

IN FACT



Information Act newsletter

Freedom of Information and Privacy Protection in the NT Public Sector

Issue 2 – June 2006

Welcome back

Apologies to anyone eagerly awaiting the second edition of **IN FACT**. Publication was delayed slightly in order to allow inclusion of information about amendments to the *Information Act* recently passed by the Legislative Assembly.

Your feedback on the first issue has been very useful and was much appreciated.

In this issue, we also look at Identity Card developments in the UK, a topic that should be of interest to all, given the current proposal for an Australian Health and Social Services Access Card.



Peter Shoyer
Information Commissioner



Information Act amended

The NT Legislative Assembly has amended the *Information Act* with effect from 1 July 2006.

The most significant amendment makes it clear that, in the event of inconsistency with other Territory legislation, the *Information Act* will prevail. This will be the case whether the other law was made before or after the amendment (s.9).

This amendment will have its greatest impact in relation to the FOI provisions of the Act. Except where specifically incorporated into the *Information Act*,

other laws will not form a basis for refusing access.

FOI applicants and administrators will be able to look confidently to the *Information Act* to provide guidance on all questions relating to access.

The amendment will not affect existing exceptions in the Information Privacy Principles that permit certain actions required or authorised by law, eg, use or disclosure required or authorised by law, and collection of sensitive information required by law.

In a related amendment, the secrecy provision exemption (s.48) has also been limited, so that it provides exemption only in respect of a limited number of secrecy provisions that will be listed in a new Schedule to the Act.

Much of the information that continues to be protected under s.48 is identifying information about individuals, eg, parties to adoptions, human tissue donors and recipients, victims of sexual assault, and subjects of child protection orders. Financial information provided for tax purposes will also be protected.

There are two new exemptions. One protects places of scientific, cultural or historical significance, eg, sites of meteorite strikes or fossil finds that

may be damaged if their location is disclosed - s.54(ca).

The other exempts information obtained or created in the course of investigations, audits or inquiries by the Ombudsman, the Auditor-General, the Health and Community Services Complaints Commissioner and specially appointed commissions of inquiry (s.49A).

This exemption is not subject to a public interest balancing test, although it will not extend to relevant information in the hands of the agency subject to investigation, audit or inquiry.

You can find the *Information Amendment Bill* at:

<http://notes.nt.gov.au/dcm/legislat/Acts.nsf/5504d78eee675d6e6925649e001bb652/022ae283defbb2a369257164000951ef?OpenDocument>



Office of the Information Commissioner



Reading Room



The OIC maintains 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.

Please phone 8999 1500 before you come to make sure that the room is available.

Awareness and Training

Since the start of March, the Office has conducted 24 presentations and displays. The interest in FOI and Privacy displayed by the large number of public sector staff who have attended general introductory sessions is gratifying.

Thanks to those staff and to agency Information Officers who have initiated and facilitated sessions.

We are in the process of developing our training program for the next financial year, taking into account the results of a survey recently conducted with agency stakeholders. More

information about the revised program will be included in the next issue.

Meantime, among a number of new features we are developing for our website is a Training and Events Calendar. It will give you up to date information about our activities.

Some of you may have seen or heard the recent FOI and Privacy advertisements we have been running on TV and radio throughout the Territory. The TV ads will also be on display at the Department of Justice stall at the Alice Springs, Tennant Creek, Katherine and Darwin shows.



UK Identity card go ahead

Given the clear commitment of the federal government to introduce a broad-based Health and Social Services Access (HASSA) card, it is interesting to note the progress of the National Identity Card scheme in the United Kingdom.

The debate

The UK scheme has, from its outset, been billed as an Identity Card. The main stated drivers have been protection against terrorism, identity fraud and illegal immigration.

The scheme has been the subject of heated debate, particularly in the House of Lords. The effectiveness of the card in meeting its stated goals

has been questioned, as has the substantial cost of the scheme (suggested by some to be as high as £14.5 billion).

The UK Government has made clear its intention that the ID card be compulsory for everyone over 16. However, in a compromise adopted to ensure passage of the legislation, the card will not be made universally compulsory until after the next general election.

For the moment, the scheme will extend only to people applying for a passport and to foreign nationals. Passport applicants can, for now, decline to be issued a card but their details will be placed on the National Identity Register.

The ID card scheme

The scheme will require collection of a 'biographical footprint', which will include basic facts such as name, address and date of birth.

Biometric data will also be collected, potentially including fingerprints, images of the iris and facial structure.

