(1) ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION AND OTHER IDENTIFYING DETAILS OF THE PLAINTIFF

(2) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE TRIBUNAL OR OF THE CHAIRPERSON

IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2024] NZHRRT 64**

I TE TARAIPIUNARA MANA TANGATA

	Reference No. HRRT 056/2020
UNDER	**THE PRIVACY ACT 2020**
BETWEEN	**BMN**
	PLAINTIFF
AND	**STONEWOOD GROUP LIMITED**
	DEFENDANT

AT AUCKLAND

BEFORE:
Ms SJ Eyre, Chairperson
Mr MJM Keefe QSM JP, Member
Mr IR Nemani, Member

REPRESENTATION
Ms K Wilson and Ms A Cohen for plaintiff
Mr G Bennett, lay advocate for the defendant (until 26 February 2024); then
Miss L Chow, Human Resources Director for the defendant

DATES OF HEARING: **30 May 2022 - 2 June 2022**

DATE OF DECISION: **10 December 2024**

(REDACTED) DECISION OF TRIBUNAL[1]

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[1] This decision is to be cited as *BMN v Stonewood Group Ltd* [2024] NZHRRT 64. Note publication restrictions.

[1] BMN, the then [employment position redacted] at Stonewood Group Limited (Stonewood) was invited to a coffee meeting outside the Stonewood office by the then Chief Operating Officer, Brett Gilchrist.[2] Whilst BMN was out of the office Vicki Chow, Executive Director at Stonewood, removed BMN's work laptop, personal USB flash drive (the USB) and personal cellphone from his desk at the Stonewood office. One week later BMN's employment was terminated.

[2] Despite requests Stonewood did not return BMN's personal information that they had collected from him.

[3] BMN claims Stonewood has interfered with his privacy by collecting his personal information in breach of the Privacy Act 1993 (the Act).[3]

[4] Stonewood acknowledges it took BMN's work laptop and personal cellphone but deny taking the USB and deny any interference with BMN's privacy.

BACKGROUND

[5] On 21 March 2019, Mr Gilchrist invited BMN out to coffee, at the direction of Ka-yu (John) Chow, Director. While at the coffee meeting, Mr Gilchrist gave BMN a letter detailing concerns about BMN's performance in his employment.

[6] On his return to the office BMN realised his work laptop, personal cellphone and the USB were gone and were in Miss Vicki Chow's office. BMN immediately asked Miss Vicki Chow if he could retrieve his personal devices (cellphone and the USB) and his personal files stored on the laptop, which included tax returns, case studies, research, and medical information. Miss Vicki Chow did not respond to that request.

[7] Mr Gilchrist then arrived in Miss Vicki Chow's office and BMN repeated his request for the return of his personal information and devices. The personal cellphone was returned.

[8] On 22 March 2019, BMN emailed Mr Gilchrist (that request was subsequently forwarded to Miss Vicki Chow and then to Stonewood's advocate at the time, Mr Bennett), asking:

> As agreed, can you please allow Corne to copy off my personal data, medical records and information that I may require prior to this issue being resolved.

[9] On 26 March 2019, BMN's colleague, Corne Viljoen, who [redacted] in the office, was instructed by Miss Vicki Chow to copy some of BMN's personal files from his work

[2] At the time of the hearing, Mr Gilchrist was no longer employed by Stonewood.
[3] The Privacy Act 1993 was repealed and replaced by the Privacy Act 2020 on 1 December 2020, however the actions this claim relates to all occurred prior to that date. Accordingly, the transitional provisions in the Privacy Act 2020 enable this claim to be continued and completed under the 2020 Act, but do not alter the relevant legal rights and obligations in force on 21 March 2019 and the obligations flowing from the incident on that day. This claim has therefore been determined under the Information Privacy Principles (IPPs) detailed in s 6 of the Privacy Act 1993.

laptop to a USB drive. Mr Viljoen commenced this task, but after approximately 45 minutes Miss Vicki Chow told him to stop and that instead Stonewood's external information technology provider would undertake the data copying. The laptop was then sent to the external information technology provider for investigation, they in turn sent the laptop to a computer forensics company.

[10] On 28 March 2019, BMN's employment with Stonewood was terminated and he was dismissed, effective immediately. The USB and BMN's personal information stored on his laptop had not been returned to him by the date of his termination.

[11] On 29 March 2019, BMN emailed Miss Lai-Kwan (Jenny) Chow, human resources director, and Mr Chow and stated:

> I have made 2 requests to retrieve personal data from the laptop, including medical records and a tax return. I propose I bring a USB drive to the [redacted] address and meet with a staff member who has access to the laptop. I would expect a reasonable employer to accommodate this request.

[12] In response, Mr Gilchrist told BMN he would try and retrieve his personal information by 4.30 pm that day, but that did not eventuate.

[13] On 6 April 2019, BMN wrote to Miss Jenny Chow and Mr Gilchrist, referring to his previous requests for his personal information and asserting that Stonewood was in breach of the Act. BMN reiterated his request for his personal information, advising where it was stored on the devices and requesting that it be deleted after being returned. This letter was not substantively responded to, but Stonewood's in-house lawyer at the time, Chris Pollack, indicated a response would be provided after Stonewood completed a forensic investigation of BMN's laptop.

[14] On 11 April 2019, BMN wrote to Mr Pollack and Mr Chow, noting that they had ignored four requests for his personal information and had breached the Act. Mr Pollack responded by requesting further information and suggesting that the 20 working day timeframe would start after the receipt of that further information.

[15] On 23 April 2019, BMN replied to Mr Pollack's letter and requested that he be given access to his personal information the following day. The response on 1 May 2019 was that Stonewood was in the process of extracting and understanding what was on the laptop and once that was complete:

> we will then then be in a position to provide you with copies of any information you may require, subject to our approval, but until then you will not be granted access to our computer nor provided with any information.

[16] The forensic investigation of BMN's laptop was completed in June 2019, but did not result in the provision of BMN's personal information to him. Instead, Stonewood contacted the companies whose commercial information it considered was stored on BMN's work laptop and arranged with them to reclaim their information.

[17] From 10 June 2019 to 19 July 2019, BMN communicated with Mr Bennett regarding his personal information. Mr Bennett requested that BMN provide Mr Bennett with a USB drive upon which the personal information could be loaded and pay a fee of $299.00. BMN did so, but the personal information was still not provided.

[18] Mr Bennett then requested BMN sign an undertaking, confirming the personal information was his. The day after signing it, BMN was told by Mr Bennett his personal information would not be returned until further investigations had been undertaken.

[19] On 19 July 2019, Mr Bennett advised BMN he would provide him with his personal information if he met him on the North Shore of Auckland. BMN requested a courier instead, but the personal information was not sent to him by courier.

