



Te Kawa Mataaho
Public Service Commission

Inquiry into how government agencies protected personal information provided for the 2023 Census and COVID 19 vaccination purposes

On behalf of Te Kawa Mataaho | Public Service Commission

INQUIRY LEADS

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5 DECEMBER 2024

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CHAMBERS

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Introduction

1. Information has power. In the case of an individual, their personal information is their whakapapa – past and present. It tells a story about where they have come from and where they are going. It is their story; it is their information to give and to share.
2. There are times when the government, through legislative powers, may require a person to share personal information, like for the Census or the COVID 19 pandemic. In such situations, it is incumbent on the government to act with a high level of care and diligence to protect the information provided. This is integral to maintaining public trust in government, which forms the backbone of the democratic system and the social licence with which government agencies act.
3. Where there are allegations that a government agency or agencies have failed to meet the standard of care that all New Zealanders are entitled to expect from the public sector, those allegations must be treated seriously and dealt with appropriately. This is particularly true in the case of allegations of failures to protect personal information; it is a taonga with immense strategic value.
4. Such allegations were reported by the media in early June 2024, specifically that personal information provided by or to government agencies as part of Census 2023, or for COVID 19 vaccination purposes, had been used for improper purposes by certain third-party service providers during the 2023 General Election period.
5. On 10 June 2024, the Prime Minister and the Minister for the Public Service directed the Public Service Commission to respond to these allegations and conduct an inquiry into the protection of personal information (the **Inquiry**).
6. On 14 June, the Acting Public Service Commissioner announced the Terms of Reference for the Inquiry and that she had appointed us, Pania Gray and Michael Heron KC, to lead the Inquiry. We were assisted by Jane Barrow, Barrister, Craig Neil and Beth Thomas.
7. The Inquiry is governed by its Terms of Reference, a copy of which may be found in Appendix A. The purpose of the Inquiry is to establish the facts and provide an independent assessment of government agency activity in relation to the allegations.

We have reviewed a range of public allegations about the improper use of personal information by certain service providers.

8. The allegations relevant to the Inquiry are:¹
 - a. That personal information collected for the 2023 Census was used for an improper purpose or purposes by a service provider.

¹ Paragraph 2 of the Inquiry's Terms of Reference.

- b. That personal information collected for vaccination purposes during the COVID 19 pandemic was used for an improper purpose or purposes by a service provider.
 - c. That relevant government agencies were made aware of the allegations above, prior to the media reporting, and did not take appropriate action (the **allegations**).
9. The allegations – sourced in large part from one or more whistleblowers who worked at Manurewa Marae – were first reported in June 2024:²
- a. Census forms collected by staff at Manurewa Marae were photocopied and retained and data from those forms were entered into an online database and sent to Te Whānau o Waipareira Trust.
 - b. That information was then used to target Māori electorate voters in the Tāmaki Makaurau electorate.
 - c. The staff at Manurewa Marae who delivered Census forms also included enrolment forms for voters to change from the General roll to the Māori roll.
 - d. Participants were given \$100 supermarket vouchers, wellness packs or food parcels to induce them to complete the Census forms.
 - e. Visitors to Manurewa Marae were given \$100 supermarket vouchers when they completed the forms to switch electoral rolls. (To the extent the vouchers relate to changing electoral rolls, this allegation is outside our Terms of Reference.)
 - f. Attempts were made to alert Statistics New Zealand and the Ministry of Social Development, but neither agency acted on those reports.
10. It was further reported that personal information collected for the COVID 19 Immunisation Programme was used for political campaigning.³

The scope of this Inquiry includes six government agencies and three private service providers.

11. Six government agencies and three private service providers (the **relevant service providers**) are listed in the Terms of Reference for this Inquiry.
12. The Terms of Reference also permitted the Public Service Commissioner to include within the scope of the Inquiry any other public service agency they thought appropriate or as directed by the Prime Minister and the Minister for the Public Service. It has not been necessary for us to add any agencies through the Inquiry process.

² <https://www.thepost.co.nz/politics/350293431/stats-nz-investigating-potential-misuse-maori-census-data/>.

³ <https://www.thepost.co.nz/politics/350299612/complaint-alleged-te-pati-maori-misused-info-collected-covid-vaccination-drive>.

Relevant government agencies

13. The Inquiry is focused on the conduct of Te Puni Kōkiri, the Ministry of Health, Te Whatu Ora / Health New Zealand, Statistics New Zealand, Oranga Tamariki and the Ministry of Social Development (the **agencies**).⁴

Te Puni Kōkiri – Ministry of Māori Development

14. Te Puni Kōkiri is a government department established in 1992. Te Puni Kōkiri is the Government’s principal policy advisor on Māori wellbeing and development; it is the lead government agency for Whānau Ora.
15. Te Puni Kōkiri describes Whānau Ora as “a culturally-grounded, holistic approach to improving the wellbeing of whānau as a group, and addressing individual needs within the context of whānau”.⁵ It seeks to put “whānau and families in control of services and [the] supports they need to build on their strengths and [to] achieve their aspirations”.⁶ It is a funding model that allows providers to work with clients across the full range of their needs and aspirations (e.g. health and housing and education).
16. There are currently three approved contractors for the programme, referred to as the ‘commissioning agencies’. Te Pou Matakana is the commissioning agency for the North Island. Te Pūtahitanga o te Waipounamu is the commissioning agency for the South Island. Pasifika Futures works with providers across Aotearoa to build the capability and capacity of Pacific families.
17. Relevant to this Inquiry, Te Puni Kōkiri funded the Whānau Ora commissioning agencies to assist in the Government’s response to the COVID 19 pandemic, including funding providers for COVID 19 vaccination purposes.

The Ministry of Health – Manatū Hauora

18. The Ministry of Health is responsible for monitoring the performance and outcomes achieved by the health system, to make sure it is delivering the best possible health services to New Zealanders.⁷
19. Relevant to this Inquiry, the Ministry of Health supplied personal health information to the relevant service providers for COVID 19 vaccination purposes. In broad terms, this included both the sharing of data through a secure channel and through controlled access to national databases.

Te Whatu Ora – Health New Zealand

20. Te Whatu Ora was established on 1 July 2022, through the Pae Ora health reforms. It replaced the 21 District Health Boards (**DHBs**) and assumed their responsibility

⁴ Paragraph 7.

⁵ <https://www.tpk.govt.nz/docs/tpk-wo-outcomesframework-aug2016.pdf>, page 1.

⁶ <https://www.tpk.govt.nz/en/nga-putea-me-nga-ratonga/whanau-ora>.

⁷ <https://www.health.govt.nz/about-ministry/what-we-do>.

for planning and commissioning hospitals, as well as providing primary and community health services.

21. The contracts for health services between DHBs or the Ministry of Health and third-party service providers that were in place at that time transferred to Te Whatu Ora. The same applied to data sharing arrangements; Te Whatu Ora assumed responsibility for meeting those commitments.
22. Relevant to this Inquiry, Te Whatu Ora had data sharing arrangements in place with the relevant service providers for COVID 19 vaccination purposes.

Statistics New Zealand – Tatauranga Aotearoa

23. Statistics New Zealand (**Stats**) is New Zealand’s official data agency. It collects information from people and organisations and uses it to provide insights and data about New Zealand.
24. Every five years, Stats runs the Census – the official count of how many people and dwellings there are in New Zealand. The Census is the only survey in New Zealand that covers the whole population. It provides the most complete picture of life in New Zealand cities, towns, suburbs, and rural areas. Data from the Census informs the Māori and General electorates and helps the government plan services. These include hospitals, kōhanga reo, schools, roads, and public transport.
25. In mid-2023, Stats contracted with one of the relevant service providers to assist with Census 2023 data collection to address the low Māori response rate in Tāmaki Makaurau.

Ministry of Social Development – Te Manatū Whakahiato Ora

26. The Ministry of Social Development (**MSD**) is the lead agency for the social sector. Amongst other functions, it delivers social services and assistance to young people, working-age people, older people, families, whānau and communities.
27. Relevant to this Inquiry, we have considered the role of MSD staff in assisting with the collection and sharing of personal information and concerns about marae activities raised by an MSD staff member under the Protected Disclosures (Protection of Whistleblowers) Act 2022. Their concerns relating to the appropriate collection and sharing of personal information – in connection with Census 2023 and COVID 19 vaccinations – form part of the allegations that underpin this Inquiry.

Oranga Tamariki – Ministry for Children

28. Oranga Tamariki (**OT**) provides services or support to children, young people and their families or whānau under, or in connection with, the Oranga Tamariki Act 1989.
29. Relevant to this Inquiry, we have considered the role of an OT staff member in assisting with the collection and sharing of personal information, as part of Manurewa Marae assisting with Census 2023 data collection.

Relevant service providers

30. There are three relevant service providers: Manurewa Marae, Te Whānau o Waipareira Trust and Te Pou Matakana.
31. Te Pou Matakana and Te Whānau o Waipareira Trust submit that the scope of the Inquiry relates to personal information collected by government agencies and shared with the relevant service providers, and does not (and could not under the Public Service Act 2020) extend to how the relevant service providers collected personal information from their clients or the service providers' compliance with their privacy obligations.
32. We do not accept this submission. We are required to establish facts in relation to the allegations and provide an independent assessment of government agency activity in relation to the allegations (except any aspects that are outside of scope). Our Terms of Reference provide that we may only make findings of fault in relation to the government agencies and "to the extent necessary to achieve the purpose of the inquiry" the relevant service providers. In-scope factual findings in relation to the service providers and necessary findings of fault against the service providers are expressly contemplated by our Terms of Reference. We have been careful to ensure, however, that we limit our assessment of the appropriateness of arrangements and actions to that of the agencies.

Manurewa Marae Trust Board

33. Manurewa Marae Trust Board (**Manurewa Marae**) is located in Clendon Park, Manurewa. Manurewa Marae submitted the following:

"Manurewa Marae was established by Manurewa whānau as a safe haven for urban Māori to come together for whanaungatanga. It was a place to ensure Māori tikanga, kawa and heritage is maintained. It was registered as both an incorporated society and a charity in 2008. Over time, the Marae has expanded their Korowai Manaaki on limited resources opening its doors to support and provide wrap around services to whānau Māori and the wider community. It offers health and other social services, and operates a foodbank.

Manurewa Marae relies on the generosity of volunteers – including kaumātua and kuia - to deliver its services in a way that enables it to build trust with some of the most hard-to-reach people in a way that is mana enhancing and that reflects empathy and manaakitanga. It is dependent on the creativity and innovation of a small pool of paid kaimahi to carry out day-to-day services to community. Manurewa Marae's grassroots approach to service delivery depends on the goodwill of our community volunteers, fostering and building relationships with key partners and organisations within the community to maximise its reach.

Manurewa Marae is a part of Te Pae Herenga o Tāmaki Whānau Ora collective (**Te Pae Herenga**). Some government agencies have staff located at Manurewa Marae.

During the Covid 19 pandemic Manurewa Marae became the first marae in the country to open a vaccination centre and were provided only four days to set it up. Manurewa Marae completed over 60,000 vaccinations. Frontline staff in particular were under immense pressure and worked seven days a week, at their own personal risk, to support whānau during an uncertain time. In late April 2023 Manurewa Marae was contracted by Te Pou Matakana to lift Māori and Pasifika rates of Census completion in some of the hardest to reach households in South Auckland. Manurewa Marae exceeded the contracted target of 1,800 households in approximately nine weeks.”

Te Pou Matakana Limited

34. Te Pou Matakana Limited (**Te Pou Matakana**) is a limited liability company and registered charity, established in 2014. Its shareholders are the National Urban Māori Authority (**NUMA**), Te Whānau o Waipareira Trust and the Manukau Urban Māori Authority. Te Pou Matakana is more commonly known by its trading name – the Whānau Ora Commissioning Agency or sometimes by the acronym, WOCA. Although our Terms of Reference refer to it as the Whānau Ora Commissioning Agency, we refer to the organisation as Te Pou Matakana throughout the Inquiry report.
35. The charitable purpose of Te Pou Matakana is to “provide whānau and families within the North Island of New Zealand with direct, personal and practical health, educational, justice and social support and services utilising Whānau Ora principles and philosophy”.
36. Te Pou Matakana describes itself as working for whānau through direct investment and commissioning initiatives from 16 Whānau Ora collectives made up of more than 100 Māori-governed and operated Whānau Ora partners in the North Island.
37. Te Pou Matakana submitted that Whānau Ora partners operate on the basis that:
 - a. Through their kaimahi, Whānau Ora partners provide whānau Māori with the opportunity to access a range of information and support, and to allow whānau to make their own decisions. Whānau self-determination, mana motuhake – their consent – is at the forefront.
 - b. Instead of sending multiple agencies to one whānau to address whānau needs as disconnected issues, Whānau Ora kawa enables whānau – and Whānau Ora kaimahi – to attend to whānau needs holistically.
 - c. Whānau Ora rests on whakamana (empowerment) and whakawhanaungatanga (building relationships), which in turn includes for instance: connecting whānau Māori with their hapū, iwi, marae and iwi organisations; ensuring they know of and can access services available to them; and enabling them to participate meaningfully, confidently, and positively in their community.
38. Te Pou Matakana is contracted by Te Puni Kōkiri to fund and support initiatives that deliver Whānau Ora outcomes.

Te Whānau o Waipareira Trust

39. Based in Henderson, Te Whānau o Waipareira Trust (**Waipareira**) is a charitable trust, registered in 1984. It is an urban Māori authority and is a member of NUMA. The Te Whānau o Waipareira Trust Group comprises eight separate legal entities, one of which is Whānau Tahi Limited.
40. Waipareira offers an extensive range of health, education and other social services in the west Auckland area.
41. Waipareira submits:

“It supports urban Māori who, as a product of colonisation, may be disconnected from their hapū, whakapapa and marae. The Waitangi Tribunal has recognised Waipareira as an organisation applying tikanga Māori and exercising rangatiratanga in a modern setting and deserving of special recognition in terms of Te Tiriti.

Waipareira is now the largest integrated non-government social service organisation in the motu, providing health, welfare, education, training, justice, budgeting and enterprise services to the whānau of West Auckland.”
42. It is the lead agency of Te Pae Herenga collective.

Methodology

43. For this Inquiry, we operated under delegation with facility to use the powers contained in both the Public Service Act 2020 and the Inquiries Act 2013.
44. In the course of the Inquiry, we have interviewed current and former senior management and staff of the government agencies and Manurewa Marae.
45. Te Pou Matakana and Waipareira preferred to answer questions from us in writing. We have also received written responses to questions we posed to Manurewa Marae. We record our specific thanks for their co-operation and provision of detailed responses to our questions.
46. We have liaised regularly with Doug Craig, who headed the Stats independent investigation, and other government agencies including New Zealand Police, the Office of the Privacy Commissioner, Charities Services, the Electoral Commission and the Ombudsman. We have also received information and interviewed personnel from Te Kāhui Kahu, a division of MSD which provides accreditation to social service providers.
47. Finally, we reviewed extensive documentation, including correspondence, operational documents, statistics and contracts. We have reviewed draft findings from Mr Craig’s Stats investigation and findings from internal and external assurance reports for Te Puni Kōkiri, MSD and OT.
48. We conducted a natural justice process with affected parties before finalising the report, including providing a draft report on 4 October 2024 and receiving feedback from all agencies and the relevant service providers. We provided a further draft

report to certain affected parties on 12 November 2024. A final report was provided to the Public Service Commissioner on 5 December 2024.

49. We extend our gratitude to all those who have spoken to us, provided information or assisted us in the Inquiry. We particularly acknowledge the assistance of Public Service Commission staff whose advice and support proved invaluable.

Report structure

50. Though some of the allegations are directly targeted at the activities of specific agencies, we have considered the Inquiry terms in full, for each of the agencies. We address these in full in each subject-agency specific chapter. A summary of the findings and conclusions for each agency may be found in the Executive Summary.

Executive Summary

51. Personal information within the scope of this Inquiry was shared by some of the agencies (Ministry of Health, Te Whatu Ora and Stats) with the relevant service providers. The other agencies (MSD, Te Puni Kōkiri and OT) did not share personal information within the scope of this Inquiry with those providers.
52. With the exception of Stats, none of the agencies received any complaints or concerns about the relevant service providers in relation to the allegations which are the subject of this Inquiry.

Ministry of Health and Te Whatu Ora

53. Personal information was shared pursuant to formal Data Sharing Agreements (DSA) and providers' staff accessing the national immunisation databases at the point of COVID 19 vaccination.
54. The Ministry of Health and Te Whatu Ora have no record of receiving any concerns or complaints about the relevant service providers and their management and use of personal information collected for COVID 19 vaccination purposes.
55. The terms of the DSAs adequately and appropriately set out the expectations of the parties. There is a range of safeguards operating over personal information held in the national immunisation databases.
56. The agencies, however, did not implement a systematic means for assuring themselves that the relevant service providers were meeting the contractual expectations. The validation checks applied by the agencies did not relate to the systems and controls of the service providers for the receipt, storage, use and disposal of data. Health officials advised us that there were no controls operating over the files once they were downloaded by the providers' authorised staff.
57. The generic DSA framework relies on high trust and commercial incentives as safeguards. Though this has not provided satisfactory reassurance here, we note that Te Whatu Ora now has work underway to revise its standard DSA terms. It told us it will add audit, retention, and disposal provisions as well as develop an appropriate assurance framework for monitoring the use of personal information shared with external parties.
58. Te Whatu Ora has not yet obtained satisfactory assurance from Te Pou Matakana and Waipareira that they have each complied with the terms of their respective DSAs. As a result, Te Whatu Ora and we are unable to conclude on how effective the safeguards and institutional arrangements have been for personal health information shared for COVID 19 vaccination purposes. We were told that Te Whatu Ora halted the further supply of personal health information to Te Pou Matakana under the DSA in June 2024.
59. The Ministry of Health and Te Whatu Ora had no safeguards in place for identifying and managing the possibility of conflicts of interest arising from the sharing of personal health information with the relevant service providers. For the Ministry of Health, this is because they considered these would be managed by Te Puni Kōkiri.

