



Unstructured data and advanced tooling: legal issues and considerations

NZILA – Thursday 7 September 2023

PRESENTED BY

Joseph Fitzgerald (Partner)

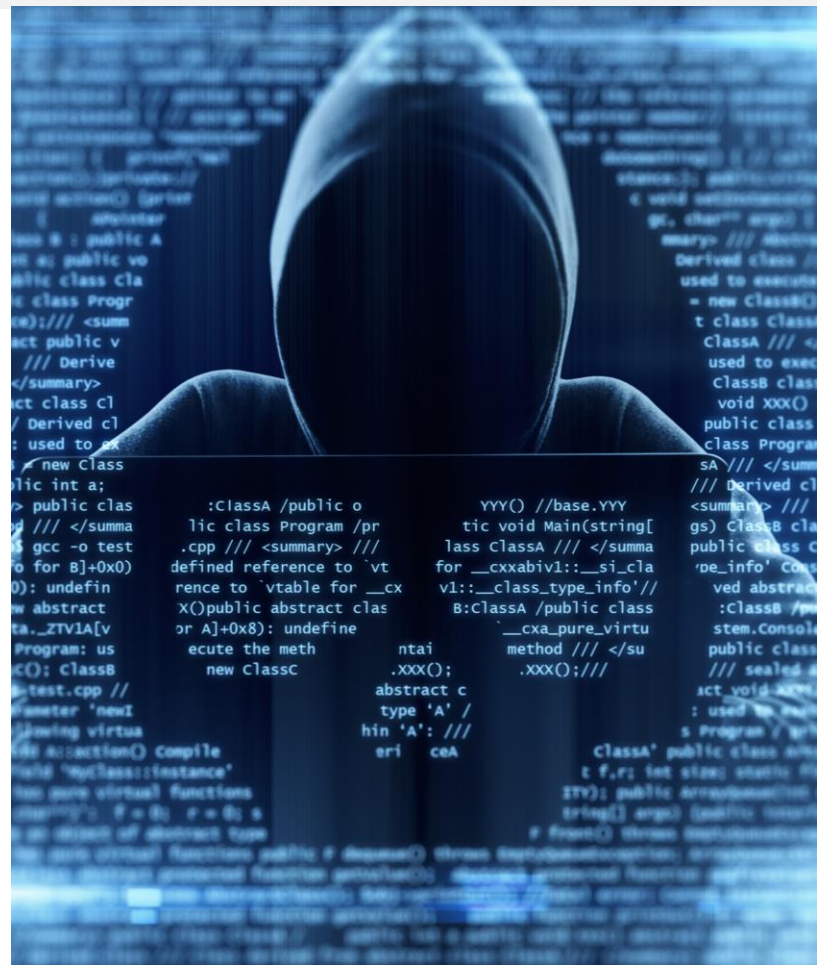
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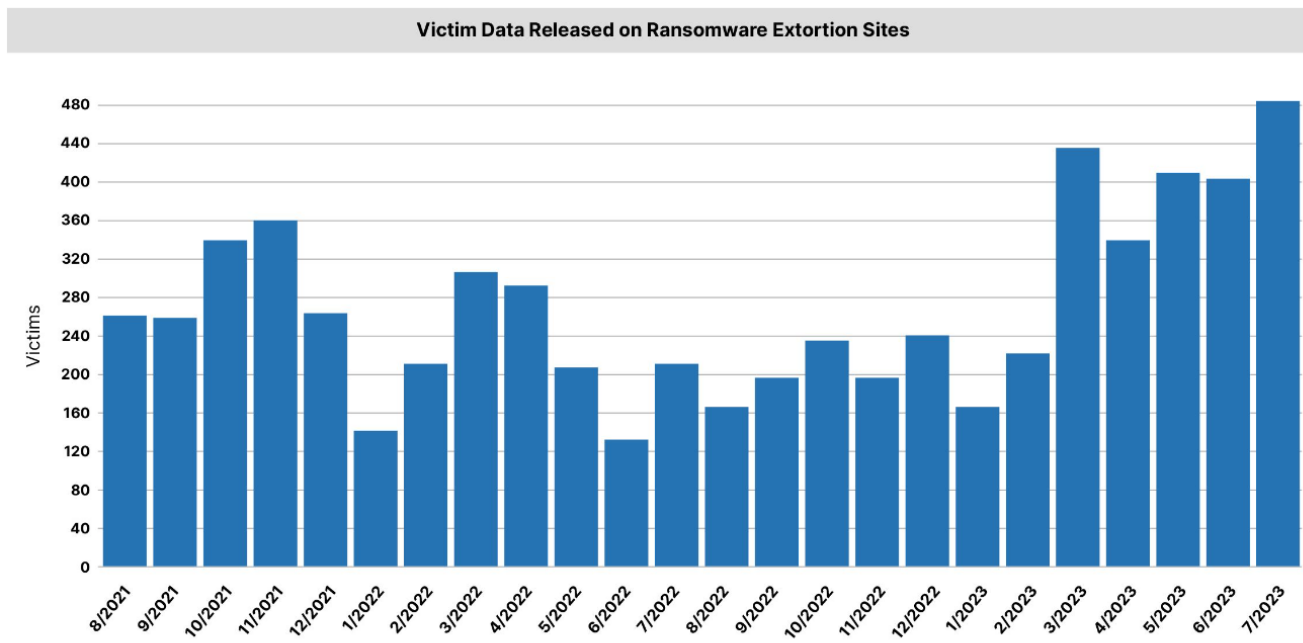
Today we will cover