[20] Meanwhile, in June 2019, BMN had complained to the Privacy Commissioner. The Commissioner issued a preliminary view on 14 August 2019 that Stonewood had breached Information Privacy Principles (IPPs) 1, 2 and 4 and that there had been an interference with BMN's privacy. Stonewood then assured the Privacy Commissioner they would return the personal information to BMN by 18 October 2019, the Privacy Commissioner then discontinued the investigation.

[21] BMN says Stonewood did not provide the personal information to him. Stonewood say Miss Jenny Chow emailed Mr Bennett on 7 November 2019 to ask if BMN had his information, Mr Bennett replied that he had sent it on a USB drive to BMN but that he had not heard anything from him.

[22] In January 2021, BMN filed this claim. On 8 April 2022 during the course of the Tribunal proceedings, Stonewood returned an incomplete tranche of BMN's personal information to him.

BMN'S CLAIM

[23] BMN claims Stonewood interfered with his privacy as it collected his personal information in breach of IPP's 1, 2 and 4 as it was not collected for a lawful purpose or directly from him, and it was collected in circumstances that were unfair and constituted an unreasonable intrusion upon his personal affairs.

[24] BMN also claims Stonewood breached IPP 6 as despite multiple requests, his personal information has not been provided to him and breached IPP 11 as it disclosed his personal information to third parties.

[25] The remedies BMN seeks include restraining orders, the return of all his personal information and the USB and damages.

[26] Stonewood denies it has interfered with BMN's privacy. Stonewood denies taking the USB and says while it took BMN's work laptop and personal cellphone, this does not amount to collection of his personal information. Stonewood maintain it sent BMN a USB drive with his files "around mid-October 2019".

ISSUES

[27] The issues the Tribunal must determine to resolve this claim are set out below:

Collection of Personal Information

[27.1] Was the collection of BMN's personal information necessary and was it collected for a lawful purpose as required by IPP 1?

[27.2] Was BMN's personal information collected directly from him or otherwise in accordance with the requirements of IPP 2?

[27.3] Was the personal information about BMN collected unfairly and/or in a manner that was an unreasonable intrusion upon the personal affairs of BMN, in breach of IPP 4?

[27.4] If BMN's personal information was collected in breach of IPP 1, 2 or 4 was there an interference with BMN's privacy?

Information Privacy request

[27.5] Was a complaint that Stonewood did not respond as required to BMN's information privacy request an action investigated by the Privacy Commissioner?

[27.6] If so, was there an information privacy request made by BMN to Stonewood?

[27.7] If so, was Stonewood's response to BMN's information privacy request in accordance with the requirements of the Act?

[27.8] If not, does that amount to an interference with BMN's privacy?

Disclosure of Information

[27.9] Was the allegation that Stonewood disclosed personal information about BMN to others an action investigated by the Privacy Commissioner?

[27.10] If so, did Stonewood disclose personal information about BMN to others?

[27.11] If so, did the disclosure of BMN's personal information fall within one of the exceptions provided in IPP 11?

[27.12] If not, does the disclosure of BMN's personal information amount to an interference with his privacy (s 66(1))?

Remedy

[27.13] If Stonewood have interfered with BMN's privacy, what is the appropriate remedy?

[28] During the hearing Stonewood repeatedly referred to BMN allegedly having on his work laptop, information from companies (other than Stonewood) and other files they say were inappropriate. As stated prior to and at the hearing, the Tribunal only has jurisdiction in relation to the alleged interference with BMN's privacy in respect of his personal information. Accordingly, the Tribunal can make no finding, nor order a remedy in relation to any documents or files on the laptop other than those that contain BMN's personal information.

COLLECTION OF PERSONAL INFORMATION

The Legal Framework

[29] Information privacy principles (IPPs) 1–4 are the collection principles. They prescribe a framework for collection of personal information.

[30] An agency is prohibited from collecting personal information unless it meets the criteria in IPP 1 that requires:

> **[30.1]** The information to be collected for a lawful purpose connected with a function or activity of the agency (IPP 1(a)); and
>
> **[30.2]** The collection of the information is necessary for that purpose (IPP 1(b)).

[31] If personal information is collected by an agency, then IPP 2 requires it to be collected directly from the individual concerned. Unless the agency believes on reasonable grounds that one of the exceptions in IPP 2(2) applies.

[32] IPP 4 prohibits an agency collecting personal information by unlawful means or by means that in the circumstances of the case are unclear or intrude to an unreasonable extent upon the personal affairs of the individual concerned.

[33] The prescribed requirements in the collection principles must be met before information is collected.[4] In particular, the requirements under IPP 1(a) and (b) must be met prior to collection. The collection of information cannot be retrospectively justified.

[34] "Collect"[5] is defined in the Act as "does not include receipt of unsolicited information".[6]

[4] *Armfield v Naughton* [2024] NZHRRT 48 *(Armfield)* at [47].
[5] Privacy Act 1993, s 2 definition of "collect" para (1).
[6] It is noted that while this claim is under the PA1993, in the Privacy Act 2020 the definition of collect was amended to clarify that, in relation to personal information, collect requires taking a step to seek or obtain the personal information. The definition in the Privacy Act 2020 is "collect, in relation to personal information, means to take any step to seek or obtain the personal information, but does not include receipt of unsolicited information".

[35] The Tribunal has found that collect is a broad term of wide application and includes "to gather together, to seek and to acquire".[7] While the ordinary meaning of collect includes receipt, it is not limited to receipt, as discussed below:[8]

> Given that Principle 1 is the overarching privacy principle from which the others flow and further given the need to promote and protect individual privacy the term *collect* must be given a broad and purposive interpretation.

[36] The Tribunal has also relevantly observed:[9]

> [44.3] Individual privacy will be promoted and protected by giving to the term collect a broad meaning. The term is not a synonym of "solicit". It is to be given the purposive meaning of "gathering together, the seeking of or acquisition of personal information".
>
> [44.4] The word "collect" does not require a "request" to the subject in question.
>
> [44.5] While "collect" certainly includes the receipt of information asked for, it is not limited to this single meaning. "Collect" does not in this context mean "received".
>
> [44.6] A narrowing of the protection of the Privacy Act to those circumstances in which information is received and then only by soliciting in the sense of "to ask for" would be inconsistent with the promotion and protection of personal privacy.
>
> [44.7] The definition of "collect" is not intended to exclude the obtaining of personal information by means of surveillance devices. The purpose of and background to the Act suggest that surveillance should be considered to be a form of collection.
>
> [44.8] "Unsolicited" is to be narrowly defined as information which comes into the possession of the agency in circumstances where the agency has taken no active steps to acquire or record that information.

