

# Progress update on aspects of Police photographing and fingerprinting practices

## Introduction

In line with expectations set in late 2021, this report provides a further update on progress New Zealand Police (Police) has made in response to:

1. The Compliance Notice issued by the Office of the Privacy Commissioner (OPC) about Police's photographing and fingerprinting practices [14 requirements outlined in Appendix 1].
2. Recommendations made in the joint inquiry report by OPC and the Independent Police Conduct Authority (IPCA) into Police photographing of members of the public [23 recommendations outlined in Appendix 2].

## High level summary of progress from April to June 2023

- Engagement with 13 frontline functions and 20 teams across six policing Districts has been completed, raising awareness about privacy and engaging in more detail on processes for capturing, storing, sharing/using and deleting photographs. Engagement provided useful insights on the range of policing operations that capture photographs, as well as current practices and challenges with processes and systems that store, share/use and delete photographs.
- Subject-specific workshops were held on photograph and video settings to support development of practice, procedures and guidance, as well as system enhancements.
- Discussions and workshops were also held with identified system owners to understand systems that capture and store photographs, videos and fingerprints. Further detailed analysis against compliance requirements is underway to develop options and a timeline for system changes and deletion of non-compliant rangatahi photographs. We expect completion of design and full implementation of system enhancements and remediation to go beyond December 2023 (with the exact timeline to still be confirmed).
- Review of regulatory framework, and other guiding principles for managing photographs, videos and fingerprints nearing completion. Development of practice and procedures for photographs, videos and fingerprints continues, with engagement on draft practice and procedures planned in July.
- A training plan and approach has been socialised with stakeholders to confirm support structures for developing the content for general education and awareness, and practice and procedure training on the changes; and to embed changes and behaviour in operational practices to ensure application of relevant regulatory requirements.

## Key

Status	Comments
Under action	Action has been taken, and is at an early stage of review and implementation
Progressively implemented	The review and implementation process is more advanced; measures are in place and being progressively advanced, with their effectiveness being monitored
Completed	Swift remedial action has been taken, with confidence the solution is enduring; the requirement can therefore be considered closed from an audit perspective, but will continue to be monitored

## Report back on OPC Compliance Notice Requirements as at June 2023

Compliance Notice Requirement			Progress update	Status
<b>Delete casual photos of rangatahi in public</b>				
①	46a(i)	Identify and delete all photographs (and duplicates of photographs) in Police's systems that have been taken in a non-compliant manner	<ul style="list-style-type: none"> <li>Scoping and discovery work complete across approximately 27 Police systems to identify systems which capture, share, store and delete photographs, and assess scope of enhancements required.</li> <li>Work in progress to develop a plan to analyse information held in systems, and determine the remediation approach.</li> </ul>	Progressively implemented
②	46a(ii)	Ensure police officers stop taking casual photographs of rangatahi in public in a noncompliant manner		Completed (22-03-18 First OPC bimonthly update re CN_2021_02)
③	46a(iii)	Develop and implement a decision-making framework based on objective and lawful criteria which a police officer must follow when deciding whether it is permissible to photograph rangatahi in public, to ensure the Agency does not retain those photographs for longer than is required to meet a lawful purpose	<ul style="list-style-type: none"> <li>As part of continuous improvement, we have made changes to the decision-making framework in Checkpoint (a Police mobility application) aimed at better aligning to the Joint OPC/ IPCA Report findings. These improvements will significantly help staff understand the criteria which should be followed prior to capturing photographs.</li> <li>Further updates also planned as part of implementing: <ul style="list-style-type: none"> <li>the overarching practice and procedures, for capturing, sharing/using, storing and deleting photographs, fingerprints and videos, and</li> <li>associated system enhancements.</li> </ul> </li> </ul>	Completed (23-20-12 2nd OPC Quarterly update re CN_2021_02)
<b>Cease collecting biometric prints from rangatahi in custody on a voluntary basis</b>				
④	46b(i)	Identify and delete all sets of biometric prints (and duplicates of prints) in Police's systems that have been collected in a noncompliant manner	<ul style="list-style-type: none"> <li>See above 46(a)(i)</li> </ul>	Progressively implemented Completion due by December 2023
⑤	46b(ii)	Ensure police officers stop collecting biometric prints from rangatahi in custody in a noncompliant manner		Completed (22-03-18 First OPC bimonthly update re CN_2021_02)
<b>Cease taking photographs of rangatahi in custody on a voluntary basis</b>				
⑥	46c(i)	Identify and delete all photographs (and duplicates of photographs) in Police's systems that have been taken in a non-compliant manner		Completed (22-03-18 First OPC bimonthly update re CN_2021_02)
⑦	46c(ii)	Ensure police officers stop taking photographs of rangatahi in custody in a non-compliant manner		Completed (22-03-18 First OPC bimonthly update re CN_2021_02)
<b>Cease smartphone photography of adults in custody</b>				
⑧	46d(i)	Identify and delete photographs (and duplicates of photographs) of adults in Police custody in Police's systems that have been taken in a noncompliant manner	<ul style="list-style-type: none"> <li>See above 46(a)(i).</li> </ul>	Under action Completion due by December 2023

