



Credit Reporting Privacy Code 2004

Incorporating:
Amendment No. 3
and Commentary

Privacy Commissioner
Te Mana Matapono Matatapu

NEW ZEALAND

CREDIT REPORTING PRIVACY CODE 2004

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CREDIT REPORTING PRIVACY CODE 2004

I, MARIE SHROFF, Privacy Commissioner, having given notice in accordance with section 48(1) of the Privacy Act 1993 of my intention to issue a code of practice and having satisfied the requirements of the subsection, now issue under section 46 of the Act the Credit Reporting Privacy Code 2004.

Issued by me at Wellington on 6 December 2004

THE SEAL of the)
Privacy Commissioner was) [L.S.]
affixed to this code of practice)
by the Privacy Commissioner)

Marie Shroff
Privacy Commissioner

Note: A code of practice issued under section 46 of the Privacy Act 1993 is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989 – Privacy Act, s.50.

Note: This edition dated January 2010 incorporates Amendment No 2 which came into force on 1 April 2006 and also Amendment No 3 which comes into force on 22 February 2010..

PART 1

PRELIMINARY

1. Title

This code of practice is the Credit Reporting Privacy Code 2004.

2. Commencement

(1) Subject to subclause (2), this code will come into force on 1 April 2006.

(2) Clauses 7 and 8 will come into force on 1 April 2005.

Note: Clause 7 concerns charging for access and correction, and clause 8 concerns internal complaints procedures.

3. Review

The Commissioner must review the code as soon as practicable after 1 April 2008.

4. Application and effect of code

(1) This code applies to credit reporters.

(2) This code:

- (a) applies or modifies the application of the information privacy principles and prescribes how the principles are to be applied or complied with;
- (b) modifies the application of public register privacy principle 2;
- (c) imposes controls in relation to the comparison of personal information with other personal information for the purpose of producing or verifying information about an identifiable individual;
- (d) in relation to charges under section 35 of the Act, prescribes circumstances where no charge may be imposed; and
- (e) prescribes procedures for dealing with complaints alleging a breach of the code.

Commentary:

Section 53 of the Act sets out the two main legal effects of a code of practice. Firstly, any "action" (which includes any policy or practice, and any failure to act) that would otherwise breach an information privacy principle is deemed not to breach that principle if done in accordance with the code. Secondly, any failure to comply with the code, even if not otherwise a breach of a principle, is deemed to be a breach of a principle.

See Parts 6 and 7 of the Act.

The code only applies to “credit reporters” that collect or hold “credit information”. Both of these terms are defined in clause 5.

While the code does not directly apply to subscribers, such as credit providers and debt collectors, they are indirectly affected through their subscriber agreements (see, in particular, Schedule 3) and through the compliance obligations imposed on credit reporters. They must, for example, cooperate with all reasonable compliance checks and cooperate in the resolution of complaints.

Complaints made to the Privacy Commissioner about the actions of subscribers are dealt with under the information privacy principles in the Privacy Act, not under the code.

Section 10 of the Act provides that certain requirements in the code will continue to apply to credit information when it is transferred out of New Zealand.

5. Interpretation

Note: A word or expression used in the code has the same meaning as in the Privacy Act (see s.34 Interpretation Act 1999). Words and expressions defined in s.2 of the Privacy Act and used in this code are listed in Appendix 1.

In this code:

access log means a record of every access made to credit information held by a credit reporter, other than access that is automatically generated by the credit reporter itself

Note: Access logs must include the details set out in rule 5(5).

Act means the Privacy Act 1993

credit means property or services acquired before payment, and money on loan

[credit default information means the credit information listed in paragraph (e) of the definition of credit information]

Note: This definition was inserted by Amendment No 2.

credit information means the following types of personal information:

(a) the following identification information:

- (i) full name;
- (ii) any alias or previous name;
- (iii) sex;
- (iv) date of birth;
- (v) address; and
- (vi) any previous address;

(b) the following supplementary identification information:

- (i) occupation;
- (ii) any previous occupation;
- (iii) employer; and
- (iv) any previous employer;

Note: For special limits on disclosure of “supplementary identification information” see rule 11(3).

- (c) information relating to identification documents reported lost or stolen or otherwise compromised;
- (d) the following information reported by a credit provider about an application for credit by an individual:
 - (i) type of credit sought;
 - (ii) amount sought;
 - (iii) capacity of the individual (such as applicant, joint applicant or guarantor);
 - (iv) date of the application;
 - (v) details of the credit provider; and
 - (vi) credit provider’s client reference number;
- (e) the following credit default information, reported by a subscriber that has taken steps to recover the amount outstanding:
 - (i) notice that an account for which an individual is holder or guarantor is in default for more than 30 days;
 - (ii) capacity of the individual (such as account holder or guarantor);
 - (iii) date of the default;
 - (iv) type of account, the amount in default and the total amount owing on the account;
 - (v) status of the default including details of any referral to a debt collector and any payment, part payment, scheme of arrangement or write-off subsequent to the default;
 - (vi) details of the final settlement of an amount of default;
 - (vii) details of the subscriber; and
 - (viii) subscriber’s client reference number;

Note: Credit default information cannot be reported unless the subscriber has first taken steps to recover the debt. The default must relate to a credit account.

