Authority, it will: inform Ngāitai Iwi Authority that the provider has been in contact with the person/whānau; the result of that contact; and relevant information so that Ngāitai Iwi Authority can decide whether to follow-up with the whānau and seek to engage with them based on their connections and relationships.

I anticipate that other iwi may request similar arrangements, and propose that WOCA and the Ministry agree to work in good faith to agree similar arrangements in the event that any other iwi seeks a bespoke data sharing arrangement akin to what is reflected for Ngāti Whatua Ōrakei.

Second request

I have also considered the request from Whānau Ora Commissioning Agency and Whānau Tahi to disclose data for purposes of reaching Māori who have had a first dose of COVID-19 vaccine, but who have not yet had a second dose. The request is for this data for all people who are identified as Māori in the health datasets, and who live in the North Island. For each person it would include their:

- name
- personal contact details such as address, phone number
- National Health Index number (NHI).

The Ministry had previously offered to provide this dataset for the purposes of reaching Māori who have not yet received their second dose of COVID-19 vaccine, including individuals who have no future vaccine booking for their second vaccine and it has been 8 weeks or more since their first vaccine. As you know, the High Court asked the Ministry to review its decision in light of its findings.

I note the Ministry already provides this information to WOCA in relation to its enrolled population. I have agreed to also provide WOCA and Whānau Tahi with data relating to Māori in the North Island who have had a first dose of COVID-19 vaccine, but who have not yet had a second dose, in the following tranches:

- at 3-4 weeks following a first dose of vaccine, who are not enrolled with a primary care provider and do not have a booking
- at 6 weeks following a first dose of vaccine, including those who are enrolled with another primary care provider and who do not have a booking for a second dose. This is because people who are enrolled with a provider often have an established relationship with that provider. Many providers will be using their own systems and processes to follow-up and arrange for a second dose of vaccine.

We consider it important to reduce the potential for Māori to receive multiple phone calls from multiple service providers, including Whakarongorau, Whānau Ora, as well as their own primary healthcare provider. Our expectation is that you will use this data to assist Māori to access a second dose of vaccine.

Arrangements

As you are aware, a number of iwi across Te Ika a Māui remain opposed to the sharing of people's individual-level data with WOCA. A range of reasons have been expressed for this including that individual consent should be sought from those individuals who may be contacted from WOCA; and that iwi have a legitimate interest in the protection of the data relating to their people, and those living in their takiwā. The data being requested is Māori data. Further Māori data is subject to the rights articulated in the Treaty of Waitangi and the UN Declaration on the rights of Indigenous peoples. Recognising the obligations I have in contributing to the Crown's relationship with iwi, I propose that the data sharing agreement between our organisations include that:

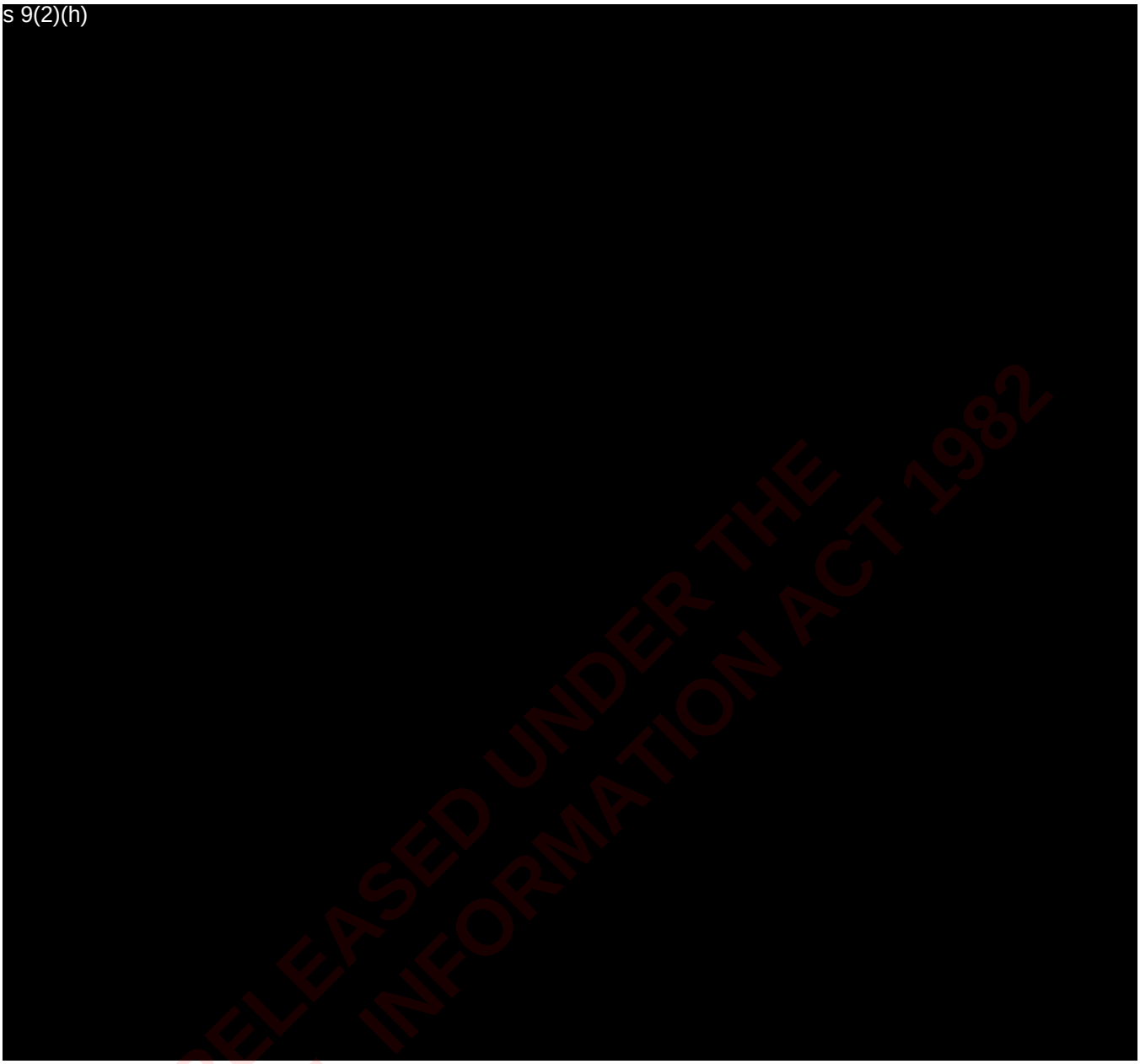
- data provided may only be used to support COVID-19 vaccination service planning, monitoring, invitation, delivery and quality improvement for Māori who are not fully vaccinated
- an expectation of working with WOCA providers, relevant iwi and other providers to co-ordinate out-reach and support to access COVID-19 vaccination for Māori who are not fully vaccinated
- a requirement to have a clear answer when people who are contacted (and who aren't enrolled with the provider) if they ask where they provider got their details, and how they know the person is unvaccinated
- WOCA will delete information relating to anyone who advises they do not want their data to be held by the Applicant.
- data supplied is to be retained until no later than 30 June 2022. After that date the information is to be securely destroyed.