Te Puni Kōkiri did not consider that this was their sole responsibility. Both the Ministry of Health and Te Whatu Ora have accepted our Inquiry findings. As the lead agency for health sector data sharing, Te Whatu Ora told us that it intends to revise the DSA framework to ensure that conflicts of interest are actively considered.

Statistics New Zealand

60. Stats shared unit-level dwelling data for those households that had not yet responded (wholly or in part) to Census 2023 in the South Auckland area. Whilst not immediately ‘identifiable’, Stats understood that Te Pou Matakana would combine this information with their own datasets to identify Māori in those households. At the time, Stats decided that this was sufficient to qualify as “personal information” and it would clearly have been personal information once combined.
61. This information was shared under an Information Sharing Agreement.
62. Several concerns about the management of personal information were raised with Stats, both by internal and external parties, including while the contract with Te Pou Matakana was being performed. The complaints raised by internal Stats employees were largely ignored. Stats dealt with the external concerns as best it could in the circumstances.
63. The safeguards and institutional arrangements in place to protect personal information were insufficient for several reasons:
 - a. Stats provided information to Te Pou Matakana before it understood how the information would be dealt with, handled, protected and destroyed.⁸
 - b. Stats removed the requirement for Certificates of Confidentiality, a key requirement to ensure the protection of Census data.
 - c. Stats did not finalise a Privacy Impact Assessment and drafts we have seen show confusion about management of the information.
 - d. Stats did not provide adequate training to Te Pou Matakana or its kaimahi, and the training materials provided to Stats for review raised red flags as to how information was to be protected and/or used.⁹
64. The conflict of interest terms that Stats included in its Contract for Services (the **Contract**) with Te Pou Matakana only considered conflicts of interest arising from Te Pou Matakana (as the defined supplier). It did not expressly provide for conflicts of interest that may arise with subcontractors (such as Manurewa Marae), a risk which was clearly identified by a Stats employee early in the process.

⁸ Te Pou Matakana submitted materials to suggest Stats did understand the filtering of non-response addresses by whānau who had engaged with their partners and this is noted.

⁹ Te Pou Matakana maintains that the training was appropriate and adequate, in particular because the Data and Statistics Act and the Contract was intended to result in a for Māori, by Māori approach. Autonomy for Te Pou Matakana and its providers was a central part of that approach, with guidance given by Stats trainers involved in training Te Pou Matakana trainers and providing template training materials. This, it was submitted, was consistent with the Te Tiriti o Waitangi duties on Stats under its Act (including Rangatiratanga and Whakawhāiti).

65. In any event, neither party to the Contract appears to have considered the conflict of interest provisions and possible conflicting interests were not identified or managed.
66. The aim of the Stats contract with Te Pou Matakana was well-intentioned and the resulting additional Census forms meant that Stats considered that the Contract was successful. However, the Stats processes meant that a risk of the mishandling of personal information was not addressed.
67. As a result, there was a risk of the collection or use of personal information for an improper purpose due to this combination of factors.

Te Puni Kōkiri, Ministry for Social Development and Oranga Tamariki

68. None of these agencies were providing personal information within the scope of this Inquiry.
69. Neither Te Puni Kōkiri nor OT management were aware of the allegations of inappropriate use of personal information before the allegations were raised in the media. There is insufficient evidence for us to conclude whether MSD management was notified of the allegations of misuse of Census data before the allegations became public.

Observations

70. The protections over personal information which existed in the service contracts or data sharing agreements are only one part of the overall protections required when agencies deal with sensitive personal information. The ability to monitor, audit and hold accountable the relevant contractual party to those obligations is also important.
71. When concerns surfaced publicly about the relevant service providers using personal information, shared by government agencies, for improper purposes, the providers all swiftly refuted the allegations. However, none of the agencies were able to draw on their existing assurance systems to respond to the allegations. This is problematic.

Referrals to other oversight bodies

The Terms of Reference anticipated that we might identify issues for referral to other oversight bodies.

72. We were not tasked with determining the liability (civil, criminal or disciplinary) of any person. However, we are permitted to make referrals to an appropriate oversight body or make recommendations that further steps be taken to determine liability.
73. Where we have identified matters for referral to other organisations, we have recorded this in each of the agency chapters (where relevant).
74. The reasoning behind each of these referrals is also contained within the relevant agency chapters.
75. To summarise, we have made the following referrals.

Ministry of Health and Te Whatu Ora

76. In response to the allegations, Manurewa Marae was clear that its staff did not collect personal information from people attending the marae to receive their COVID 19 vaccination beyond what was necessary to record bookings and vaccinations updates in the COVID 19 Immunisation Register. We are unable to make findings as to whether any information – for any purpose – was inappropriately collected at the point of COVID 19 vaccination, and then used by Manurewa Marae staff.
77. A related allegation was put to us directly during the Inquiry. That is, that Manurewa Marae collected personal information for its own purposes, at the point of COVID 19 vaccination. Also, during the Inquiry, we received details of an allegation of unauthorised use of personal information by Manurewa Marae – collected at the point of vaccination – for a Te Pāti Māori text message campaign in the weeks leading up to the General Election. As these allegations are outside the Inquiry Terms of Reference, we have referred them to the Privacy Commissioner for his consideration.

Statistics New Zealand

78. Te Pou Matakana and Waipareira have told us that the personal information they collected was entered into a database owned by Waipareira, and it was clearly distinct from Census data (i.e. the information entered into the Census forms by whānau). This distinction was not always observed at Manurewa Marae and in any event, we are concerned about the practical application of all necessary privacy obligations with such an approach. These are issues that require further investigation, but they are outside the scope of our Terms of Reference and are best determined by a specialist regulator. Therefore, we have referred this matter to the Privacy Commissioner for his consideration.
79. The Terms of Reference contain an allegation that personal information collected for the 2023 Census was used for an improper purpose by a service provider.
80. The Terms of Reference do not enable us to reach a conclusion as to whether the service providers actually used personal information or Census data for an improper purpose. Such a conclusion is not necessary for us to independently examine Stats' conduct in relation to these allegations.
81. Aspects of this matter are the subject of an ongoing investigation by New Zealand Police. As noted in paragraphs 12 to 15 of the Terms of Reference, these matters are outside the scope of this Inquiry.

Oranga Tamariki

82. There was an employment issue which arose, but it is irrelevant to the Inquiry. We have referred this issue back to OT for it to consider the appropriate course of action.

Ministry of Social Development

83. MSD is handling an existing employment issue and matters arising relating to that person (similar to the OT employment issue) ought to be dealt with as part of that process.

Te Puni Kōkiri | Ministry of Māori Development

84. Te Puni Kōkiri is the lead government agency for Whānau Ora. Each of the three Whānau Ora commissioning agencies¹⁰ is a non-government organisation contracted by Te Puni Kōkiri to fund and support initiatives to deliver Whānau Ora outcomes.¹¹ Te Pou Matakana – one of the relevant service providers – is the commissioning agency for the North Island.
85. Using their share of the annual funding Te Puni Kōkiri distributes to the three commissioning agencies, each commissioning agency develops, supports, and invests in a portfolio of programmes and initiatives to deliver outcomes aligned with the aspirations of the whānau they work with and the Whānau Ora Outcomes Framework.

Background facts

Te Puni Kōkiri had contractual arrangements with two of the relevant service providers – Te Pou Matakana and Waipareira – for COVID 19 vaccination purposes.

86. Te Puni Kōkiri entered into one¹² contract with Te Pou Matakana and two contracts with Waipareira (as the lead agency for Te Pae Herenga) for COVID 19 vaccination purposes. These contracts spanned September 2021 – July 2022.
87. Though we understand that Manurewa Marae may have received funding through these COVID 19 vaccination contracts, the details of those third party-to-third party funding arrangements are outside the scope of this Inquiry. Further, Te Puni Kōkiri is not a party to the contractual arrangements that Te Pou Matakana has with its partner providers (nor for the contracts with the Whānau Ora collectives). Te Puni Kōkiri told us that these arrangements and relationships sit entirely between those providers and Te Pou Matakana.

Te Puni Kōkiri had no contractual arrangements with any of the relevant service providers for Census 2023 purposes.

88. Te Puni Kōkiri had no contractual arrangements in place with any of the relevant service providers for Census 2023 data gathering. However, in April 2023, Te Puni Kōkiri played an introductory role between Stats and Te Pou Matakana, at the suggestion of senior Public Service Commission staff, to support an increase in Census 2023 data gathering from Māori households. This is discussed in the Stats chapter of this Report.

¹⁰ During the Inquiry, Te Puni Kōkiri initiated procurement for commissioning agencies for the period beyond 1 July 2025.

¹¹ <https://www.tpk.govt.nz/en/nga-putea-me-nga-ratonga/whanau-ora/whanau-ora-kaupapa>.

¹² This contract was subject to a variation.

Te Puni Kōkiri did not share any personal information with any of the relevant service providers, for either COVID 19 vaccination or Census 2023 purposes.

89. Although Te Puni Kōkiri had contracts with both Te Pou Matakana and Waipareira for COVID 19 vaccination purposes, none of the contracts included provision for the sharing of personal information.
90. We note that Te Pou Matakana sought and received personal information from the Ministry of Health (and later, Te Whatu Ora). This is discussed in more detail in the health chapter of this Report.
91. Te Pou Matakana and Waipareira consider that the COVID 19 vaccination contracts held with Te Puni Kōkiri are outside the scope of the Inquiry because Te Puni Kōkiri did not provide personal information to those providers under those contracts. Further, they submitted that the Inquiry is not entitled to make any findings relating to these contracts nor an independent assessment of Te Puni Kōkiri's actions in relation to these contracts.
92. After carefully considering this submission as part of the natural justice process, we consider that we are entitled to make findings about Te Puni Kōkiri's arrangements for the identification and management of any conflicts of interest of the relevant service providers (actual, potential or perceived) in relation to these COVID 19 vaccination contracts and whether those arrangements were appropriate and effective in the circumstances. For completeness we note that the circumstances are different than with MSD or OT (there were no such contracts in place). Our findings are set out below.

Te Puni Kōkiri included conflict of interest provisions in its COVID 19 vaccination contracts.

93. Actual, potential and perceived conflicts of interest were defined in each of the COVID 19 contracts between Te Puni Kōkiri and Te Pou Matakana and Te Puni Kōkiri and Waipareira.
94. The contract terms required Te Pou Matakana and Waipareira to notify Te Puni Kōkiri immediately if they became aware of anything that might give rise to an actual, potential, or perceived conflict of interest between their obligations to Te Puni Kōkiri and any other interests and responsibilities they had. This could arise if officers of Te Pou Matakana or Waipareira had roles which gave rise to a possible conflict of interest. In response to Te Pou Matakana and Waipareira's submissions to us, we note that the contractual obligations include compliance with legal obligations such as the confidentiality and privacy obligations encompassing the Privacy Act 2020; therefore the providers must only use personal information for the purpose for which it was provided. Those contractual obligations could (depending on the circumstances) come into conflict with the office holders' other positions and

obligations.¹³ The first step (as discussed below) is the identification by the provider concerned of their relevant interests.

95. The contract terms also obligated Te Pou Matakana and Waipareira representatives to “comply with the ‘Standards of Integrity and Conduct’ issued...by the State Services Commission [now the Public Service Commission]...in all...dealings with Te Puni Kōkiri and other third parties...”. These standards promote conduct that is fair, impartial, responsible and trustworthy.¹⁴
96. The COVID 19 contract terms did not require the parties to maintain an up-to-date conflicts register nor have policies and practices in place to cover the identification and management of conflicts of interest in relation to the assessment and selection of the providers and the programmes commissioned.¹⁵
97. In June 2024, Te Puni Kōkiri commissioned an external review of its COVID 19 vaccination contracts with Te Pou Matakana and Waipareira.¹⁶ The review considered how the contracts addressed conflicts of interest and (the protection of) personal information, and the extent to which Te Puni Kōkiri’s policies and procedures relating to conflicts of interest and privacy align with relevant laws and/or public sector guidance.

Findings

Te Puni Kōkiri, Te Pou Matakana and Waipareira did not exchange any personal information under any of the contractual arrangements for COVID 19 vaccination purposes.

98. As noted in paragraph 89, Te Puni Kōkiri did not share any personal information with either Te Pou Matakana or Waipareira as part of the COVID 19 contracts between the parties.
99. Neither Te Pou Matakana nor Waipareira shared any personal information with Te Puni Kōkiri as part of the accountability reporting against those contracts. All of the information reported to Te Puni Kōkiri that we reviewed, for contracts delivered for COVID 19 vaccination purposes was at an aggregate level; no individuals or whānau were identifiable in the reporting.
100. As a result, in relation to these COVID 19 vaccination contracts, we have not been required to assess the adequacy of any safeguards in place for the collection and use of personal information.

¹³ An example could be if personal information gathered for one purpose was sought to be used for another purpose, without appropriate consent or authority.

¹⁴ <https://www.publicservice.govt.nz/guidance/guide-he-aratohu/standards-of-integrity-and-conduct>.

¹⁵ These were terms in the broader Whānau Ora Outcome Agreement between Te Puni Kōkiri and Te Pou Matakana.

¹⁶ The specific terms of one COVID 19 contract with Waipareira did not fall within the Terms of Reference of this Inquiry, i.e. facilitating vaccinations.

There is no record of any complaints referred to, or raised with, Te Puni Kōkiri about the allegations.

101. Te Puni Kōkiri received no concerns or complaints about any of the relevant service providers in relation to the allegations. Therefore, this aspect of the Inquiry's Terms of Reference has not been engaged.

The COVID 19 contracts, between Te Puni Kōkiri and Te Pou Matakana and Te Puni Kōkiri and Waipareira, contained conflict of interest terms.

102. The contract provisions relating to conflicts of interest should have ensured that the matter was given attention. The underlying sentiment was further reinforced by the contract references to the Public Service Commission's 'Standards of Integrity and Conduct'.

103. The conflict of interest related contract terms put a procedure in place for any change in circumstances after the contract was signed; the importance of timely notification was emphasised. The contracts clearly set out that the parties must discuss, agree and record in writing how any notified conflicts of interests would be managed.

104. We regard these conflict of interest terms as appropriate in the circumstances. They are consistent with the Public Service Commission's Conflict of Interest Model Standards. The terms put the foundations in place for the identification and management of conflicts of interest. They provide for ongoing disclosure, cover the three different types of conflicts (potential, actual and perceived), and specify that conflict of interest management plans should be agreed and documented.

105. The June 2024 external review considered the conflict of interest terms in the COVID 19 contracts that we have also considered as part of the Inquiry. Other aspects of that external review were irrelevant to the Inquiry's scope and some parts of the review were subject to legal privilege. On the terms in common with this Inquiry, our findings are aligned.

The conflict of interest provisions in the COVID 19 vaccination contracts were not engaged by either Te Puni Kōkiri or Te Pou Matakana and Waipareira.

106. Te Puni Kōkiri did not initiate engagement with either Te Pou Matakana or Waipareira on any potential, actual or perceived conflicts of interest during the period of the contracts. Similarly, Te Puni Kōkiri told us that neither Te Pou Matakana nor Waipareira notified Te Puni Kōkiri of any conflicts of interest under the COVID 19 vaccination contracts between the parties. The first step was for the providers to notify relevant interests which could give rise to a conflict (in the defined terms).

107. We are concerned at this lack of formalised attention by Te Puni Kōkiri to conflict of interest matters.

Conclusion

108. There were no specific allegations – in the context of Te Puni Kōkiri commissioning services for COVID 19 vaccination purposes from the relevant service providers – that personal information was provided by Te Puni Kōkiri to those providers and

applied for an improper purpose. No one raised such concerns with Te Puni Kōkiri nor the Inquiry directly.

109. Te Puni Kōkiri and Te Pou Matakana and Waipareira (on behalf of Te Pae Herenga) did not exchange personal information under the COVID 19 vaccination contracts. Therefore, in relation to these COVID 19 vaccination contracts, we have not been required to assess the adequacy of any safeguards in place for the collection and use of personal information.
110. We consider that the conflict of interest terms that Te Puni Kōkiri used in its COVID 19 vaccination contracts with Te Pou Matakana and Waipareira (on behalf of Te Pae Herenga) were appropriate. They are consistent with the Public Service Commission's Conflict of Interest Model Standards.
111. No potential, actual or perceived conflicts of interest were identified by the providers or discussed by the parties. In fact, Te Puni Kōkiri did not consider the conflict of interest provisions during the term of those contracts thereby limiting their ability to act as a safeguard for any potential, actual or perceived conflicts of interest. It would be prudent for Te Puni Kōkiri to revisit its processes to provide for a more active consideration of possible conflicts of interest.

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112. In the lead up to this Inquiry, there were publicly reported allegations that information collected for vaccination purposes during the COVID 19 pandemic was used for an improper purpose or purposes by a service provider. This chapter considers these, and similar allegations put to us directly during the Inquiry.
113. Unlike other chapters in this Report, this chapter considers two agencies within the scope of the Inquiry – the Ministry of Health and Te Whatu Ora. The 2022 Pae Ora health reforms led to the transfer of many functions related to the COVID 19 vaccination programme from the Ministry of Health to Te Whatu Ora. For ease of reading, we present the factual background in a chronological sequence, noting which of the two agencies was involved at the time.

Background facts

Various government agencies contracted with the relevant service providers to lift Māori COVID 19 vaccination rates.