Was BMN's personal information collected for a lawful purpose and was it necessary (IPP 1)?

[37] BMN claims Stonewood collected his personal information when Miss Vicki Chow took his work laptop, his personal cellphone and the USB from his office desk without his knowledge. He submits that Stonewood knew he had personal information on these devices and that there was no lawful purpose for the collection.

[38] Stonewood accept that BMN's personal information was on his devices, but submit that personal information was not collected by them, rather they say they received the personal information unsolicited. While they also accept that they did remove BMN's work laptop and personal cellphone from his office desk, they dispute that they took the USB.

Did Stonewood "collect" BMN's personal information?

[39] Stonewood submit "collection" requires action and they say BMN was not asked to take any action to provide the personal information, the implication being that the personal information was therefore not collected. However, as noted above at [34] to [36] the definition of collect is not restricted to meaning "to ask for", nor is it a synonym of "solicit".

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[7] *Holmes v Housing New Zealand Corporation* [2014] NZHRRT 54 *(Holmes)* at [67].
[8] At [71].
[9] *Armfield*, above n 4 at [44].

It is to be interpreted widely and can mean acquire, it does not require a request.[10] An individual's personal information can therefore be collected even when they are unaware the collection occurred, as in this case.

[40] Mr Chow set out in his evidence the steps taken to formulate and implement the plan to take BMN off-site to enable Stonewood to remove his personal cellphone, work laptop and the USB. These were active and intentional steps by Stonewood to take BMN's devices, while knowing that they contained his personal information. This is not receipt of unsolicited information acquired without taking active steps. This is collection of personal information.

[41] Mr John Chow and Miss Jenny Chow both provided evidence that despite knowing there would be personal information on the devices,[11] neither had given any thought to the Act nor any privacy considerations at the time the plan was formulated and then actioned. Stonewood collected BMN's personal information.

[42] Similarly, while Stonewood submitted that BMN's personal information was unsolicited, that term must be interpreted narrowly to be consistent with the purpose of the Act. As noted above at [36] "unsolicited" means circumstances where an agency has taken no active steps to acquire the information.[12] That is not what happened here. Stonewood took active steps to acquire BMN's devices that they knew contained personal information.

[43] Mr Bennett for Stonewood submitted the finding of the Privacy Commissioner in a 2001 Case Note,[13] supported its interpretation of collect. However, that Case Note not only pre-dates the Tribunal's consideration of "collect" in *Armfield v Naughton (Armfield)*[14] and *Holmes v Housing New Zealand Corporation* (*Holmes*)[15], but the circumstances described in it are distinguishable from BMN's situation.[16]

[44] Mr Bennett also submitted the wide definition of collect applied in *Holmes* should not be applied to this claim, given the differences between BMN's situation where he stored personal information on his laptop and *Holmes* where there was a direct request for information. This difference is however irrelevant given the Tribunal's interpretation of collect and as in both *Armfield* and *Holmes* the Tribunal has been explicit that collect does not require a request.[17]

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[10] *Armfield*, above n 4, at [44].
[11] Just as they themselves had personal information on their work laptops and as they permitted employees to have personal information on their work devices.
[12] *Armfield* above n 4 at [44.8].
[13] *Case Note 4784* [2001] NZ Priv Cmr 20.
[14] *Armfield*, above n 4.
[15] *Holmes* above n 7.
[16] The Case Note involved information given to the travel agency by an individual without any action by the travel agency whereas Stonewood actively arranged for BMN to leave the building and then took his devices.
[17] To do so would narrow the protection of the Act and be inconsistent with the promotion and protection of personal privacy.

[45] Accordingly, the narrow meaning of collect proposed by Stonewood, which would also require the Tribunal to accept an unnecessarily wide meaning of unsolicited, has no basis in law and must be rejected by the Tribunal.

[46] Applying the correct interpretation of collect to BMN's case the Tribunal finds that Stonewood did collect BMN's personal information when it took the active step of, without any warning or permission, uplifting his work laptop, his personal cellphone and personal USB.

Did Stonewood take BMN's USB drive?

[47] BMN's evidence was that when he returned to his desk after coffee with Mr Gilchrist, the USB was missing from his desk as well as his personal cellphone and work laptop.

[48] Mr Chow and Miss Jenny Chow denied that a USB was taken. However, neither of them was present in the office at the time the devices were taken from BMN's desk so they have no direct knowledge of what occurred on that day or what was actually taken. It was Miss Vicki Chow who took the items from BMN's desk while he was out with Mr Gilchrist. Miss Vicki Chow was not called as a witness for Stonewood.

[49] The Tribunal did, however, hear evidence from Mr Viljoen [redacted potentially identifying information]. Mr Viljoen provided undisputed evidence that he saw Miss Vicki Chow remove BMN's work laptop, personal cellphone and the USB from BMN's desk. This is the only first-hand evidence of the taking of the items that was provided to the Tribunal; Mr Viljoen saw the USB taken.

[50] Mr Gilchrist was not present at the time the items were taken, but he was in the office immediately after taking BMN for coffee and his evidence is that he observed that BMN's work laptop, personal USB and personal cellphone had been removed from his workstation.

[51] Stonewood submitted that because the USB was not mentioned in some of BMN's communications regarding this event and because he was unable to categorically state where it was located on his desk before it was taken, that the Tribunal should find it was not taken. However, the Tribunal is satisfied based on the evidence of Mr Viljoen, Mr Gilchrist and BMN, who were all present on the day in question and all have first-hand knowledge of the events of that day, that BMN's personal USB was taken.

[52] The Tribunal finds that it is more probable than not that BMN's USB was taken by Stonewood at the same time it took his work laptop and personal cellphone. Accordingly, the personal information on that USB is included in the information we find was collected by Stonewood.

Was the collection a breach of IPP 1?

[53] Miss Jenny Chow repeatedly stated in the hearing that Stonewood had no reason to collect BMN's personal information.

[54] Mr John Chow and Miss Jenny Chow both confirmed that despite knowing there would be personal information on the devices, neither had given any thought to the Act or any privacy considerations at the time the plan was formulated and then actioned.

[55] Stonewood has therefore provided no evidence of any lawful purpose for collecting BMN's personal information, nor any evidence to show it was necessary to collect the information. Stonewood has breached IPP 1.

Was BMN's personal information collected directly from him?

[56] IPP 2 requires an agency to collect personal information directly from the individual concerned, unless the agency believes on reasonable grounds that any of the circumstances listed in IPP 2(2) apply.

[57] BMN submits the personal information was undisputedly not collected directly from him. As Mr Chow's evidence stated it was taken as part of "an orchestrated plan" for Mr Gilchrist to take BMN out of the office so his devices (that Stonewood knew contained personal information) could be taken from his desk.