- (f) serious credit infringement information;
- (g) information relating to summary instalment orders or judgments for monies owed that have been entered against an individual;
- (h) the following insolvency information:

- (i) adjudications, discharges, suspensions of discharges and annulments of bankruptcy;
- (ii) entry to, and termination and discharge from, the no asset procedure;
- (i) information sourced from a specified public register;
- (j) an access log;
- (k) a credit score;
- (l) a correction statement or notice of disputed debt attached to credit information in accordance with rule 7;
- (m) administrative information incidental to credit reporting activities

credit provider means an agency that carries on a business involving the provision of credit to an individual

credit report means credit information about an individual that is disclosed by a credit reporter

Note: A credit report will not necessarily contain all of the credit information held by the credit reporter about an individual.

credit reporter means an agency that carries on a business of reporting to other agencies, for payment, information relevant to the assessment of the creditworthiness of individuals

credit score means a statistically based rating of the credit default risk of an individual that is produced by a credit reporter_{credit_reporter}

debt collector means an agency that carries on a business of collecting debt

identification information means the credit information listed in paragraph (a) of the definition of credit information

previous enquiry record means that part of the access log relevant to the assessment of creditworthiness that is displayed in a credit report

prospective employer, in relation to an individual, means a person who has offered to employ or appoint that individual, or who has entered into negotiations to employ or appoint that individual

prospective insurer, in relation to an individual, means a person who has offered to insure that individual, or who has entered into negotiations to insure that individual

prospective landlord, in relation to an individual, means a person who has offered to grant a tenancy of premises to that individual, or who has entered into negotiations to grant a tenancy to that individual

rule means a rule set out in clause 6

serious credit infringement means an act done by an individual:

- (a) that involves fraudulently obtaining credit, or attempting fraudulently to obtain credit;
- (b) that involves fraudulently evading the individual's obligations in relation to credit, or attempting fraudulently to evade those obligations; or
- (c) that a reasonable person would consider indicates an intention, on the part of the individual, no longer to comply with the individual's obligations in relation to credit

Note: compare Australia's Privacy Act (Cth) 1988, s.6(1).

specified public register means a public register maintained pursuant to a public register provision listed in Schedule 2

subscriber means an agency that has entered into a subscriber agreement with a credit reporter

subscriber agreement means a written agreement providing a subscriber with access to credit information held by the credit reporter

Note: For subscriber agreement requirements see rules 5(2), 8(3) and 11(2) and Schedule 3.

Summary of Rights means the summary of rights set out in Schedule 4 or a document to the same effect

supplementary identification information means the credit information listed in paragraph (b) of the definition of credit information.

PART 2

CREDIT REPORTING PRIVACY RULES

6. Credit reporting privacy rules

The credit reporting privacy rules are as follows:

Rule 1

Purpose of Collection of Credit Information

- (1) Personal information must not be collected by a credit reporter unless:
 - (a) the information is collected for a lawful purpose connected with a function or activity of the credit reporter; and
 - (b) the collection of the information is necessary for that purpose.
- (2) A credit reporter must not collect personal information for the purpose of credit reporting unless it is credit information.

Note: An action is not in breach of this rule if it is authorised or required by or under law - Privacy Act, s.7(4). This rule and rules 2-4 apply only to the collection of information on or after the commencement of this rule.

Rule 2

Source of Credit Information

- (1) Where a credit reporter collects credit information, it must collect the information directly from the individual concerned.
- (2) It is not necessary for a credit reporter to comply with subrule (1) if the credit reporter believes, on reasonable grounds:
 - (a) that the information is publicly available information;
 - (b) that the individual concerned authorises collection of the information from another source;
 - (c) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences;
 - (ii) for the enforcement of a law imposing a pecuniary penalty;
 - (iii) for the protection of the public revenue; or
 - (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);

- (d) that the information:
 - (i) will not be used in a form in which the individual concerned is identified; or
 - (ii) will be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; [...]

Note: The word "or" was omitted by Amendment No. 2.

- [(e) that:
 - (i) the collection is from a debt collector that is enforcing a debt owed by the individual concerned; and
 - (ii) the information is identification information, supplementary identification information, credit default information or serious credit infringement information; or

(f) that the collection of the information is in accordance with an authority granted under section 54 of the Act.]

Note: Paragraph (e) was omitted and paragraphs (e) and (f) were inserted by Amendment No. 2.

Note: An action is not in breach of this rule if it is authorised or required by or under law - Privacy Act, s.7(4).

Note: This rule applies only to the collection of information on or after the commencement of this rule.

Commentary:

There are a number of exceptions to rule 2. If a credit reporter seeks to rely on one of the exceptions in any proceedings, the onus of proving the exception lies upon the credit reporter. See Privacy Act, s.87.

Credit reporters rarely collect credit information directly from the individual concerned. Some information is collected on the basis of the exceptions relating to publicly available information or to collection from a debt collector. Most is collected indirectly (from subscribers) on the basis of an authorisation given by the individual.

Authorisation is fundamental to the privacy protection afforded by the code. A properly worded authorisation will assist in compliance with rules 2 and 11 and will help ensure that subscribers meet their obligations under the subscriber agreement.

Rule 3
Collection of Credit Information from Individual

- (1) Where a credit reporter collects credit information directly from the individual concerned, the credit reporter must take such steps (if any) as are, in the circumstances, reasonable to ensure that the individual concerned is aware of:
 - (a) the fact that the information is being collected;
 - (b) the purposes for which the information is being collected;
 - (c) the intended recipients of the information;
 - (d) the name and address of:
 - (i) the agency that is collecting the information; and
 - (ii) the agency that will hold the information;
 - (e) whether or not the supply of the information is voluntary or mandatory and if mandatory the particular law (if any) under which it is required;
 - (f) the consequences (if any) for that individual if all or any part of the requested information is not provided; and
 - (g) the rights of access to, and correction of, credit information held by the credit reporter provided by rules 6 and 7.
- (2) A credit reporter must conspicuously display on the credit reporter's website a statement that sets out the purposes for which it collects credit information and the purposes for which the information will be used and disclosed.
- (3) The steps referred to in subrule (1) must be taken before the information is collected or, if that is not practicable, as soon as practicable after it is collected.
- (4) A credit reporter is not required to take the steps referred to in subrule (1) in relation to the collection of credit information from an individual if the credit reporter has taken those steps in relation to the collection, from that individual, of the same information or information of the same kind, on a recent previous occasion.
- (5) It is not necessary for a credit reporter to comply with subrule (1) if the credit reporter believes, on reasonable grounds:
 - (a) that non-compliance would not prejudice the interests of the individual concerned;
 - (b) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences;
 - (ii) for the enforcement of a law imposing a pecuniary penalty;
 - (iii) for the protection of the public revenue; or
 - (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);
 - (c) that compliance would prejudice the purposes of collection;
 - (d) that compliance is not reasonably practicable in the circumstances of the particular case; or
 - (e) that the information:
 - (i) will not be used in a form in which the individual concerned is identified; or

- (ii) will be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned.