- | | |
|----------|---|
| 1 | The problem – exfiltration |
| 2 | Legal treatment of unstructured data in New Zealand |
| 3 | Gerard Ward – technical considerations |
| 4 | Q&A / The solution – legal considerations in advanced tooling |

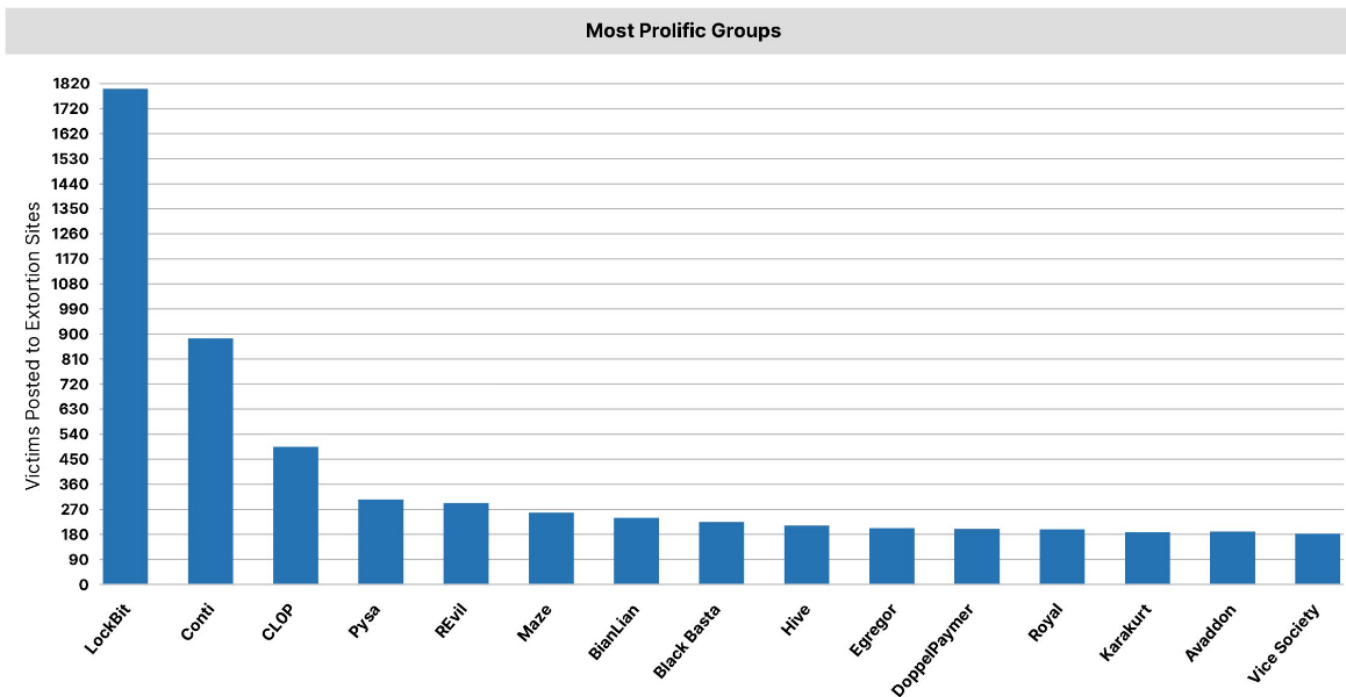
- Data exfiltration is becoming increasingly prevalent, and commonly the “main” extortion leverage.
- Kroll (2021) – almost 80% of ransomware attacks include an exfiltration threat.
- Unit 42 Incident Response (2023) – 70% of negotiated ransomware cases involved data exfiltration (up from 40% in 2021).
- Recorded Future Ransomware Tracker (2023) – 482 victims had data released on ransomware sites, compared to just over 200 same time in 2022.