[58] Stonewood has the onus[18] of proving that one of the exceptions in IPP 2(2) applies.

[59] Stonewood did not submit that it believed on reasonable grounds that any of the exceptions in IPP 2(2) applied to justify it not collecting the personal information directly from BMN, nor did it provide any evidence to support this. Rather, Stonewood submitted that it held "genuine and serious concerns" regarding BMN and that a forensic examination of the laptop justified their concerns. This appears to be a reference to a concern that BMN may have had on his laptop, information from companies (other than Stonewood) and other files they say were inappropriate. However, even if that concern was correct, that is not one of the listed exceptions for not collecting information directly from BMN in IPP 2(2). Stonewood have failed to show how this concern alone means one of the exceptions applies.

[60] The Tribunal finds that there is no evidence that at the time the personal information was collected, Stonewood believed on reasonable grounds that one of the circumstances listed in IPP 2(2) applied.

[61] Stonewood has breached IPP 2.

Was the personal information about BMN collected in breach of IPP 4?

[62] IPP 4 prohibits information being collected unfairly and/or in a manner that is an unreasonable intrusion on the personal affairs of the individual involved.

[63] Stonewood collected BMN's personal information by taking his work laptop, personal cellphone and the USB. This collection was planned and Stonewood knew the devices contained his personal information. Stonewood took BMN's personal devices and the work laptop without his knowledge, while he was taken out of the office and the devices

[18] Section 87.

were collected in full view of his colleagues. Stonewood did not return the USB and refused to allow him access to his personal information on the laptop that was critical to his personal affairs, including medical and tax records. This means of collection was manifestly unfair and a clear instance of an unreasonable intrusion upon BMN's personal affairs.

[64] Stonewood submitted it had a legal right to remove and examine the laptop which it owned and therefore did not breach IPP 4. Stonewood also reiterated its submission that it did not collect personal information from BMN as the information was unsolicited however this submission does not engage with the requirements of IPP 4. Stonewood provided no submissions or evidence suggesting that the means of collection of BMN's personal information was not unfair or was not in the circumstances unreasonably intrusive upon his personal affairs. Stonewood's submission attempts to belatedly justify its actions after obtaining a forensic report on the laptop, but that provides no defence. The requirements of IPPs 1 to 4 must exist at the time of the collection of the personal information, they cannot be retrospectively applied. There were alternative ways that Stonewood could have taken BMN's work laptop whilst ensuring his personal information was not being collected in a manner that was unfair or unreasonably intrusive on his personal affairs.

[65] The Tribunal finds that Stonewood has breached IPP 4 by its manner of collection of BMN's personal information.

Was there an interference with BMN's privacy?

[66] The Tribunal has found breaches of IPPs 1, 2 and 4. The Tribunal must now determine if those breaches amount to an interference with BMN's privacy.

[67] Section 66 sets out the definition of an interference with privacy, s 66(1) is relevant to this claim and has two parts which must both be met to find an interference with privacy:

> **66 Interference with privacy**
>
> (1) For the purposes of this Part, an action is an interference with the privacy of an individual if, and only if—
>
> (a) In relation to that individual—
>
> (i) the action breaches an information privacy principle;
>
> (ii) […]
>
> (b) in the opinion of the Commissioner or, as the case may be, the Tribunal, the action—
>
> (iii) has caused, or may cause, loss, detriment, damage, or injury to that individual; or
>
> (iv) has adversely affected, or may adversely affect, the rights, benefits, privileges, obligations, or interests of that individual; or
>
> (v) has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to the feelings of that individual.

[68] As the Tribunal has found that Stonewood has breached IPPs 1, 2 and 4, the first part of the definition of an interference with privacy (s 66(1)(a)), is met.

[69] The second part of the definition requires the Tribunal to be satisfied that the actions which amounted to a breach of the IPPs caused, adversely affected, or resulted in any of the consequences described in s 66(1)(b). The harm (or consequences) must be causally connected to the breaches of the IPPs. The breaches must have constituted a material cause of the harm.[19] The breach does not need to be the sole cause of the harm suffered but must have had a real influence on the occurrence of the harm.[20]

[70] Where the consequences of a breach have resulted in humiliation, loss of dignity or injury to feelings to the individual, those consequences must be significant.[21] Significant means the impact must have been "important", "notable" or "considerable".[22]

[71] BMN has provided evidence of the significant impact of the collection of his personal information on him. His evidence is that three weeks after the collection, he was formally diagnosed with acute anxiety and depression, prescribed antidepressants, sleeping medication and attended counselling. BMN attested at the hearing that both the anxiety and depression were continuing. This evidence is undisputed and accepted. The timing of this diagnosis, confirmed by a medical certificate, is consistent with it being causally connected to the collection of his personal information.

[72] Stonewood suggested that because the medical certificate referred to "employment issues", the health conditions were caused by the loss of his job, not by the breaches of the collection principles. The loss of his job may have contributed to BMN's acute anxiety and depression, but the wrongful collection of his personal information does not need to have been the sole cause of the consequences he has suffered as noted above.[23] The collection of BMN's personal information occurred during his employment, by his employer, so the doctor's reference to employment issues can be attributed to the collection that occurred in his employment (as well as potentially the loss of his job).

[73] BMN's evidence that the unlawful collection and retention of his personal information resulted in serious health conditions arising from his anxiety about his career, the confidentiality of his personal information and his inability to complete his tax returns is an entirely plausible consequence of Stonewood's actions.

[74] Further, the email correspondence and other communications by BMN at the time and after the wrongful collection clearly demonstrate that the catalyst for his distress was the wrongful collection of his personal information, including the inability to retrieve it, who

[19] *Taylor v Orcon Ltd* [2015] NZHRRT 15, (2015) 10 HRNZ 458 at [61].
[20] At [61].
[21] Section 66(1)(b)(v).
[22] *Winter v Jans* HC Hamilton CIV-2003-419-854, 6 April 2004 at [35]; affirmed recently in *D'Arcy-Smith v Chief Executive of the Ministry of Social Development* [2024] NZHC 1550 at [27].
[23] Above [70].

had seen his information and who was using and sharing his personal information, once it was out of his control following the collection.

[75] The wrongful collection of BMN's personal information, which occurred just before his employment was terminated, caused him significant humiliation, significant loss of dignity and significant injury to feelings. The Tribunal finds that the wrongful collection is clearly the catalyst for this impact on BMN. The humiliation, loss of dignity and injury to feelings continued as he attempted to obtain the return of his personal information. Counsel for BMN submitted that this caused him to suffer "mentally, financially and reputationally", in a "truly dreadful" situation.