114. In the early stages of the COVID 19 pandemic, there was no vaccination available. In 2021, after a range of vaccinations for the virus became available, the New Zealand Government entered into a procurement arrangement to enable a nationwide vaccination programme. The COVID 19 vaccination programme which began in February 2021, used the Pfizer-BioNTech vaccine, which involved two vaccine doses.
115. After it became apparent that the COVID 19 vaccination programme had not achieved equitable coverage for some population groups, the Government funded a range of initiatives to lift vaccination rates for Māori. These included:
- a. Te Puni Kōkiri contracting with the three Whānau Ora commissioning agencies – including Te Pou Matakana – to provide COVID 19 vaccination and other COVID 19-related services.
 - b. DHBs contracting with organisations, including Manurewa Marae and Waipareira, to deliver COVID 19 vaccinations and other related COVID 19 services.

From April 2021, both Manurewa Marae and Waipareira had access to personal health information on the immunisation register as COVID 19 local vaccination centres.

116. On 7 April 2021, the Counties Manukau DHB contracted with Manurewa Marae to operate a COVID 19 Local Vaccination Centre (**LVC**).
117. Similarly in April 2021, the Waitematā DHB contracted with Waipareira to operate a COVID 19 LVC.
118. The contracts authorised Manurewa Marae and Waipareira staff to access the COVID 19 Immunisation Register (**CIR**) and the Book My Vaccine register. This allowed staff to record bookings and vaccination updates for whānau attending the

LVC. The CIR register included people's name, age, date of birth and vaccination status.

In September 2021, the Ministry of Health provided personal health information of Whānau Ora enrolled patients to Te Pou Matakana through a Data Sharing Agreement (DSA) with the Ministry of Health.

119. In August 2021, Te Pou Matakana requested that the Ministry of Health share personal information about unvaccinated Māori in the North Island.
120. Subsequently, on 27 September 2021 the Ministry of Health entered into a DSA with Te Pou Matakana and Whānau Tahī (on behalf of their commissioned providers). Whānau Tahī is an information technology (IT) service provider, and it provided the secure IT storage and system software which was used by Te Pou Matakana for its data sharing arrangements with the Ministry of Health (and later, with Te Whatu Ora). Whānau Tahī is a limited liability company. Though wholly owned by Waipareira, Whānau Tahī has a separate board of directors.
121. Under the DSA, the Ministry of Health provided Te Pou Matakana with individual-level COVID 19 vaccination and COVID 19 vaccination booking status data for individuals who were enrolled with Te Pou Matakana Whānau Ora partner health providers. This comprised some 118,000 whānau Māori individuals. The Ministry of Health provided weekly updates of this data to Te Pou Matakana through Whānau Tahī.
122. Te Pou Matakana maintained its August 2021 request for data about all unvaccinated Māori in the North Island. Specifically, Te Pou Matakana sought the National Health Index (NHI) number, name, demographics, contact details and vaccination status for unvaccinated¹⁷ people recorded as domiciled in the North Island and identifying as Māori in the COVID 19 Immunisation Programme (CVIP) dataset.
123. For completeness, we note that this data request became the subject of High Court proceedings. High Court judgments of 1 November 2021¹⁸ and 6 December 2021¹⁹ led to the Ministry of Health providing Te Pou Matakana and Whānau Tahī with the information they had initially requested in August 2021.
124. From late November 2021, the Ministry of Health progressively provided the name, date of birth/age, NHI number, COVID 19 vaccination status and phone number and/or address for most people in the North Island over 12 years old who identified as Māori (except for those who had previously opted out of data sharing for COVID 19 purposes), on a DHB-by-DHB basis.
125. The Pfizer vaccine was deemed safe for use with children between 5 and 11 years old on 17 January 2022. In a new DSA signed on 14 February 2022, the Ministry of Health agreed to extend the data sharing arrangements with Te Pou Matakana to include the name, date of birth/age, NHI number and COVID 19 vaccination status

¹⁷ Māori who have had no vaccine dose and those who have had only one dose.

¹⁸ Te Pou Matakana Ltd and Whānau Tahī Limited v Attorney-General [2021] NZHC 2942.

¹⁹ Te Pou Matakana Ltd and Whānau Tahī Limited v Attorney-General [2021] NZHC 3319.

for Māori children aged 5 - 11 years residing in the North Island. The February DSA excluded address and telephone contact details for this 5 - 11 years age group.

126. In March 2022 a new DSA, which consolidated previous DSAs, was put in place for the supply of information to support COVID 19 vaccination invitations and administration, and associated management processes. Section 4 of the DSA outlined the obligations of Te Pou Matakana in detail, including that information was not to be shared with any unauthorised persons outside of those named in the agreement, the purpose of sharing the data and retention conditions.

In September 2022, Te Whatu Ora entered into a new DSA with Te Pou Matakana.

127. The September 2022 DSA between Te Whatu Ora and Te Pou Matakana provides Te Pou Matakana with NHI level information for every Māori resident in the North Island who is overdue immunisations on the National Immunisation Schedule.
128. Up until June 2024, Te Whatu Ora provided personal information in weekly datasets of NHI-level health information (including names, and in some cases addresses and telephone contact details) for registered clients of Te Pou Matakana from the immunisation datasets for COVID 19, Influenza 55+ and 3-12 year olds and Measles Mumps Rubella (for those aged 1 year old in 2009 or later).

Beginning in 2021, the Ministry of Health (and later Te Whatu Ora) shared personal information with the relevant service providers for COVID 19 vaccination purposes, through two different mechanisms.

The first mechanism involved datasets containing personal information about Whānau Ora enrolled patients being assembled and transferred through a secure file transfer channel.

129. The first mechanism involved bespoke datasets being assembled by the Ministry of Health, in response to information requests made under the DSAs (described above) and transmitted through a Secure File Transfer Protocol (**SFTP**) channel.
130. Relevant to the circumstances of this Inquiry and until the December 2021 DSA was in effect, data matching was initiated by Whānau Tahī (on behalf of Te Pou Matakana and its commissioned providers).²⁰ It provided files containing details of Te Pou Matakana clients via the SFTP. The Ministry of Health (and later Te Whatu Ora) then used these details (name, date of birth, address) to match an NHI. It then joined CIR and COVID 19 vaccination booking information before returning a CSV file to Whānau Tahī through the SFTP channel. At that point, authorised users from the provider logged in using dual factor authentication to download the CSV files.

²⁰ The data-matching step was not required after the wider data set began to be provided.

The second mechanism involved authorised service provider staff accessing personal information in the online COVID 19 immunisation registers.

131. The DHB contracts with Manurewa Marae and Waipareira facilitated trained staff having access to personal health information stored in the CIR.²¹ This included name, age, date of birth and vaccination status. This enabled searching and information being input by authorised staff to book vaccination appointments and update records when a vaccination had taken place. It did not permit staff to download that information.

Findings

Due diligence as a first safeguard for the protection of personal information.

132. Standard institutional arrangements were followed, and some due diligence of Te Pou Matakana (and Whānau Tahī) was carried out by the Ministry of Health prior to the establishment of the September 2021 DSA.

133. Although there is no standardised form to use, we found that it is standard practice for health providers to apply to the relevant government health agency (now Te Whatu Ora) if they wish to access personal health information. This was the factual background for Te Pou Matakana; in August 2021 it approached the Ministry of Health seeking personal information about unvaccinated Māori in the North Island.

134. Once received, the standard process is for a provider's application to be assessed by the agency's privacy experts. The provider is required to demonstrate that they have sound, safe data management policies and practices and are a competent organisation to have access to health data. Once the provider is approved, the Ministry of Health (now Te Whatu Ora) and the provider enter into a DSA.

135. It was intended that the information sought by Te Pou Matakana in August 2021 – to be shared under a DSA – would be provided to Whānau Tahī. The Ministry of Health told us that it was not unusual to have a DSA with multiple parties where a group of entities was involved in the provision of health services.

136. Whānau Tahī developed and operates a software application – called Navigator. We understand that the Navigator application stores data in an encrypted database, accessible only through multi-factor authentication, with site-based access policies.²²

137. Though carried out before the August 2021 information request was received and not directly related to the sharing of COVID 19 vaccination data, we reviewed a May 2021 Ministry of Health Privacy Impact Assessment about the Navigator application. We were told that the Ministry of Health relied on this privacy assessment when entering the September 2021 DSA. The assessment considered the privacy risks identified in the Privacy Act 2020 and the Rules of the Health Information Privacy Code. The only concern identified related to the Navigator

²¹ In early December 2023, the Aotearoa Immunisation Register (AIR) replaced the CIR; this is operated by Te Whatu Ora.

²² Te Pou Matakana Limited and Whānau Tahī Limited v Attorney-General [2021] NZHC 3319, para 77.

platform retaining all data and information indefinitely, which put Whānau Tahī at risk of non-compliance with the Privacy Act. The Ministry of Health proposed mitigations, including that Whānau Tahī establish an appropriate retention policy to govern storage and disposal arrangements. The Privacy Impact Assessment records this concern as being addressed.

138. As at September 2021, it appears that the Ministry of Health’s due diligence relied on its experience working with Whānau Tahī as a reliable and trusted information technology partner. Whānau Tahī is the operator of the New Zealand ePrescription Service and the national system for managing the provision of disability support services. It is this background that appears to have weighed favourably in the Ministry of Health’s consideration of the request to share personal health information for COVID 19 vaccination purposes with Te Pou Matakana, using the Whānau Tahī IT systems.
139. Though it transpired after the September 2021 DSA was agreed, we note that the evidence underpinning the High Court judgment *Te Pou Matakana Limited and Whānau Tahī Limited v Attorney General*²³ supports the Ministry of Health’s confidence in Whānau Tahī’s technical capability providing appropriate data safeguards. The judgment noted the uncontradicted evidence that the level of protection of data provided by Whānau Tahī’s system is greater than that afforded by some DHBs.²⁴
140. From July 2022, Te Whatu Ora assumed responsibility for the existing DSA with Te Pou Matakana and Whānau Tahī for COVID 19 vaccination purposes. As previously discussed in paragraph 127, Te Whatu Ora entered into a new DSA in September 2022. There is no evidence that Te Whatu Ora carried out further due diligence on Te Pou Matakana as part of the process to expand the terms of the DSA; and we note that the September 2022 DSA does not include Whānau Tahī as a party to the agreement.
141. Overall, the due diligence carried out on Te Pou Matakana by the Ministry of Health and Te Whatu Ora – ahead of entering into DSAs – was light touch. A high degree of trust was placed in Whānau Tahī as a proven health sector technology partner. Notwithstanding the public health ‘emergency’ context posed by COVID 19 at that time, we consider that more extensive due diligence should have been carried out before each DSA was entered into. It appears that the agencies placed more emphasis and weight on using the terms of the DSA itself to ensure the protection of personal information, rather than the due diligence process. As part of the natural justice process, the Ministry of Health told us that it was not practical to undertake further due diligence and that because they also had a long history of dealing with Whānau Tahī, the purpose of more due diligence was unclear.

²³ *Te Pou Matakana Ltd v Attorney-General* [2021] NZHC 3319.

²⁴ *Te Pou Matakana Limited and Whānau Tahī Limited v Attorney-General* [2021] NZHC 3319, para 77.

The Ministry of Health and Te Whatu Ora included a number of safeguards in their DSAs with Te Pou Matakana.

142. The DSAs were the key framing documents for the information sharing arrangements with Te Pou Matakana for COVID 19 vaccination purposes. They set clear obligations on the parties to the agreement in respect of the handling and use of the personal health information.
143. The standard terms of the DSAs included the type of privacy and data protections we expected. They limited the purposes for which the data could be used and had provisions relating to the safe storage, use and destruction of personal information. The DSAs also required compliance with privacy legislation, and Health Information Security Framework and Governance Guidelines, Government and Ministry of Health cloud computing and health information guidance, including the New Zealand Information Security Manual and the Government Protective Security Requirements.
144. By way of example, the September 2021 DSA recorded an acknowledgement from the applicants (Te Pou Matakana and Whānau Tahī) that the Ministry of Health was relying on them to act as custodians for the privacy, safety and security of the information supplied under the DSA. The Ministry of Health was obliged to provide support and resources to assist Te Pou Matakana to comply with its obligations under the DSA. Through the DSA, Te Pou Matakana and Whānau Tahī also acknowledged that they would hold and use the data in accordance with all legislative requirements, including those set out in the Health Information Privacy Code 2020, and HISO 10064:2017 Health Information Governance Guidelines. The DSA also specified terms relating to the destruction of the information shared under the DSA.
145. In making the December 2021 decision to provide a broadened set of personal health information to Te Pou Matakana, the Ministry of Health expanded the scope of conditions and privacy protections. For example, Te Pou Matakana could only use the data to support COVID 19 vaccination service planning and monitoring, and Te Pou Matakana had to delete information relating to anyone who advised them that they did not want their data to be held. A condition of that agreement was that the data had to be securely destroyed by 30 June 2022.
146. The February 2022 DSA also required Te Pou Matakana to accept and fulfil a range of privacy obligations. These included Te Pou Matakana and Whānau Tahī having effective information governance arrangements in place, holding and using data in accordance with legislative requirements and the Health Information Privacy Code, not using the information in a way that identifies any individual publicly, and not sharing the information with any person who is not authorised under the DSA.
147. The Ministry of Health and Te Pou Matakana also agreed to work to ensure that the mechanism used for sharing purposes was secure, and to address any user access issues.
148. For the most part, we consider that the terms of the Ministry of Health and Te Whatu Ora DSAs laid strong foundations for the protection of personal health information

shared with Te Pou Matakana, for COVID 19 vaccination purposes. However, they did not enable either agency to verify Te Pou Matakana's use of the data. Specifically, none of the DSAs contained provisions for the Ministry of Health or Te Whatu Ora to audit the applicants' use of the data.

149. The Ministry of Health and Te Whatu Ora both told us that they had not carried out any formal assurance processes in respect of the personal health information they had shared with either Te Pou Matakana or Whānau Tahī, for COVID 19 vaccination purposes.
150. Without a facility for the agencies to confirm for themselves that Te Pou Matakana was complying with the terms of the DSAs, the 'foundation' safeguards put in the DSAs relied on the parties trusting that the DSA terms were being complied with. We do not consider this to be appropriate. The privacy obligations surrounding personal health data are strict. Having audit or assurance arrangements as a DSA term is an important further safeguard for ensuring that the other ('foundation') safeguards in the DSAs – to ensure the appropriate storage and use of personal information – are effective.
151. During the natural justice process, Te Whatu Ora told us that it has work underway to revise its standard DSA terms; it will add audit, retention, and disposal provisions as well as develop an appropriate assurance framework for monitoring the use of personal information shared with external parties.

The Ministry of Health and Te Whatu Ora followed their standard processes to transfer personal health information under the DSAs.

152. We were told that an SFTP channel is the standard institutional arrangement for sharing personal information in the health sector. We were also told that an SFTP channel provides one of the highest levels of protection for data in transit.²⁵ The Ministry of Health and Te Whatu Ora also implemented data validation processes – before uploading CSV files to the SFTP channel – to ensure that only agreed and accurate data was provided under the DSAs with Te Pou Matakana.
153. By way of example, when data sharing commenced in September 2021, the Ministry of Health reconciled a sample of NHIs back to source to ensure it was sending accurate data. In addition, week-on-week, row comparisons of the amount of data being shared were undertaken to ensure that, with broad parameters, the amount of data being sent was as expected. We were told that periodic data cross checking has also been carried out over the last three years, to ensure that accurate data was being shared.
154. It is standard practice for Te Whatu Ora to send an email notifying the relevant DSA contact that information is being transmitted through the SFTP channel. We understand that this acts as a check that data is being effectively and correctly

²⁵ SFTP is a file transfer protocol used to send data securely by working over the Secure Shell (SSH) data stream to provide a greater level of protection than standard FTP (File Transfer Protocol).

transmitted. We were told that this process was followed for the DSAs with Te Pou Matakana.

155. Based on our inquiries, we are satisfied that the SFTP channel – as the technical mechanism – safeguarded the personal information and COVID 19 vaccination data while it was being transferred from the Ministry of Health (and then Te Whatu Ora) to Whānau Tahī (on behalf of Te Pou Matakana) under the DSA. However, we have concerns about the lack of additional safeguards around that information sharing mechanism.
156. Once a SFTP channel is set up, the standard process is for the Ministry of Health to enable access for people nominated by the provider. Only these nominated individuals are granted access – through a two-stage authentication process – to the SFTP channel. We reviewed documentation which confirmed that this standard process was applied for the Te Pou Matakana SFTP channel.
157. Initially, personal health information shared under the DSA was provided through a SFTP channel set up for Whānau Tahī, as the IT service provider for Te Pou Matakana. In July 2023, the Ministry of Health set up a separate SFTP channel for Te Pou Matakana. As we understand it, the SFTP channel for Whānau Tahī remains ‘live’ but as noted in paragraph 140, Whānau Tahī is not a named party to the September 2022 DSA. We also found that a small number of staff with a Waipareira email address are authorised users of the Te Pou Matakana channel. Waipareira is not a party to the DSA. In response to this finding, Waipareira told us that Waipareira IT staff are contracted to provide IT services to Te Pou Matakana and that the DSA obligations therefore apply to those Waipareira staff.
158. Further, several officials told us that no controls operate over the CSV files once they are downloaded from the SFTP channel by the service provider’s authorised staff. For the purposes of the Inquiry, we took this to mean that Te Whatu Ora had no visibility over how the personal information that it shared through the SFTP channel was being used by Te Pou Matakana. It could only have relied on trust that the foundation terms of the DSA – around privacy, data storage, security and use – were being complied with. Essentially, it appears to us that there were no safeguards in place once the relevant personal information was downloaded from the SFTP channel by authorised individuals, nominated by Te Pou Matakana. It also appears to us that this is not unique to the information sharing arrangements with Te Pou Matakana for COVID 19 vaccination purposes. We do not consider this to be an acceptable set of arrangements, particularly in combination with the lack of assurance provisions in the DSA, as previously discussed.
159. To monitor how information is further shared and/or used once it has been transmitted through the SFTP channel, Te Whatu Ora told us it will look to introduce appropriate data handling protocols. The protocols will consider technical measures, such as encryption and heightened access controls, as well as procedural safeguards, such as regular training and awareness programmes for staff. Te Whatu Ora advised that the measures will be designed to foster a strong culture of information protection and accountability, ensuring that there are strong safeguards for the information it shares.

