

## Covid's threat to personal privacy

Few if any of us realise we currently face a challenge to our right to privacy from what's called the 1984 test.

Not the year 1984, but the dystopian novel written by George Orwell on the evils of totalitarianism, especially government strategies to control citizens.

Debate about personal privacy never quite disappears in settled democracies, and has emerged again as we confront the difficulties of tracing Covid-19 contacts.

The narrative seems simple – is right to privacy outweighed by the need to preserve life? How strong are our privacy principles?

Ours date back to 17<sup>th</sup> century Britain, when the industrial revolution and urbanisation spawned a need to preserve natural light shining through London's windows.

The resulting Prescription Act 1832 was the world's first privacy law, because while it aimed to save sunshine it also bestowed a right not to be overlooked by neighbours.

Despite that promising start, the word "privacy" didn't materialise in other early British parliament-enacted law (on which ours is based). Protecting personal privacy depended on the tortuous development of a tort in common law, which people use to sue one another.

The privacy tort got a helping hand in 1849, when Queen Victoria's husband, Prince Albert, sued a man for publishing some of the prince's etchings, although it was called breach of confidence rather than privacy.

After that, the tort withered and its development fell to the Americans, beginning in 1890 when lawyer and judge Louis Brandeis was offended with newspaper coverage of his daughter's wedding, so wrote a famous essay called "The right to privacy".

The American tort that emerged had a big influence when nearly a century later New Zealand got round to grappling with the need to protect personal information from the onset of digital communication.

US law helped shape the thinking of politicians like Sir Geoffrey Palmer and Peter Dunne, who were influential in developing our mis-named Privacy Act (which focuses on data protection rather than personal privacy), and our first privacy commissioner, Bruce Slane.

The international electronic transfer of money by banks and companies was a big driver of their efforts.

The transfer agencies demanded all so-called developed countries adhere to legal guidelines, and by the mid-1980s New Zealand was the only such nation without them.

There wasn't much argument about that aspect as discussion ran hot over what our new law should cover.

Much debate centred on whether every Kiwi should have a single ID number that would be used for all transactions with central government, something like last century's informal use of tax numbers in the US.

The many NZ opponents to such an intrusive practice successfully evoked the George Orwell “big brother” threat, so our Privacy Act specifically forbids a unique identifier.

That doesn’t mean identifiers can’t be used, and they are, extensively in this digital age.

How many are the logins and passwords we must have to function, and how often must we update them at the frequent insistence of social media, software companies, government departments and online shops.

Until now, we’ve accepted such inconvenience, but Covid-19 tracers discovered nearly a third of Kiwis they needed to contact could not be found because their online data was out of date.

Pressure built on the government to develop a tracking app. The process took weeks, and was done with a nervous eye on overseas approaches less concerned about privacy rights.

That we now have something voluntary that ensures personal details aren’t accumulated in a central government computer is reassuring. But it’s useless unless adopted by the majority of retail outlets, and so far that hasn’t happened.

Now there’s a bigger issue than the perpetual threat from big bro – the one from little bros, private operators who beat the government to it and got retailers to adopt their app instead.

We’ve encountered them at New Plymouth outlets. In fact, to this point our government code hasn’t registered anywhere. Either we’re not asked for anything, directed to sign a physical register, or “enrolled” in apps we’ve never heard of, systems that swallowed our details with no explanation from anyone.

I found one on my phone later and tracked down the operator, an NZ company that said my information is safe and will not be passed on to anyone.

The spokesman said he merely developed the app as a way to call government attention to his company’s digital capabilities.

Perhaps it should have listened, instead of repeatedly telling us how many people have downloaded its irrelevant official app.