[76] It was also submitted this caused BMN to suffer detriment and adversely affected his interests with a significant impact on BMN. The collection of his information and subsequent actions were described by counsel for BMN as a "campaign of harassment".

[77] The collection of BMN's personal information was a deliberate act, which could be described as subterfuge, BMN was taken out of the office, while his information was collected in front of his colleagues. It is accepted this caused significant humiliation, given the circumstances of the collection and the nature of the personal information taken. The Tribunal also finds that this resulted in a significant loss of dignity for BMN, whose personal information that included medical and tax information was collected by his employer unexpectedly and with no indication of when or if it would be returned, or if it would be treated confidentially. It is also accepted that these breaches of the collection principles caused BMN significant injury to feelings, as he suffered a range of emotions brought on by the wrongful collection and lack of certainty about when he would receive his personal information back, who was accessing it and how it was being used. His anxiety and stress about this and his future career prospects and other consequences of this wrongful collection was apparent from the evidence and accepted as an entirely plausible response to this situation.

[78] In addition, the Tribunal finds that the collection of BMN's information caused him loss and detriment when he was unable to complete his tax return on time, incurring a penalty and adversely affected his interests as it impacted his health, his career prospects and removed access for him to a personal USB and he did not have access to all his personal information that had been on his laptop.

[79] The Tribunal finds that Stonewood's breach of IPPs 1, 2 and 4 resulted in all forms of harm in s 66(1)(b) and in particular caused significant humiliation, injury to feelings and loss of dignity to BMN. Stonewood has interfered with BMN's privacy.

INFORMATION PRIVACY REQUEST (IPP 6) AND DISCLOSURE OF PERSONAL INFORMATION (IPP 11)

[80] The Tribunal only has jurisdiction to consider claims under the Act, that have been investigated by the Privacy Commissioner.[24] This requires the Commissioner to have notified the respondent of the action alleged to be an interference with privacy and for that alleged action to have been the subject of an investigation, whether or not that investigation was completed.

[81] The Commissioner's investigation sets the boundary of the Tribunal's jurisdiction.[25] It is a question of fact as to whether the Commissioner has actually conducted an investigation into the matters that are before the Tribunal.

[82] To clarify what "action alleged" has been investigated, the Commissioner issues a Certificate of Investigation particularising the subject of the investigation. While that certificate evidences what was within scope of the investigation it is not, on its own, determinative of this issue.[26]

[83] In this claim, the Commissioner's certificate described the matters investigated as being*:*

> The Respondent's collection of the complainant's personal information.

[84] The certificate recorded that IPPs 1, 2 and 4 were applied and that "the Respondent provided its assurance it would return the complainant's personal information in order to resolve the complaint". The investigation was discontinued on that basis.

[85] The Certificate of Investigation does not refer to any investigation of the alleged breach of IPP 6 or IPP 11. While it is accepted that the Certificate is not definitive, the evidence available regarding BMN's complaint supports a finding that neither IPP 6 nor IPP 11 was investigated by the Commissioner. It is acknowledged that BMN's communication with the Commissioner indicated his primary complaint was regarding the collection of his personal information, but that he also referred to his requests for access to his personal information, his desire to retrieve the information, for Stonewood to delete it and his concern about disclosure.

[86] However, the Commissioner's preliminary view[27] and the letter sent to BMN on 25 September 2019 closing the investigation both explicitly record that the Commissioner

[24] Or in respect of the Privacy Act 1993, where there has been an unsuccessful attempt at conciliation (see ss 82 and 83 of the Act) which is not relevant in this claim.
[25] *Van Wey Lovatt v Health New Zealand (Strike Out)* [2023] NZHRRT 37 at [24]; and affirmed by the High Court in *Van Wey Lovatt v Health New Zealand* [2024] NZHC 2538 at [74]
[26] *Van Wey Lovatt v Health New Zealand (Strike out)* at [29].
[27] Conveyed in a letter dated 14 August 2019.

did not investigate BMN's complaint under IPP 6 at all. There is no reference to IPP 11 in either of these letters. The focus was instead on a resolution of BMN's desire to receive the information back from Stonewood and the assurance Stonewood gave the Commissioner in early September 2019 that they would provide BMN with his personal information.

[87] While the Commissioner was therefore aware of BMN's IPP 6 requests and IPP 11 concerns, he clearly chose not to investigate them. Further Stonewood was not notified of an investigation into IPP 6 or IPP 11 and the scope of the investigation did not broaden to include those matters. BMN's IPP 6 and IPP 11 concerns were not investigated by the Commissioner.

[88] Counsel for BMN relied on a Complaints Review Tribunal (CRT) case from 1999[28] and Ministry of Justice reports prepared in advance of the introduction of the Privacy Act 2020 to support a wider interpretation of investigation. However Tribunal case law determined since the 1999 CRT decision under the 1993 Act has greater weight. In *Von Tunzelman v Southland Regional Development Agency Ltd (Strike-Out Applications)*,[29] the Tribunal noted that the manner in which the complaint was viewed, notified, and investigated by the Privacy Commissioner is important in determining if there was an investigation. Applied to BMN's situation, it is very clear from the express statement by the Commissioner that IPP 6 was not investigated and that only the alleged wrongful collection of BMN's personal information under principles IPP 1, 2 and 4 was investigated. There is no mention at all of an investigation into IPP 11.

[89] The Tribunal therefore has no jurisdiction over the IPP 6 or IPP 11 claims and cannot determine this matter further. The remaining issues identified at [27] to be determined in respect of these principles cannot therefore be determined.

REMEDY

[90] The Tribunal has found that Stonewood has interfered with BMN's privacy through its collection of his personal information in breach of IPPs 1, 2 and 4. The Tribunal must now consider what, if any, remedies it should grant under s 85 of the Act.

[91] BMN seeks:

> **[91.1]** A declaration that the actions of Stonewood constitute an interference with his privacy;
>
> **[91.2]** An order restraining Stonewood from continuing to interfere with his privacy;

[28] *Cable v NZ Insolvency and Trustee Service* [1999] NZCRT 10 (6 May 1999).
[29] *Von Tunzelman v Southland Regional Development Agency Ltd (Strike-Out Applications)* [2022] NZHRRT 18.

[91.3] An order restraining Stonewood from repeating or engaging in, or allowing others to engage in, similar conduct which may amount to an interference with his privacy;

[91.4] Damages for pecuniary loss of $394.87;

[91.5] Damages to compensate him for humiliation, loss of dignity and injury to feelings;

[91.6] An order that Stonewood return to BMN all copies of his personal information held by it, and following return, erase his personal information from its possession; and

[91.7] An order that Stonewood return BMN's personal USB to him.

