

IN FACT



Information Act newsletter

Freedom of Information and Privacy Protection in the NT Public Sector

Issue 1 - February 2006

Welcome to the first edition of IN FACT!

It is a newsletter aimed at keeping FOI administrators and practitioners up to date with developments in Freedom of Information and Privacy Protection in the Territory, in Australia and throughout the world.

IN FACT will have regular sections that provide information on developments in legislation and case law, and emerging hot topics. We will also let you know about training opportunities conducted or facilitated by the Office of the Information Commissioner.

Happy reading.



Peter Shoyer
Information Commissioner



Do you need that copy?

Organisations frequently require clients to present an identity document like a driver's licence or passport to establish identity. Sometimes, an organisation will note down details from such a document in its records. On occasion, an organisation will make and retain a photocopy of the ID document.

Under IPP 1.1 an organisation must not collect personal information unless it is necessary for one or more of its functions or activities. IPP 4 requires organisations to take reasonable steps to protect the security of personal information and to destroy it if it is no longer needed for any purpose.

This is a time of increasing concern about identity fraud. Information contained in ID documents is often pivotal to any attempt by criminals to misappropriate another person's identity. Collection and retention of information from an ID document creates a risk — a risk for the individual and a risk for the organisation. If the information is retained by the organisation there is potential for it to be lost or disclosed to others either inadvertently or deliberately. The risk is real. The media regularly reports on sensitive information finding its way into unauthorised hands.

It is therefore important that organisations evaluate the need to collect personal information of this nature, the need to retain it, and the steps taken to protect it.

Clearly, it will often be important for an organisation to confirm the identity of the individual with whom they are dealing. This can be an essential element of protection against identity fraud. Sometimes the law will require it. Organisations must nevertheless consider what is necessary in the particular case.

If production of an ID document is considered necessary, other questions arise, for example:

- Is there any need to record information from the ID document? Could you simply note that the ID document has been sighted? What future need is there to record any details?
- If you must record some details, can relevant details be recorded without copying the whole document? What need is there to retain a photocopy?
- Finally, if a photocopy must be retained, how soon can it be destroyed?



Office of the Information Commissioner



Reading Room



The OIC has opened a Reading Room in our offices at Level 7, 9-11 Cavenagh St.

Available materials include:

- Annual Reports from various jurisdictions
- Federal Privacy Handbook
- FOI and Privacy texts
- FOI and Privacy publications from other jurisdictions
- Information Commissioner Guidelines
- Recent articles of interest.

You are welcome to come to the reading room to browse or we may be able to help you with resources on a particular issue.

We ask that you phone (8999 1500) before you come to make sure that the room is available.

Training Opportunities

Introductory courses - FOI, Privacy and Records Management

The Office will conduct introductory sessions on the *Information Act* in March and April. For the Alice Springs and Darwin sessions, Mr Barry

Garside, Records Policy Advisor with NT Archives, will join us to discuss Records and Archives Management.

If you wish to attend, please email karan.howell@nt.gov.au or phone Karan on 8999 1436 with the session, date and time.

Centre	Presenter	Date	Time	Venue	Closing Date
Alice Springs	P Shoyer B Garside	Wed 15 March	10-1	DCIS – Alice Springs Training Room, 2 nd Fl, Belvedere House	10/03/06
Darwin	P Shoyer B Garside	Fri 24 March	9-12	NT Archives – Conference Rm, L2, 25 Cavenagh St	21/03/06
Gove	C Atkinson	Thur 30 March	10-12	DEET, Nhulunbuy Training Centre, Chesterfield Circ	27/03/06
Katherine	P Shoyer	Thur 13 April	10-12	Katherine Training Room, L1, Government Centre	07/04/06

Advanced Information forums

In March, we will facilitate two advanced forums for FOI and Privacy practitioners. The forums will allow practitioners to share their experience and discuss issues of mutual interest on particular topics.

The **Privacy forum** will discuss issues relating to use and disclosure of personal information. We seek input from attendees on questions, issues and scenarios that they wish to raise at the forum. These will be collated and circulated prior to the forum to give notice of topics that may be discussed. Please e-mail any input to Karan by 6 March.

The **Procedures forum** will commence with brief overviews from FOI and Privacy administrators in two organisations of their practices, procedures and policies, and then discuss issues of interest to participants. Again, the Office seeks input from attendees in the nature of questions, issues and scenarios they wish to raise. Please e-mail any input to Karan by 20 March.

If you wish to attend, please email karan.howell@nt.gov.au or phone Karan on 8999 1436 with the session, date and time.

Darwin	PRIVACY FORUM Use and Disclosure, IPP's 2 and 9	Thur 9 March	2 - 4	NT Archives – Conference Rm, L2, 25 Cavenagh Street
Darwin	PROCEDURES FORUM FOI and Privacy practices and procedures	Thur 23 March	2 - 4	NT Archives – Conference Rm, L2, 25 Cavenagh Street

AIAL Forum

The Australian Institute of Administrative Law is holding its Annual Forum at the Surfers Paradise Marriott Resort on the Gold Coast on 22 and 23 June 2006. The Annual Forum ranges across all aspects of administrative law but usually has healthy Freedom of Information and Privacy components.