Cease smartphone photography of adults in custody				
⑨	46d(ii)	Until Police meets its wider compliance obligations, ensure police officers stop using devices which are not connected to Police's National Intelligence Application [NIA] (including Police-issued smartphones) to take photographs of adults in police custody in a noncompliant manner	<ul style="list-style-type: none"> <li>See above 46(a)(iii)</li> <li>Workshop held with mobility system owners to develop options that support compliance requirements. Further detailed analysis against requirements in progress.</li> </ul>	Under action Completion due by December 2023
Take preventive procedures				
⑩	46e	Police must develop and implement agency-wide practices and procedures to prevent ongoing Privacy Act non-compliant practices	<ul style="list-style-type: none"> <li>Engagement workshops with 13 frontline functions and 20 teams across six Districts has been completed, raising awareness about privacy and engaging in more detail on processes for capturing, storing, sharing/using and deleting photographs. Engagement provided useful insights on the range of policing operations that capture photographs, as well as current practices and challenges with processes and systems that store, share/use and delete photographs.</li> <li>Subject-specific workshops held on photograph and video settings to support development of practice, procedures and guidance as well as system enhancements.</li> <li>Review of regulatory framework/legislative environment and other guiding principles nearing completion (broad range of legislation, regulations, memoranda of understanding governing Police functions and practice for managing photographs, videos and fingerprints).</li> <li>Development of draft overarching practice and procedures for photographs, videos and fingerprints continuing. Improvement of existing policies, practice and procedures that involve taking of photographs, videos and/or fingerprints to follow.</li> <li>Engagement on draft overarching practice and procedures planned for July 2023.</li> </ul>	Under action Completion due by December 2023
Take deletion procedures				
⑪	46f	Police must develop and implement agency-wide practices and procedures for the routine and systematic deletion of all identifying particulars, including photographs and Biometric Prints, to ensure it does not keep identifying particulars for longer than is required for a lawful purpose	<ul style="list-style-type: none"> <li>Review of existing practice and procedures for routine and systematic deletion of photographs, videos and fingerprints to follow once overarching practice and procedure drafted. Note Police's current disposal schedule requires updating but is in place until 2026.</li> <li>Engagement on draft practice and procedures planned for July 2023.</li> <li>Workshops held with Police's Information and Communications Technology Service Centre (ICTSC) and relevant system owners on enhancements required to systems to ensure compliance with relevant retention and disposal rules.</li> </ul>	Under action Completion due by December 2023
Undertake training				
⑫	46g	Police must develop and deliver agency-wide training to its staff and relevant contractors on practices and procedures highlighted by this Compliance Notice	<ul style="list-style-type: none"> <li>See 46(e)</li> <li>Plan developed to deliver agency-wide training. The phased plan is a multi-faceted approach to ensure: <ul style="list-style-type: none"> <li>Police-wide awareness and understanding of privacy principles, and our policy, practice and procedure changes are delivered across the organisation</li> <li>We cement learning through face-to-face opportunities with operational Police</li> <li>We embed ongoing behaviour change in relation to our practices for photographing, videos and fingerprinting through existing training opportunities targeting different audiences</li> </ul> </li> <li>During Privacy Week (8-14 May): <ul style="list-style-type: none"> <li>An organisation-wide screen saver was displayed to promoted the theme of 'Privacy is in your hands', with a reminder that we hold information on all of us (family, friends and our community) and it is all our responsibility to handle personal information safely.</li> <li>Organisation-wide communications sent out to promote completion of privacy survey to gauge levels of understanding across the organisation, a reminder of Privacy+ online learning module, and referral to details about managing privacy breach incidents</li> </ul> </li> <li>To follow Privacy Week, the first of a series of educational posters is being developed to continue the theme of 'privacy is in your hands'. The series of posters will support training messages and will be distributed to sites across the motu.</li> </ul>	Under action Completion due by December 2023
Develop and implement a system to audit compliance				
⑬	46h	Police must develop and implement a system to regularly audit its compliance with its obligation to delete all identifying particulars, including photographs and Biometric Prints, to ensure it does not keep identifying particulars for longer than is required for a lawful purpose	<ul style="list-style-type: none"> <li>Procurement planning continuing on Phase 1 to source external resources to lead Phase 1 assurance activity, Completion of Phase 1 assurance amended to October 2023.</li> </ul>	Completed (First OPC quarterly update re CN_2021_02)