People will have to attend at a government office to provide this data, and assist with identity verification. This will be supplemented by checks against other databases, eg, national insurance and driver's licences.

Information about individuals will be included on the National Identity Register. Each person will have an Identity Registration Number, and their biometric data will be permanently paired with their other information.

Cards will bear the name and photo of the holder on their face. Other information will be stored on a microchip. Each card will have an associated PIN number.

It is envisaged that cards will be available for use not only by government organisations but also by a wide range of private sector entities. Suggested users of cards (with consent of the cardholder) include banks, courier services, libraries, DVD rental firms, travel agencies and retailers.

The Australian HASSA Card proposal is presently limited to use for government purposes but the potential for extension to the private sector has been mooted, subject to additional consultations. (continued below)



ID Cards - Need for security

The importance of ensuring security of information stored on, or accessible through, smart-cards cannot be overstated. This is particularly so when biometric data is included.

There are numerous recent examples of identity thieves accessing and misusing information in or on cards. The 'Chip and PIN' theft discussed later in this newsletter is one.

However, a chip can be replaced, and a new PIN can be provided. This is not the case with biometric data. No government can provide new fingerprints or a new facial structure if that information is lost or stolen.

Once biometric data is lost to the wrong people, the individual must bear the consequences for life.

As biometric features take on added significance as high quality identifiers over the coming years, the negative consequences of misappropriation can only increase. Any smartcard system that incorporates their use must place security at the highest priority.

For more on the UK ID Card see the official Identity and Passport Service site: <http://www.identitycards.gov.uk>. For an alternative view, see the NO2ID site: <http://www.no2id.net>

For information about the HASSA Card see the Dept of Human Services site: http://www.humanservices.gov.au/access/factsheets/access_card_at_glance.htm and the Australian Privacy Foundation site: <http://www.privacy.org.au>

FOI Update

FOI Review Reports

The Victorian Ombudsman, Mr George Brouwer, has recently released a report on a *Review of the Freedom of Information Act*.

In it, he cites delay as the key issue for FOI applicants. He also points to problems with lack of quality of reasons for decision and poor assistance to applicants in some cases.

<http://www.ombudsman.vic.gov.au>

This report follows the *Scrutinising Government* report published by the Australian Ombudsman in March.

In that report, the Ombudsman discussed similar criticisms and recommended, among other things, the establishment of an FOI Commissioner.

<http://www.comb.gov.au>

High Court FOI challenge

Readers may be familiar with long running legal proceedings involving journalist Michael McKinnon, and his challenge to conclusive certificates issued by the federal Treasurer under the Commonwealth *Freedom of Information Act*.

The case revolves around the test to be applied when considering a challenge to a conclusive certificate, rather than on a merits review of an FOI decision. However, the ultimate decision of the High Court may also provide valuable commentary on the nature of the public interest test in an FOI context.

The High Court heard argument on 18 May, and reserved its decision.

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/other/HCATrans/2006/239.html?query=mckinnon%20AND%20treasury>



Recent Decisions

WA Information Commissioner

<http://www.foi.wa.gov.au/Decisions2006.htm>

Documents relating to power procurement process - whether documents concern the commercial affairs of an agency - whether disclosure could reasonably be expected to have an adverse effect on those affairs - whether disclosure, on balance, would be in the public interest. *Conservation Council of WA Inc and Western Power Corporation, Re* [2006] WAICmr 7 (31 March 2006).

Qld Information Commissioner

<http://www.oic.qld.gov.au>

Documents concerning allegations made about the conduct of a person at a social gathering of Government officers and others - whether information obtained, used or prepared for an investigation by the CMC in performance of the prescribed functions of the CMC. *Springborg and Crime & Misconduct Commission and others, Re*, Decision 1/2006 (26 April 2006).

VCAT

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

Chief Psychiatrist's Investigation under *Mental Health Act* – access sought to Inquiry panel's notes; draft report and correspondence related to report – whether exempt from release – whether the public interest requires release. *Rosen v Dept of Human Services* [2006] VCAT 691 (28 April 2006).

Commonwealth AAT

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

Applicant sought access to information relating to himself and his companies, concerning contamination of Av-Gas – applicant sought to limit fees – discussion of financial hardship-discussion of 'general public interest'. *Van der Wiel and Civil Aviation Safety Authority* [2006] AATA 1207 (7 March 2006).

Office provides policy assistance

The Office of the Information Commissioner assists public sector organisations in the development and review of systems, policies and legislation.