The theme for the 2006 forum will be protection of individual and community interests. The program for the forum is yet to be finalised. You can access the AIAL website at <http://law.anu.edu.au/aial/>. If you want to enquire about the Annual Forum, or about activities of the NT Chapter of the AIAL, you can contact Peter Shoyer on 8999 1500.

FOI Update

Qld Public Hospitals Commissions of Inquiry report

The Report by the Hon Geoff Davies AO followed an inquiry into allegations surrounding the activities of a number of overseas trained doctors, and particularly a doctor employed at the Bundaberg Base Hospital. The report contains a number of interesting comments on a 'culture of secrecy' within Queensland Health and on the manner in which the Cabinet exemption was applied in relation to information about hospital waiting lists.

Paragraphs 1.78, 6.6, 6.494 and 6.517-6.599 are of note in that regard. http://www.qphci.qld.gov.au/Final_Report.htm

UK Information Commissioner

For a report on an interview with the UK Information Commissioner regarding implementation of FOI see: http://news.bbc.co.uk/1/hi/uk_politics/4701720.stm

For the UK Information Commissioner website see: <http://www.informationcommissioner.gov.uk/>

Recent Decisions

Commonwealth AAT

<http://www.austlii.edu.au/>

- Frivolous or vexatious applications. *Mulder and Centrelink* [2005] AATA 1022 (14 October 2005).
- Application for waiver of fees – Discussion of financial hardship and public interest. *Australian Privacy Foundation and Attorney General's Department* [2005] AATA 1204 (6 December 2005).

VCAT

<http://www.austlii.edu.au/>

- Petition for pardon – legal professional privilege – whether privilege waived – balancing process between public interest and privilege – reference to one legal advice but not others has potential to mislead – battered women's syndrome. *Osland v Dept of Justice* [2005] VCAT 1648 (16 August 2005).

Western Australian Information Commissioner

<http://www.foi.wa.gov.au/Decisions2005.htm>

- Information relating to execution of search warrant – prejudice to investigation – neither confirm nor deny response - *Post Newspapers Pty Ltd and Town of Claremont, Re* [2005] WAICmr 17 (21 October 2005).

Queensland Information Commissioner

http://www.infocomm.qld.gov.au/indexed/decisions/html/LDS_2005-2006.htm

- Records of interview in disciplinary investigation – applicant subject of investigation - information that did not relate to the investigation involving the applicant and the disclosure of which could reasonably be expected to inhibit staff members from volunteering such information in the future exempt under ‘staff management’ exemption – Information that

related to investigation of applicant not exempt under ‘staff management’ or ‘confidentiality’ exemptions. *Hart and Queensland Health* (471/04, 9 September 2005).

- Response to complaint about medical treatment – applicant was complainant – response not exempt under ‘confidentiality’ exemption - name of independent medical practitioner contacted for informal expert opinion was exempt under ‘confidentiality’ exemption. *Milovanovic and Health Rights Commission* (377/03, 22 September 2005)
- Draft Report by Queensland Health into circumstances surrounding deaths of people awaiting cardiac services at The Prince Charles Hospital - Two paragraphs remaining in issue contained purported views of staff – staff disputed accuracy of record - exempt under ‘staff management’ exemption. *Flegg and Queensland Health* (270/05, 25 January 2006)

Privacy Update

\$15 million out of pocket for privacy breaches

The US Federal Trade Commission has reached a settlement with data broker Choicepoint in relation to charges that its security and record-handling procedures violated consumers’ privacy rights and federal laws. Choicepoint will pay \$10 million in civil penalties and \$5 million in consumer redress. The settlement requires Choicepoint to implement new

procedures to ensure that it provides consumer reports only to legitimate businesses for lawful purposes, to establish and maintain a comprehensive information security program, and to submit to regular audits by an independent third party.

For the FTC press release see:

<http://www.ftc.gov/opa/2006/01/choicepoint.htm>

For an EPIC Alert article see:

http://www.epic.org/alert/EPIC_Alert_13.02.html

UK Identity Card debate

The British government continues to pursue legislation to introduce an identity card. For a report on developments see:

http://news.bbc.co.uk/1/hi/uk_politics/4711178.stm

Reviews and drafts

Attorney-General's Department - Draft Anti Money Laundering Bill

<http://www.ag.gov.au/aml>

Australian Government Information Management Office – Australian Government Smartcard Framework

http://www.agimo.gov.au/infrastructure/smart_cards

Australian Government Information Management Office – Australian Government Authentication Framework for Individuals – Discussion Paper

http://www.agimo.gov.au/infrastructure/authentication/agaf_consultation

New Tasmanian Privacy law commences

Tasmania's *Personal Information Protection Act 2004* commenced in 2005. The Act is available on the Tasmanian Legislation website:

<http://www.thelaw.tas.gov.au/help/index.w3p#sessional>



Asia-Pacific privacy forum renamed

The bi-annual forum of Asia-Pacific privacy authorities, formerly known as PANZA+, was renamed the Asia Pacific Privacy Authorities (APPA) Forum at the 24th forum in Melbourne in November. This reflects the involvement of authorities from Australia, New Zealand, Hong Kong and Korea.