Take all other necessary steps				
14	46i	Police must identify and take all other necessary steps to ensure that noncompliant practices highlighted in this Compliance Notice do not continue.	<ul style="list-style-type: none"> <li>• Opportunities to improve practices are continuing to be identified as part of a range of ongoing engagement.</li> <li>• Remediation planning underway to remediate any non-compliant practices progressively</li> </ul>	Under action Due as soon as reasonably practicable

**Report back on recommendations by the Independent Police Conduct Authority and Privacy Commissioner into Police's conduct when photographing members of the public – progress as at June 2023**

	Recommendation	Detail	Progress update	Status
	Taking photographs for <u>intelligence</u> purposes			
1	Police should develop a consolidated and comprehensive policy covering the use of photography to collect personal information under the Privacy Act for general <u>intelligence gathering purposes</u> .	<p>(a) setting an appropriate threshold under the Privacy Act (IPP1) for the collection of personal information: when turning their minds to their reasons for collection officers must be able to articulate a <u>reasonable possibility</u>, based on more than mere conjecture, that the individual being photographed could be relevant to a particular or likely investigation (<u>the lawful purpose</u>).</p> <p>(b) unless an exception applies, informing the individual of the purpose for taking the photograph, the consequences for the individual if the photograph is not provided and other information required under the Privacy Act (IPP 3)</p> <p>(c) setting out the applicable thresholds for exceptions to the requirement to inform the individual. In relation to the maintenance of the law exception, that requires a reasonably held belief that not complying with IPP 3 is necessary to avoid prejudice to the maintenance of the law;</p> <p>(d) the circumstances that require the consent of the individual to ensure that photographing the individual is fair and does not intrude to an unreasonable extent on their personal affairs. For example: (i) if an officer is engaging with an individual and informing them of the reason and purpose for the photograph, it will generally be fair to also obtain their consent, particularly if the individual is a youth; or (ii) if seeking the individual's consent would be disproportionately prejudicial to the reason for taking the photograph or to the maintenance of the law, that risk of prejudice can justify proceeding without consent; and (iii) that, if a photograph is taken after the refusal of consent, the individual must be informed that the photograph is mandatory.</p>	See progress updates against CN requirements 46(e) and (f) above	Under action
2	Police policy should provide clear guidelines for complying with the Privacy Act when stopping a youth in public and taking photographs for general intelligence-gathering purposes	<p>(a) reflecting the youth specific protections in the Oranga Tamariki Act and UNCROC;</p> <p>(b) tailoring the explanation under IPP 3 to the youth in an age-appropriate way; and</p> <p>(c) reflecting the requirements of IPP 4 when officers are deciding whether to proceed with a photograph of a youth and require officers to engage with the youth's family, whanau or caregiver and, in the case of a child or tamariki under the age of 14, to obtain consent from them (or if they are unavailable another appropriate and independent adult), before taking a photograph of the youth.</p>		
3	Police policy should require officers to record the circumstances and considerations that they rely on to justify the collection of personal information for purposes of <u>intelligence gathering</u> .			
4	Police policy should include guidance on the limits of an officer's power to take photographs or video recordings when that officer is lawfully on private premises.			
	Taking photographs for <u>investigation</u> purposes			
5	Police should develop a consolidated and comprehensive policy covering the use of photography to collect personal information under the Privacy Act for <u>non-crime scene identification</u> . This policy should develop clear, practical guidelines for complying with the	<p>(a) setting an appropriate threshold under the Privacy Act (IPP1) for the collection of personal information: when turning their minds to their reasons for collection officers must be able to articulate a <u>reasonable possibility</u>, based on more than mere conjecture, that the individual being photographed could be relevant to a specific investigation that is currently underway (<u>the lawful purpose</u>).</p> <p>(b) unless an exception applies, informing the individual of the purpose for taking the photograph, the consequences for the individual if the photograph is not provided and other information required</p>	See progress updates against CN requirements 46(e) and (f) above.	Under action