Note: An action is not in breach of this rule if it is authorised or required by or under law - Privacy Act, s.7(4).

Note: This rule applies only to the collection of information after the commencement of this rule.

Commentary:

Credit reporters rarely collect credit information directly from the individual concerned. When they do, the requirements of rule 3 ensure that the process is open and transparent.

Understanding the purposes of collection and the intended recipients of the information enables individuals to evaluate whether to provide the information or not. It helps to ensure that the notified purposes are not exceeded and that the individuals are not later surprised by unexpected uses or disclosures. The rule also ensures that the individuals know whether the supply of the information is mandatory or voluntary. It links closely with the need to ensure that individuals are fully informed before they are asked to provide authorisations under rules 2, 10 or 11.

There are a number of exceptions to rule 3. If a credit reporter seeks to rely on one of the exceptions in any proceedings, the onus of proving the exception lies upon the credit reporter. See Privacy Act, s.87.

**Rule 4
Manner of Collection of Credit Information**

Credit information must not be collected by a credit reporter:

- (a) by unlawful means; or
- (b) by means that, in the circumstances of the case:
 - (i) are unfair; or
 - (ii) intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Note: An action is not in breach of this rule if it is authorised or required by or under law - Privacy Act, s.7(4).

Note: This rule applies only to the collection of information after the commencement of this rule.

Rule 5
Storage and Security of Credit Information

- (1) A credit reporter that holds credit information must ensure:
 - (a) that the information is protected, by such security safeguards as it is reasonable in the circumstances to take, against:
 - (i) loss;
 - (ii) access, use, modification, or disclosure, except with the authority of the credit reporter concerned; an
 - (iii) other misuse, including misuse by anyone with authorised access; and
 - (b) that if it is necessary for the information to be given to a person in connection with the provision of a service to the credit reporter, everything reasonably within the power of the credit reporter is done to prevent unauthorised use or unauthorised disclosure of the information.

- (2) Without limiting subrule (1), a credit reporter must take the following measures to safeguard the credit information it holds against unauthorised access or misuse:
 - (a) develop written policies and procedures to be followed by its employees, agents and contractors;
 - (b) impose access authentication controls such as the use of passwords, credential tokens or other mechanisms;
 - (c) provide information and training to ensure compliance with the policies, procedures and controls;
 - (d) ensure that a subscriber agreement that complies with Schedule 3 is in place before disclosing information under rule 11(2);
 - (e) monitor usage and regularly check compliance with the agreement, policies, procedures and controls and the requirements of this code;
 - (f) identify and investigate possible breaches of the agreement, policies, procedures and controls;
 - (g) take prompt and effective action in respect of any breaches that are identified;
 - (h) systematically review the effectiveness of the policies, procedures and controls and promptly remedy any deficiencies; and
 - (i) maintain an access log.

- (3) Subrules (1) and (2) apply to credit information held by a credit reporter that was obtained before or after the commencement of this rule.

- (4) The access authentication controls required by subrule (2)(b) must include, in respect of accesses made after the commencement of this rule, a means of identifying both the subscriber and the specific user.

- (5) The access log required by subrule (2)(i) must include a record of the time, date, subscriber purpose in relation to each access and must identify, or provide a means to identify, the specific user.

Note: An action is not in breach of this rule if it is authorised or required by or under law – Privacy Act, s.7(4).

Commentary:

This rule is linked to the subscriber agreement and requires credit reporters to safeguard the information against unauthorised access or misuse. Credit reporters will need to be in

a position to demonstrate they have taken appropriate measures in the event of a complaint or enquiry by the Privacy Commissioner.

If a subscriber is found to have made access to the database on a false basis, such as a non-existent authorisation, various responses including suspension or a requirement to supply evidence of all authorisations in future may be appropriate.

The access log is in essence a full audit trail of access to the information, linked to the specific user and purpose. The access log will normally be available to the individual upon request, although there may be occasions when the Privacy Act provides good reasons to withhold some of the information.

Rule 6

Access to Credit Information

- (1) Where a credit reporter holds credit information in such a way that it can readily be retrieved, the individual concerned is entitled:
 - (a) to obtain from the credit reporter confirmation of whether or not the credit reporter holds such information; and
 - (b) to have access to that information.
- (2) Where, in accordance with subrule (1)(b), an individual is given access to credit information, the individual must be advised that, under rule 7, the individual may request the correction of that information.
- (3) Where a credit reporter refuses a request under subrule (1), the credit reporter must:
 - (a) advise the individual of the complaints procedure available under clause 8; and
 - (b) subject to subrule (4), provide the individual with a copy of the Summary of Rights.
- (4) A copy of the Summary of Rights need not be given pursuant to subrule (3)(b) if the credit reporter has either:
 - (a) made the summary available to the individual on a recent previous occasion; or
 - (b) conspicuously displayed the summary on the credit reporter's website and notified the individual that a copy of the summary is available on request.
- (5) The application of this rule is subject to:
 - (a) Part 4 of the Act (which sets out reasons for refusing access to personal information);
 - (b) Part 5 of the Act (which sets out procedural provisions relating to access to personal information); and
 - (c) clause 7 (which concerns charges).
- (6) This rule applies to credit information held by a credit reporter that was obtained before or after the commencement of this rule.

