BREACHING PRIVACY COSTS

When a student association vice president leaked a letter to a magazine about the association's president concerning her performance, the president complained it was a breach of her privacy. Paul Robertson takes a look at the Human Rights Review Tribunal's findings.

SCHOOLS, LIKE ANY OTHER large organisation, 'leak' information about other staff members and students. Someone who is upset by the leaking of their personal information can complain to the Privacy Commissioner and then on to the Human Rights Review Tribunal.

What is the cost to the person/school if personal information is leaked this way? A decision from the Tribunal in 2015 gives guidance.

TROUBLE AT THE ASSOCIATION

The Tribunal considered a complaint by the president of a student association. The president had been given a letter about her performance warning that, unless she improved her performance within a tight timeframe, there would be further action which could include committee members seeking a vote of no confidence.

The vice president of the executive committee, who was also a journalist, provided a copy of the letter to a reporter for the university magazine and the magazine published an extract from the letter in an article.

The president's concern was that the 'leaking' of the letter breached Principle 11 in the Privacy Act.

The vice president argued that disclosure of the warning letter was necessary to ensure that students were properly informed about what was happening to the association.

Principle 11 provides that the disclosure must directly relate to the purpose in connection with which the information was obtained. At the time the warning letter was drafted, there was no consideration of releasing the warning letter to students. The focus was on putting the president on notice of performance concerns.

The vice president argued that he released the letter on behalf of the executive committee and this should make a difference. "No" said the Tribunal, there was firstly no evidence that the letter was disclosed with the agreement of the other executive members, and, secondly, the fact that it was released on behalf of the executive was not a defence. The disclosure did, however, expose the whole executive to liability.

In addition, the letter was released before the president had an opportunity to attend to the matters complained about in the letter. The Tribunal concluded that the letter had been released as part of a personal vendetta in order to embarrass the president.

The Privacy Act sets out when the release of information will be unwarranted interference with privacy. Here it was sufficient that there was a breach of one of the information privacy principles (principle 11).

HOW MUCH?

The next step was to assess the compensation to be paid.

The vice president was a journalist by occupation and should have known about the consequences of leaking the letter. Comments that he made in the magazine article showed his animosity towards the president and that his intention was to embarrass and to hurt her as much as he could.

However, the remedies prescribed by the Privacy Act do not have as their purpose the punishment of the defendant.

The president gave evidence that she felt "absolutely humiliated" by the publication of the letter. She found it degrading to receive hate mail from strangers. She suffered from stress and anxiety, had trouble sleeping, sought medical treatment and was prescribed medication.

The Tribunal noted that the information was made available on the internet and the article had 'gone viral'.

The president was awarded $18,000 for humiliation, loss of dignity and injury to feelings. The Tribunal also made a training order directing that the vice president attend a Privacy Act workshop to understand his responsibilities under the Privacy Act.

Director of Human Rights Proceedings v Crampton [2015] NZHRRT 35

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