	Recommendation	Detail	Progress update	Status
	Privacy Act <u>when stopping individuals in public and taking photographs for purposes of investigations</u>	<p>under the Privacy Act (IPP 3)</p> <p>(c) setting out the applicable thresholds for exceptions to the requirement to inform the individual. In relation to the maintenance of the law exception, that requires a reasonably held belief that not complying with IPP 3 is necessary to avoid prejudice to the maintenance of the law;</p> <p>(d) the circumstances that require the consent of the individual to ensure that photographing the individual is fair and does not intrude to an unreasonable extent on their personal affairs.</p> <p>For example:</p> <p>(i) if an officer is engaging with an individual and informing them of the reason and purpose for the photograph, it will generally be fair to also obtain their consent, particularly if the individual is a youth; or</p> <p>(ii) if seeking the individual's consent would be disproportionately prejudicial to the reason for taking the photograph or to the maintenance of the law, that risk of prejudice can justify proceeding without consent; and</p> <p>(iii) that, if a photograph is taken after the refusal of consent, the individual must be informed that the photograph is mandatory.</p>		
6	Police policy should provide clear guidelines for complying with the Privacy Act when taking photographs of youth for investigation purposes	<p>(a) reflecting the youth specific protections in the Oranga Tamariki Act and UNCROC;</p> <p>(b) tailoring the explanation under IPP 3 to the youth in an age-appropriate way; and</p> <p>(c) reflecting the requirements of IPP 4 when officers are deciding whether to proceed with a photograph of a youth and require officers to engage with the youth's family, whanau or caregiver and, in the case of a child or tamariki under the age of 14, to obtain consent from them (or if they are unavailable another appropriate and independent adult), before taking a photograph of the youth.</p>		
7	Police policy should require officers to record the circumstances and considerations that they rely upon to justify the collection of personal information for <u>investigation purposes</u> .			
8	Police policy should confirm that Police may take photographs at a crime scene provided that the privacy of those unrelated to the incident is taken into account. This could be addressed by the redaction of images that include individuals who are not relevant to the <u>investigation</u> .			
<b>Traffic checkpoints and other traffic stops</b>				
9	Police should prioritise review of training and policy on LTA checkpoints and stops to ensure that:	<p>(a) policies reflect the current legal constraints, including the application of the privacy principles when taking photographs for non-LTA purposes;</p> <p>(b) checkpoints and other traffic stops are not established for the primary purpose of collecting photographs and personal information for a collateral purpose</p> <p>(c) information gathered in the course of an LTA checkpoint or stop is not used for other purposes (e.g., general intelligence) unless lawfully collected for that other purpose, or it comes under a valid use exception under the Privacy Act</p> <p>(d) photographs are taken for identification purposes at traffic checkpoints and other traffic stops when an infringement notice is being issued only when the driver's identity is not able to be ascertained in other way (e.g., by examination of the driving licence and accompanying photograph);</p> <p>(e) officers receive regular training on the limits of taking photographs at LTA checkpoints and traffic stops.</p>	See progress updates against CN requirements 46(e) and (f) above.	Under action
<b>Protests and other large gatherings</b>				
10	Police should review the Demonstrations policy to reflect that	<p>(a) an appropriate threshold for photography is where the officer believes, based on some articulable facts, that there is a reasonable possibility of disorder occurring</p> <p>(b) recording demonstrators for no reason other than their presence in an otherwise lawful and peaceful demonstration, with the aim of identifying them for potential future demonstrations, is not necessary for a lawful Police purpose.</p>	Policy has been reviewed, updated and published	Completed
<b>Issuing notices and proof of service</b>				
11	As part of a general review of policy and guidance relating to photographs of members of the public, Police should review and update policies and process relating to proof of service. This should make it clear that officers may photograph individuals holding a summons or 22 Recommendation infringement notice, as long as officers properly explain the purpose and use of the photograph, take it by fair and reasonable means, and limit the use of the photographs to demonstrating proof of service.		See progress updates against CN requirements 46(e) and (f) above	Under action

