



Application for a grant of authorisation

Section 81 of the *Information Act*

Applicant:	Department of Planning and Infrastructure
Subject:	Assistance to the Salvation Army Family Tracing Service
Date of Decision:	31 December 2008

Decision and Reasons for Decision

1. I have decided to grant an authorisation pursuant to section 81 of the *Information Act* to allow the Department of Planning and Infrastructure to depart from Information Privacy Principles 1.1 and 2.1 in order to assist the Salvation Army Family Tracing Service (“SAFTS”) to locate family members whose current whereabouts are unknown in order to re-unite the family. The grant will permit the Department of Planning and Infrastructure to collect, and then use and disclose information contained on its Northern Territory Motor Vehicle Registry (“MVR”) database to identify and contact individuals in the Northern Territory to inform them that someone has lost contact with them and wishes to re-establish contact. The scope of the grant, and the terms and conditions of the grant, are set out in the authorisation that appears at the end of this document.

History of the application

2. In October 2006, the then Department of Infrastructure, Planning and Environment first approached the Office of the Information Commissioner about a possible grant of authorisation pursuant to section 81 of the *Information Act*. The purpose of the application was to assist SAFTS to trace missing family members by using information contained on the MVR database to identify and contact individuals in the Northern Territory. The matter stalled for a period in 2007 as a result of various staff changes. In December 2007, the Department of Planning and Infrastructure made a second application to this Office. Further discussions and negotiations continued about certain aspects of the application during 2008. In September 2008, I had a meeting with the Director of SAFTS to resolve some outstanding issues about the application.

3. I then wrote to the NT Police Fire & Emergency Services, Department of Justice and the NT Council of Social Services seeking comments on the application. Attached to my letters was a copy of the application and a copy of the Office guideline *Authorising Departure from the Information Privacy Principles*. I indicated that if I did not receive a response, I would proceed with the application on the basis that the organisation did not wish to make a comment. I received responses from the NT Police Fire & Emergency Services and the Department of Justice supporting the proposed practice.

4. On 19 December 2008, I provided a copy of my draft decision and reasons for the decision to the Manager, Legal Services, the Manager, Registration and Licensing Policy, and the acting Manager of the Motor Vehicle Registry in the Department of Planning and Infrastructure and to the Director of SAFTS for comment. The draft decision included a number of proposed conditions on the grant of authorisation. Officers from the Department of Planning and Infrastructure raised no objections to the draft decision including the draft terms and conditions.

Other grants of authorisation

5. In June 2005, the former Northern Territory Information Commissioner gave approval for the Power and Water Corporation to depart from Information Privacy Principles 1 and 2 in order to assist the International Tracing Service conducted by the Australian Red Cross.

6. In October 2005, the former Information Commissioner also gave approval for the Department of Planning and Infrastructure to depart from Information Privacy Principles 1 and 2 in order to assist the International Tracing Service conducted by the Australian Red Cross.

7. The practice adopted by the Power and Water Corporation and the Department of Planning and Infrastructure is essentially the same as the proposed system by SAFTS. Both grants are subject to the same terms and conditions as I have imposed on SAFTS.

Background information about SAFTS

8. I have considered the aims and purpose of SAFTS. The Salvation Army is a Christian not-for-profit organisation that provides both charity and social services. SAFTS was established in England in 1885 by Mrs Booth, the wife of the founder of the Salvation Army. The Service was originally known as Mrs Booth's Investigations Department.

9. The purpose of SAFTS is to locate family members whose current whereabouts are unknown in order to re-unite the family. It only searches for adult members of the immediate family and does not accept enquiries from persons under the age of 18 years. It does not assist with family tree or genealogy searches, adoption searches, searches for legal reasons or searches for friends.

10. SAFTS assists in tracing thousands of people worldwide every year on behalf of families and is assisted in this purpose through investigative avenues such as Centrelink's "In Touch" program, electoral rolls, telephone directories and the MVR databases in most Australian jurisdictions. Searches are conducted on behalf of applicants residing in Australia and overseas. Services offered for overseas residents are generally handled by designated international offices.