Note: This rule is subject to provisions in enactments which authorise or require personal information to be made available or Acts which prohibit, restrict, or regulate the availability of personal information – Privacy Act, s.7(1) and (2). Under s.7(3) it is also subject to certain regulations which prohibit, restrict or regulate the availability of personal information.

Commentary:

Under rule 6, individuals have a right to access information held about themselves by a credit reporter. The right is subject to limited reasons for refusing a request and to procedural requirements. Reasons for refusing access to credit information are covered by Part 4 (ss.27 to 32) of the Act. Procedural provisions relating to access to credit information are covered by Part 5 (ss.33 to 45). Clause 7(2) provides that no charge may be made for supplying the requested information, unless the individual requests that it be made available within 5 working days.

Requests may be made orally or in writing, and there is no special format for a request. Requesters may find it convenient to use the form offered by a credit reporter, but there is no legal requirement to do so. Any such forms must comply with the notification obligations in rule 3. Credit reporters are required to satisfy themselves as to the identity of the individual making the request (see Privacy Act, s.45).

Individuals are entitled to request all credit information held about them, not simply the information contained in a credit report. They might for example request the full access log and any credit score held.

In some circumstances, the credit reporter may have a statutory obligation to transfer the request to another agency that is better able to respond to the request, such as a credit provider (see Privacy Act, s.39).

Many requests for copies of credit reports are made to the subscriber at the time the report is obtained. These requests are covered by the information privacy principles, not this code.

Financial agents/counsellors/advisors can only make requests under rule 6 if they are properly authorised as legal agents of the individual (see Privacy Act, s.45).

Rule 7
Correction of Credit Information

- (1) Where a credit reporter holds credit information, the individual concerned is entitled:
 - (a) to request correction of the information; and
 - (b) to request that there be attached to the information a statement of the correction sought but not made.
- (2) A credit reporter that holds credit information must, if so requested by the individual concerned or on its own initiative, take such steps (if any) to correct that information as are, in the circumstances, reasonable to ensure that, having regard to the purposes for which the information may lawfully be used, the information is accurate, up to date, complete, and not misleading.
- (3) Where a credit reporter receives a request for correction under subrule (1)(a) the credit reporter must:
 - (a) pending the taking of a decision on the request, either suppress the disputed information or clearly identify the information as disputed and being checked for accuracy; and
 - (b) subject to subrule (4), provide the individual with a copy of the Summary of Rights.
- (4) A copy of the Summary of Rights need not be given pursuant to subrule (3)(b) if the credit reporter has either:
 - (a) made the summary available to the individual on a recent previous occasion; or
 - (b) conspicuously displayed the summary on the credit reporter's website and notified the individual that a copy of the summary is available on request.
- (5) Where a credit reporter that holds credit information is not willing to correct the information in accordance with a request by the individual concerned, the credit reporter must:
 - (a) advise the individual of the individual's entitlement under subrule (1)(b); and
 - (b) if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the information, in such a manner that it will always be read with the information, any statement provided by the individual of the correction sought.
- (6) Where a credit reporter has taken steps under subrules (2) or (5), the credit reporter must, if reasonably practicable, inform each person or body or agency to whom the credit information has been disclosed of those steps.
- (7) Where a credit reporter receives a request made pursuant to subrule (1), the credit reporter must:
 - (a) inform the individual concerned of the action taken as a result of the request;
 - (b) provide the individual with a copy of any corrected information; and

- (c) if it refuses the request, advise the individual of the complaints procedure available under clause 8.
- (8) The application of this rule is subject to Part 5 of the Act (which sets out procedural provisions relating to the correction of personal information) and clause 7 (which concerns charges).
- (9) This rule applies to credit information held by a credit reporter that was obtained before or after the commencement of this rule.

Note: An action is not in breach of this rule if it is authorised or required by or under law - Privacy Act, s.7(4).

Commentary:

Under rule 7, individuals have a right to request the correction of credit information held about them. The right is subject to the procedural requirements set out in Part 5 (ss.33 to 45). Clause 7(2) provides that no charge may be made for making any requested correction, or providing a copy of any corrected information.

Requests can be made orally or in writing, and there is no special format for a request. Requesters may find it convenient to use the form offered by a credit reporter but there is no legal requirement to do so. Any such forms must comply with the notification obligations in rule 3. Credit reporters are required to satisfy themselves as to the identity of the individual making the request (see Privacy Act, s.45).

Correction rights are especially important in this context. Most credit information held by a credit reporter is not checked by the credit reporter at the time of collection or verified by the credit reporter with the individual. Correction may involve alterations, deletions or additions to the information. If a correction request is refused, the credit reporter must advise the individual of the complaints procedure available under clause 8 and of the right to complain to the Privacy Commissioner. Individuals must also be advised of their entitlement to attach a correction statement. The right to seek correction is not dependent on an individual having made a personal access request.

The refusal to correct credit information without a proper basis, may constitute an interference with privacy under the Privacy Act, s.66(2). Failure to ensure information is accurate may also involve a breach of rules 7(2) or 8 which may, if the individual has been adversely affected as a result, constitute an interference with privacy under s.66(1).

Credit reporters may suppress disputed information pending the taking of a decision on a correction request, although they are not obliged to do so. Flagging the information as disputed pending the taking of a decision may mitigate the harm but does not constitute a correction. Continuing to disclose disputed information that is later found to be inaccurate or misleading may have adverse consequences for the individual.

A correction statement must be attached to the information, in such a manner that "it will always be read with the information". Reasonable steps must be taken to ensure that the two items are always read together by subscribers.