Access to personal information through the COVID 19 registers – the COVID 19 Immunisation Register (CIR) and Book My Vaccine register – was centrally controlled.

160. We understand that the CIR required dual factor authentication for access and that the system was subject to regular surveillance for unusual activity. We also understand that the data held on the CIR was not able to be downloaded by users - they could only search and input data into the register. The security settings on the CIR had end-to-end controls.
161. The Ministry of Health created an extensive manual to guide the establishment and operation of an LVC. The guidance covered access to the COVID 19 registers and other training for the vaccination workforce. There were also e-training modules for staff. Both Manurewa Marae and Waipareira provided us with information about the training requirements for staff accessing the CIR and Book My Vaccine register.
162. In respect of LVC site access to the COVID 19 registers, no data could be transferred from that platform to the providers or their staff. In alignment with this, we were told that before walk-in vaccines were permitted, the DHB would send a password protected email to Manurewa Marae every day, which listed the people who had booked for a vaccination at the marae that day, to assist with the marae's planning logistics.
163. We were told that during the COVID 19 vaccination drive, contracted providers were given devices (like iPads) to facilitate authenticated and controlled staff access to the CIR and Book My Vaccine information. Manurewa Marae and Waipareira staff confirmed these arrangements and further advised that only clinical staff (authorised to administer the COVID 19 vaccination) were able to view and make entries about a person's vaccination information.
164. We are satisfied that the safeguards and institutional arrangements in place for staff of the relevant service providers accessing personal information through the COVID 19 registers were both adequate and effective.

In June 2024, the Ministry of Health and Te Whatu Ora sought assurances from the relevant service providers regarding their proper use of personal health information shared with them for COVID 19 vaccination purposes.

165. The Ministry of Health told us that it sought and received assurance from Te Pou Matakana that personal information it had supplied under the March 2022 DSA had been destroyed in line with the requirements set out in that DSA.
166. Te Whatu Ora also sought assurance from Te Pou Matakana that it had upheld all DSA requirements and expectations with respect to their handling, use and deletion of personal health information. Te Whatu Ora told us that it was not sufficiently assured by the undertaking made by Te Pou Matakana that it had complied with the DSA in all respects. It wrote again seeking more information from Te Pou Matakana. Te Pou Matakana subsequently responded that on the basis of legal advice, all information requests should go through this Inquiry. Te Whatu Ora put a halt on sharing data under the DSA in June 2024. Te Pou Matakana subsequently told us that it and Waipareira had sought further clarification about Te Whatu Ora's requests, which Te Whatu Ora has not responded to. When we put this to Te Whatu

Ora, it told us that it had not received and could not locate the follow-up request for clarification from either Te Pou Matakana or Waipareira.

167. In response to an initial enquiry from Te Whatu Ora, Manurewa Marae confirmed that it has upheld all notified requirements and expectations in respect of its use, protection, and disclosure of personal health information including that it was, and continues to be, appropriately protected from unauthorised access. Te Whatu Ora sought further clarification that the assurances applied to all personal health information provided to Manurewa Marae – by Te Whatu Ora, the Ministry of Health, a DHB and third parties. Te Whatu Ora told us it now regards Manurewa Marae as having provided comprehensive assurance that its use and management of personal information complied with the terms of their agreements with Manurewa Marae.
168. Waipareira responded to a similar request for assurance from Te Whatu Ora. However, as Te Whatu Ora considered that Waipareira's response did not provide the requested assurances, Te Whatu Ora followed up with a further request. Waipareira subsequently responded stating that, rather than duplicate matters, it would address the request as part of its response to the Inquiry. Waipareira told us that it had sought further clarification about Te Whatu Ora's requests, which Te Whatu Ora has not responded to. As noted above, Te Whatu Ora told us that it could not locate the follow-up request from Waipareira.
169. This situation is entirely unsatisfactory. First, Te Whatu Ora did not seek assurance about the relevant service providers' use of personal health information shared for COVID 19 vaccination purposes as part of its standard operating procedures. In our view, and for Te Pou Matakana at least, this reflects the nature of the high trust model that governs the data sharing arrangements and the lack of assurance arrangements in the DSA terms. Second, the apparent lack of leverage (for Te Whatu Ora) to obtain its own assurance is problematic. The Inquiry Terms of Reference stated that any assurance processes that the agencies within scope were conducting in relation to the allegations would continue as planned. Te Whatu Ora appears not to have further recourse available to them beyond halting the further supply of personal health information to Te Pou Matakana under the DSA (which Te Whatu Ora did in June 2024). As noted above, Te Whatu Ora is taking steps to rectify the shortcomings of the DSA framework.

There is no record of any complaints referred to or raised with the Ministry of Health and/or Te Whatu Ora about the allegations.

170. The Ministry of Health advised us that it was not in direct receipt of, nor is there any record of the Ministry of Health having previously received any allegations or complaints related to the misuse of personal health information shared under the COVID 19 DSAs. Moreover, the Ministry of Health found no record of any complaints received by the Ministry's Privacy Officer or any other person related to any alleged breach of privacy by Te Pou Matakana, Waipareira or Manurewa Marae, prior to the June 2024 media reporting.

171. Similarly, Te Whatu Ora also advised us that it had not received any concerns or complaints in respect of the allegations that personal health information shared under the COVID 19 DSAs had been misused.²⁶
172. During the interviews with current and former Ministry of Health and Te Whatu Ora staff, we asked them about any privacy breaches and whether any concerns about the use of personal health information shared with any of the relevant service providers had been raised with them. None had been made aware of any actual or potential data and/or privacy breaches. Moreover, two staff commented to us on how successful the DSAs and associated data sharing had been, noting that over 230 million pieces of data had been shared with no complaints or breaches of data ever being brought to their attention.
173. As the Ministry of Health and Te Whatu Ora have no record of receiving any concerns or complaints about the relevant service providers and their management and use of personal information collected for COVID 19 vaccination purposes, we do not make an independent assessment on this aspect of the Terms of Reference.

Allegations that personal information was collected at Manurewa Marae for another purpose, when people attended the marae to receive their COVID 19 vaccination.

174. In the lead up to the announcement of the Inquiry, there were allegations that personal information collected for vaccination purposes during the COVID 19 pandemic was used for an improper purpose or purposes by a service provider.
175. During the Inquiry, it was alleged to us that personal information was collected by Manurewa Marae staff from people attending the marae for their COVID 19 vaccination. One specific allegation concerned the unauthorised use of personal information by Manurewa Marae – collected at the point of vaccination – for a Te Pāti Māori text message campaign in the weeks leading up to the General Election.
176. As this matter sits outside the Terms of Reference of the Inquiry, we have referred it to the Privacy Commissioner for his consideration.

The Ministry of Health and Te Whatu Ora data sharing arrangements for COVID 19 vaccination purposes did not provide for the routine consideration of conflicts of interest.

177. None of the DSAs contained any terms relating to conflicts of interest.
178. The Ministry of Health and Te Whatu Ora staff we interviewed considered there were a range of measures in place to manage conflicts. These included the data protection measures in the DSAs, the regulatory framework (e.g. the Privacy Act 2020 and the Health Information Privacy Code 2020), and the open and transparent relationship they had with Te Pou Matakana.
179. We disagree. We consider that these measures mainly relate to data management, not the effective identification and management of conflicts of interest.

²⁶ <https://www.publicservice.govt.nz/news/inquiry-into-the-protection-of-personal-information>, Terms of Reference paragraph 2(b).

180. We found that neither the DSAs nor DHB COVID 19 vaccination service contracts contained any specific provisions relating to the identification and management of conflicts of interest. The Ministry of Health told us that conflict of interest declarations are not typically sought as part of the DSA process. While we can understand this position, it should not have meant that the health agencies gave no consideration to conflict of interest matters. The Auditor-General's conflict of interest guidance emphasises that everyone in the public sector needs to remain alert to the possibility of conflicts at all times.
181. Moreover, the Ministry of Health considered that as the funding for COVID 19 vaccination services flowed from Te Puni Kōkiri to Te Pou Matakana, any conflicts of interest that Te Pou Matakana was required to declare (or should have declared) were for Te Puni Kōkiri to manage, not the Ministry of Health. We disagree with this narrow view, focused solely on the possibility of conflicting pecuniary interests. When we put this to senior Te Puni Kōkiri officials, they did not agree that Te Puni Kōkiri carried sole responsibility for identifying and managing any conflicts of interest relating to the relevant service providers and their COVID 19 vaccination activities. We concur; both agencies had responsibilities to consider the possibility for conflicts of interest.
182. It also concerns us that these two agencies did not work together to have a coordinated view as to how any conflicts of interest relating to the sharing of personal information for COVID 19 vaccination purposes with Te Pou Matakana would be identified and managed. Both departments knew that the other was engaging with the relevant service providers about their COVID 19 vaccination activities. Neither the Ministry of Health nor Te Whatu Ora appeared to be alert to the possibility of conflicts of interest. Consequently, they did not consider whether any possible conflicts had been identified and where needed, introduce any appropriate risk mitigations (noting that the onus of identification of interests and any possible conflicts of interest was initially on the providers).
183. It was not appropriate for the health agencies (nor an effective strategy) to assume that any conflicts of interest would be dealt with by another government agency or be identified and notified to them by the relevant service providers, in the absence of any specific expectation to do so. As part of the natural justice process, Te Whatu Ora confirmed that its current standard processes for considering requests for personal information do not specifically include identifying and managing conflicts of interest. It will be revising its standard processes relating to requests for data sharing, and associated documentation, to provide for active inquiry about, and consideration of, conflicts of interest. It also noted that where appropriate, the possibility for a conflict of interest may lead to the inclusion of special terms in DSAs and/or focused assurance activity to ensure that data is not used for inappropriate purposes.

Conclusion

184. This Inquiry considered allegations that personal information collected for COVID 19 vaccination purposes was used for an improper purpose/s by one or more of the relevant service providers. The Ministry of Health and Te Whatu Ora have no record

of receiving any such concerns or complaints about the relevant service providers and their management and use of personal information collected for COVID 19 vaccination purposes.

185. A further allegation was put to us directly during the Inquiry. That is, that Manurewa Marae collected personal information for its own purposes, at the point of COVID 19 vaccination. Also, during the Inquiry, we received an allegation of unauthorised use of personal information by Manurewa Marae – collected at the point of vaccination – for a Te Pāti Māori text message campaign in the weeks leading up to the General Election. As both allegations are outside the Inquiry Terms of Reference, we have referred them to the Privacy Commissioner for his consideration.
186. The Ministry of Health and Te Whatu Ora both shared personal health information with Te Pou Matakana (and Whānau Tahī as its IT service provider) for COVID 19 vaccination purposes. The various DSAs established the framework for that data sharing and specified its restricted use. The terms in each of the DSAs included all the necessary Privacy Act 2020 and Health Information Privacy Code 2020 protections and safeguards we expected to see.
187. In our view, the foundation terms of the DSAs adequately and appropriately set out the expectations of Te Pou Matakana and Whānau Tahī for the circumstances. However, there are also some significant gaps in the arrangements.
188. The agencies did not implement a systematic means for assuring themselves that the relevant service providers were meeting those DSA expectations. The validation checks available to and applied by both agencies, related to the quality of the data they shared with Te Pou Matakana and Whānau Tahī, not their underlying systems and controls for receiving, storing, using and disposing of that data. Further, officials told us that there were no controls operating over the CSV files (i.e. the personal information shared through the DSAs) once they were downloaded from the SFTP channel by the providers' authorised staff. This lack of 'back end' controls is concerning.
189. It appears to us that the current DSA framework – generally and not just specific to the providers within the scope of the Inquiry – relies on high trust and commercial incentives. That is, it is in health providers' best interests to have robust systems and controls around the storage, management and use of personal health information, or they risk adverse consequences and potentially, their business' viability. We do not consider trust and the commercial context to be adequate 'back end' safeguards.
190. Emphasising this point, Te Whatu Ora told us that it has not yet obtained satisfactory assurance from Te Pou Matakana and Waipareira that they have each complied with the terms of their respective DSAs. This is unsatisfactory. It means that both they (Te Whatu Ora) and we were unable to conclude on how effective the government agency safeguards, and institutional arrangements have been, for personal health information shared with between the parties for COVID 19 vaccination purposes.

191. During the natural justice process, Te Whatu Ora told us that it has work underway to revise its standard DSA terms; it will add audit, retention and disposal provisions as well as develop an appropriate assurance framework for monitoring the use of personal information shared with external parties.
192. The Ministry of Health and Te Whatu Ora had no safeguards in place for addressing the possibility of conflicts of interest arising from the sharing of personal health information with the relevant service providers. At the time, the Ministry of Health considered that it was not its responsibility to identify and manage conflicts of interest because it only had a data sharing arrangement in place with Te Pou Matakana (and not a funding arrangement). Both agencies have accepted our Inquiry findings. As the lead agency for health sector data sharing, Te Whatu Ora has told us that it intends to revise the DSA framework to ensure that conflicts of interest are actively considered.

Statistics New Zealand | Tatauranga Aotearoa

193. Census, the official count of people and dwellings in New Zealand, is the jewel in Statistics New Zealand’s (**Stats**) crown.²⁷
194. Carried out every five years, the information gathered through the Census is used to “develop and implement new policies, research, planning, and decisions about services in areas like health, education, housing, and transport.”²⁸
195. In New Zealand, the Census consists of two forms: a dwelling form, which records questions about an individual’s household and the dwelling in which they were living on Census Day; and an individual form, which records a wide range of information about an individual. Each household is required to fill out one dwelling form and every household member an individual form.

Background facts

196. In 2023, Census Day was 7 March 2023.²⁹
197. The information collected in the Census in 2023 covered a broad range of topics such as ethnicity, culture and identity, education, training and housing. In 2023, questions about an individual’s gender, sex characteristics and sexual identity were collected for the first time.³⁰
198. Every New Zealander is required by law to complete the Census,³¹ although in reality not every New Zealander does so. In 2023, Stats hoped to achieve a 90% completion rate of the estimated resident population in New Zealand on Census Day.

Low Census response rates from Māori.

199. In previous Censuses, in particular the 2018 Census, the response rates from people self-identifying as Māori (i.e. recording their ethnicity as Māori) have been lower than the rest of the population. In the lead up to the 2023 Census, Stats invested in new initiatives to increase the return rates from Māori. These initiatives arose in the context of the Data and Statistics Act 2022 (the **Act**) and the obligations on the Government Statistician under that Act.³²

²⁷ <https://www.stats.govt.nz/topics/census>.

²⁸ <https://www.stats.govt.nz/topics/census>.

²⁹ Data and Statistics (2023 Census) Order 2022.

³⁰ <https://www.stats.govt.nz/news/what-you-will-be-asked-in-the-2023-census/>.

³¹ Data and Statistics Act 2022, sections 29 and 76.

³² These include obligations to build and maintain the capability and capacity of Statistics New Zealand to—

(i) understand Te Tiriti o Waitangi/the Treaty of Waitangi and the perspectives of Māori (including iwi and hapū) in relation to the collection and use of data for the production of official statistics and for research; and

(ii) engage with Māori about the collection of data, the production of official statistics, and the use of data for research under this Act to provide useful insights about the economic, social, cultural, and environmental well-being of Māori (including iwi and hapū):

(c) foster the capability and capacity of Māori to—

(i) collect and use data for the production of statistics; and

(ii) access and use data under this Act for research; and

(iii) engage with the Statistician under this Act.

200. However, by 24 March 2023, Stats estimated a 58% return rate of individual forms in the 2023 Census from people self-identifying as Māori (i.e. recording their ethnicity as Māori), compared to 76% in the general population.³³ By 29 March 2023, the estimated individual form return rate for people of Māori ethnicity was 61% (nationally). While Māori response rates in Auckland North were, at that time, some of the highest across the regions, Māori response rates for Auckland South were markedly lower than those in other regions across the motu.
201. A further assessment by Stats on 3 April 2023 showed that the overall response rate for Māori was 63%. By 17 April 2023, the estimated individual form return rate for people of Māori ethnicity in the Auckland South region was 60%.

Stats engaged with Te Pou Matakana to raise Census return rates from Māori.

202. Although Te Pou Matakana had approached Stats in 2022 about assisting with the Census, Stats began to engage with Te Pou Matakana as early as 1 March 2023 about any assistance Te Pou Matakana could provide to increase Māori Census 2023 response rates.
203. On 5 April 2023, following discussions with Stats, Te Pou Matakana sent Stats a business proposal to carry out Census completion work.
204. Te Pou Matakana, through its Whānau Ora provider network Te Pae Herenga and its “backbone lead” Waipareira, proposed to target 10,000 Māori households across Tāmaki Makaurau and 50,000 Māori individuals (based on an average of five individuals per household). Te Pou Matakana suggested Stats provide regular updates of Māori households that had completed the Census to avoid any duplicate visits.
205. On 14 April 2023, the Government Statistician, the Chief Executive of Te Puni Kōkiri, other Stats employees and representatives of Te Pou Matakana met.
206. On 15 April 2023, the Government Statistician provided Te Pou Matakana a letter of comfort which set out a high-level agreement between Stats and Te Pou Matakana:
- a. Te Pou Matakana’s providers would collect Census forms from Māori in Auckland.
 - b. The desired target was 50,000 forms from Māori.
 - c. The work would be carried out in May and possibly June.
 - d. The consideration for the agreement would be \$5 million.