Once again, I wish to acknowledge and thank the Whānau Ora Commissioning Agency for your significant contribution to the overall effort to raise Māori vaccination rates across Te Ika a Māui.

Nāku noa, nā

Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health

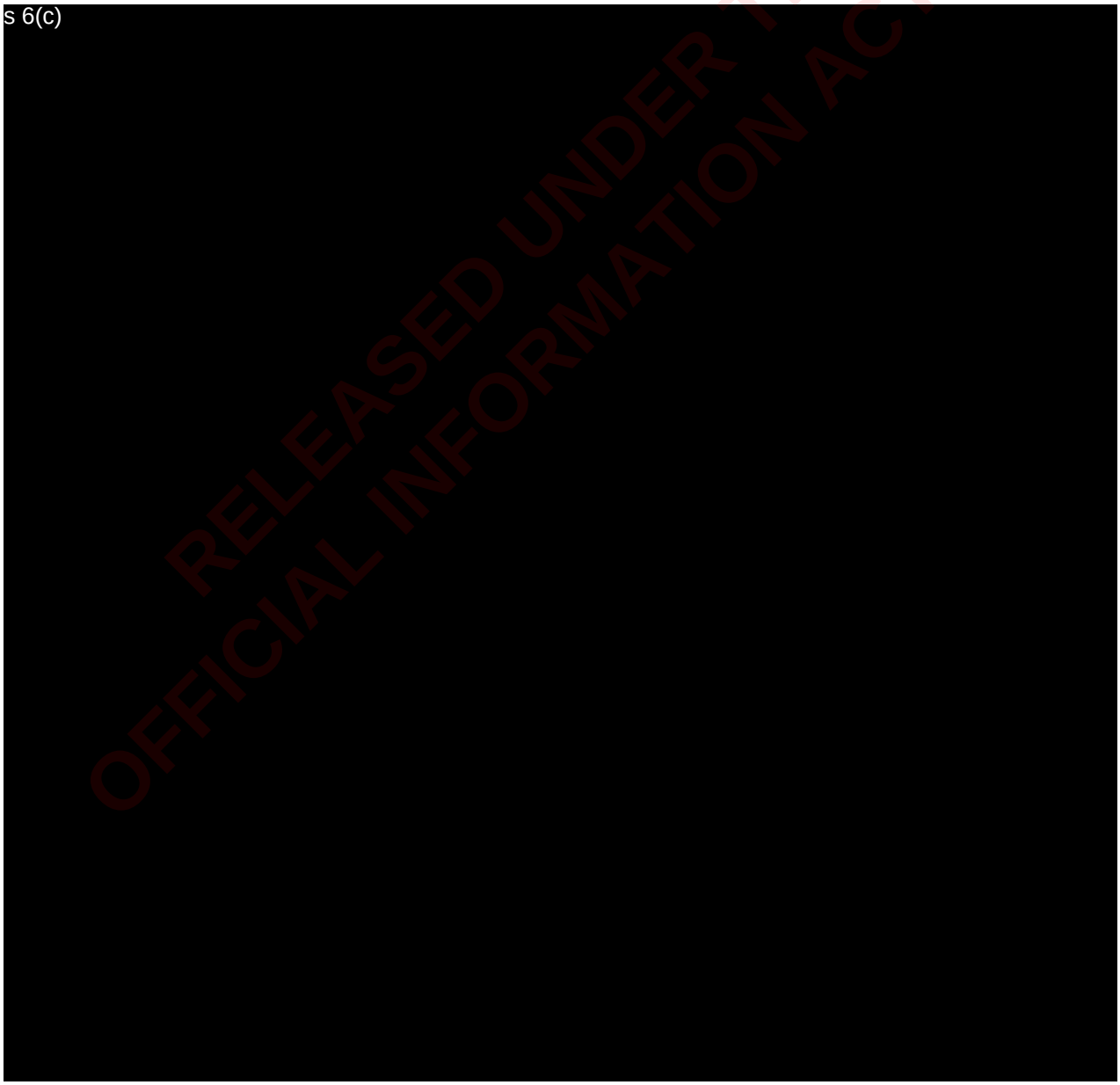
s 9(2)(h)



