

7 July 2020

[REDACTED]

By email only: [REDACTED]

Dear [REDACTED]

Official Information Act #19.177 - Profile Finance

1. We refer to your request received on 10 June 2020 for a copy of Schedule 1 to the settlement agreement between the Commerce Commission (Commission) and Profile Finance Limited dated 17 April 2020.¹
2. You advised the purpose of your request is to advise clients of [REDACTED] who may be entitled to a refund, and to understand how the amounts were calculated.
3. We have treated this as a request for information under the Official Information Act 1982 (OIA).
4. On 17 June 2020, we advised that Schedule 1 contains information about 2,119 loans, including personal information about a significant number of borrowers, and that we consider we would need to consult with each borrower in order to make a decision on whether to release the information. We asked if you could narrow the scope of your request to clients of [REDACTED] (and provide their authority to share the information).
5. In response, on 26 June 2020, you asked:
 - 5.1 would the Schedule 1 information give just the total amount payable or would you be able to check how it had been calculated; and
 - 5.2 how the Commission will check the amounts are correctly calculated.
6. On 29 June 2020, we advised:

¹ <https://comcom.govt.nz/case-register/case-register-entries/profile-finance-limited>

- 6.1 the amount each borrower receives depends on the original amount of their loan;
- 6.2 each borrower will receive statutory damages, which is calculated in accordance with the Credit Contracts and Consumer Finance Act 2003 (CCCFA), plus a portion of \$100,000;
- 6.3 the statutory damages calculation is set out in section 89 of the CCFA:
- 6.3.1 if the loan is under \$4,000, the statutory damages amount is \$200;
- 6.3.2 if the loan is over \$4,000, the statutory damages amount is 5% of the advance, to a maximum of \$6,000 (this means that if a loan is over \$120,000 a borrower will receive \$6,000);
- 6.4 under the settlement, borrowers will receive, in addition to statutory damages, a pro-rata portion of \$100,000;
- 6.5 the pro-rata portion is calculated by dividing the total advances for all 2119 affected loans (approximately \$16,567,460) by the advance made on each loan and then multiplying by \$100,000 - for example:
- 6.5.1 a loan of \$2089.84 would receive a total payment of \$212.61 made up of statutory damages of \$200 (being the minimum amount) plus \$12.61 (being $\$2089.84 / 16,567,460.91 \times \$100,000$);
- 6.5.2 a loan of \$9260.56 would receive a total payment of \$518.93 made up of statutory damages of \$463.03 (being $\$9260.56 \times 5\%$) plus \$55.90 (being $\$9260.56 / 16,567,460.91 \times \$100,000$);
- 6.6 Schedule 1 of the agreement sets out the calculation for each borrower in the following format:

Loan ID	Loan name	Date opened	Amount financed	Statutory damages	Portion of \$100,000	Total refund
[###]	[Borrower name]	[xx/xx/20xx]	\$x,xxx.xx [a]	\$xxx.xx [b]	\$xx.xx [c]	\$xxxx.xx [b+c]

- 6.7 Profile Finance will, as part of the settlement, report to the Commission about how it has made the refunds; and
- 6.8 we are more than happy to provide you with the information we have in Schedule 1 for a borrower with a privacy waiver.

Our response

7. We have decided to decline your 10 June 2020 request for a copy of Schedule 1, under section 9(2)(a) of the OIA to protect the privacy of natural persons.

8. We consider that good reasons exist for withholding the information and this is not outweighed by other considerations which would make it desirable, in the public interest, to make the information available (section 9(1) of the OIA).
9. We are happy to provide you with the Schedule 1 information for a borrower with a privacy waiver. Please send this to oja@comcom.govt.nz.
10. If you are not satisfied with the Commission's response to your OIA request, section 28(3) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.
11. The Commission may publish this response to your request in the Official Information Act register on our website.² Your personal details will be removed from any published response.
12. Please do not hesitate to contact us at oja@comcom.govt.nz if you have any questions about this request.

Yours sincerely

Mary Sheppard

OIA Coordinator

² <https://comcom.govt.nz/about-us/requesting-official-information/oia-register>