11. SAFTS is subject to, and adheres to, the National Privacy Principles contained in the federal *Privacy Act*. Further information about SAFTS can be found at <http://www.salvationarmy.org.au/familytracing/default.asp> or <http://salvos.org.au/need-help/family-tracing/?furl=familytracing>

Legislative requirements

12. The Department of Planning and Infrastructure is a public sector organisation for the purposes of the *Information Act* and is therefore bound by the relevant privacy provisions of that Act including the Information Privacy Principles ("IPPs"). The IPPs control the manner in which organisations must collect, use, handle and protect personal information. Section 67 of the Act provides that a public sector organisation interferes with a person's privacy if the organisation contravenes an IPP.

13. IPP 1.1 provides that a public sector organisation must not collect personal information unless the information is necessary for one or more of its functions or activities. In my view, the proposed practice breaches IPP 1.1. Collection of the name and the date of birth of the applicant from SAFTS for the purposes of tracing missing family members is not necessary for the performance of the functions or activities of the MVR.

14. IPP 2.1 provides that a public sector organisation must not use or disclose personal information about an individual for a purpose ("the secondary purpose") other than the primary purpose for collecting it, unless one of the exceptions applies. None of the exceptions apply in the case of the proposed system. In my view, the proposed practice is a breach of IPP 2.1. The primary purpose for which personal information is collected and maintained in the MVR database is for driver licensing and vehicle registration purposes. The primary purpose does not extend to

collecting the name and date of birth of an individual provided by SAFTS and using that information by comparing it with the name, date of birth and address of customers in the MVR database in order to ascertain if this information matches that of the individual sought. Officers at the MVR would therefore be using and disclosing personal information about an individual for a secondary purpose.

15. For this reason, the Department of Planning and Infrastructure requires a grant of authorisation under section 81 of the *Information Act* to collect the information from SAFTS which is inconsistent with IPP 1.1, and to use and disclose the personal information in the MVR database for a secondary purpose which is inconsistent with IPP 2.1.

Proposed practice

16. The class of people that may be affected by the use of the personal information are the customers of the MVR database.

17. The type of personal information to be used is:

- name;
- date of birth (for identification purposes only); and
- address.

18. The proposed practice is as follows:

- The person seeking contact (the applicant) lodges an application with a SAFTS office.
- SAFTS office requires identification from the applicant and proof of relationship with the person being sought.
- SAFTS assesses the application to ensure the reasons for the application do not, on the face of it, fall outside the scope of the service.
- A registration fee is usually payable by the applicant of \$50.00, or \$30.00 for a concession, however a search will not be refused because of an inability to pay.
- SAFTS conducts relevant searches, including contacting the MVR in writing, providing the name and date of birth of the person sought.
- The MVR officer searches the MVR database to ascertain a possible match.
- If a possible match is ascertained, the MVR sends a letter to the person being sought informing them that SAFTS is seeking contact.

Additional protections

19. The scope of the proposed practice is restricted to the procedure outlined above. To ensure the maximum protection of privacy for all those concerned, it is intended that the procedure be controlled and limited as follows:

- All avenues of investigation undertaken by SAFTS are strictly confidential.
- SAFTS informs the applicant about the search process and the possible outcomes, including that the person sought may not wish to initiate or follow through with contact.
- The individual's personal information will be used solely for the purpose of forwarding a letter by the MVR.
- The personal information of the person being sought will not be disclosed by the MVR to any other organisation or person.
- No confirmation will be provided to SAFTS as to whether a possible or actual match was made with the MVR database, nor will SAFTS receive confirmation as to whether a letter has been sent to the person being sought.
- The letter from the MVR to the person being sought will not contain the applicant's name nor the circumstances in which the applicant seeks contact with the person being sought.
- The letter from the MVR will be limited to the fact that a family member is seeking contact with a request to contact SAFTS directly for further information should they choose to do so.

