



**MINISTRY OF SOCIAL
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

Dear

On 13 June 2017 you emailed the Ministry requesting, under the Official Information Act 1982, the following information:

- *What legislation, if any, stops a client of MSD from recording their interactions with Ministry of Social Development staff?*

In general, there is no legislation preventing a party to a conversation from recording it. Depending on the nature of the recording, however, the Privacy Act 1993 and the Crimes Act 1961 may apply.

The Privacy Act 1993 will generally not restrict clients from making a recording in relation to their own personal affairs. However, if an individual client collects, uses, or discloses personal information in a way which would be highly offensive to a reasonable person, section 56(2) may apply. In this situation, the Privacy Principles set out in section 6 of the Privacy Act 1993 will apply.

The Ministry has a statutory duty under the Privacy Act 1993 to protect the privacy of its clients and staff. As such, the Ministry may discourage clients from recording interactions with its staff members. While many Ministry sites are public places, there is a concern that another client's privacy could be breached if they are captured in the recording and this is later disclosed. The Privacy Act 1993 may be viewed in full here: <http://www.legislation.govt.nz/act/public/1993/0028/latest/DLM296639.html>.

The Crimes Act 1961 also places some restrictions on recording interactions with the Ministry. In particular, a client may breach the Crimes Act if they were to record a private conversation in which they are not involved, unless the conversation occurs in a public place, or they have the consent of one of the people taking part in the conversation. For more information please refer to Part 9A of the Act. The Crimes Act 1961 may be found in full here: <http://legislation.govt.nz/act/public/1961/0043/latest/DLM327382.html>.

If a client wishes to record their interactions with Ministry staff, he or she should advise Ministry staff of this. The Ministry may be able to facilitate the interaction in a way that will avoid or mitigate breaching the Privacy Act 1993 and the Crimes Act 1961.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public shortly. The Ministry will do this by publishing this letter on the Ministry of Social Development's website. Your personal details will be deleted and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response regarding the legislation governing the recording of conversations with Ministry staff, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely



Elisabeth Brunt,
General Manager, Ministerial and Executive Services