Recorded Future Ransomware Tracker (23 August 2023)



Recorded Future Ransomware Tracker (23 August 2023)





ALL YOUR **IMPORTANT FILES** ARE **STOLEN AND ENCRYPTED!**

Any attempts to restore your files with the third-party software will be **fatal** for your files!
To recovery your data and not to allow data leakage, it is possible only through purchase of a private key [from us](#)

There is only one way to get your files back:

Through a standard browser

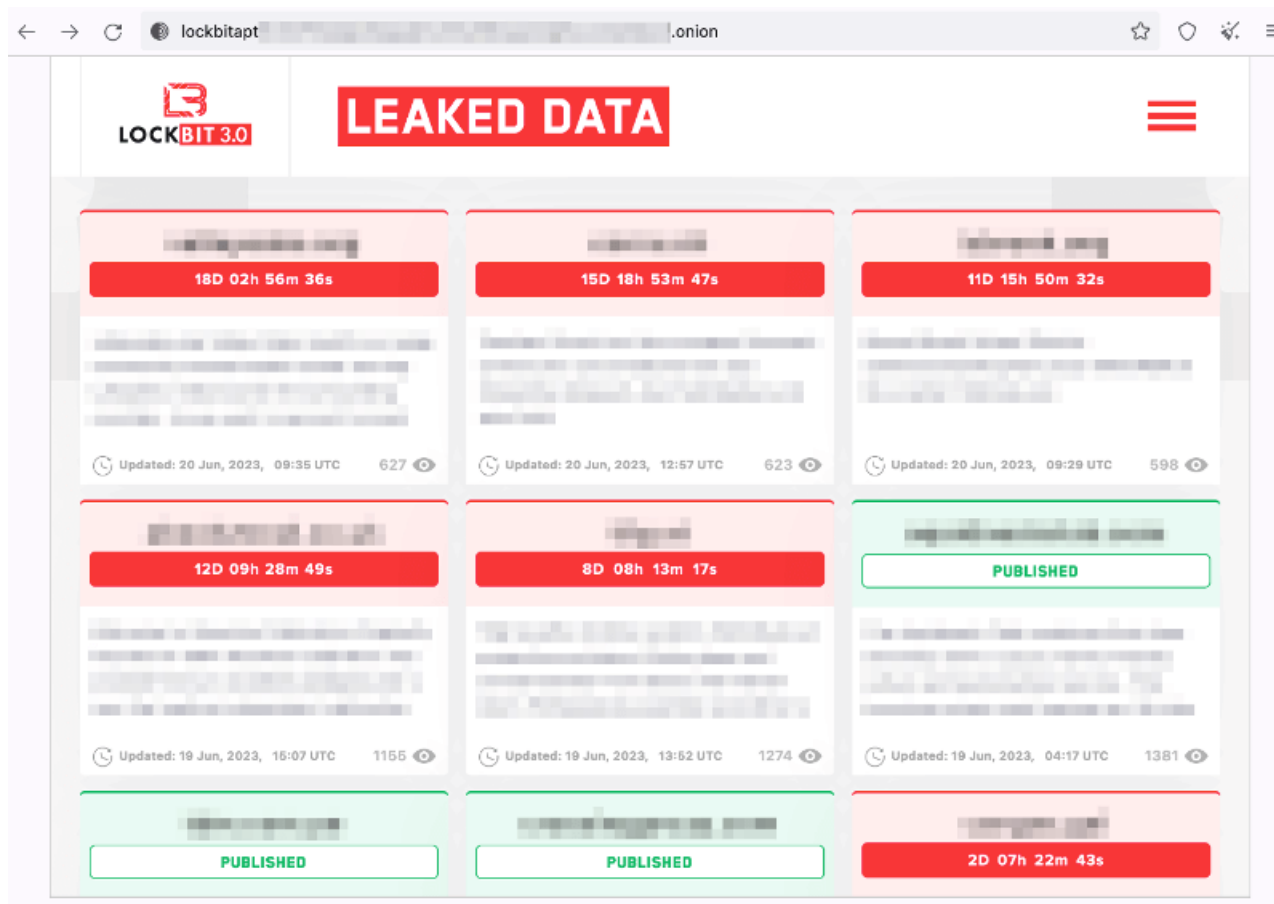
- Brave (supports Tor links) Firefox Chrome Edge Opera
- Open link - [https://de\[redacted\].at/](https://de[redacted].at/)