Declaration

[92] The Tribunal has found that Stonewood interfered with BMN's privacy, accordingly a formal declaration is appropriate. There is nothing in this claim that would justify withholding a declaration and although the grant of a declaration is discretionary, declaratory relief is not normally denied where the Tribunal finds there has been a breach.

[93] A declaration is made accordingly.

Orders restraining Stonewood

[94] The remedy of an order to restrain a defendant's conduct is designed to prevent a defendant continuing or repeating an interference with privacy, or, to restrain them from engaging in, causing or permitting others to engage in conduct of the same kind that constituted the interference.

[95] The interference with privacy in this claim is the collection of BMN's personal information and failure to return it to BMN after it had been wrongly collected. Any ability to collect his information again in this manner is unlikely to arise, given BMN is no longer employed by Stonewood. Accordingly, it is not necessary or appropriate to restrain Stonewood from collecting BMN's personal information.

[96] As the actions of disclosing the personal information to other companies have been found to not be within the jurisdiction of the Tribunal, no order can be made in relation to the restraining of any such conduct.

[97] No order will be made restraining the conduct of Stonewood under s 85(1)(b).

Damages for pecuniary loss

[98] BMN claims reimbursement of $394.87 for expenses incurred by the collection of his personal information and failure to return it. This amount is comprised as follows:

[98.1] $299 paid to Stonewood's advocate (at the time), Mr Bennett at Abbey Employment Law Specialists, for the return of his personal information;

[98.2] $45.87 for a USB drive purchased at the request of Mr Bennett for the personal information to be transferred on to; and

[98.3] $50.00 late payment fee charged by Inland Revenue Department for late filing of his tax return due to not having access to his personal information.

[99] The Tribunal is satisfied that the expenses described above were reasonably incurred by BMN as a direct result of the interference by Stonewood with BMN's privacy. BMN incurred the first two expenses in attempting (ultimately unsuccessfully) to obtain the return of his wrongfully collected personal information. The third expense was incurred as he was late filing his tax return due to not having access to his personal information.

[100] Stonewood did not dispute that these costs were incurred. There is a clear causal connection between the interference with privacy and these costs and accordingly Stonewood is required to pay these expenses.

Damages for humiliation, loss of dignity and injury to feelings

[101] For damages to be awarded under this head, there must be a material causal connection between any humiliation, loss of dignity and injury to feelings experienced by the plaintiff and the interference with their privacy.[30] The award of damages is intended to compensate for the harm suffered, not to punish the defendant.[31] The conduct of the defendant must also be taken into account in deciding what remedy to grant.[32]

> **85 Powers of the Human Rights Review Tribunal**
>
> **…**
>
> (4) It shall not be a defence to proceedings under section 82 or section 83 that the interference was unintentional or without negligence on the part of the defendant, but the Tribunal shall take the conduct of the defendant into account in deciding what, if any, remedy to grant.

[102] Having found an interference with privacy on the basis that BMN experienced significant humiliation, distress, and injury to feelings, it follows that the threshold for an award of damages under s 88(1)(c) has been met.[33]

[103] In *Hammond v Credit Union Baywide (Hammond)*, three bands were broadly identified for awards of damages under this head.[34] Damages at the less serious end of

[30] *Gorgus v Chief Executive of Department of Corrections* [2024] NZHC 634 at [75]; and *Reekie v Attorney-General* [2022] NZHRRT 20 at [66].
[31] *Hammond v Credit Union Baywide* [2015] NZHRRT 6, (2015) 10 HRNZ 66 at [170]; and *Gorgus v Chief Executive Department of Corrections* above n 30 at [54].
[32] Section 85(4).
[33] See discussion at [80].
[34] *Hammond,* above n 31, at [176].

the scale have ranged up to $10,000; for more serious cases, awards have ranged from $10,000 to about $50,000; and for the most serious category of cases, awards may be in excess of $50,000.[35]

[104] The circumstances of this interference with BMN's privacy and the impact on him is such that the appropriate level of damages is as submitted by BMN's counsel, within the top band of damages described in *Hammond*, being over $50,000.

[105] Counsel for BMN drew comparisons between BMN's situation and the circumstances in *Hammond,* noting in particular that like Ms Hammond's employer, if Stonewood had "paused for a brief moment to consider its obligations under the Privacy Act, it would have been deflected from the high handed and impulsive reaction". Counsel acknowledged that while damages in the Tribunal are not punitive, the actions of the defendant, where they exacerbate the humiliation, loss of dignity or injury to feelings are relevant to damages.[36] In *Hammond,* the plaintiff was awarded $98,000 in damages for humiliation, loss of dignity and injury to feelings. It was submitted that damages for BMN should be within the vicinity of that figure and certainly in the top band of the *Hammond* damages.

[106] The Tribunal is required to have regard to Stonewood's conduct as noted above.[37] This was not a case where the interference with privacy was unintentional or without negligence.

[107] Stonewood took BMN's work and personal devices and collected his personal information in a planned action orchestrated to occur while he was taken out of the office by Mr Gilchrist. It was apparent from the evidence of both Miss Jenny Chow and Mr Chow that no consideration was given to privacy interests, nor was there any attempt to carry out the actions in a manner or setting that could minimise the humiliation, loss of dignity and injury to feelings of BMN.

[108] The conduct of Stonewood exacerbated the humiliation, loss of dignity and injury to feelings BMN experienced. A prompt return of his personal information wrongly collected would have significantly reduced the humiliation, loss of dignity and injury to feelings he experienced. Instead Stonewood effectively blocked BMN's attempt to obtain the return of his information and through Mr Bennett, engaged in a range of tactics that delayed the return of his wrongly collected information, including requiring BMN to provide a USB for his personal information, then not providing the information; issuing an invoice for $299 for the return of his personal information, but still not providing the information after it was paid; requiring BMN to attend a certain location to pick up his personal information and not providing it when he did not attend. Stonewood does not dispute

[35] *Hammond* above n 31 at [176].
[36] As also discussed in *Hammond* above n 31 at [170.3].
[37] Section 85(4).

engaging in any of these actions. These tactics were performed against the backdrop of Stonewood having assured the Privacy Commissioner it would provide BMN with his personal information by 18 October 2019. This assurance was not met.

[109] Stonewood has defended this claim on the basis there was no collection of BMN's information and therefore no interference with privacy but submitted that if an interference with privacy was found, "it would not warrant any remedy as it is minor and was a passive collection of information". In the alternative, Mr Bennett submitted that any damages should be no more than $25,000 to $30,000, being what he described as the "mid to low" band of *Hammond*.