Rule 8
Accuracy, etc, of Credit Information

- (1) A credit reporter that holds credit information must not use or disclose that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used or disclosed, the information is accurate, up to date, complete, relevant, and not misleading.
- (2) A credit reporter must, when undertaking a comparison of personal information with other personal information for the purpose of producing or verifying information about an identifiable individual, take such measures as are reasonably practicable to avoid the incorrect matching of the information.
- (3) Without limiting subrule (1), a credit reporter must:
 - (a) ensure that a subscriber agreement that complies with Schedule 3 is in place before disclosing information under rule 11(2);
 - (b) establish and maintain controls to ensure that, as far as reasonably practicable, only information that is accurate, up to date, complete, relevant, and not misleading is used or disclosed;
 - (c) monitor information quality and conduct regular checks on compliance with the agreements and controls;
 - (d) identify and investigate possible breaches of the agreements and controls;
 - (e) take prompt and effective action in respect of any breaches that are identified; and
 - (f) systematically review the effectiveness of the agreements and controls and promptly remedy any deficiencies.
- (4) Subrule (1) applies to credit information held by a credit reporter that was obtained before or after the commencement of this rule.

Note: An action is not in breach of this rule if it is authorised or required by or under law - Privacy Act, s.7(4).

Commentary:

Rule 8 protects individuals by requiring credit reporters that hold credit information to check its accuracy etc before using it (for example in credit scoring) or disclosing it. The credit information must be more than simply accurate. It must also be up to date, complete, relevant and not misleading. For example, information relating to a debt that has been repaid should be updated accordingly, and a bankruptcy that has been discharged should have that noted. An unauthorised enquiry might need to be removed from the previous enquiry record, but not from the access log.

Credit reporters are required to maintain a robust compliance programme that monitors the quality of the credit information they use and disclose. Regular checking and prompt remedial action is required where breaches are identified. A range of actions and responses may be available and appropriate, depending on the circumstances. These may include, for example, reminding staff and subscribers of their obligations; targeted re-checking of information for accuracy etc; notification to the affected individual; correcting the information; checking for similar inaccuracies elsewhere; disciplining staff; removing all information supplied by the source; suspension of a subscriber's access rights; pursuing contractual remedies under the subscriber agreement.

Rule 9
Retention of Credit Information

- (1) A credit reporter that holds credit information must not keep that information for longer than is required for the purposes for which the information may lawfully be used.
- (2) It will be sufficient compliance with subrule (1) if a credit reporter holds credit information of the types specified in column 1 of Schedule 1 for no longer than the permitted period set out in column 2 for that type.
- (3) A credit reporter must display on the credit reporter's website a statement of the retention periods applicable to each type of information specified in Schedule 1.
- (4) This rule applies to credit information held by a credit reporter that was obtained before or after the commencement of this rule.

Note: An action is not in breach of this rule if it is authorised or required by or under law - Privacy Act, s.7(4).

Commentary:

Rule 9 aids transparency and sets out retention periods in Schedule 1 that form a baseline. It is sufficient compliance with rule 9 if a credit reporter adopts the retention periods in Schedule 1, but it is not compulsory to do so. A credit reporter may be able to justify a longer retention period in the event of a complaint.

Rule 10
Limits on Use of Credit Information

- (1) A credit reporter that holds credit information that was obtained in connection with one purpose must not use the information for any other purpose unless the credit reporter believes, on reasonable grounds:
- (a) that the source of the information is a publicly available publication;
 - (b) that the use of the information for that other purpose is authorised by the individual concerned;
 - (c) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences;
 - (ii) for the enforcement of a law imposing a pecuniary penalty;
 - (iii) for the protection of the public revenue; or
 - (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);
 - (d) that the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to:
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual;
 - (e) that the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained;
 - (f) that the information:
 - (i) is used in a form in which the individual concerned is not identified; or
 - (ii) is used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
 - (g) that the use of the information is in accordance with an authority granted under section 54 of the Act.
- (2) Subrule (1) does not apply to credit information held by a credit reporter that was obtained before 1 July 1993.

Note: An action is not in breach of this rule if it is authorised or required by or under law - Privacy Act, s.7(4).

Commentary:

There are a number of exceptions to rule 10. If a credit reporter seeks to rely on one of the exceptions in any proceedings, the onus of proving the exception lies upon the credit reporter. See Privacy Act, s.87.

Rule 11
Limits on Disclosure of Credit Information

- (1) A credit reporter that holds credit information must not disclose the information unless the credit reporter believes, on reasonable grounds:
- (a) that the information consists solely of information sourced from a publicly available publication;
 - (b) that the disclosure is to the individual concerned;
 - (c) that the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to:
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual;
 - (d) that the disclosure of the information is necessary to facilitate the sale or other disposition of a business as a going concern;
 - (e) that the disclosure of the information is in accordance with an authority granted under section 54 of the Act; or
 - (f) that the disclosure is permitted by subrule (2).
- (2) A credit reporter that holds credit information may disclose the information in accordance with a subscriber agreement that complies with Schedule 3 if the credit reporter believes, on reasonable grounds:
- (a) that the disclosure of the information is to a debt collector for the purpose of enforcement of a debt owed by the individual concerned;
 - (b) that the disclosure is authorised by the individual concerned and is made to:
 - (i) a credit provider, or that credit provider's agent, for the purpose of making a credit decision affecting that individual (and for directly related purposes including debt collection);
 - (ii) a prospective landlord, or that prospective landlord's agent, for the purpose of assessing the creditworthiness of that individual as a prospective tenant or as a guarantor of a tenancy;
 - (iii) a prospective employer, or that prospective employer's agent, for the purpose of a pre-employment check of that individual for a position involving significant financial risk;
 - (iv) a prospective insurer, or that prospective insurer's agent, for the purpose of a decision on the underwriting of insurance in respect of a credit related transaction relating to that individual;
 - (c) that disclosure is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences;
 - (ii) to enable an insurer to investigate a case of suspected insurance fraud;
 - (iii) for the enforcement of a law imposing a pecuniary penalty;
 - (iv) for the protection of the public revenue; or
 - (v) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
 - (d) that the information:
 - (i) is to be used in a form in which the individual concerned is not identified; or

- (ii) is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned.
- (3) A credit reporter must not disclose supplementary identification information except by confirming identical information supplied by a subscriber.
- (4) A credit reporter may make available for valuable consideration, in accordance with this rule, credit information sourced from a specified public register that has been re-sorted, or combined with other information sourced from a specified public register, notwithstanding that such re-sorting or combination might otherwise breach public register privacy principle 2.
- (5) This rule applies to credit information held by a credit reporter that was obtained before or after the commencement of this rule.