20. SAFTS procedure if contact is made is as follows:

- SAFTS confirms additional details, such as parents' names, to ensure the correct person has been identified before proceeding further.
- Where the person being sought advises SAFTS they do not want to make contact with the applicant, SAFTS notifies the applicant in writing.
- If the person being sought provides consent, their contact details are provided to the applicant.
- If requested, SAFTS will not exchange personal contact information but will instead act as an intermediary between the applicant and the person being sought.
- Internal and external counselling is available to both the applicant and the person being sought if at any stage contact gives rise to concerns or distress.

- Information provided to SAFTS by the applicant and/or the person being sought is confidential and is not disclosed without that person's express consent.

Power to grant an authorisation

21. The Information Commissioner may grant a public sector organisation an authorisation to collect, use or disclose personal information in a way that would otherwise be contrary to IPPs 1, 2 and 10. In making a decision about whether or not to grant an authorisation, the Commissioner must take into account the public interest and individual privacy interests.

22. Section 81 of the *Information Act* provides:

81. Grant of authorisation

- (1) On the application of a public sector organisation, the Commissioner may authorise in writing the organisation to collect, use or disclose personal information in a manner that would otherwise contravene or be inconsistent with IPP 1 (Collection), IPP 2 (Use and disclosure) or IPP 10 (Sensitive information).
- (2) The Commissioner may only grant an authorisation if, having regard to the purpose for collecting, using or disclosing the personal information, the Commissioner is satisfied that –
 - (a) the public interest in collecting, using or disclosing the information outweighs to a substantial degree the interference with the privacy of persons that might result from collecting, using or disclosing the information; and
 - (b) the benefit to persons of collecting, using or disclosing the information outweighs the interference with the privacy of those persons that might result from collecting, using or disclosing the information.
- (3) An authorisation is subject to the terms and conditions (if any) specified in the authorisation.

23. I must be satisfied that both section 81(2)(a) and section 81(2)(b) are met before I can grant an authorisation. Section 81(2)(a) requires a balancing of the public interest and individual privacy interests. The public interest can include benefits to a class of individuals in an appropriate case. The public interest must outweigh the interference with privacy interests to a substantial degree.

Interference with Privacy

24. The potential for interference with privacy is relevant to both limbs of section 81(2). When assessing interference with privacy, it is appropriate to consider the

nature, likelihood and seriousness of potentially negative impacts on the individual arising from the interference.

25. I am aware that there is the potential for harm in any tracing service that facilitates contact between individuals. The following are some of the situations which may potentially cause harm:

- In some cases, simply sending a letter to the individual, even though it merely invites an approach to SAFTS, could cause a level of distress by invoking memories of unhappy, unpleasant or tragic past experiences.
- In a few cases, the person who is seeking to establish contact may not be motivated by a desire to make positive contact, but rather by malice.
- Raising the potential for contact might cause the individual anxiety or distress.
- The individual may be of the view that any contact at all is objectionable.
- The individual may not want anyone to know where they are located.
- It may bring back unhappy or traumatic memories or they may not want past circumstances to come to the attention of current family or friends.
- It is possible, although not likely, given the use of the date of birth to ensure a match, that the person contacted may not be the individual sought. If this were to occur by chance or by some administrative error, it may result in person contacting SAFTS with the expectation that someone is wanting to make contact with them when this is untrue.
- There is potential for another member of the individual's family or household to open the mail for the individual which may cause distress.
- There is the possibility that an individual may notice the letter and ask about its contents which again may cause distress to an individual who has sought to move on from an unpleasant or traumatic past.
- There is the potential for duplication of contact with the Red Cross Tracing Service. However I am of the view that any duplication should be minimal given the purpose of the Red Cross Tracing Service is generally to reunite those separated by war or international conflict.

26. I have considered the above circumstances which may potentially cause harm but I believe that these are minimised by the following procedures proposed to be adopted by both the MVR and SAFTS:

- The application by the person seeking contact is vetted by SAFTS in accordance with established procedures at first instance.