Through a **Tor Browser** - recommended

- Download Tor Browser - <https://www.torproject.org/> and install it.
Open one of links in Tor browser and follow instructions on these pages:
[http://lockbits\[redacted\].onion/](http://lockbits[redacted].onion/)
- or mirror
[http://lockbits\[redacted\].onion/](http://lockbits[redacted].onion/)
These links work only in the Tor browser!
- Follow the instructions on this page

ATTENTION!

- [https://\[redacted\].at](https://[redacted].at) may be blocked. We recommend using a Tor browser (or Brave) to access the TOR site
- Do not rename encrypted files.
- Do not try to decrypt using third party software, it may cause permanent data loss.
- Decryption of your files with the help of third parties may cause increased price (they add their fee to our).
- Tor Browser may be blocked in your country or corporate network. Use <https://bridges.torproject.org> or use Tor Browser over VPN.
- Tor Browser user manual <https://tb-manual.torproject.org/about>
- All your **stolen important data** will be loaded into our blog if you do not pay ransom.
Our blog
[http://lockbit\[redacted\].onion](http://lockbit[redacted].onion)
or [https://\[redacted\].blog.at](https://[redacted].blog.at) where you can see data of the companies which refused to pay ransom.



The top half of the image features a dark blue, textured background that resembles watercolor or a mottled paint effect. The colors range from deep navy blue to a lighter, teal-like blue, with soft, irregular edges between the different shades.

The legal treatment of unstructured data

- A uniquely New Zealand problem (at least when compared to modern data protection regulations).
- General Data Protection Regulation (EU):

“This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.”



"The protection of natural persons should apply to the processing of personal data by automated means, as well as to manual processing, if the personal data are contained or are intended to be contained in a filing system. Files or sets of files, as well as their cover pages, which are not structured according to specific criteria should not fall within the scope of this regulation."

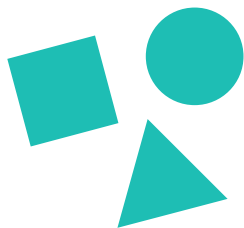
General Data Protection Regulation (EU), Recital 15

- Privacy Act 2020 – Personal Information:
 - “information about an identifiable individual”, structure agnostic.
 - *Police v Ombudsman* [1985] 1 NZLR 578 (HC):
 - “not confined to the written word but embraces any knowledge, however gained or held”
 - [1988] 1 NZLR 385 (CA):
 - “that which informs, instructs, tells or makes aware” can include unrecorded matter held in a person’s memory.
 - *Case note 292270* [2019] NZPriv Cmr 6:
Employer refused to give information held in their mind.