³³ Ethnicity is a person’s present-day affiliation, compared to ethnic origin which is a person’s historical relationship to an ethnic group, or a person’s ancestors’ affiliation to an ethnic group. See <https://www.stats.govt.nz/consultations/ethnicity-standard-classification-consultation>.

Stats shared personal information with Te Pou Matakana and/or Waipareira through an Information Sharing Agreement.

207. The contractual relationship between Stats and Te Pou Matakana was recorded in two agreements.
208. The first agreement, an **Information Sharing Agreement**, between Stats and Te Pou Matakana was drafted by Te Pou Matakana and signed on 27 April 2023.³⁴ Pursuant to this Agreement, Stats would provide information to Te Pou Matakana about non-responding households.
209. The type of information shared by Stats consisted, variously, of addresses of non-responding households, the estimated number of occupants in a household, the number of forms completed and/or any relevant risks identified by previous Stats NZ Collectors (the **Personal Information**). The Personal Information did not contain individual names or details of ethnicity or descent.
210. Although the Personal Information did not name individuals, Stats classified it as personal information under the Privacy Act because it would become identifiable when combined with information already held by the provider or gathered as part of the process.³⁵
211. The purpose of the Information Sharing Agreement was to enable data-sharing from Stats to Te Pou Matakana to:
 - a. Work in partnership to undertake data analysis and insights to drive an uplift in the Māori response rate for the 2023 Census.
 - b. Undertake geo-analytics to identify priority areas for Te Pou Matakana and its provider partners to target.
 - c. Measure the impact of the Whānau Ora approach to collecting **Census data** (i.e. the information provided by individuals and households to complete their Census forms).

The delivery outcomes were contained in a Contract for Services.

212. Stats and Te Pou Matakana also entered into a Contract for Services (**Contract or Contract for Services**) on 29 April 2023. Pursuant to this Contract, Te Pae Herenga would deliver a range of programmes to increase Māori Census completion rates. The outcome sought was 50,000 completed individual forms from Māori in the Auckland region, through visits to 10,000 dwellings during May and June 2023.
213. The Contract set out details on the importance of this mahi, a description of the Whānau Ora model and the work Te Pou Matakana had undertaken previously. It also stated that the “partnership” between Stats and Te Pou Matakana would

³⁴ For completeness, we note that this agreement was entered into between Stats and Te Pou Matakana in its trading name – Whānau Ora Commissioning Agency.

³⁵ We consulted with the Office of the Privacy Commissioner about this and considered their response. It seems that if any person can link the information with other information to identify the individuals to which it relates, then the information will be “personal information”. This is a question of fact and context is important. On this basis, we consider that Stats rightly considered the information shared to be personal information.

recognise and give effect to the principles of Te Tiriti o Waitangi. Clause 1.1 of the Contract included that the parties would be guided by certain principles including rangatiratanga (a common purpose while also respecting the autonomy and independence of Te Pou Matakana) and being whānau-centred (shifting the focus from ‘services for individuals’ to ‘wrapping services around whānau’ - taking a more holistic view of family wellbeing). The Contract for Services anticipated that grocery vouchers may be used to encourage and support whānau to participate in the Census.

214. The Contract for Services also specified that Waipareira would be accountable for all processes around the implementation of the eligibility criteria for receiving vouchers and secure tracking and auditable record keeping in relation to those vouchers.
215. Te Pou Matakana would provide daily check-ins and weekly insights to Stats on its progress. The daily reports were to include the numbers of homes visited, texts sent, calls to a call centre and community events held. On a weekly basis, information was to be provided about target and actual numbers of phone calls, target and actual numbers of home visits, number of health and safety visits, number of refusals, number of responses collected at community events, risks and issues registered and any additional insights.
216. During the course of the Contract, Stats requested further reporting details including numbers of whānau on the target list for the upcoming week and various other numbers and details which fed into the reporting requirements for Te Pou Matakana and its partners.

Census data gathering would take place in conjunction with Te Pou Matakana’s other Whānau Ora (holistic wellbeing support) activity.

217. The Contract for Services recognised that the Census data gathering (the **Census Activity**) would take place contemporaneously with Te Pou Matakana’s other “Whānau Ora (family wellbeing support)” activities.
218. We understand that those Whānau Ora activities would consist primarily of Te Pou Matakana’s 2023 Winter Wellness Campaign, of which the three main pillars were:
 - a. Census,
 - b. General whānau hauora (wellness), and
 - c. Electoral enrolment processes (including switching to the Māori roll).
219. Senior management at Stats told us they were aware in a general sense that electoral enrolment discussions would take place alongside Census Activity (although the Contract only stated whānau ora (family wellbeing support) activity would be delivered with Census activity). Training materials provided to Stats by Te Pae Herenga after the mahi had begun (discussed below) also referenced these discussions.

220. For each household visited, Manurewa Marae kaimahi received \$100. Te Pou Matakana told us that incentives for staff were not part of the contract between Te Pou Matakana and Manurewa Marae for the Census Activity. That contract did not prevent the use of incentives for staff but required the Marae to support and resource kaimahi through kaimahi support packages.

To carry out the Census Activity, Te Pou Matakana or Waipareira combined the Personal Information with its own datasets to target Māori households or individuals.

221. Stats knew that Te Pou Matakana would combine the Personal Information with its own datasets to identify Māori in non-responding households.

222. This information would then be used to inform which areas kaimahi would need to visit or where to hold community events.

223. Te Pou Matakana and/or Waipareira requested its Te Pae Herenga service providers to collect a specific set of information through its Data Collection Tool (the **Te Pou Matakana Reporting Information**) for various purposes as part of the Census Activity. This included, they submitted, to track progress of the Census service delivery for their reporting requirements under the Contract for Services.³⁶

224. The Te Pou Matakana Reporting Information included a person's name, ethnicity, date of birth, gender, number of forms (dwelling and individual) completed, contact number, electoral enrolment information and service referral information.

Findings

The safeguards and protections on the Personal Information were contained in the Information Sharing Agreement and the Contract for Services.

225. The Information Sharing Agreement contained various privacy requirements, and the Contract for Services contained various deliverables, to protect the Personal Information and the integrity of the Census process.

226. The Information Sharing Agreement stated that Stats and Te Pou Matakana would act as “shared custodians for the privacy, safety and security of the information” and would ensure:³⁷

- a. Effective information governance arrangements for all IT systems.
- b. Information would only be accessed and/or used where consistent with the agreed purposes of the Agreement.
- c. Data would be held and used in accordance with all legislative requirements and in accordance with the agreed purposes of the Agreement.
- d. They would not share information in a way that identifies any individual publicly.

³⁶ Note that we do not necessarily accept the information was required for reporting under the Contract.

³⁷ See Appendix B for an explanation of privacy standards.

- e. They would not share identifiable data with any person who was not authorised under the Agreement, except where authorised by or under law or required by a Court.
 - f. Any concerns about the integrity of the information supplied would be notified to either party.
227. The Contract for Services also contained safeguards and protections on the Personal Information including:
- a. Certificates of Confidentiality.
 - b. Agreeing a Data Management Plan with Stats.
 - c. Confirming processes around data sharing between all Te Pae Herenga partners undertaking Census Activity.
 - d. Completing a Privacy Impact Assessment with Stats and undertaking all necessary steps to ensure that people’s private information was kept secure during the process and disposed of fully and safely at the end of the collections process.
 - e. Developing a workforce training plan.

Stats did not action key safeguards in the Contract for Services.

228. The key safeguards contained in the Contract for Services were the Certificates of Confidentiality, Privacy Impact Assessment and the development of a workforce training plan.

229. None of these safeguards were adequately actioned.

The Certificates of Confidentiality were ‘descope’d without the knowledge or approval of the Government Statistician.

230. To protect the highly confidential nature of Census responses, the Government Statistician may require a person collecting Census data to sign a Certificate of Confidentiality.³⁸

231. A Certificate of Confidentiality places a lifelong statutory obligation of confidentiality on its signatory,³⁹ a breach of which is a criminal offence.⁴⁰

232. The Contract for Services required Te Pou Matakana to ensure that all personnel involved in Census Activity completed a Certificate of Confidentiality.

233. The form of the Certificate was to be approved and/or provided by Stats.

234. Although Stats apparently made some attempts at drafting the Certificates, these were never finalised nor provided to Te Pou Matakana.

³⁸ Data and Statistics Act 2022, section 42(3)(a). These Certificates are also required in other circumstances, such as when a person is employed by Stats. We discuss these in more detail in Appendix B.

³⁹ Section 42(6).

⁴⁰ Section 78.

235. It has been difficult for us to conclude why Certificates of Confidentiality were not signed by all relevant kaimahi carrying out Census Activity under the Contract.
236. Te Pou Matakana told us that Stats waived the need for Certificates of Confidentiality because Te Pou Matakana kaimahi have established processes and extensive experience in managing sensitive, private and confidential information, especially, they say, in comparison to Stats' ordinary Census fieldworkers. Te Pou Matakana also told us that because Te Pou Matakana operates under such high standards, Stats deemed the Certificates of Confidentiality unnecessary.
237. An email between a Stats employee and Te Pou Matakana on 10 May 2023 tends to support this view:
- “Also, just following up on the documentation regarding Certification of kaimahi working with confidential information (this is for our Privacy Impact Assessment). We descope this from the Census training as kaimahi have already undertaken this due to their usual BAU.”
238. The draft Privacy Impact Assessment (which we discuss in more detail below) also notes that confidentiality training was not provided to Te Pou Matakana kaimahi because they had already undertaken “rigorous” training in confidentiality and privacy in relation to other initiatives, such as the COVID 19 vaccination programme.
239. Further correspondence also suggests that those at Stats responsible for the implementation of the Contract for Services removed the need for Certificates of Confidentiality by erroneously conflating them with training.
240. As a result, a Stats employee advised the Census Operational Leadership Team that the “Confidentiality Cert document (kaimahi training)” had been “received” on 7 June 2023. We were told that the Leadership Team relied on this statement at the time to the effect that Confidentiality Certificates had been signed.
241. This is unsatisfactory. Certificates of Confidentiality are distinct from privacy or confidentiality training and serve a different purpose: without executed Certificates, there are fewer enforcement options available to Stats for any privacy breaches. The obligations to protect data are in part enforced through offences of breaching the Certificate of Confidentiality.⁴¹ Without a Certificate, there can be no offence of breaching it.⁴²
242. Further, the only personnel who could ‘descope’ the need for Certificates of Confidentiality were the Government Statistician or his delegates. The Government Statistician did not agree to or action this nor have we seen any evidence that his delegates did so. Outside of those delegations, we are unsure why anyone else would have considered they had the power to ‘descope’ this requirement.

⁴¹ Section 78 of the Act.

⁴² This is mitigated somewhat by the fact that the limitation period has expired so Stats considers it would not be able to charge anyone with an offence of breaching these Certificates.

243. Of greater concern, in our view, is the impact of the failure to execute these on public perception and trust and confidence. The Certificates of Confidentiality are a part of Stats’ branding, and they are referred to on the Stats website in the section “How we look after your data”.⁴³

The Privacy Impact Assessment was not finalised.

244. Had the Privacy Impact Assessment been completed, the lack of Certificates of Confidentiality may have been identified and rectified.

245. A Privacy Impact Assessment has no legal standing and is not required by the Privacy Act. However, the discipline involved with its preparation ensured that Stats employees who were engaging with privacy issues turned their mind to the risks associated with those issues and how to manage them.

246. Outstanding queries included whether specific addresses were passed on to kaimahi, the termination date of the Information Sharing Agreement and whether the Personal Information was deleted from Te Pou Matakana’s databases.

247. The drafts we have seen did not contain any recommendations from the Stats Privacy Team and we were told that they were awaiting outstanding information before they completed their recommendations.

248. The failure to complete this document meant that insufficient attention was paid to the management of processes and data. As a result, it appears to us that Stats did not have a unified view of how the Personal Information was being shared or processed and the associated risks. Importantly, the Stats Privacy Team had not provided any recommendations on how to manage those risks. This is a significant failure in the context of the Personal Information shared.

Stats did not provide adequate training under the Contract.

249. We were told, in circumstances in which Stats provided Personal Information to a third party, bespoke training was required.

250. Stats provided some training and some training materials to Te Pou Matakana and its kaimahi, although it was not provided in the ordinary way, such as would have occurred for other Census 2023 fieldworkers. We note that the Act contemplates partnering with Māori organisations for data collection and adopting different approaches to reflect the nature of the relationship, as discussed in paragraph 213 above.

251. This difference was in part due to the timing of the Contract for Services, which was entered into after the Stats Census training team had been decommissioned. Instead, Stats largely delegated training for the Census Activity to Te Pou Matakana. Te Pou Matakana stressed that this was a “train the trainer” approach, which they submitted was approved by Stats and appropriate given the nature of the relationship and the activity involved.

⁴³ <https://www.stats.govt.nz/about-us/o-raraunga-i-tatauranga-aotearoa-your-data-at-stats-nz/how-we-look-after-your-data/>.

252. Te Pou Matakana and Waipareira also emphasised to us that Stats decided “early on” that detailed privacy and confidentiality training was not required for the reasons outlined above at paragraph 236.
253. This is unacceptable when considering the sensitive nature of the data collection work that kaimahi were doing; they were effectively stepping into the shoes of Census fieldworkers who, we understand, undertook extensive privacy training and signed Certificates of Confidentiality.

Stats did not pay adequate attention to Te Pou Matakana’s training materials.

254. Despite the unusual training parameters and the large responsibility placed on Te Pou Matakana, Stats first asked Te Pou Matakana for its training material and resources on 24 May 2023 (although Te Pou Matakana submitted to us that a Stats staff member attended an earlier training session where those materials were used).
255. Stats received Te Pou Matakana’s training materials in early June 2023, just a few weeks before the Contract was due to come to an end.
256. Once received, it is not clear if Stats staff reviewed this training material.
257. We found several troubling aspects relating to the collection of Personal Information, which Stats seems to have overlooked or ignored.
258. For example:
- a. The material instructs that at a minimum, questions 1-15 on the individual form are required to be completed to achieve Census completion. Stats told us that there was no reason for this ‘reduced completion requirement’ and they did not agree to this instruction. In contrast, Te Pou Matakana and Waipareira told us that Stats had said on a number of occasions during discussions in April 2023 that the minimum requirements for responses were questions 1-15. Manurewa Marae and the Manurewa Marae kaimahi we spoke to told us that they thought questions 1-15 on the individual form were all that was needed to return a completed individual form. Further, some thought this was what had been agreed with Stats. Te Pou Matakana and Waipareira said this was not treated as a contractual requirement and was not suggested to kaimahi during their training sessions.
 - b. The same document states that all sealed envelopes need to be posted in the nearest post box, “once you’ve done your own quality control against your Whānau Ora engagement records”. Te Pou Matakana and Waipareira submitted to us that their key message at training was that the sealing of envelopes was to occur in front of whānau.
 - c. It also refers to a “Data Collection Tool”, although it then goes on to say that data is “de-identified for Whānau Ora engagement reporting and no information is used for any other purpose”. Causing us some confusion, it also states that the data collected was available for the providers to use at their “discretion”. Te Pou Matakana and Waipareira submitted that this referred to data collected as part of their Winter Wellness campaign.

259. There is enough in these materials that should have warranted further inquiry from Stats.

Stats did not acknowledge or action staff concerns raised about the way Personal Information was provided to Te Pou Matakana.

260. A Stats staff member raised concerns about the combination of the Personal Information with Te Pou Matakana's own data as early as 4 May 2023. The particular concern was that Stats was enabling Te Pou Matakana to use the Personal Information alongside Te Pou Matakana's existing data to identify target areas, which risked creating identifiable data. The staff member suggested that Stats should seek confirmation that the data would not be shared with other organisations and deleted once the Census Activity was done.

261. This suggestion does not appear to have been acknowledged nor actioned.

Stats did not seem to know how the Personal Information would be managed by Te Pou Matakana.

262. The training material drafted by Stats and dated 18 May 2023 also required Te Pou Matakana to provide information about their processes in relation to raising a security and/or privacy incident. That same document noted that Stats was awaiting confirmation about how Te Pou Matakana would link paper Census responses with addresses and Census form identifiers and share that data with Stats.

263. It is unclear to us if these matters were ever closed out. Stats was providing Personal Information to Te Pou Matakana/Waipareira without fully understanding or knowing how that Personal Information would be handled, used or protected by Te Pou Matakana/Waipareira.

Stats failed to implement the safeguards in the Contract for Services.

264. Te Pou Matakana and Waipareira told us that they expected their staff to put the completed paper Census forms in sealed envelopes in the presence of whānau and place them in the nearest post box.

265. It is, however, without any contest – and the Manurewa Marae staff we spoke to accept – that completed paper Census forms were returned to Manurewa Marae, for some period (the length of which is disputed).

266. We have heard conflicting accounts about what happened with completed Census forms at Manurewa Marae – we have been told that they were sent to Stats each day and that unused or partially completed Census forms were destroyed. We have also been told that the forms were photocopied and then posted to Stats or entered online and still retained. There is no unified view as to why Census forms were retained at the Marae, where they were kept and for how long.

267. One staff member at Manurewa Marae told us that the paper Census forms were retained to facilitate Waipareira's reporting requirements.