Together with commissioners from national privacy bodies, commissioners from the Northern Territory, NSW and Victoria attended the first day of the forum. In addition, government representatives from the Commonwealth, Queensland, South Australia and Western Australia attended the second day of the forum.

Topics discussed at the forum included:

- Cross-border enforcement issues
- 'Substantial similarity' between privacy schemes
- Commonwealth initiatives in identity management
 - Document Verification Service
- Privacy Impact Assessments
- Information flows in response to natural disasters
- Layered Privacy Notices
- APEC Privacy framework
- Workplace privacy
- Positive credit reporting.

HR&EOC guidelines on discrimination in employment on basis of criminal records

http://www.humanrights.gov.au/human_rights/criminalrecord/on_the_record/index.html

The HR&EOC has produced *On the Record: Guidelines for the prevention of discrimination in employment on the basis of criminal record*. While advice on compliance with the NT *Anti-Discrimination Act* should be sought from the Anti-Discrimination Commission, *On the Record* provides useful guidance when considering privacy issues raised by a perceived need to collect and retain personal information about criminal records.

Canadian Privacy Commissioner's Phone records obtained

Detailed phone records relating to the Canadian Information Commissioner have been purchased for a small sum by a journalist seeking to show the ease with which personal information can be obtained on-line.

http://www.epic.org/alert/EPIC_Alert_12.24.html



Recent Case Notes

Federal Privacy Commissioner

<http://www.privacy.gov.au/act/casenotes/index.html>

- Complainant sent 2 e-mails to agency making allegations against third party – Agency sent copies to third party – Third party sued for defamation – Privacy Policy said would not disclose without sender's consent – Commissioner found complainant could not have been reasonably likely to have been aware that would be passed on, and did not impliedly consent – Confidential settlement. *N v Australian Government Agency* [2005] PrivCmrA 12.
- Amongst other activities complained about, an employment services company photocopied passports of applicants – Commissioner decided photocopying and storing was not
 - authorised under NPP 7.2 – Company agreed to merely sight passports in future – Comment on 'Bundled' consents – Company agreed to review application form to allow applicants to opt-in to future uses and disclosures. *OPC v Employment Services Company* [2005] PrivCmrA 13.
 - Complainant in dispute with Agency A. Sought review by Agency B - Gave contact details to Agency B on basis would be kept confidential - Agency B disclosed to Agency A – On becoming aware Agency B asked Agency A to delete, confirmed had deleted, and required employee responsible to apologise to complainant – Commissioner declined to investigate as respondent had adequately dealt with. *O v Australian Government Agency* [2005] PrivCmrA 14.

VCAT

<http://www.austlii.edu.au/>

- Phone number of person who found lost dog disclosed – abusive phone calls – apology offered – whether damage suffered. *Whitfield v Greater Bendigo CC* [2005] VCAT 1756 (23 August 2005).

Victorian Privacy Commissioner

<http://www.privacy.vic.gov.au/dir100/priweb.nsf/content/B890E0779DB01AF2CA256EC4001FD44D?OpenDocument>

- Councillor standing for re-election made comments about landowner in dispute with Council – Dispute had already been subject to public debate – Discussion of public interest in free flow of information in relation to public affairs and political matters – distinction between right to privacy and right to reputation – complaint lacked substance. *Complainant Z v Local Council* [2006] VPrivCmr 1.
- Child involved in an incident on Departmental premises. Parent unhappy with how Department dealt with incident. Wrote open letters (which did not bear his name), handed them out to other

people and protested outside Department – Later parent claimed he overheard a staff member mentioning child's name to a member of the public – Decision that complaint misconceived as parent's actions had disclosed identity. *Complainant AA v The Department* [2006] VPrivCmr 2.

NSW ADT

<http://www.austlii.edu.au/>

- File of student who had a medical condition accessed by teacher acting as coach of non-school sporting team – use and disclosure of information – imminent threat to life or health – required or authorised by law – duty of care – disclosure of information to HREOC. *Director General, Department of Education and Training v MT* [2005] NSWADTAP 77 (23 December 2005).
- Public housing tenant subject of allegations that may be in breach of tenancy agreement – alleged breaches of collection and use principles – discussion of nature of investigation of breaches. *OA v New South Wales Department of Housing* [2005] NSWADT 233 (17 October 2005).



Your Say....

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Are there items of interest you would like to see featured?

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Please give us feedback:

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