- Personal information of the person sought will not be released by the MVR to SAFTS. The letter from the MVR will provide SAFTS' contact details to facilitate that person contacting SAFTS should they wish to do so.
- The individual is advised by letter from the MVR that a family member wishes to make contact and is simply requested to contact SAFTS direct should they choose to do so.
- The letter does not identify who wishes to make contact or for what reason to minimise the potential that the individual's past circumstances may come to the attention of others.
- No confirmation is provided by the MVR to SAFTS as to whether a possible match has been made.
- No personal information is disclosed by the MVR to SAFTS, the applicant or the person being sought.
- The decision whether to contact SAFTS and whether to allow SAFTS to pursue reconciliation will be entirely at the discretion of the individual being sought. Any information provided to SAFTS by the applicant and/or person being sought is strictly confidential and SAFTS undertakes not to release that information without the person's express consent.

27. Both the MVR and SAFTS acknowledge and understand that a person has an expectation of privacy with respect to personal information which is held by public sector organisations.

Public interest and individual benefit

28. The Department of Planning and Infrastructure submits that the nature of the public interest in facilitating the service is essentially on humanitarian grounds. SAFTS is a Christian based non-profit organisation that is committed to the concept of the family unit and re-uniting family members who are missing or have been separated through conflict or other circumstances.

29. If contact is established SAFTS aims to:

- provide an avenue to re-unite or introduce family members;
- establish lines of communication if possible;
- assist in reconciling past differences, if any; and
- provide support to family members.

30. It is expected that the community would generally look favourably on such a humanitarian service. The Salvation Army has an excellent reputation and the services it provides are widely supported by the community at both a national and

international level. The reconciliation of family members is in the public interest generally.

31. Further, SAFTS is of benefit in facilitating communication between otherwise disconnected family members and can provide relief through exchanging family messages, making health and welfare enquiries and re-establishing contact if desired. Rebuilding such relationships is important to provide families with better support structures.

32. Of individual benefit is the potential for joy in re-establishing contact and relationships between family members, the opportunity to exchange medical, familial and ancestral information and provide comfort and relief in the knowledge of the circumstances of loved ones.

33. In the event that contact is unsuccessful, it may give the person seeking contact a measure of closure for their own personal benefit in the knowledge that all reasonable options have been exhausted.

34. Further, there could be a detrimental impact in terms of SAFTS' ability to deliver successful outcomes if its ability to facilitate contact in the Northern Territory is restricted.

35. Some individuals may choose not to take advantage of the opportunity. They may feel that their future direction in life should not involve re-establishing contact. For that reason, the practice allows for an individual to decide whether to respond by contacting SAFTS. The procedures established by SAFTS allow significant choice for the individual, providing for situations that fall short of re-establishing contact. For example, an individual may simply wish to notify the enquirer that he or she is alive and well but does not wish to maintain contact.

36. In relation to section 81(2)(a), I am satisfied that there is significant public interest in assisting a scheme which gives individuals the opportunity to reunite with relatives and family in these circumstances. I am satisfied that the public interest in collecting and using the information in accordance with the proposed practice outweighs to a substantial degree the interference with privacy that might result.

37. Section 81(2)(b) requires me to balance the benefits to persons in collecting, using and disclosing the information with the class or classes of individuals whose privacy may be interfered with.

38. There are clearly significant benefits for the applicants. The applicants have been motivated to contact SAFTS and clearly wish to make contact with a person with whom they no longer have contact. There is significant scope for benefit to the individuals who may be contacted. These are listed above. Not all individuals may wish to take advantage of these benefits and they have the choice to decline. But I believe a significant proportion would elect to make contact. Based on statistical information from SAFTS, it is anticipated that the number of enquiries would be about 50 per year and about 75% of those would make a response to SAFTS. There would also be benefits for SAFTS as they would be able to more effectively provide a valuable service to the community.

39. I have noted above the possible negative impacts of those individuals whose privacy may be interfered with. I have considered the likelihood of these impacts occurring and the likely severity of the consequences. I am satisfied that the benefit to the individuals of collecting, using and disclosing the information outweighs the interference with the privacy of those persons that might result.