268. Te Pou Matakana and Waipareira have told us that the Te Pou Matakana Reporting Information was entered into a database owned by Waipareira. They distinguished

this from Census data (i.e. the information entered into the Census forms by whānau) which they say was entirely separate from the Te Pou Matakana Reporting Information.

269. We saw evidence that this distinction was not always observed at Manurewa Marae. We have referred this matter to the Privacy Commissioner for his consideration.

Stats employees raised concerns about completed Census forms prior to media reporting.

270. Multiple concerns about the Census Activity were raised internally, potentially as early as May 2023 but at least by July 2023.

271. For example:

- a. One Stats employee reported to their supervisor that completed Census forms were being held at Manurewa Marae in May 2023. The supervisor told us that they did not do anything with this information, at that time.
- b. That same employee escalated this concern and was told to log it as an incident. They did not do so, and Stats did nothing further to respond to this allegation.
- c. On 7 July 2023, a Stats employee contacted Te Pou Matakana about boxes of completed Census forms found by another Stats employee at Manurewa Marae, seemingly as a result of the concerns described above. The employee recorded that Te Pou Matakana told them that they were “forms they input on computer and need to destroy” and that Te Pou Matakana had sent “clear instructions yesterday to all [Te Pou Matakana] parties to destroy any forms”. The Stats employee did not query why forms were being input into computers and could not recall this conversation at our interview (we note that Te Pou Matakana told us that these were Winter Wellness forms being referred to and not Census forms).
- d. On 12 July 2023, a senior manager at Stats asked a direct report to follow up about the completed Census forms reported to be in boxes at Manurewa Marae to ensure they were destroyed. There is no evidence that the (direct report) employee did so.

272. Stats’ failure to respond to these allegations in an appropriate and timely manner is concerning in the context of a nationwide, mandatory data gathering event. Responses to the Census comprise both important and sensitive personal information. We expected that any suggestion that the Census Activity was not being carried out with the care and diligence required would be investigated thoroughly by Stats in accordance with the best practice and legislation set out in Appendix B.

The Chief Executive of the Electoral Commission raised concerns with the Government Statistician in November 2023.

273. The Chief Executive of the Electoral Commission received a complaint about the use of Census data gathered by Manurewa Marae kaimahi for political purposes on

11 October 2023. The Electoral Commission told the complainant to refer its complaint to Stats, which they do not appear to have done.

274. He also discussed this matter with the Government Statistician at an informal meeting on 24 November 2023. The Government Statistician asked his staff if there were any records of such a complaint. Nothing was returned.

275. We consider that without details or a substantive complaint, the Government Statistician could not have done anything further in relation to this alleged complaint.

An external person told us that they contacted Stats via their 0800 number to complain about boxes of completed Census forms at Manurewa Marae.

276. A person told us that they contacted the Stats 0800 number with allegations that Manurewa Marae was holding boxes of completed Census forms.

277. Despite extensive searches, including specific searches against the two phone numbers the person may have used, Stats was unable to substantiate if the 0800 call had ever been received, when and by whom. In the circumstances, we are unable to assess the conduct of Stats in relation to this alleged contact.

The Contract of Services contained a conflicts of interest clause.

278. The Contract for Services incorporated standard terms and conditions by reference to “Schedule 2 Standard Terms and Conditions GMC Form 1”. Those standard terms and conditions contain a warranty by which Te Pou Matakana warranted that there were no conflicts in providing the services and it agreed it must do its best to avoid situations that may lead to a conflict arising. The Contract terms put a procedure in place for any change in those circumstances after the Contract was signed; the importance of timely notification to Stats was emphasised. The Contract clearly set out that the parties must discuss, agree and record in writing how any notified conflicts of interests would be managed.⁴⁴

279. These terms are consistent with [the Public Service Commission’s Conflict of Interest Model Standards](#). The terms put the foundations in place for the identification and management of conflicts of interest in the contract. They provide for ongoing disclosure, cover the three different types of conflicts (potential, actual and perceived), and specify that conflict of interest management plans should be agreed and documented.

280. It is not clear how much consideration was given to these terms and there is no evidence that they were engaged by either party. Te Pou Matakana and Waipareira

⁴⁴ Clause 9.2 of Schedule 2. Conflicts of interest were defined in Schedule 2:

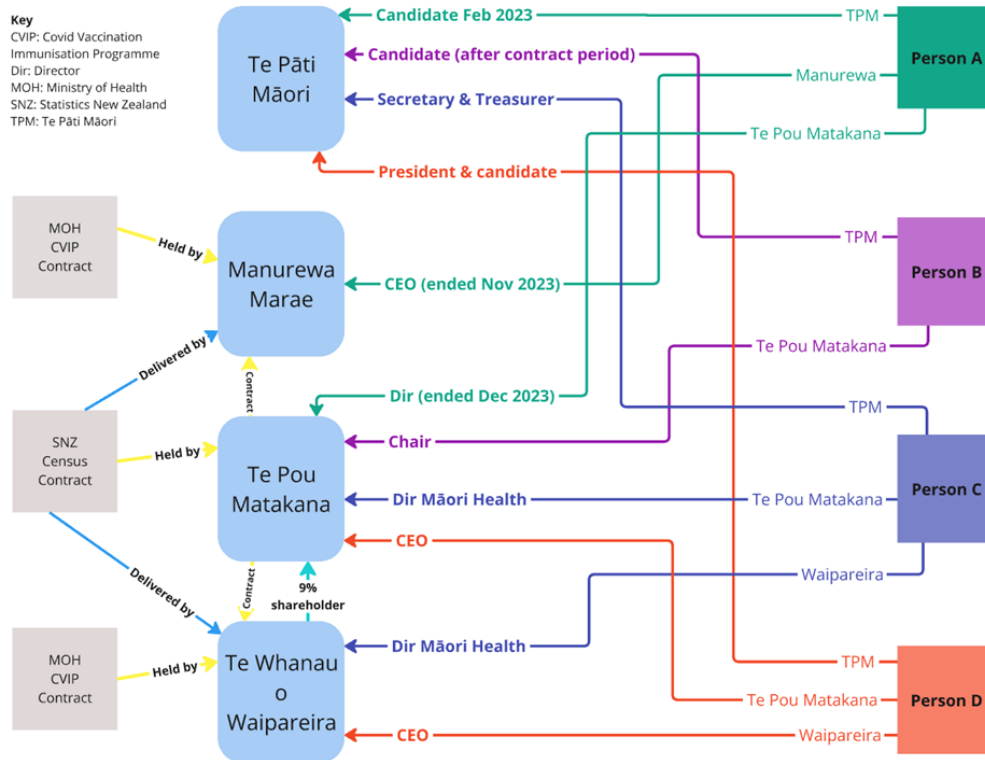
“A Conflict of Interest arises if a Party or its Personnel’s personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Contract, such that the Party’s or its Personnel’s independence, objectivity or impartiality can be called into question. A Conflict of Interest may be: • actual: where the conflict currently exists • potential: where the conflict is about to happen or could happen, or • perceived: where other people may reasonably think that a person is compromised.”

submitted that we ought to identify the obligations under the Contract which could conflict with the roles held by their personnel. We do so below.

We consider there was a possibility for a conflict of interest to arise.

281. At the heart of some of the allegations is Stats' failure to manage a possible conflict of interest. Specifically, we are referring to the potential for information provided under the Information Sharing Agreement to be used for another purpose.
282. This possible conflict of interest is alleged to arise because some key officers of the relevant service providers were also officers or candidates of Te Pāti Māori. In addition, Te Pou Matakana was instructing its subcontracted providers (including Manurewa Marae) to conduct electoral enrolment activities at the same time as Census Activity. This introduced the potential for personal information to be collected under one process (Census) and used for another (electoral). The fact that personal information was collected and appears to have been provided to Waipareira in combined form (either on paper or electronically) for other reporting purposes demonstrates the risk – personal information derived from the Census Activity appeared to be part of reporting information which could be used for other purposes. The obligations of privacy and confidentiality in the Contract (binding on "Personnel" as defined in the Contract) may have conflicted with the same Personnel's commitments to Te Pati Māori. To be clear, we are not making findings that a conflict of interest existed; we are setting out the context and possibility that should have led to Stats engaging the conflict of interest procedures in the Contract.
283. For completeness, we note that Te Pou Matakana and Waipareira deny that personal information was collected under one process (Census) and used for another (electoral). They also state that such combination of personal information did not occur. Te Pou Matakana, Waipareira and Te Pāti Māori submitted to us that there is no identified conflict of interest and that we are not empowered to find that one exists. Irrespective of this submission, we find that there were connections and interests (as already noted) which should have been disclosed to Stats and considered by Stats as part of the contractual process. Though the connections and interests were publicly available, we did not see notification from Te Pou Matakana to Stats of the electoral enrolment activities it intended to carry out and acknowledgement of the interests its personnel had in such a process (as required under the Contract).
284. These connections and interests are illustrated in the diagram below:

Service providers and relevant interests (as at 2023)



285. It falls outside our Terms of Reference to make any finding as to whether there was a conflict of interest (as defined) that needed management. However, in our view, the multiple and overlapping interests of the persons involved on the service provider side should have given rise to Stats needing to be clear about its expectations relating to the identification and management of actual, perceived and potential conflicts (as is standard with the provision of public services).⁴⁵

286. It is important to note that the existence of any kind of conflict of interest would not have precluded Stats from contracting Te Pou Matakana. In a small country such as New Zealand, people often hold multiple roles. Te Pati Māori submitted (in response to our draft report) that Māori participation in electoral politics alongside community mahi empowering whānau Māori should not be regarded as giving rise to any appearance of a conflict of interest. In our view, however, the failure to properly identify and manage possible conflicts gave rise to the very allegations that initiated this Inquiry.

Despite the contractual requirements and staff raising red flags, Stats paid insufficient attention to conflicts of interest.

287. The possibility of a conflict of interest – and the potential for misuse of Census data – was raised on a number of occasions prior to contracting by a Stats employee. They identified “a potential perverse incentive here – the Commissioning Agency

⁴⁵ Cf. the Public Service Commission’s Model Standards on Conflicts of Interest and the Auditor-General’s Managing conflicts of interest: A guide for the public sector.

will benefit long term from the Census results – as well as being a key user of the data.”

288. This particular conflict of interest query, and others, were not responded to by Stats.
289. Stats’ failure to adequately respond to this concern means that the possibility for conflicts was not effectively recorded and managed by Stats.

The need for consideration of conflicts of interest was magnified by the electoral enrolment work.

290. This failing to identify or manage potential, perceived or actual conflicts of interest was particularly poignant when considering that Stats knew that Te Pou Matakana and its partner providers would be undertaking work in relation to the Māori Electoral Option alongside the Census Activity. Stats does not appear to have properly considered the appropriateness of this work at the same time as obtaining Census information.
291. The Terms of Reference record an allegation that “personal information provided to government agencies as part of the 2023 Census...has been misused by third parties during last year’s election”.
292. The Terms of Reference do not enable us to reach a conclusion as to whether the service providers actually used the Personal Information or Census Data for an improper purpose. Such a conclusion is not necessary for us to independently examine Stats’ conduct in relation to these allegations.
293. Aspects of this matter are the subject of an ongoing investigation by New Zealand Police. As noted in paragraphs 12 to 15 of the Terms of Reference, these matters are outside of the scope of this Inquiry.

The failure in Stats’ processes meant that the potential for misuse of Personal Information or the Census process was missed.

294. Had Stats acted with any reasonable diligence it would have been aware that there was a potential for both retention and misuse of information which required careful management.
295. In addition, suggestions by a Stats employee that Stats investigate which government contracts Te Pou Matakana was operating under were ignored. Had this been investigated, this may have caused Stats to further reflect on the potential combining of data collection processes (noting that Stats knew, at least, that other activities were occurring).
296. The risks associated with potential misuse are magnified when one considers that the Census is a statutorily mandated exercise; it is an offence not to complete the Census. In practice the Contract for Services was ordaining the relevant service providers’ kaimahi with those powers that Stats employees or contractors would have had during the ‘usual’ window for collecting Census data. We were told that managing Census fieldworkers is taken very seriously in Stats; we can see no reason why this should not have occurred here. In reality, it appears to us that Stats left Te Pou Matakana in control of its own processes, including providing the bulk of

training to kaimahi, training over which Stats had little oversight. Te Pou Matakana submits, understandably, that this was the point of the specific relationship which was being formed and consistent with the obligations of Stats to Māori.

297. It appears to us that responsibility for this Contract was entrusted to personnel within Stats who did not have the necessary skills to manage it. In saying that, we acknowledge the comments to us that this Census mahi occurred at a time of great pressure. It was subject to significant time constraints and the New Zealanders upon whom the mahi was focused were difficult to reach.

Conclusion

298. Stats NZ contracted Te Pou Matakana to assist with a “last-ditch” attempt to collect Census returns for a further 10,000 households, aiming to get 50,000 additional individual forms completed by Māori. The mahi was aimed at those persons who Stats had been unable to reach. There was limited time in which to do so.

299. Against our Terms of Reference, we find that:

- a. Early in its engagement with Te Pou Matakana, concerns about the contracting process were raised internally within Stats. Risks of conflicts, privacy breaches and poor process were identified and not dealt with.
- b. The usual processes and safeguards that Stats had in place for Census Activity were not put in place. The high trust model was inappropriate in the circumstances. Fundamental confidentiality protections (Certificates of Confidentiality) were not in place.
- c. Complaints were made about the processes followed by Te Pou Matakana subcontractors (including Manurewa Marae). Stats staff raised serious concerns, but these were not acknowledged or adequately dealt with by the agency.
- d. The possibility of conflicts of interest were not adequately identified or managed.
- e. The aim of the Stats contract with Te Pou Matakana was well-intentioned and the resulting additional Census forms (an additional estimated 40,000 forms, less than 1% of all Census forms) meant that Stats viewed the Contract as a success. However, the failings we have identified introduced a risk of mishandling of personal information which was not adequately addressed.

300. In all, the risk of collection or use of Personal Information for an improper purpose was not adequately managed by Stats due to this combination of process failings.

Ministry of Social Development | Te Manatū Whakahiato Ora

Background facts

Ministry of Social Development did not have contractual arrangements with the relevant service providers for COVID 19 vaccination or Census 2023 purposes.

301. The Ministry of Social Development (**MSD**) had no contractual arrangements in place with any of the relevant service providers for Census 2023 data gathering or COVID 19 vaccination purposes.
302. MSD did not share personal information with any of the service providers for COVID 19 vaccinations or Census 2023 purposes.

An MSD employee raised Census allegations.

303. MSD's inclusion as a government agency within the scope of the Inquiry stems solely from Protected Disclosures made by one of its employees (the **MSD Whistleblower** or the **Whistleblower**).
304. Because of this factual background, the Inquiry, as it focuses on MSD, is only concerned with whether MSD knew of the allegations prior to the media reporting and, if it did, whether it responded appropriately.

MSD has carried out its own Internal Review.

305. Following publicity around the allegations, MSD carried out its own assurance activities (the **Internal Review**).
306. We have been given access to the Internal Review, which wholly concerns matters outside the Inquiry's Terms of Reference.

The MSD Whistleblower's allegations.

307. The MSD Whistleblower told us that Manurewa Marae kaimahi would take completed Census forms home so that they could submit the data contained within them to Stats online. This practice was essentially equivalent to the responder completing the online Census form, rather than a paper Census form. We were told that the physical form would then be returned to Manurewa Marae for certain staff to input the data into their databases.
308. The MSD Whistleblower also told us that they saw kaimahi and children of Manurewa Marae kaimahi at the marae premises photocopying completed Census forms – although they told us that this process shifted over time – and that there were archive boxes full of completed Census forms in and around Manurewa Marae buildings. We refer to the above allegations as the **MSD Whistleblower's census allegations** or just the **census allegations**.
309. The MSD Whistleblower appears to have been involved in Census Activities carried out at Manurewa Marae and was financially rewarded in the same way as Manurewa Marae staff.

310. For completeness and because this is relevant to our findings about whether MSD knew of the MSD Whistleblower’s census allegations, we note that the MSD Whistleblower also had a separate concern (the **other concern**). The contents and veracity of that other concern are outside the scope of the Inquiry, so we do not address it, nor MSD’s process for dealing with it.

Findings

The MSD Whistleblower says that they discussed their census allegations with MSD management in mid to late 2023.

311. The MSD Whistleblower told us that they discussed their census allegations with both of their managers (**Manager 1** and **Manager 2**).
312. Manager 1 is no longer employed by MSD, and we have been unable to contact them.
313. MSD interviewed Manager 2 as part of its Internal Review. Manager 2 does not recall the Whistleblower raising the census allegations and this is reflected in MSD’s written records, including emails between the Whistleblower and Manager 1 and Manager 2.
314. Manager 2’s recollections of their interactions with the MSD Whistleblower are about the Whistleblower’s other concern. Manager 2 told the Internal Review that they told the Whistleblower to set out their concerns in writing.
315. The Whistleblower did so by email in or about September 2023 and told Manager 2 that they were going to request an audience with the relevant MSD Regional Director and Regional Commissioner.
316. That email, and those that followed it, solely addressed the Whistleblower’s other concern.
317. In any event, the Whistleblower lodged a personal grievance against MSD in January 2024. We have not seen this document but asked MSD to review it closely. MSD has assured us that it contains no reference to the Whistleblower’s census allegations.
318. Similarly, in written correspondence between MSD and the Whistleblower’s employment advocate that we have reviewed, the advocate did not raise the census allegations.

The first time the MSD Whistleblower raised the census allegations in writing with MSD was in May 2024, in a personal grievance/protected disclosure.