We are available to discuss potential issues that proposals raise, particularly relating to the collection and handling of personal information. We aim to identify potential privacy issues and offer options that will protect privacy while promoting the objectives of the proposal.

We welcome approaches from organisations at the earliest possible point of the development or review process.

Privacy Update

ALRC Review

The Australian Law Reform Commission has been given a broad-ranging reference to review the Commonwealth *Privacy Act*.

The *Privacy Act* presently regulates privacy protection for both Commonwealth agencies and a large segment of the private sector.

The reference has been made having regard to:

- the rapid advances in information, communication, storage, surveillance and other relevant technologies;

- possible changing community perceptions of privacy and the extent to which it should be protected by legislation;
- the expansion of State and Territory legislative activity in relevant areas; and
- emerging areas that may require privacy protection.

The ALRC is due to report by 31 March 2008. Everyone with an interest in privacy is encouraged to play a part in the review.

<http://www.alrc.gov.au/>

OOPS!

A laptop containing the personal information of 26.5 million US veterans has been stolen from the home of a government data analyst. The information included names, social security numbers and dates of birth.

The information had been taken home by the analyst for 3 years prior to the theft.

<http://www.cnn.com>

Victorian Compliance Notice

The Victorian Privacy Commissioner has issued a Compliance Notice requiring the Office of Police Integrity to commission an independently designed and conducted security audit of various aspects of its systems.

The Compliance Notice follows an investigation into the inadvertent disclosure of personal information relating to about 90 people contained in audit data from the Police LEAP system. See *Jenny's case*:

http://www.privacy.vic.gov.au/dir100/priweb.nsf/content/5d37ecb57a98bda7ca256c4d0019e8ad?OpenDocument&ExpandSection=1#_Section1

'Chip and PIN' theft

Customers of Shell petrol stations in the UK have recently been hit by identity thieves who have managed to copy card details and PIN numbers from cards used to make electronic payments at petrol pumps.

It is reported that more than £1million has been misappropriated with the aid of this information. One card holder is said to have lost £25,000.

http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=385565&in_page_id=1770

'Do Not Call' register

The Commonwealth Parliament is currently debating the *Do Not Call Register Bill 2006*. The Bill is designed to allow people to opt out of receiving unsolicited telemarketing calls.

Broadly speaking, the legislation will not apply to government bodies, charities, religious and educational institutions or to political calls.

<http://parlinfoweb.aph.gov.au/PIWeb/results.aspx>



Recent Case Notes

Federal Privacy Commissioner

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

- Complainant applied to open bank account - Form required details of marital status – Complainant objected – Told mandatory field on computer system – Bank accepted not necessary – Agreed to modify computer system. *D v Banking Institution* [2006] PrivCmrA 4.
- Complainant an employee of agency – sensitive information about employment stored on a computer file that was available to other staff – agency accepted it had failed to take reasonable steps to protect the information – conciliated on the basis of apology, transfer of the information to more secure site, and payment for counselling. *B v Australian Government Agency* [2006] PrivCmrA 2.

- Complainant made insurance claim – investigated and paid – sought access to information about them collected during investigation – Access refused to some information on basis of privacy and commercial sensitivity. *C v Insurance Company* [2006] PrivCmrA 3.

Victorian Privacy Commissioner

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

- Department ran competition – names, e-mail addresses and telephone numbers of entrants available through Google search – Department removed information but it still showed up on Google search as ‘cached’ files – Department pursued matter with US Google to have information removed. *Complainant AD v The Department* [2006] VPrivCmr 5.
- Complainant was a staff member investigated in relation to a number of issues – One disciplinary penalty was imposed in relation to a range of findings – One person who had made allegations against the

complainant was informed about the outcome of the wider investigations and the penalty imposed – Commissioner decided that disclosure for purpose of informing a complainant is an expected secondary purpose – But identified concerns as to disclosures about wider investigations - Conciliated in respect of disclosure of information about wider investigation, which the public sector body accepted was unnecessary. *Complainant AC v Public Sector Body* [2006] VPrivCmr 4.

NSW ADT

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

- Complainant claimed that Police breached privacy by delivering a letter addressed to her at her home, by making telephone calls to her, by acting on false information about her, and by storing and distributing false information about her without her knowledge or consent – Dismissed as misconceived and lacking in substance. *NZ v Commissioner of Police* [2006] NSWADT 142 (16 May 2006).



Your Say....

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

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