40. I am satisfied that I should grant an authorisation pursuant to section 81(2) of the *Information Act*.

Terms and conditions of the grant

41. When making a grant it is important to ensure that the scheme meets the objects of the proposal while minimising interference with individual privacy. To that end, section 81(3) provides for the imposition of terms and conditions. The Department of Planning and Infrastructure has stated that it is prepared to accept a grant of authorisation on such terms and conditions as I consider fit.

42. I have noted above the potential for negative impacts on individuals and consequently consider it appropriate to impose a limit on the duration of the grant and to require a review at reasonable intervals.

43. Given the small number of likely instances of use, I propose to set a 5 year period for the grant. However, in allowing that period, I consider it appropriate to reserve a right to the Commissioner to revoke the grant on notice to the Department of Planning and Infrastructure should events show that the potential for interference with privacy is greater than anticipated. I also believe that it is appropriate to impose a reporting requirement after 2 years, and again shortly before the end of the 5 year period.

44. I also believe that it is appropriate for the Department of Planning and Infrastructure to record the names of people who have been contacted and details of any complaints about the proposed practice. This would include complaints made directly to the Department of Planning and Infrastructure, and any complaints made to the SAFTS about which the Department of Planning and Infrastructure is informed. This will provide useful information for review and will allow the Department to ensure that there is no unnecessary repetition of contact with particular individuals.

45. A grant of authorisation currently permits the MVR and the Power and Water Corporation to assist the Australian Red Cross Tracing Service. It is possible that additional organisations may wish to assist the SAFTS in a similar manner. These claims may have equal merit to the proposal of the Department of Planning and Infrastructure. However, it would add to the potential for impact on privacy if individuals who matched on a number of databases then received a number of letters from different organisations. I have therefore made provision for organisations that are granted like authorisations to share information with those organisations to ensure that people who are matched on a government database are not repeatedly contacted.

46. Having considered the issues discussed above, I have decided to grant an authorisation on the following terms and conditions.

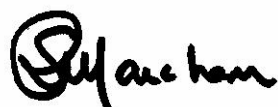
Grant of Authorisation – No. 1 of 2008

I grant an authorisation under section 81 of the *Information Act* in the following terms:

Organisation	The Department of Planning and Infrastructure (“the Department”)
Authorisation	<p>To collect, use and disclose personal information for the purposes of assisting the Salvation Army Family Tracing Service, subject to the terms and conditions set out below and otherwise in a manner that substantially complies with the application dated 20 December 2007 (the “authorised practice”).</p> <p>To disclose personal information collected for the purpose of the authorised practice to organisations with a similar grant of authorisation, for the purpose of reduction of interference with the privacy of individuals.</p>
Terms and conditions	<p>The Department will maintain a register that will record:</p> <ul style="list-style-type: none"> • the names and dates of birth of individuals who have been contacted under the authorised practice; and • details of any complaints made by, or on behalf of, individuals who have been contacted. <p>The Department will not attempt to contact any individual under the authorised practice more often than once in a 3 year period.</p> <p>The Department will not attempt to contact any person who objects to further contact.</p> <p>The Department will, prior to 31 December 2010, make an interim report to the Information Commissioner on the effectiveness and impact of the authorised practice. The report will include numbers of contacts, details of any known positive outcomes, of any complaints made, and of any adverse effects on individuals.</p> <p>The Department will, prior to 31 October 2013, make a report to the Information Commissioner on the effectiveness and impact of the authorised practice. The report will include numbers of contacts, details of any positive outcomes, of any complaints made, and of any adverse effects on individuals.</p>

Length of authorisation	Until 31 December 2013, unless terminated earlier by the Information Commissioner.
Date	31 December 2008

NOTE: This authorisation only extends to departures from IPPs 1 and 2 as stated above. The organisation remains bound by the IPPs in all other respects. The authorisation does not allow departure from any other restrictions or requirements that bind the organisation.



ZOE MARCHAM
Acting Information Commissioner
Northern Territory