Note: An action is not in breach of this rule if it is authorised or required by or under law – Privacy Act, s.7(4) and s.60(3).

Commentary:

There are a number of exceptions to rule 11. If a credit reporter seeks to rely on one of the exceptions in any proceedings, the onus of proving the exception lies upon the credit reporter. See Privacy Act, s.87. Credit reporters must ensure that they have reasonable grounds for believing that an exception applies before a disclosure is made.

Most of the exceptions to rule 11 are linked to the purpose of creditworthiness assessment, and most (but not all) disclosures require the authorisation of the individual concerned.

Authorisation must be express and fully informed. It is not sufficient for a subscriber to simply notify an individual that a credit check will be undertaken as part of a credit application process. The authorisation need not be in writing, but the absence of written evidence may present a problem if the credit reporter is later required to prove that it believed on reasonable grounds that an authorisation existed.

“Prospective landlord” does not include an accommodation bureau or a current landlord. Landlords who take rent in arrears are likely to be credit providers.

“Prospective employer” does not include existing employers or employers who are still in the process of short-listing job applicants. Nor does it include an employment bureau pre-screening candidates. The definition of prospective employer is wide enough to include those appointing contractors and consultants as well as employees.

“Significant financial risk” is to be assessed by reference to the facts of the situation. The onus is on the person relying on the exception to prove that the position did involve a financial risk that was significant to that business.

“Prospective insurer” does not include an existing insurer, although an existing insurer may come within one of the other exceptions to rule 11. The insurance underwriting must be in respect of a credit related transaction, such as mortgage insurance.

An “agent” must be properly authorised.

Rule 12
Unique Identifiers

- (1) A credit reporter must not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable the credit reporter to carry out one or more of its functions efficiently.
- (2) A credit reporter must not assign to an individual a unique identifier that, to that agency's knowledge, has been assigned to that individual by another agency, unless those two agencies are associated persons within the meaning of section OD7 of the Income Tax Act 1994.
- (3) A credit reporter that assigns unique identifiers to individuals must take all reasonable steps to ensure that unique identifiers are assigned only to individuals whose identity is clearly established.
- (4) A credit reporter must not require an individual to disclose any unique identifier assigned to that individual unless the disclosure is for one of the purposes in connection with which that unique identifier was assigned or for a purpose that is directly related to one of those purposes.
- (5) Subrules (1), (2) and (3) do not apply in relation to the assignment of unique identifiers before the commencement of this rule.
- (6) Subrule (4) applies to any unique identifier, whether assigned before or after the commencement of this rule.

Note: An action is not in breach of this rule if it is authorised or required by or under law – Privacy Act, s.7(4).

PART 3

MISCELLANEOUS

7. Charges

- (1) The circumstances in which a credit reporter may impose a charge under section 35(3) of the Act are limited by subclause (2).
- (2) No charge may be made for:
 - (a) responding to a request made pursuant to rule 6(1)(a);
 - (b) making available credit information in accordance with rule 6(1)(b) unless the individual concerned requests that the information be made available within 5 working days, in which case a reasonable charge may be made;
 - (c) correcting any credit information in compliance with a request made pursuant to rule 7(1)(a); or
 - (d) providing a copy of any corrected information pursuant to rule 7(7)(b).

Commentary:

Credit reporters cannot normally charge for personal access or correction. A charge may be made for personal access only in respect of urgent (within 5 working days) requests, and even then the charge must be reasonable.

The Privacy Act, s.35 also limits charging in other situations.

8. Complaints of breach of code

- (1) A credit reporter must designate a person or persons to deal with complaints alleging a breach of this code and facilitate the fair, simple, speedy and efficient resolution of complaints.
- (2) A credit reporter must have a complaints procedure which provides that:
 - (a) when a complaint alleging a breach of this code is received:
 - (i) the complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the complainant within that period;
 - (ii) the complainant is informed of any relevant internal and external complaints procedures; and
 - (iii) the complaint and the actions of the credit reporter regarding the complaint are documented;
 - (b) within 10 working days of acknowledging the complaint, the credit reporter must:
 - (i) decide whether or not the complaint is justified; or
 - (ii) decide that more time is needed to investigate the complaint and inform the complainant of the additional time required and the reasons for it; and
 - (c) as soon as practicable after the credit reporter decides whether or not it accepts that a complaint is justified, it must inform the complainant of:
 - (i) the decision;
 - (ii) the reasons for the decision; and
 - (iii) any actions the agency proposes to take; and

- (d) if the credit reporter decides that a complaint is not justified, it must also inform the complainant of:
 - (i) any appeal procedure the credit reporter has in place; and
 - (ii) the right to complain to the Privacy Commissioner.
- (3) The information provided to the complainant under subclause (2)(a)(ii) must include a copy of the Summary of Rights, unless a copy has been provided to that complainant on a recent previous occasion.
- (4) Nothing in this clause limits or restricts any provision in the Act.

Commentary:

This complaint procedure applies to all complaints alleging a breach of the code. A different set of procedures and time limits apply to correction requests – see Privacy Act, Part 5.

Failure by a credit reporter to comply with clause 7 is deemed by the Act to be a breach of an information privacy principle. If some adverse effect results from such a failure, it may in itself constitute an interference with privacy for which the Act provides remedies.