	Recommendation	Detail	Progress update	Status
	Responding to monitoring by members of the public			
12	As part of a general review of policy and guidance relating to photographs of members of the public, Police should ensure there is guidance about the lawful basis for photographing or video recording members of the public monitoring Police. This should make clear that officers should do so only if the officer has reasonable concerns that the person’s behaviour poses a threat or is obstructing them in the performance of their duty.		See progress updates against CN requirements 46(e) and (f) above	Under action
	Interaction with youth in Police stations			
13	Police policy should reflect that “voluntary consent” - whether or not it is informed - does not make the otherwise unlawful or unnecessary collection of personal information lawful or compliant with the Privacy Act		See progress updates against CN requirements 46(e) and (f) above	Under action <small>(note 2 parts of this rec were completed as per 22- 03-18 First OPC bimonthly)</small>
14	Police should cease the practice of taking photographs of youth on a ‘voluntary’ basis where a youth has been uplifted or detained, except where a photograph is necessary for Police’s care and protection role to ensure the safety of the youth.		Completed as part of meeting CN requirements 46(c)(ii)	Completed
15	Police should cease the practice of taking biometric prints from youth on a ‘voluntary’ basis.		Completed as part of meeting CN requirement 46(b)(ii)	Completed
16	Police policy should identify	(a) the limits on taking ‘voluntary’ photographs of youth (and adults) present in Police stations on a voluntary basis under IPP 1 (b) where a youth is concerned, the requirement for a parent, caregiver or other appropriate adult to be present to give informed consent for a ‘voluntary’ photograph	See progress updates against CN requirements 46(e) and (f) above	Under action
17	Police should prioritise training for officers to improve understanding of:	(a) Police’s functions under the Oranga Tamariki Act in the youth justice and care and protection contexts; (b) the youth-specific protections due to vulnerability.		
	Use			
18	Police policy should provide clear guidelines on the purposes for which lawfully collected personal information in the form of photographs and videos may be used under the Privacy Act (IPP 10).		See progress updates against CN requirements 46(e) and (f) above	Progressively implemented
	Retention			
19	Police policy and guidelines (including any relevant disposal schedule) should be reviewed and amended to ensure the technology policy is fit for purpose to support compliance with Police’s obligations under the Privacy Act (and other relevant legislation) and provide guidance for officers routinely using mobile devices for mixed personal and policing purposes including, in particular:	(a) the consistent storage and uploading of images and associated data to secure locations, and minimising the retention of images on individual devices and the duplication of images across Police systems	See progress updates against CN requirements 46(e) and (f) above	Under action
		(b) limits on using individual devices to capture images where other Police devices or technology is specifically set up for that purpose		
		(c) protocols on handling sensitive or traumatic images.		
		(d) limits on the use and retention of images (and copies) in individual devices and in Police systems;		
		(e) routine review and deletion of images from mobile and desktop devices		
		(f) protocols for purging and replacing devices.		
20	Police should prioritise regular training for all officers on using mobile devices to ensure legal compliance.			
	General			
21	Police should review systems and implement the ability to audit compliance with:	(a) updated technology policy and the handling of photographs of individuals on mobile devices (b) the deletion of identifying particulars in accordance with statutory time limits.	See progress updates against CN requirements 46(a)(iii), (e) and (f) above	Under action
22	Police should develop a strategy to improve its staff’s fundamental understanding of the application of the Privacy Act to the collection and protection of personal information with a particular focus on photographs as sensitive biometric information covering	(a) policies and processes (b) training		
		(c) methods for updating knowledge and practice on an ongoing basis.		