s 9(2)(h)

s 9(2)(h)

s 6(c)



From: Phil Knipe <Phil.Knipe@health.govt.nz>
Sent: Thursday, 6 June 2024 2:12 pm
To: 'Liz.MacPherson@privacy.org.nz' <Liz.MacPherson@privacy.org.nz>
Cc: emily.smithers@privacy.org.nz; vinka.cisternas-torres@privacy.org.nz; Diana Sarfati <Diana.Sarfati@health.govt.nz>
Subject: FW: Emailing: Letter to Director General of Health regarding alleged mis-use of COVID 19 vaccination data

Kia ora Liz,

On behalf of the Director-General, I confirm that receipt of your letter.

I understand that you have sent a similar letter to Health NZ, who administer the data sharing arrangements relating to vaccination data – we are liaising with them and will be back in touch.

Ngā mihi

Phil Knipe
Chief Legal Advisor
Ministry of Health
DDI: 04 496 2137
s 9(2)(a)

http://www.health.govt.nz
mailto: phil.knipe@health.govt.nz

From: Liz MacPherson <Liz.MacPherson@privacy.org.nz>
Sent: Wednesday, 5 June 2024 4:55 pm
To: Diana Sarfati <Diana.Sarfati@health.govt.nz>
Cc: Emily Smithers <Emily.Smithers@privacy.org.nz>; Vinka Cisternas-Torres <Vinka.Cisternas-Torres@privacy.org.nz>
Subject: Emailing: Letter to Director General of Health regarding alleged mis-use of COVID 19 vaccination data

Letter to Director General of Health reg

Refer to Document 7A

Tēnā koe Diana

Attached please find a letter regarding the alleged mis-use of COVID 19 vaccination data.

The letter requests information from the Ministry of Health regarding the assurance processes it has used to satisfy itself that the information provided was used for the purposes for which it was disclosed and deleted once those purposes were fulfilled.

Please do not hesitate to get in contact if you have any queries regarding this request.

Ngā mihi

Liz

Liz MacPherson (she/her)
Deputy Privacy Commissioner

Office of the Privacy Commissioner Te Mana Mātāpono Matatapu
PO Box 10094, The Terrace, Wellington 6143
T +64 4 474 7590
M s 9(2)(a)
privacy.org.nz

Your message is ready to be sent with the following file or link attachments:

Letter to Director General of Health regarding alleged mis-use of COVID 19 vaccination data

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Document 7A

Privacy Commissioner
Te Mana Mātāpono Matatapu

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5 June 2024

Dr Diana Sarfati
Director-General of Health and CE
email only: diana.safati@health.govt.nz

Tēnā koe Diana

Allegations of inappropriate re-use of COVID 19 data

During the COVID 19 pandemic the Ministry of Health disclosed data on unvaccinated Māori to the Whānau Ora Commissioning Agency (WOCA) for the purposes of encouraging greater uptake of vaccinations by Māori.

This disclosure was enabled by the Privacy Act's information sharing exceptions, specifically where information is necessary to prevent or lessen a serious threat to the life, health or safety of an individual or to public health or safety (Principle 11(1)(f)).

OPC's understanding is that the data sharing agreement between the Ministry of Health and WOCA included that the data provided may only be used to support Covid-19 vaccination service planning, monitoring, invitation, delivery and quality improvement for Māori who were not fully vaccinated.

As you are aware, allegations have been made that the COVID 19 vaccination data provided to WOCA may have been used for purposes other than those for which they were disclosed.

Given this, can you please inform the Office of the Privacy Commissioner of the steps the Ministry of Health has taken to assure itself that the information provided to the WOCA was only used for the purposes for which it was disclosed and that the information was deleted once that purpose was fulfilled.

I would appreciate your response as soon as possible as it will determine the approach this Office takes to this issue.

Ngā mihi

Liz MacPherson
Deputy Privacy Commissioner