319. On 12 May 2024, the Whistleblower’s advocate lodged with MSD’s Chief Executive a “Personal Grievance raised under the protection of the Protected Disclosures (Protection of Whistleblowers) Act 2022” (the **May PG/PD**). This communication contained references to the Whistleblower’s census allegations.
320. The description of this communication caused some confusion at MSD; it was unclear whether it was a personal grievance, a protected disclosure or both. Classification was important. The CE’s office asked the Whistleblower’s advocate to continue to work with them in relation to the personal grievance which MSD

considered had been stalled for some months. As to the protected disclosure, MSD notified the advocate that it would begin to undertake its processes and report.

321. On 22 May 2024, the CE's office told the Whistleblower's advocate that it proposed to transfer the protected disclosure to the Police on the basis it contained allegations that may have related to a breach of s 217 of the Electoral Act 1993.
322. It appears the Whistleblower's advocate did not respond to this email. Instead, on 30 May 2024, they told the CE's office that the Whistleblower had laid a formal complaint with the New Zealand Police.
323. On 2 June 2024 the media reported about the MSD Whistleblower's census allegations.⁴⁶
324. On 10 June 2024 MSD transferred the protected disclosure to the Police and notified the Whistleblower's advocate of such the next day.

We have not had to consider conflicts of interest.

325. As MSD did not have relevant contractual relationships, nor share personal information with the relevant service providers, there has been no need for us to consider the conflicts of interest aspect of the Terms of Reference.

Conclusion

326. MSD did not provide personal information to any of the relevant service providers; we make no further findings in this regard.
327. The lack of written records and access to Manager 1 makes it difficult for us to conclude whether the MSD Whistleblower did in fact report their census allegations to their MSD managers prior to the May PG/PD.
328. Further, there is insufficient evidence to establish that MSD had been notified of the Whistleblower's census allegations prior to May 2024. We refer in particular to the Whistleblower's January 2024 personal grievance, which did not refer to these allegations, their omission from subsequent communications and the fact that they appear to have only been raised – at least formally – in May 2024 in a second personal grievance/protected disclosure.
329. From May 2024, we consider that MSD acted appropriately and with the urgency required when handling the protected disclosure. It maintained communication with the Whistleblower's advocate and kept them informed of the process it was following.
330. In our view, there is nothing further MSD could have done in the short time between the May PG/PD and the first media reports. We consider that MSD's decision to refer matters to the Police, which it did on 10 June 2024 (after the allegations were made public), was appropriate.

⁴⁶ <https://www.thepost.co.nz/politics/350293431/stats-nz-investigating-potential-misuse-maori-census-data/>.

Oranga Tamariki | Ministry for Children

Background facts

Oranga Tamariki contracts with Waipareira and Manurewa Marae.

331. Oranga Tamariki (**OT**) has contractual arrangements with Waipareira and Manurewa Marae for services with tamariki and rangatahi. These are outside the scope of the Inquiry.
332. OT had no contractual arrangements in place with any of the relevant service providers for Census 2023 data gathering or in relation to the provision of COVID 19 vaccinations.

Oranga Tamariki did not share any personal information with any of the relevant service providers for COVID 19 vaccination or Census 2023 purposes.

333. OT did not provide any personal information to any of the relevant service providers for COVID 19 vaccination or Census 2023 purposes. As a result, we were not required to consider or conclude on whether OT had appropriate safeguards in place to manage and protect information shared with the service providers.
334. The Office of the Chief Executive undertook a Targeted Assurance Review in relation to information access and management stemming from OT's other contracts with Waipareira and Manurewa Marae. We have been given access to a draft of the Review, which wholly concerns matters outside the Inquiry's Terms of Reference.

Findings

An OT employee undertook Census 2023 data gathering.

335. As with MSD, our focus has been on whether OT knew about the allegations at the centre of the Inquiry through one of its employees who undertook Census 2023 data gathering (the **OT employee**).
336. There is no indication that the OT employee raised any concerns related to the allegations with their manager/s at OT.⁴⁷

There is no record of any complaints referred to or raised with OT about the allegations.

337. OT received no concerns nor complaints about any of the relevant service providers and their management and use of personal information collected for COVID 19 vaccination or Census 2023 purposes. As far as we are aware, no other OT staff who were aware of the Census data gathering activity raised any concerns with OT management.
338. This aspect of the Terms of Reference has not been engaged.

⁴⁷ OT has advised us that the OT employee did not formally notify OT that they were carrying out this work or that they were receiving payment for it.

We have not had to consider conflicts of interest.

339. As OT did not have contractual relationships, nor share personal information with the relevant service providers, there has been no need for us to consider the conflicts of interest aspect of the Terms of Reference.

Conclusion

340. OT did not share relevant personal information with the service providers and, beyond the specific employee, it did not have any knowledge of the allegations within the scope of this Inquiry.

341. We have referred matters relating to the OT employee to OT.

Appendix A: Terms of Reference

Background

1. The media has recently reported allegations that personal information provided to government agencies as part of the 2023 Census, or for COVID 19 vaccination purposes during the pandemic, has been misused by third parties during last year's election (the **allegations**).
2. At a high level the allegations are:
 - a. That personal information collected for the 2023 Census was used for an improper purpose or purposes by a service provider.
 - b. That personal information collected for vaccination purposes during the COVID 19 pandemic was used for an improper purpose or purposes by a service provider.
 - c. That relevant government agencies were made aware of the allegations above, prior to the media reporting, and did not take appropriate action.
3. These are very serious allegations that have been strongly denied by the relevant third parties. The allegations go to the heart of trust and confidence in New Zealand's democratic processes and institutions. They relate to the use of personal information of a sensitive and confidential nature collected by government agencies under legislative powers. It is critical that New Zealanders can trust when their personal information is collected by government agencies, it is held securely, used only for proper authorised purposes, and any complaints about alleged misuse are properly dealt with. For these reasons the Prime Minister and the Minister for the Public Service have directed the Public Service Commissioner to conduct an inquiry (the **Inquiry**).

Purpose

4. The purpose of the Inquiry is to establish the facts and provide an independent assessment of government agency activity in relation to the allegations.

Related agency investigations and assurance activities

5. The agencies within scope will support the Inquiry while also continuing to lead their relationships with relevant service providers and to take appropriate steps to manage their contractual arrangements with them.
6. Any investigations, reviews and other assurance processes (other investigation) that the agencies within scope are conducting in relation to the allegations will continue as planned. To the extent that the scope of any other investigation intersects with the terms of reference of this Inquiry, the decision-maker or lead of the other investigation will, only as relates to the matters that intersect:
 - a. Keep the Inquiry leads updated on the other investigation.
 - b. Consult with the Inquiry leads on any proposed findings.

- c. Take into account any feedback from the Inquiry leads before making findings or recommendations.
 - d. Provide to the Inquiry leads any information and analysis that supported the findings.
7. Otherwise, any other investigation will retain its mandate. The Inquiry leads will work with agencies to develop a process for how this will work in practice and to avoid any unnecessary duplication.

Scope

8. The agencies within scope of this Inquiry are: Statistics New Zealand, the Ministry of Health, Health New Zealand, Te Puni Kōkiri, Oranga Tamariki, the Ministry of Social Development, as well as any other public service agency (the **agencies**) that the Public Service Commissioner considers appropriate to include or is directed to include by the Prime Minister and the Minister for the Public Service. The relevant service providers include Whānau Ora Commissioning Agency, Te Whānau o Waipareira Trust and Manurewa Marae Trust Board.
9. This Inquiry is to establish the facts in relation to the allegations (except any aspects that are outside of scope) including by considering, making findings and reporting on:
- a. What relevant personal information was shared with the relevant service providers, and what mechanism was that information shared under.
 - b. What concerns were raised with the agencies, or were they aware of, prior to media reporting, and what was done in relation to those concerns.
10. The Inquiry is to independently assess the appropriateness of the agencies' actions, including by considering, making findings and reporting on:
- a. The safeguards and institutional arrangements that the agencies and relevant service providers had in place to ensure the appropriate collection and use of personal information in the circumstances surrounding these allegations and whether those safeguards were adequate and effective in the circumstances.
 - b. Whether any complaints that were made, or referred, to agencies about these allegations (including any made using speak up or protected disclosures processes) were responded to appropriately.
 - c. the arrangements that the agencies had in place for the identification and management of any conflicts of interest of the relevant service providers (actual, potential or perceived) and whether those were appropriate and effective in the circumstances.
11. The findings should be informed by considering the expected controls that the agencies should have in place in relation to these matters including:
- a. Privacy principles as set out in the Privacy Act 2020
 - b. The Health Information Privacy Code 2020

- c. Health Information Governance Guidelines
- d. Health Act 1956
- e. Data and Statistics Act 2022
- f. The terms of any applicable agency data sharing contracts and/or Approved Information Sharing Agreements
- g. The Protected Disclosures (Protection of Whistleblowers) Act 2022
- h. The Ombudsman’s Protected disclosures – guidance on internal policies and procedures
- i. The Public Service Commission’s Speaking Up Model Standards, and any subject agency specific speak up policies
- j. The Public Service Commission’s Conflict of Interest Model Standards, and any subject agency specific conflict of interest policies
- k. The Government Model Contract Templates, issued by Government Procurement New Zealand

Out of scope

12. New Zealand Police and the Electoral Commission are considering, or have considered, related matters including:
 - a. Whether inappropriate incentives were given to data collectors working at Manurewa marae and/or to members of the public to encourage them to complete enrolment forms, and/or to switch from the General electoral roll to the Māori electoral roll.
 - b. Whether a text message campaign using the number 2661 required an authorisation statement and/or was otherwise inconsistent with the Electoral Act 1993.
 - c. Whether funding provided by the agencies to any service provider was then used inappropriately by a political party for campaigning purposes in the 2023 election.
13. The Electoral Commission has made referrals to New Zealand Police and is continuing to work with them on those matters. New Zealand Police and the Electoral Commission have statutorily independent law enforcement and regulatory functions.
14. The Public Service Commissioner’s integrity and conduct and performance mandate only extends to public service agencies and, in some cases, to Crown entities. It does not extend to political parties. Nor does it extend directly to other private organisations or individuals.
15. Any matters that are actively being investigated, or are being considered for possible investigation, by the New Zealand Police or the Electoral Commission are outside of the scope of this Inquiry. Similarly, the appropriateness of any decisions

made in respect of these matters by either of these agencies is also outside scope of the Inquiry. The Inquiry will work with New Zealand Police and the Electoral Commission to ensure that there is a clear understanding by the agencies and the relevant service providers as to the matters that are outside scope.

16. For the avoidance of doubt, the Inquiry will not determine the civil, criminal or disciplinary liability of any person. This does not prevent the Inquiry from making a referral to an appropriate oversight body as outlined below or making recommendations that further steps be taken to determine liability. The inquiry may only make findings of fault in relation to the agencies and, to the extent necessary to achieve the purpose of the Inquiry, the relevant service providers.

The Privacy Commissioner and the Ombudsman

17. The Privacy Commissioner has been formally notified of the allegations and will consider whether their regulatory powers should be initiated based on information sought from relevant parties. This includes the agencies, the findings of this Inquiry, information referred to them by any person or entity, and any complaints received from any person or entity.
18. Similarly, the Ombudsman may need to consider whether their statutory powers should be initiated based on information sought from relevant parties. This includes the agencies, the findings of this Inquiry, information referred to them by any person or entity, and any complaints received from any person or entity.
19. The Inquiry may refer any matter to the Privacy Commissioner or the Ombudsman if there is evidence of a breach of duty, legal obligations or misconduct by any person or agency or any other matter that warrants consideration by that oversight body. This can occur at any time during the Inquiry. The oversight bodies will determine whether further action by them is warranted.
20. The Inquiry may seek expert views from any person they consider appropriate and may consult the Privacy Commissioner and the Ombudsman on, the whole or part of, a draft of the Inquiry report.

Process

21. The Inquiry may request and consider all information that it sees as relevant and available from the agencies. This information gathering process will include obtaining and assessing material from the investigations and other internal assurance activities that the agencies have underway in relation to this matter. The inquiry may also interview any relevant public servants and request and consider relevant documentation from any government agency.
22. The Inquiry may develop a process for hearing from other relevant parties, as considered necessary, to achieve the purpose of this Inquiry. For the avoidance of doubt this will not include public hearings.
23. The Inquiry will meet natural justice obligations, including by providing the draft report to the relevant service providers, and any private individuals and/or organisations named in the report who are the subject of adverse comment or findings.

24. The Inquiry must:
 - a. avoid prejudice to the maintenance of the law, including the prevention, investigation and detection of offences; and
 - b. ensure that any future criminal, civil, disciplinary or other proceeding is not prejudiced (to the extent possible).

The Public Service Commissioner's functions

25. The Prime Minister and the Minister for the Public Service have directed the Public Service Commissioner to conduct the Inquiry under clauses 2(2) and 5(2)(a) of Schedule 3 of the Public Service Act 2020 (the Public Service Act). The direction under clause 5(2)(a), relates to the following general functions of the Commissioner, as set out in section 44 of that Act:
 - (b) to promote integrity, accountability, and transparency throughout agencies in the State services, including by setting standards and issuing guidance.
 - (d)(ii) to act as the employer of public service chief executives, including by— to the extent relevant in each case, reviewing the performance of the public service agency that the chief executive leads or carries out some functions within.
26. The Commissioner may undertake an inquiry to assist in exercising these functions. This Inquiry is appointed to assist the Commissioner in the promotion of these functions and will be conducted accordingly.

Appointment

27. The Public Service Commissioner appoints Michael Heron KC and Pania Gray of Kororā Consulting to lead the Inquiry.

Powers

28. Pursuant to schedule 3, clause 6 of the Public Service Act and, for the purposes of the Inquiry, the Public Service Commissioner delegates their functions and powers under schedule 3, clauses 2 to 4 and 8 to 11 of the Public Service Act jointly to the appointed Inquiry leads.

Application of provisions of the Inquiries Act 2013

29. The Public Service Commissioner certifies it is reasonably necessary that the provisions of the Inquiries Act 2013, specified in schedule 3, clause 8(2) of the Public Service Act, apply in relation to the Inquiry because of the nature and seriousness of the allegations and the need to ensure the Inquiry has the powers necessary to investigate and report on them.

Deliverables, timeframe and reporting

30. The Inquiry will commence immediately on the appointment of the Inquiry leads and must be carried out as soon as practicable, with an indicative reporting date of 16 September 2024. The Inquiry leads can make interim findings and/or refer matters to other oversight agencies before that date, as they consider appropriate.

31. The intention is for the final report to be made publicly available, subject to any applicable privacy or other legal considerations.

Heather Baggott

Acting Public Service Commissioner

14 June 2024

Appendix B: Standards governing the protection of personal information

The Terms of Reference require our findings to be informed by the expected controls that flow from the following legislative and best practice guidance:

- Privacy principles as set out in the Privacy Act 2020
- The Health Information Privacy Code 2020
- Health Information Governance Guidelines
- Health Act 1956
- Data and Statistics Act 2022
- The terms of any applicable agency data sharing contracts and/or Approved Information Sharing Agreements
- The Protected Disclosures (Protection of Whistleblowers) Act 2022
- The Ombudsman’s Protected disclosures – guidance on internal policies and procedures
- The Public Service Commission’s Speaking Up Model Standards, and any subject agency specific speak up policies
- The Public Service Commission’s Conflict of Interest Model Standards, and any subject agency specific conflict of interest policies
- The Government Model Contract Templates, issued by Government Procurement New Zealand

We have also considered the Auditor-General’s Managing conflicts of interest: a guide for the public sector.

We summarise the key features of each below.

Information Privacy Principles set out in Privacy Act 2020

1. The [Privacy Act 2020](#) promotes and protects individual privacy by providing a framework for protecting an individual’s right to privacy of personal information. It applies to New Zealand agencies in relation to any action taken by that agency in respect of personal information collected or held by the agency.⁴⁸
2. The Privacy Act contains thirteen ‘Information Privacy Principles’ (**IPPs**) which govern how information should be collected, handled and used:
 - a. *IPP 1: Purpose for collection of personal information:* Information can only be collected for lawful purposes connected with a function or an activity of the

⁴⁸ An ‘agency’ for the purposes of the Act is an agency that takes any action in relation to personal information collected or held by that agency – see [section 4](#). This includes individuals, public sector agencies, private sector agencies and courts and tribunals (except in relation to their judicial functions). It does not include, for example, the Sovereign, an inquiry, or a member of Parliament – see [section 8](#).

agency and only when necessary for that purpose. If the lawful purpose for which that information is collected does not require the collection of an individual's identifying information, the agency may not require that information.

- b. *IPP 2: Source of personal information – collect it from the individual:* Information must be collected directly from the individual concerned, unless the agency believes on reasonable grounds that certain exceptions apply, for example that non-compliance would not prejudice the interests of the individual concerned or that compliance would not prejudice the purposes of the collection.
- c. *IPP 3: Collection of information from subject – what to tell the individual:* The agency collecting personal information must take reasonable steps to ensure that the individual concerned is aware that the information is being collected, as well as the purpose for which the information is being collected, the intended recipients of the information, details of the agency collecting the information and how the agency will hold that information, the particular law or authorization under which the information is collected, the consequences for that individual if the requested information is not provided, and the rights of access to and correction of information.
- d. *IPP 4: Manner of collection:* An agency may collect personal information only by lawful means and by means that are fair and unobtrusive.
- e. *IPP 5: Storage and security of personal information:* An agency holding personal information must ensure that the information is protected by reasonable security safeguards to ensure against loss, unauthorized access, use, modification or disclosure, or other misuse. The agency must ensure that, if it is necessary for the information to be given to another person in connection with the provision of a service to the agency, the agency does everything reasonably within its power to prevent unauthorised use or unauthorised disclosure of that information.
- f. *IPP 6: Access to personal information:* Individuals should be able to access their personal information.
- g. *IPP 7: Correction of personal information:* Individuals should be able to correct personal information held by an agency.
- h. *IPP 8: Accuracy of personal information to be checked before use or disclosure:* An agency holding personal information must not use or disclose that information without taking reasonable steps to ensure that the information is accurate, up to date, complete, relevant, and not misleading.
- i. *IPP 9: Retention of personal information:* An agency must not keep personal information for longer than is required for the purposes for which the information may lawfully be used.
- j. *IPP 10: Limits on use of personal information:* An agency holding personal information that was obtained in connection with one purpose may not use

the information for any other purpose, with limited exceptions, such as the agency reasonably believes that the other purpose is directly related to the purpose in connection with which the information was obtained, or that the use of the information for that other purpose was authorised by the individual concerned.