[110] As discussed earlier,[38] Stonewood also submitted that the harm BMN experienced, may not have been caused by the breaches of the collection principles, but rather caused by the loss of his employment. However, for the reasons already discussed, the Tribunal is satisfied that it was the inability to access or arrange the return of his personal information was a material cause of the humiliation, injury to feelings and loss of dignity that BMN suffered.

[111] While both parties compared BMN's circumstances to that of Ms Hammond, in this claim the Tribunal has only found an interference with privacy arising from the collection of BMN's personal information, not from the disclosure of that information. *Hammond* was the opposite, an interference with privacy was found as a result of the disclosure to third parties but not because of the collection of personal information. This distinction appropriately impacts the award of damages given the breadth of exposure of the information to others in Ms Hammond's situation and the resultant impact on future work and the humiliation, loss of dignity and injury to feelings that elicits, when personal information is wrongly disclosed to a wide audience.

[112] The Tribunal finds that an award of damages of $60,000 is appropriate, this reflects the significant level of humiliation, loss of dignity and injury to feelings experienced by BMN as a result of the wrongful collection of his personal information.

Orders to remedy the interference

[113] The Tribunal may grant an order that the defendant perform certain actions to remedy an interference or redress any loss or damages suffered by an aggrieved individual as a result of that interference.[39]

[114] BMN seeks the return of his wrongfully collected personal information and of his USB containing personal information, he also requests that his personal information then be deleted off any devices in Stonewood's possession.

[38] Above [70]–[80].
[39] Section 85(d).

Return of Personal Information

[115] The personal information was wrongfully collected in an interference with BMN's privacy, the appropriate remedy is the return of a copy of all of BMN's personal information that was on his work laptop and his personal USB.

[116] Stonewood has repeatedly indicated they provided BMN with his personal information and have consistently said it would be returned, however that has not comprehensively occurred. There is no evidence the personal information was returned prior to the commencement of this proceeding. Some was returned following a teleconference convened by the Tribunal but not all. The personal information wrongfully collected must be returned.

[117] To assist Stonewood in ensuring that all personal information is returned, they may find it useful to refer to the Memorandum dated 4 May 2022 filed by BMN's counsel listing categories of documents.

Return of USB containing personal information

[118] BMN's personal USB containing his personal information was taken when his other devices were uplifted, while an order has been made that all his personal information be returned, to him, it is appropriate that Stonewood also return the USB to practically redress the loss suffered by BMN as a result of the interference with his privacy.

Deletion of Personal Information

[119] To ensure that the wrongful collection of BMN's personal information is redressed appropriately and permanently, it is also necessary for the personal information to be deleted from any devices in Stonewood's possession where it is held.

FINAL NON-PUBLICATION AND SEARCH ORDERS

Interim Orders

[120] The Tribunal issued interim non-publication orders, pursuant to ss 95 and 107 of the Human Rights Act 1993 (HRA), on 31 August 2021 and amended these orders on 31 May 2022. The interim orders currently in force are:

> **[120.1]** Publication of the name, physical address, email address, phone number, occupation and any other detail which could lead to the identification of the plaintiff in this proceeding is prohibited pending further order of the Chairperson, Deputy Chairperson or Tribunal.
>
> **[120.2]** Publication of the plaintiff's profession and current or former employers (excluding Stonewood Group Ltd) in connection with this proceeding is prohibited pending further order of the Chairperson, Deputy Chairperson or Tribunal.

[120.3] There is to be no search of the Tribunal file without leave of the Chairperson, Deputy Chairperson or Tribunal. The parties are to be notified of any request to search the file and given an opportunity to be heard on that application.

Application for Final Orders

[121] BMN seeks final non-publication orders in respect of his name, address, occupation, and any other details which would lead to his identification.

[122] Stonewood opposes the non-publication orders.

Legal Framework

[123] The Tribunal may order non-publication of the name and identifying details of a participant in a proceeding, or any account of the evidence, in accordance with s 107(3)(b) of the HRA, if satisfied that it is desirable to do so.[40]

[124] To determine whether it is desirable to do so, the Tribunal must consider whether there is material before the Tribunal to show specific adverse consequences sufficient to justify an exception to the fundamental rule of open justice. The standard is a high one. The Tribunal must also consider whether an order is reasonably necessary to secure the "proper administration of justice" in proceedings before it and ensure it does no more than is necessary to achieve that.[41]

[125] Open justice is an essential legal principle. It was described as follows:[42]

> [2] The principle of open justice is fundamental to the common law system of civil and criminal justice. It is a principle of constitutional importance and has been described as 'an almost priceless inheritance'. The principle's underlying rationale is that transparency of court proceedings maintains public confidence in the administration of justice by guarding against arbitrariness or partiality, and suspicion of arbitrariness or partiality, on the part of courts. Open justice "imposes a certain self-discipline on all who are engaged in the adjudicatory process – parties, witnesses, counsel, Court officers and Judges". The principle means not only that judicial proceedings should be held in open court, accessible by the public, but also that media representatives should be free to provide fair and accurate reports of what occurs in court. Given the reality that few members of the public will be able to attend particular hearings, the media carry an important responsibility in this respect. The courts have confirmed these propositions on many occasions, often in stirring language. [Footnotes omitted.]

[126] As any non-publication order also limits the right to freedom of expression guaranteed by s 14 of the New Zealand Bill of Rights Act 1990 (NZBORA), the Tribunal must also ensure the exercise of that discretion (including the terms of any order) is a reasonable limit on that right, as is required by s 5 of NZBORA.[43] The steps set out in

[40] Human Rights Act 1993 (HRA), s 107(3)(b) applies to proceedings by virtue of s 89 of the Act and s 134 of the Privacy Act 2020.
[41] *Waxman v Pal (Application for Non-Publication Orders)* [2017] NZHRRT 4 *(Waxman)* at [66].
[42] At [56] where the Tribunal cited *Erceg v Erceg* [2016] NZSC 135.
[43] *Marshall v IDEA Services Ltd (Application for Interim Non-Publication Orders)* [2019] NZHRRT 52 at [16.2].

Waxman[44] in essence mirror the proportionality test to be applied under s 5 but also reflect the context in which freedom of expression is being limited.[45]

[127] The High Court in *JM v Human Rights Review Tribunal*[46] emphasised that non-publication orders being considered in the Tribunal must be governed by the statutory standard of such an order being "desirable" and reiterating that the test under s 107(3) of the HRA is a two stage test:[47]

[128] Accordingly, the Tribunal must consider the following issues to determine if a final non-publication order should be granted:

> **[128.1]** Is a non-publication order desirable?
>
> **[128.2]** If so, should the Tribunal exercise its discretion to grant the non-publication order?

Is a final non-publication order desirable?