- The Privacy Act 2020 lacks an accountability requirement.
- GDPR – 6 principles (lawfulness, purpose, minimisation, accuracy, storage, integrity/confidentiality) *AND* an accountability requirement.
 - Article 5(2): *“The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 (‘accountability’).”*
 - Article 30(1): *“Each controller and, where applicable, the controller’s representative, shall maintain a record of processing activities under its responsibility... That record shall contain all of the following information:”*

As a result, we have large exfiltration events impacting information that is...



Unstructured



Non-compliant



Unknown

...which you usually have to tell the OPC about. To return to APRA: inconsistent reporting of material incidents and control weaknesses to APRA in a timely manner.



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Q&A / legal considerations in advance tooling

Legal considerations



Training



Transparency



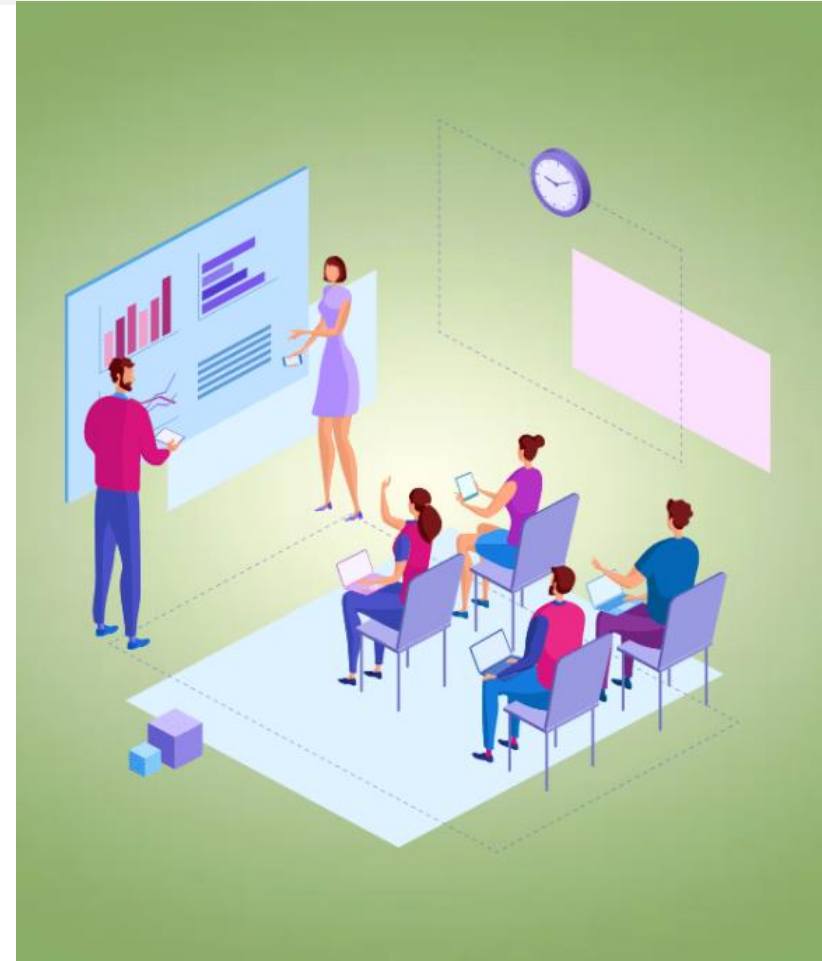
Outputs



The “Fettered
Discretion” issue

Training

- Where has the training data come from?
Internal? External?
- If external - is that training data compliant?
 - Privacy Act 2020
 - Data scrapping
 - Intellectual property
- If internal – where does it go?
 - Security risk
 - Processing risk





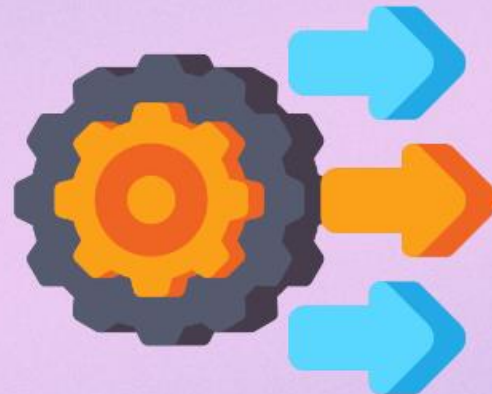
Transparency

- Black-box processing – what do people have a right to know?
- GDPR:
 - Art 13.2(f) – “*meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing*”
- Privacy Act 2020:
 - More limited specific application
 - But the general rules still apply: IPP4; IPP6; IPP10
- How do you explain this stuff?