- k. *IPP 11: Limits on disclosure of personal information:* An agency holding personal information must not disclose that information to any other agency or to any other person. Exceptions to this principle include that the disclosure of the information is one of the purposes for which the information was obtained or the disclosure is to the individual concerned or is authorised by the individual concerned.
 - l. *IPP 12: Disclosure of personal information outside New Zealand:* An agency may disclose personal information to a foreign person or entity only in very limited circumstances.
 - m. *IPP 13: Unique identifiers:* An agency may assign a unique identifier to an individual for use in its operations only if that identifier is necessary to enable the agency to carry out one or more of its functions efficiently.
3. These principles have been distilled by the Privacy Commissioner in respect to the collection of personal information.⁴⁹ The Act requires that you only collect personal information that is necessary for a lawful purpose. When collecting personal information from someone, you need to let them know what you're doing. The Commissioner suggests the best way to do this is usually with a clear privacy statement, which would include why you are collecting the information.
 4. The Privacy Commissioner is also authorised to issue codes of practice that become part of law.⁵⁰ These codes modify the operation of the Privacy Act and set rules for specific industries, organisations, or types of personal information.
 5. Such a code of practice may modify the application of one or more of the IPPs by:
 - a. Prescribing more stringent or less stringent standards.
 - b. Exempting any action from an IPP, either unconditionally or conditionally.
 - c. Applying one or more of the IPPs without modification.
 - d. Prescribing how one or more of the IPPs are to be applied or complied with.
 6. There are currently six codes of practice:
 - a. Civil Defence National Emergencies (Information Sharing) Code 2020
 - b. Credit Reporting Privacy Code 2020
 - c. Health Information Privacy Code 2020 (discussed below)

⁴⁹ [Office of the Privacy Commissioner | Collecting personal information.](#)

⁵⁰ <https://www.privacy.org.nz/privacy-act-2020/codes-of-practice/>; see also [section 32](#).

- d. Justice Sector Unique Identifier Code 2020
- e. Superannuation Schemes Unique Identifier Code 2020
- f. Telecommunications Information Privacy Code 2020

The Health Information Privacy Code

- 7. The [Health Information Privacy Code](#) (the **Code**) applies to specific forms of information about an identifiable individual, such as their medical history or support services they use or have used.
- 8. The Code captures specific agencies or classes of agencies including health and disability service providers, agencies which provide services under an agreement with another agency and specified agencies like the Ministry of Health.
- 9. The Code modifies the IPPs set out above. The modifications relevant to the Inquiry are:
 - a. *Rule 5: Storage and security of health information.* A health agency that holds health information must ensure that when it gives information to a person in connection with the provision of a service by that person to the health agency (including any storing, processing or destruction of the information), it does everything reasonably within its powers to prevent unauthorised use or unauthorised disclosure of that information, and that a document containing health information is, where applicable, disposed of in a manner that preserves the privacy of the individual.
 - b. *Rule 10: Limits on use of health information.* A health agency that holds health information that was obtained in connection with one purpose may not use the information for any other purpose. There are exceptions, such as the health agency believes on reasonable grounds that the use of the information for that other purpose is authorised, or that the other purpose is directly related and connected to the original purpose for which it was obtained.

Health Information Governance Guidelines

- 10. The [Health Information Governance Guidelines](#) (the **Guidelines**) provide good practice advice – arranged into four major subject areas – on the safe sharing of personal health information:⁵¹
 - a. Maintaining quality and trust.
 - b. Upholding consumer rights and maintaining transparency.
 - c. Appropriate disclosure and sharing.
 - d. Securing and protecting personal health information.

⁵¹ These do not appear to have been updated since 2017 so do not reflect the enactment of the Privacy Act 2020. They also refer to the Health Information Privacy Code 1994 (there is now the Health Information Privacy Code 2020).

11. The Guidelines set out relevant portions of the Code rules and guides practitioners as to how to meet those standards.

The Health Act 1956

12. Sections 22B to 22J of the [Health Act 1956](#) deal with personal information held by an ‘agency’⁵² when providing ‘services’.⁵³
13. Under the Health Act, an agency may disclose health information if that information is required by a specified person (for example an Oranga Tamariki social worker, an employee of the department responsible for the administration of the Social Security Act) for a specified purpose (for example, in the case of a social worker, for the purposes of exercising or performing any of that person’s powers, duties, or functions under that Oranga Tamariki Act).⁵⁴
14. An agency may also disclose health information if that disclosure is permitted by or under a code of practice issued under the [Privacy Act 2020](#).⁵⁵
15. There are also requirements on Te Whatu Ora (Health New Zealand) to provide information in specific circumstances when required to do so by the Minister.⁵⁶

Data and Statistics Act 2022

16. The [Data and Statistics Act](#) allows the Government Statistician to request statistics from individuals, public sector agencies, or organisations. It also allows the Government Statistician to authorise a public sector agency to request data to produce official statistics. Individuals are required to provide the information requested. Deliberately failing to provide information is an offence under the Act and a failure to provide information can result in a fine (infringement offence).⁵⁷
17. Those engaged in the collection of personal information as part of the Census were required by the Act or by the Government Statistician in accordance with the Act to sign a confidentiality certificate which bound them to maintain confidentiality of that personal information indefinitely.^{58,59}
18. In respect to the Census, Statistics New Zealand stated that it used a Privacy by Design approach⁶⁰ and stated on its website material that personal information collected as part of the Census was protected by the Data and Statistics Act and the Privacy Act. It would be stored safely and always kept confidential.⁶¹
19. Statistics New Zealand stated:

⁵² This has the same meaning as in the Privacy Act 2020 – see [section 22B](#).

⁵³ These are personal health services, public health services, disability support services and services under the End of Life Choice Act 2019 – see section 22B.

⁵⁴ [Section 22C](#).

⁵⁵ Section 22C(1)(b).

⁵⁶ Sections [22D](#) and [22E](#).

⁵⁷ Section 76 and section 88.

⁵⁸ Section 42.

⁵⁹ Section 78.

⁶⁰ [Using the Privacy by Design methodology for the 2023 Census | Stats NZ](#).

⁶¹ [Transcription-How-Stats-NZ-keeps-your-data-safe.pdf](#).

“Stats NZ staff and researchers who use the information we hold sign a confidentiality certificate. They must sign it before they can work with data. The declaration is a lifetime agreement to keep data confidential. We ensure:

- a. Privacy by collecting only the information we need to produce statistics and research.
- b. Security by keeping data safe from unauthorised access and use.
- c. Confidentiality by not releasing information that could identify individuals, households, or businesses.
- d. Transparency in all our processes. We work with the Office of the Privacy Commissioner to make sure we follow best practice”.⁶²

Agency data sharing agreements / contracts and/or Approved Information Sharing Agreements

20. An Approved Information Sharing Agreement, established under Schedule 2 of the Privacy Act 2020, is a formal agreement that allows personal information to be shared between or within agencies for the purposes of delivering public services. None of these were relevant to our Inquiry.⁶³
21. Data sharing agreements (DSAs) are commonly used in the health sector. For the purposes of this Inquiry, we have considered DSAs between the Ministry of Health and the relevant service providers and Te Whatu Ora and the relevant service providers.

The Protected Disclosures (Protection of Whistleblowers) Act 2022 and the Ombudsman’s Protected disclosures – guidance on internal policies and procedures

22. Although these sources of guidance for our Inquiry are listed separately in paragraph 11 of the Terms of Reference, we have combined them here because the [Ombudsman’s Guidance](#) provides useful assistance on how the [Protected Disclosures Act](#) performs in practice.
23. The Protected Disclosures Act’s purpose is to promote the public interest by facilitating the disclosure and timely investigation of serious wrongdoing in or by an organisation and by protecting the people who disclose in accordance with the Act.⁶⁴
24. Essentially, a discloser⁶⁵ may make a “protected disclosure” if they believe on reasonable grounds that there is, or has been, serious wrongdoing in or by the organisation, and they disclosed that information in accordance with this Act, and they do not disclose it in bad faith.⁶⁶

⁶² <https://www.stats.govt.nz/help-with-surveys/privacy-security-and-confidentiality-of-survey-data/>.

⁶³ [Schedule 2](#).

⁶⁴ [Section 3](#).

⁶⁵ For example, an employee, secondee or a contractor – [section 8](#).

⁶⁶ [Section 9](#).

25. Serious wrongdoing has its own definition under the Protected Disclosures Act: it is any act, omission, or course of conduct in or by an organisation that amounts to an offence, a serious risk to public health or safety, the health or safety of any individual or the environment, a serious risk to the maintenance of law, an unlawful, corrupt or irregular use of public funds or public resources, or oppressive, unlawfully discriminatory, or grossly negligent conduct.⁶⁷
26. A person who makes a disclosure under the Protected Disclosures Act is entitled to protection where that disclosure is made in accordance with any internal procedures or to the head or deputy head of the organisation, or to an appropriate authority.⁶⁸ This means that the employer must not retaliate against a discloser or treat the discloser any less favourably because of a protected disclosure.⁶⁹ Within limited exceptions, the discloser is also entitled to confidentiality around their identity.⁷⁰
27. The Protected Disclosures Act also contains guidance on what a receiver should do once it receives a protected disclosure. However, this is guidance only and does not confer a legal right or impose a legal obligation on any person that is enforceable in a court of law.⁷¹
28. The Protected Disclosures Act requires all public sector organisations to have and publish internal procedures for receiving and handling protected disclosures.⁷²
29. The internal procedures must comply with the principles of natural justice, set out a process for dealing with complaints consistent with the Act, identify who in the organisation a protected disclosure may be made to, include a reference to the requirement that the organisation not retaliate or threaten to retaliate against the discloser or treat the discloser less favourably than others, a description of the circumstances in which the disclosure may be referred to an appropriate authority and how the organisation will provide practical assistance and advice to disclosers, and a description of how the organisation will meet the duty of confidentiality.⁷³
30. The Ombudsman suggests that private organisations should also have this kind of policy.
31. The Ombudsman's guidance contains more detailed recommendations on this kind of internal procedures. For example, the procedures should set out how a person goes about making a report, such as specific e-mail addresses or phone numbers with which a person can make contact.

⁶⁷ [Section 10.](#)

⁶⁸ [Section 11.](#)

⁶⁹ [Sections 20, 21 and 22.](#)

⁷⁰ [Section 17.](#)

⁷¹ [Section 13.](#)

⁷² [Section 29.](#)

⁷³ [Section 29\(2\).](#)

The Public Service Commission’s Speaking Up Model Standards and any subject agency-specific speak up policies

32. These [Model Standards](#) are issued pursuant to [section 19\(1\)](#) of the Public Service Act 2020, which allows the Public Service Commissioner to issue guidance on integrity and conduct for public service agencies, Crown Entities, the Parliamentary Counsel Office and companies in which the Crown is the majority or sole shareholder.⁷⁴
33. These Model Standards revolve around three key elements:
 - a. *Getting the foundations right from the start* which relates to organisational commitment leadership, raising awareness, and supporting staff and managers through regular communication and training.
 - b. *Making sure processes are robust*. This requires public agencies to take concerns seriously when they are raised by ensuring systems are in place for monitoring reporting, investigation, and effectively communicating with those involved in a report.
 - c. *Keeping people safe*. This requires public services to ensure that they can feel safe in making reports and trust that organisations will act upon them and ensure that organisations provide tailored and dedicated support and protections to staff to keep them safe from reprisal.
34. The standards cover all wrongdoing. They do not appear to be limited to protected disclosures under the Protected Disclosures (Protection of Whistleblowers) Act 2022.
35. These Model Standards set out various things that an agency should do to ensure that it meets the elements set out above. For example, it suggests that an organisation should have a clear statement from senior leadership of their commitment and expectations to enable reporting of wrongdoing and sets out how a person may do that through various channels starting from informal (for example, through team meetings) to protected disclosures.

The Public Service Commission’s Conflict of Interest Model Standards, and any subject agencies specific conflict of interest policies

36. These [Model Standards](#) outline the Public Service Commissioner’s minimum expectations for staff and organisations in the public service, to support effective reporting and management of conflicts of interest. They also emphasise the three key elements set out in paragraph 33 above.
37. These Model Standards define a conflict of interest as a conflict between a public duty and private, personal and/or other interests. Personal interests can be financial or relate to family, friends or associates. Conflicts of interest may be actual, potential or perceived.

⁷⁴ [Section 17\(2\)](#). Those companies include, for example, City Rail Link Limited, Rau Paenga Limited and Kiwi Group Capital Limited – see [schedule 4A](#) of the Public Finance Act 1989.

38. The Model Standards reflect the main goal of identifying and managing conflicts of interest, which is to ensure that all operational decisions are made, and are seen to be made, legitimately, justifiably, independently and fairly.

The Auditor-General's Managing conflicts of interest: A guide for the public sector

39. This guide emphasises that there are higher expectations about conflicts of interest in the public sector because it is public money that is being spent, and public powers that are being exercised. It notes that the public rightly expect the people making decisions to act impartially, without any possibility that they could be influenced by favouritism or improper personal motives, or that public resources could be misused for private benefit.
40. The guide defines a non-financial conflict of interest as any situation where a person is not affected financially by a decision but is affected in some other way that might make the person biased or appear to be biased. It also defines a conflict of roles where it is not so much whether the person has a conflict, but whether the interests of the person relating to two organisations conflict.
41. The guide records that everyone in the public sector needs to remain alert to the possibility of conflicts at all times and that the primary responsibility for identifying and disclosing conflicts of interest to the relevant people in a timely and effective manner rests with the person concerned.
42. The guide states that there are two important aspects to dealing with conflicts of interest when they arise:
 - a. identifying and disclosing the conflict of interest; and
 - b. deciding what action, if any, is necessary to best avoid or mitigate any effects of the conflict of interest.

The Government Model Contract Templates, issued by Government Procurement New Zealand

43. Government Procurement New Zealand has issued various government model contracts and procurement plans and policies. These include for example, conflict of interest templates, procurement policy templates, procurement plan templates, evaluation, negotiation and due diligence templates.
44. There are different templates depending on whether the agency will be contracting in the name of the Crown or not, and whether the contract is for goods or for services.
45. The section of the contract templates relevant to privacy and protection of personal information can be found in the schedules. In summary, where the supplier has access to personal information under or in connection with the contract, the supplier must only use, access, store, etc that personal information to the extent necessary to provide the contracted for deliverables or services. They must ensure that the personal information is protected against loss, access, use, modification and disclosure that is not authorised by the buyer (i.e. the government agency). The supplier must also comply with the Privacy Act and not do anything that would

cause the government agency to breach that Act. Where the supplier becomes aware of any privacy breach, it must notify the government agency as soon as possible and take all reasonable steps to identify the person or persons affected, undertake its own investigation where required by the government agency, and/or mitigate the impact of any privacy breach and prevent its reoccurrence. The supplier must not notify any person of the privacy breach without the government agency's prior written approval.

Appendix C: Conflicts of Interest – Inquiry leads

This schedule sets out conflicts of interests of the Inquiry team members. Management plans for the conflicts of interests have been agreed with the Commission as required.

Inquiry member	Details	Interest	Disclosure date	Action
Pania Gray	An independent member on the Ministry of Health Risk and Assurance Committee (RAC) from November 2021 to June 2024.	Ministry of Health (MOH)	25 July 2024	The Commission <u>notes</u> the potential for a perceived conflict and <u>agrees</u> to implement the management plan.
Pania Gray	Member of the Te Mātāwai risk and audit Committee during the Inquiry period until term ended in September 2024. One of the other members of the committee was a former Director of Te Pou Matakana, term ended on 30 June 2024.	Te Pou Matakana / Whanau Ora Commissioning Agency	25 July 2024	The Commission <u>notes</u> the potential for a perceived conflict and <u>agrees</u> to implement the management plan.
Pania Gray	Deputy Electoral Commissioner is a colleague board member on the NZ Film Commission.	Electoral Commission	25 July 2024	The Commission <u>notes</u> the potential for a perceived conflict and <u>agrees</u> to implement the management plan.

Michael Heron KC	Currently representing South Seas Healthcare Trust (SSHT).	Te Whatu Ora	22 July 2024	The Commission <u>notes</u> the potential conflict and <u>agrees</u> to implement the management plan.
Michael Heron KC	Currently conducting a confidential investigation not related to this investigation.	Oranga Tamariki	2 October 2024	The Commission <u>notes</u> the potential conflict and <u>agrees</u> to implement the management plan.
Michael Heron KC	Acted for Te Whatu Ora in a confidential matter not related to this Inquiry. Instruction was ongoing during the Inquiry period and has now concluded. Has received various specific instructions from Te Whatu Ora over time.	Te Whatu Ora	22 July 2024	The Commission <u>notes</u> the potential conflict and <u>agrees</u> to implement the management plan.
Jane Barrow Inquiry team member	Nil declaration.	N/A	N/A	No action required.
Beth Thomas Inquiry team member	Nil declaration.	N/A	N/A	No action required.
Craig Neil Inquiry team member	Nil declaration.	N/A	N/A	No action required.