	Recommendation	Detail	Progress update	Status
23	In implementing the strategy, Police should establish a rolling programme of reviews and updates of key policies, and develop and deliver agency-wide training to its staff and relevant contractors on	(a) the decision-making framework and procedures to be followed to photograph individuals and youth in public		Under action
		(b) storage and deletion procedures.		

Milestone Report as at June 2023 for remaining OPC compliance notice requirements

Workstream	CN reference	Milestone	2022/2023									2023/2024							Status
			Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Onwards	
Reporting	N/A	Quarterly Report December 2022																	Dec 2022
		Quarterly Report March 2023																	Mar 2023
		Quarterly Report June 2023																	Jun 2023
		Quarterly Report September 2023																	Sep 2023
		Quarterly Report December 2023																	Dec 2023
Practice and procedures (approx. 50)		Review of current state practice and procedures																	June 2023
		Review of regulatory framework/legislative environment for managing photographs, videos and fingerprints																	June 2023
	46(e), 46(f), 46(g) and 46(i)	Overarching practice and procedure – photographs, videos, and fingerprints																	Jul 2023
		Amendments to existing practice and procedures - photographs, videos, and fingerprints																	Jul 2023
	46(f)	New practice and procedures relating to retention and disposal																	Jul 2023
		Further updates to practice and procedures - system changes (timing TBC)																	TBC
Assurance	46(h)	Assurance System																	Dec 2022
	46(a)(i), 46(a)(ii), 46(b)(i), 46(b)(ii), 46(c)(i), 46(c)(ii), 46(d)(i) and 46(d)(ii)	Develop BPM Model																	Jun 2023
		Procurement of suppliers – Phase 1																	Jun 2023
		Phase 1 Assurance activity																	Aug 2023
		Review of approach following Phase 1																	Oct 2023
		Update BPM Model																	Feb 2024
		Procurement of suppliers – Phase 2																	Mar 2024
		Phase 2 Assurance activity																	Aug 2024
		Review of approach following Phase 2																	Aug 2024
Remediation (approx. 27)	46(a)(i), 46(c)(i) and 46(d)(i)	Scoping and document current state																	June 2023
		Remediation plan and roadmap																	July 2023
		Undertake remediation activity																	Dec 2023
Systems Enhancement (approx. 27)	46(e), 46(f) and 46(g)	Scoping and document current state																	June 2023
		Enhancement plan and roadmap																	July 2023
		Undertake enhancement activity																	Dec 2023
Change Management – Training and Education		Training Plan																	Apr 2023
	46(e), 46(f), 46(g) and 46(i)	Success Factors Training - Frontline																	Aug/Sept 2023
		Mindset/behaviour collateral																	Dec 2023
		Checkpoint app updates																	Jul 2023/Sep 2023
		Update existing training																	Dec 2023
		Assurance BPM Coaching framework																	Nov 2023
		Success Factors Training - others																	Dec 2023
		Updated Training Plan – system changes (timing TBC)																	TBC
		Updated BPM Coaching framework – system changes (timing TBC)																	TBC
		Updated training material – system changes (timing TBC)																	TBC