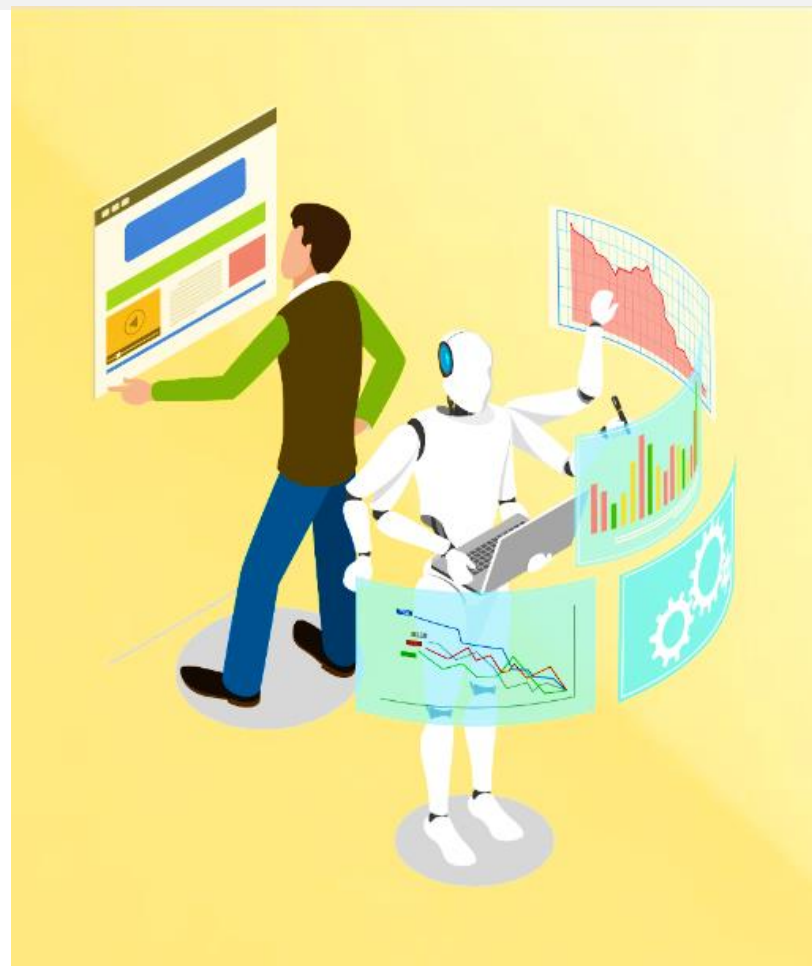
Outputs

- What do outputs look like? What can you do with them?
- Aggregation of data – something new?
- Privacy Act 2020: IPP 10 – *“the purpose for which the information is to be used is directly related to the purpose in connection with which the information was obtained”*
- IP considerations – who owns the output? What about the trained algorithm?




The “fettered discretion” issue:

- What level of automation vs human engagement is appropriate?
- Raised consistently in the public/administrative law context.
- IPP8 – “An agency ... must not use or disclose that information without taking any steps that are, in the circumstances, reasonable to ensure that the information is accurate” (PCC276 Case Note 205558 [2010] NZPrivCmr 1)
- Government principles for the safe and effective use of data analytics.



- APRA Cyber Security Stocktake - 5 July 2023
- Around a quarter of APRA's regulated entities (~24%) were assessed in the first tranche of CPS 234 assessments. The most common control gaps identified in this tranche were:
 - **Incomplete identification and classification for critical and sensitive information assets;**
 - Limited assessment of third-party information security capability;
 - Inadequate definition and execution of control testing programs;
 - Incident response plans not regularly reviewed or tested;
 - Limited internal audit review of information security controls; and
 - **Inconsistent reporting of material incidents and control weaknesses to APRA in a timely manner.**



Q+A

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