Any person may make a complaint directly to the Privacy Commissioner about an interference with his or her privacy (or complain on someone else's behalf) but the Commissioner may, in her discretion, decide not to take action on the complaint if the internal complaints procedure has not been pursued - see Privacy Act, s.71(1)(f).

A complainant that has taken these steps and is not satisfied with the outcome of the Commissioner's investigation may bring civil proceedings before the Human Rights Review Tribunal. The Tribunal may grant a range of remedies, such as declarations, damages, restraining orders and orders to take corrective action.

SCHEDULE 1
RETENTION PERIODS
(Rule 9(2))

Types of Credit Information	Retention Period
Lost, stolen or compromised identification documents information	5 years from date of report
Credit application information	5 years from date of application
Credit default information	5 years from date of default
Serious credit infringement information	5 years from date of report
Judgments	5 years from date of judgment
Insolvency information:	
Single bankruptcy	4 years from date of discharge from bankruptcy
Single entry to no asset procedure	4 years from date of discharge from the no asset procedure
Multiple insolvency events (as provided in Insolvency Act 2006, s.449A)	Indefinite
Previous enquiry record	5 years from date of enquiry

SCHEDULE 2
SPECIFIED PUBLIC REGISTER PROVISIONS
(Clause 5 and Rule 11(4))

Enactment	Public Register Provision
Insolvency Act 1967	Section 118
Insolvency Act 2006	Sections 62, 368
Personal Property Securities Act 1999	Section 139
Companies Act 1993	Section 189

Commentary:

Insolvency Act 1967, section 118 - register of undischarged bankrupts

Insolvency Act 2006, section 62 – register of discharged and undischarged bankrupts

Insolvency Act 2006, section 368 – register of persons admitted to no asset procedure

Personal Property Securities Act 1999, section 139 - personal property securities register that includes the name, address and date of birth of the debtor.

Companies Act 1993, section 189 - register of company records that includes the full names and addresses of directors and the share register

SCHEDULE 3 SUBSCRIBER AGREEMENT

(Rules 5(2), 8(3) and 11(2))

A subscriber agreement must include provisions imposing the following obligations upon the subscriber:

1. Where the subscriber collects credit information directly or indirectly from the individual concerned for disclosure to the credit reporter, the subscriber must inform the individual of the purposes for which the credit reporter is collecting the information and the purposes for which the information will be used and disclosed.
2. The subscriber must not disclose information to the credit reporter without taking such steps as are, in the circumstances, reasonable to ensure that the information is accurate, up to date, complete, relevant, and not misleading.
3. The subscriber must, as soon as reasonably practicable, update any credit default information or serious credit infringement information previously disclosed to the credit reporter and ensure that the information remains accurate, up to date, complete, relevant, and not misleading.
4. The subscriber must nominate the relevant purpose or purposes under rule 11 for which access may be sought, and confirm the relevant purpose at the time of each access.
5. The subscriber must co-operate with all reasonable compliance checks conducted by the credit reporter and, for that purpose, must supply, upon request, evidence to confirm compliance with the requirements of rule 11 or evidence to substantiate any credit default information or serious credit infringement information disclosed to the credit reporter by the subscriber.
6. The subscriber must promptly cooperate with the credit reporter in its efforts to investigate and resolve complaints and requests for correction of credit information and must, for those purposes, supply, upon request, evidence to confirm compliance with the requirements of rule 11 or evidence to substantiate any credit default information or serious credit infringement information disclosed to the credit reporter by the subscriber.
7. The subscriber must take appropriate measures, including the following, to safeguard the credit information held by the credit reporter against improper access:
 - (a) develop written policies and procedures to be followed by its employees, agents and contractors;
 - (b) establish controls, including;
 - (i) the use of passwords, credential tokens or other mechanisms; and
 - (ii) user identification;
 - (c) provide information and training to ensure compliance with the policies and controls;
 - (d) monitor usage and regularly check compliance with the policies and controls; and
 - (e) take appropriate action in relation to identified breaches of the policies and controls.

Commentary:

Clause 4:

There are two aspects to this provision. Firstly, each subscriber must justify their subscription by nominating the purpose for which they require access to the database. This must be a purpose listed in the exceptions to rule 11.

Secondly, each time the subscriber accesses the database they must confirm the purpose of that particular access. Some subscribers may have only one possible purpose, while others may have several.

Clause 6:

The code imposes strict obligations on the credit reporter to ensure accuracy and to investigate complaints under clause 8. Most complaints relate to credit information supplied by subscribers, so it is necessary for subscribers and credit reporters to co-operate.

SCHEDULE 4 SUMMARY OF RIGHTS (Rules 6 and 7 and clause 8)

A Summary of Your Rights Under the Credit Reporting Privacy Code 2004

The Credit Reporting Privacy Code 2004 is issued under the Privacy Act 1993. It promotes fairness, accuracy, and privacy in the practice of credit reporting. Credit reporters gather and sell information about you such as a failure to pay your bills or if you have been made bankrupt. You can find the complete text of the Code at *[insert location, such as www.privacy.org.nz]* and the Privacy Act at *[insert location, such as www.legislation.govt.nz]*. The Code, together with the Act, gives you specific rights, many of which are summarised below.

Limited information can be reported about you.

A credit reporter can only collect certain classes of information, set out in the Code, for its credit reporting database. A credit reporter will generally report information for no longer than 5 – 7 years: the actual retention periods are required to be displayed on each credit reporter's website.

Only certain people can access your file for certain purposes.

The Code limits the people who can gain access to your credit information. These will usually be credit providers who are considering your application for credit, but in some strictly defined situations the information may be available to prospective landlords, employers or insurers, to debt collectors, to those involved in court proceedings and to certain public sector agencies.

Your consent is required in most situations.

