

PRIVACY PRINCIPLE 4: DISCLOSURE FOR THE PURPOSES OF ENCOURAGING HARASSMENT

Background

Under section 21(1)(e)(vii) of the Broadcasting Act 1989, the BSA is required to encourage the development and observance by broadcasters of codes of broadcasting practice in relation to the privacy of the individual. Each of the main broadcasting codes (Free-to-Air Television, Pay Television and Radio) contains a privacy standard, which operates in conjunction with the BSA's eight privacy principles.¹ The purpose of this Practice Note is to provide guidance to complainants and broadcasters about the usual way privacy principle 4 is interpreted by the BSA.

Privacy principle 4 states:

The protection of privacy includes the protection against the disclosure by the broadcaster, without consent, of the name and/or address and/or telephone number of an identifiable individual, in circumstances where the disclosure is highly offensive to an objective reasonable person.

BSA Decisions

The following summaries explain the BSA's approach in its decisions on privacy principle 4 between 2006 and 2011.²

Disclosure must be highly offensive

Privacy principle 4 was developed to prevent the broadcast of a person's details in circumstances where they are disclosed for the purposes of encouraging harassment of the person by members of the public.

The following were considered highly offensive disclosures:

- a radio host told listeners where they could find the complainant's listing in the White Pages after he appeared on television describing his method for drowning cats. The host suggested listeners "send something to him", adding that he thought Mr Spring was "the cat Hitler, is a cruel, cowardly, disgusting, sickening, shit bag..." (*Spring and TRN 2007-108*)
- a radio host disclosed a caller's cellphone number and told listeners to call "If you would like to learn to be a better person" (*RW and RadioWorks, 2008-111*)

¹ The Codes and the privacy principles can be viewed on the BSA's website, www.bsa.govt.nz

² Cited by name and decision number. All decisions are available on the BSA's website, www.bsa.govt.nz

The BSA found that the following disclosures were not highly offensive:

- a radio host disclosed the address of the house where the TV programme *Outrageous Fortune* was filmed. The BSA considered that the address was disclosed to encourage people to “pay homage” to the house, rather than to harass the person who lived there (*South Pacific Pictures and RadioWorks*, 2008-017)
- the disclosure of the address of a house where a police officer had been shot. The BSA found while the number on the letterbox was visible and therefore a small number of viewers may have made the connection between the address shown and the person or people who lived there, this did not amount to disclosure for the purposes of encouraging harassment as contemplated under privacy principle 4 (*Nyhane and TVWorks Ltd*, 2010-006)
- a radio host disclosed the name of a listener who had been corresponding with him by email. The host called the listener a “moron” who was “incapable of rationality” and said “don’t email me again until you’ve had some help with your head”. The BSA found that the listener had no reasonable expectation of anonymity when emailing a talkback radio station due to the public nature of the forum, and because he had continued to send emails (which included his full name) with no specific request for confidentiality (*Malone and The Radio Network Ltd*, 2006-034)
- the full name, occupation and signature of the St John’s paramedic who responded to a convicted murderer’s medical emergency. The BSA found that the disclosure was incidental and not for the purposes of harassment (*The Order of St John and TVWorks Ltd*, 2009-025).

Extension of the principle to careless or negligent disclosures

In *NJ and APNA Networks Ltd* (2010-066), the BSA extended the scope of principle 4 to cover situations where the disclosure results in the harassment of an individual, due to the careless or negligent actions of a broadcaster. In this case, the broadcaster disclosed the complainant’s telephone number, without his permission, within a matchmaking programme which was designed specifically for the purpose of eliciting responses. The BSA upheld a breach of principle 4 on the basis that although the disclosure of the telephone number was not intended to result in harassment, harassment occurred as a foreseeable consequence of the broadcaster’s carelessness.

Disclosure of name and/or address and/or telephone number

In addition to name, address and telephone number, the BSA has also found that privacy principle 4 can apply to the disclosure of:

- the page number of an individual’s White Pages listing (*Spring and TRN*, 2007-108)

- an email address (*Marshall and RadioWorks Ltd*, 2010-146)³

For further discussion of privacy as a broadcasting standard, see the BSA's Practice Note, *Privacy as a Broadcasting Standard* (June 2010), and Dr Nicole Moreham, *Private Matters: A Review of the Privacy Decisions of the Broadcasting Standards Authority* (December 2009) at www.bsa.govt.nz

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Disclaimer: Nothing in this Practice Note binds the BSA in determining the outcome of any future complaint. Each complaint is determined on the particular facts surrounding a broadcast.

³ See the BSA's earlier decision in *Kirk and TVWorks*, 2007-088, where it determined that principle 4 did not apply to the disclosure of email addresses, because such disclosure did not result in the same "potential harassment or physical threats at their place of residence".