[129] BMN has given evidence of a range of actions taken by Stonewood and individuals associated with Stonewood that have impacted his mental health. BMN says if he is identified in relation with these proceedings, his mental health will worsen and it will have an adverse impact on his current employment and ongoing employment prospects.

[130] In particular, BMN has noted the disclosure by Stonewood of his personal information to former employers and others, the repeated statements by Stonewood to him and to others that he was being investigated by the Police for information theft (when the Police have expressly confirmed he was not), including Mr Bennett emailing BMN's employer at that time with this inaccurate information. As well as repeatedly declining BMN's attempts to access his personal information and ostensibly changing requirements when BMN requested his information. These actions have been what BMN characterised as a "campaign of harassment and intimidation", causing him "significant humiliation and feelings of exasperated stress and anxiety". BMN is concerned that if he is named in this proceeding then this pattern of conduct towards him will continue and further impact him.

[131] The actions BMN has described have not been disputed by Stonewood.

[132] The Tribunal accepts that the incidents BMN described occurred and that the ongoing disparaging remarks towards him and about him have taken a toll. The Tribunal observes that remarks of this type also occurred at the hearing. It is accepted that the

[44] *Waxman* above n 41 at [66.4.1]–[66.4.3].
[45] See *Moncrief-Spittle v Regional Facilities Auckland Ltd* [2022] NZSC 138, [2022] 1 NZLR 459 at [87]-[92] for a discussion of the s 5 New Zealand Bill of Rights Act 1993 test.
[46] *JM v Human Rights Review Tribunal* [2023] NZHC 228 at [37].
[47] At [83]-[85].

impact of this conduct, if BMN's name is made public, may result in specific adverse consequences for BMN in terms of his personal and professional life.

[133] Stonewood submitted the non-publication orders should not be made, as the evidence does not support it as medical certificate is too old because the public should know about BMN "and his actions" and because there is nothing unusual about this claim.

[134] These submissions are addressed in turn.

[135] The age of the medical certificate does not preclude a grant of name suppression given the other evidence before the Tribunal. The Tribunal has accepted BMN's evidence that his mental health has been significantly impacted from the wrongful collection and that continued to the date of the hearing. The Tribunal accepted the medical certificate shows BMN suffered from acute anxiety and depression as a result of the wrongful collection of his personal information and that at the time of the hearing still suffered from those conditions.

[136] The suggestion that the public "need to know about" BMN and his actions, is consistent with the very conduct that BMN says will cause him serious adverse consequences if name suppression is not granted - namely the repeated allegations about BMN's actions during the course of this proceeding despite it only concerning whether Stonewood had complied with the Privacy Act. In this proceeding there is nothing about BMN's actions that are relevant or of such note that they should be published to the public at large. As noted below, open justice, which encompasses the public's interest in this proceeding can be protected even if BMN's name is not published.

[137] The third reason provided for opposing final non-publication orders is that there is nothing unusual about this claim. Every claim concerns different facts so it is difficult to understand what is meant by this submission. In any event this is not relevant, as it forms no part of the criteria for non-publication orders.

[138] BMN has provided evidence of serious adverse consequences that would occur if the final non-publication orders are not made. It is accepted that these serious adverse consequences are sufficient to justify an exception to the fundamental rule of open justice.

[139] The non-publication orders being sought do not extend to the names of his current or former employers (as the interim orders did) and only cover BMN's name and other identifying details. This is sufficient to secure proper administration of justice, without doing any more than necessary to achieve that.

[140] There is very little, if any, public interest in BMN's name or other identifying details being known in connection with the circumstances of this claim. The principle of open justice can be maintained by the publication of the Tribunal's decision with his name and identifying details redacted. This enables transparency of the reasons for this decision

and does not undermine the ability of the public to understand or the media to report on the decision in accordance with open justice.

[141] It is desirable to prohibit publication of the name and identifying details of BMN.

Should the Tribunal exercise its discretion to grant the non-publication order?

[142] It has been determined it is desirable to prohibit publication of BMN's name and identifying details, the Tribunal must now determine it if should exercise its discretion to make this non-publication order.

[143] The Tribunal is satisfied it is appropriate to do so and considers as it is only BMN's name and identifying details being restricted, it is reasonable to do so and is also a reasonable limit on the right to freedom of expression.

[144] It is also appropriate to give effect to this non-publication order by restricting search of the Tribunal file. Those orders are made accordingly.

ORDERS

[145] The Tribunal is satisfied on the balance of probabilities that actions of Stonewood were an interference with the privacy of BMN. Accordingly, the following orders are made:

> **[145.1]** A declaration that Stonewood Group Limited interfered with BMN's privacy.
>
> **[145.2]** Stonewood Group Limited is to provide BMN with a full and complete copy of all his personal information that was collected from BMN and was on his work laptop and his personal USB drive on 21 March 2019, no later than 20 working days after the date of this decision.
>
> **[145.3]** Stonewood is to delete all copies of BMN's personal information that it holds and is to instruct anyone that it has provided with the information to destroy their copies within 10 working days of the date of compliance with the order at [145.2] above.
>
> **[145.4]** Stonewood is to pay BMN damages of $394.87 for pecuniary loss, no later than 20 working days after the date of this decision.
>
> **[145.5]** Stonewood is to pay BMN damages of $60,000 for humiliation, loss of dignity and injury to feelings, no later than 20 working days after the date of this decision.
>
> **[145.6]** Stonewood is ordered to return BMN's personal USB to him within 20 working days of the date of this decision. If the USB cannot be located, then Stonewood Group Ltd is to use all reasonable endeavours to locate it and is to serve on BMN an affidavit detailing its endeavours to locate the USB within 20 working days of this decision.

[145.7] A final order is made prohibiting publication of the name, address, occupation and any other identifying details of BMN.

[145.8] There is to be no search of the Tribunal file without leave of the Chairperson, Deputy Chairperson or of the Tribunal. The parties are to be notified of any request to search the file and given the opportunity to be heard on that application.

COSTS

[146] BMN seeks costs. Unless the parties come to an arrangement on costs, the following timetable is to apply:

[146.1] BMN is to file his submissions (no more than five pages) within 10 working days after the date of this decision.

[146.2] Any submissions (no more than five pages) for Stonewood are to be filed within the 10 working days which follow. BMN will then have the right of reply within five working days after that, any reply submissions are to be no more than five pages.

[146.3] The Tribunal will then determine the issue of costs based on the written submissions without further oral hearing.

[146.4] In case it should prove necessary, we leave it to the Chairperson of the Tribunal to vary the foregoing timetable.

.....	.....	.....
Ms SJ Eyre	**Mr MJM Keefe QSM JP**	**Mr IR Nemani**
Chairperson	**Member**	**Member**