Most credit checks can only take place with your authorisation. This applies to access by credit providers, prospective landlords and prospective employers. Your authorisation may not be required for access by certain public sector agencies, those involved in court proceedings and debt collectors. The credit reporter is required to log each access that is made to your information and will normally disclose this information to you on request.

You can find out what is held about you.

You are entitled to request a copy of the credit information held about you by a credit reporter. You can ask for just the information contained in your credit report or for all the information held about you (which may include additional information, such as a more complete list of those who have accessed your report). If you want the information quickly (within 5 working days) you may be required to pay a reasonable charge, but otherwise no charge may be made. A credit reporter must take precautions to check the identity of anyone making a personal access request. This may involve asking you for certain identification details, although these cannot be added to the credit reporter's database without your authorisation.

You can dispute inaccurate information with the credit reporter.

Credit reporters must take reasonable steps to ensure the accuracy of the information they hold and must act promptly to correct any errors they become aware of. If you tell a credit reporter that your report contains an inaccuracy, the credit reporter must take steps to correct it. This will usually involve checking the information you provide with the source, such

as a creditor who submitted a default. While the checking process is under way, the credit reporter must flag your credit report to show that the item has been disputed.

The credit reporter must, as soon as reasonably practicable, decide whether to make the correction you have requested or to confirm the accuracy of the information. If the credit reporter needs longer than 20 working days to make a decision it must notify you of the extension and the reasons for it. If the requested correction is not made you must be told the reason and you may ask to have a statement of the correction sought but not made, attached to the relevant information. This statement will be included with future reports.

If a correction is made or a correction statement is added, the credit reporter must inform anyone who has recently received your credit report of the change. They must tell you what they have done and provide you with a copy of the amended report.

A credit report describes your credit history, not simply your current debts. Information about a bankruptcy that has been discharged or a default that has subsequently been paid in full can continue to be reported, provided it is updated to reflect the later developments, as it remains an accurate statement of those historical events.

You have the right to make a complaint.

Each **credit reporter** must maintain an internal complaints procedure and have a designated person to facilitate the fair, simple, speedy and efficient resolution of complaints. If you believe a **credit reporter** has breached the Code you should first approach them directly.

If your complaint is not resolved you may complain to the Privacy Commissioner who has statutory powers to investigate the matter. Some cases that cannot be settled can be taken to the Human Rights Review Tribunal for final determination. Other civil law remedies may also be available including defamation and negligence.

Contact addresses.

Credit reporter: *[Insert details about where to go to exercise access and complaint rights]*

Office of the Privacy Commissioner: *[Insert contact postal address, currently PO Box 10094 Wellington and PO Box 466 Auckland]*

Warning: This is only a generalised summary. In the event of a discrepancy between this summary and a provision of the code or Act, the code or Act prevails.

Note: If the wording set out in Schedule 4 is altered, the summary must be to the same effect – see definition of Summary of Rights, clause 5.

APPENDIX 1

TERMS DEFINED IN PRIVACY ACT 1993

Words and expressions defined in s.2 of the Privacy Act and used in this code include the following:

action includes failure to act; and also includes any policy or practice

agency—

- (a) means any person or body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector; and, for the avoidance of doubt, includes a department; but
- (b) does not include—
 - (i) the Sovereign; or
 - (ii) the Governor-General or the Administrator of the Government; or
 - (iii) the House of Representatives; or
 - (iv) a member of Parliament in his or her official capacity; or
 - (v) the Parliamentary Service Commission; or
 - (vi) the Parliamentary Service, except in relation to personal information about any employee or former employee of that agency in his or her capacity as such an employee; or
 - (vii) in relation to its judicial functions, a court; or
 - (viii) in relation to its judicial functions, a tribunal; or
 - (ix) an Ombudsman; or
 - (x) a Royal Commission; or
 - (xi) a commission of inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908; or
 - (xii) a commission of inquiry or board of inquiry or court of inquiry or committee of inquiry appointed, pursuant to, and not by, any provision of an Act, to inquire into a specified matter; or
 - (xiii) in relation to its news activities, any news medium

collect does not include receipt of unsolicited information

Commissioner means the Privacy Commissioner referred to in section 12 of this Act and appointed in accordance with section 28(1)(b) of the Crown Entities Act 2004

correct, in relation to personal information, means to alter that information by way of correction, deletion, or addition; and **correction** has a corresponding meaning

document means a document in any form; and includes—

- (a) any writing on any material:
- (b) any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) any book, map, plan, graph, or drawing:
- (e) any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

Human Rights Review Tribunal or Tribunal means the Human Rights Review Tribunal continued by section 93 of the Human Rights Act 1993

individual means a natural person, other than a deceased natural person

individual concerned, in relation to personal information, means the individual to whom the information relates

personal information means information about an identifiable individual; and includes information relating to a death that is maintained by the Registrar-General pursuant to the Births, Deaths, and Marriages Registration Act 1995, or any former Act

public register has the meaning given to it in section 58

public register privacy principle has the meaning given to it in section 58

public sector agency—

- (a) means an agency that is a Minister, a Department, an organisation, or a local authority; and
- (b) includes any agency that is an unincorporated body (being a board, council, committee, or other body)—
 - (i) which is established for the purpose of assisting or advising, or performing functions connected with, any public sector agency within the meaning of paragraph (a) of this definition; and
 - (ii) which is so established in accordance with the provisions of any enactment or by any such public sector agency

publicly available information means personal information that is contained in a publicly available publication

publicly available publication means a magazine, book, newspaper, or other publication that is or will be generally available to members of the public; and includes a public register

unique identifier means an identifier—

- (a) that is assigned to an individual by an agency for the purposes of the operations of the agency; and
- (b) that uniquely identifies that individual in relation to that agency;—
but, for the avoidance of doubt, does not include an individual's name used to identify that individual