



information
and privacy
commission
new south wales

Ms Rachel Simpson
Director Committees
Parliament of NSW
Parliament House
Macquarie Street
SYDNEY NSW 2000

14 March 2013

Your ref:D13/04676

Dear Ms Simpson

Privacy Commissioner's responses to questions on notice

I refer to your letter of 1 March 2013 requesting answers to questions on notice following the second General Meeting of the Information and Privacy Commission and the Committee on the Ombudsman, the Police Integrity Commission and The Crime Commission.

Please find attached my responses to your questions.

The IPC contact on this matter is Meredith Claremont, Executive Director who can be contacted on [REDACTED]

Yours sincerely

[REDACTED]

Dr Elizabeth Coombs
NSW Privacy Commissioner



Joint Select Standing Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission

Questions on Notice for the NSW Privacy Commissioner

Q1 What implications does the increasing use of drones have for privacy? (p.8)

This important emerging issue is being referred to the newly established Information and Privacy Advisory Committee for discussion and advice. Following their consideration, further advice will be provided to the NSW Parliamentary Select Committee.

Q3: Can you tell us what proportion of privacy complaints or inquiries relate to local government? Is the number or proportion of privacy complaints and inquiries that relate to local government growing? (p.10)

Figures have been provided for the 12-month period leading up to the questions on notice (March 2012 – February 2013 inclusive).

Formal privacy allegations received by the Privacy Commissioner can take two forms:

- (a) A complaint directly to the Privacy Commissioner under the provisions of the *Privacy and Personal Information and Protection Act 1998* (the PPIP Act) or the *Health Records Information and Privacy Act 2002* (the HRIP Act) and
- (b) a privacy complaint being dealt with as an Internal Review under the PPIP Act or HRIP Act.

The vast majority of privacy complaints involving the NSW sector (including Local Government) are dealt with by way of Internal Review.

The figures for the past 12 months (1 March 2012 – 28 February 2013) in respect of Local Government complaints are as follows:

(a) Privacy Complaints Local Government:	5
Total Complaints:	91

5.5% of formal Privacy Complaints related to Local Government allegations.

(b) Privacy Internal Reviews Local Government:	16
Total formal Internal Reviews:	119

13.4% of formal privacy Internal Reviews related to Local Government allegations.



Are local government privacy complaints and inquiries growing?

Complaints: In 2009/10, 1.5% of complaints related to Local Government. In 2010/2011, that figure was 9.6% In 2011/2012, that figure was 8.8%. In the past 12 months the figure was 5.5%. Over the past four years the figure has remained below 10%.

Unfortunately it is not possible to accurately measure the trends in internal reviews concerning Local Government.

Inquiries: The databases show that in the period 1 March 2012 – 28 February 2013 2903 privacy inquiries were recorded. 163 of these (or 5.6% of the total Enquiries) related to Local Government. The data shows that the percentage of local government inquiries grew towards the end of this 12 month period.

Q4: Do you know how many complaints have been received in relation to the sharing of personal health records at the federal level? And at the state level? (p.10)

According the 2011/12 Annual Report of the Office of the Australian Information Commissioner, the federal office received 1,357 privacy complaints, of which 135 were about healthcare providers. This was the fourth highest category of complaints.

In 2011/12, the Privacy Commissioner conducted a total of 181 Internal Reviews, of which 49 were related to the sharing of personal health records. These were general complaints about health records and may not have specifically related to personally controlled electronic health records.

Q1: The Committee notes a recent report from the Commonwealth Attorney-General's Department (tabled on 29 November 2012), which states that there has been a sharp increase in law enforcement and Government agencies accessing private telephone and internet data without judicial warrant. The report states that NSW Police were the biggest users of telecommunications data, with 103,824 authorisations in 2011/12. In the context of this trend, what is your view on the calls for greater controls being imposed on access to personal data so that the privacy of individuals is better protected?

The role of the Privacy Commissioner is to champion the privacy rights of NSW citizens. Consistent with this, the effective controls on access to personal data are strongly supported.



Q3 The Privacy Commissioner can decline to investigate a complaint if it is considered frivolous, vexatious, trivial, lacking in substance, or not made in good faith. Can you provide us with data on the number of complaints that your office declines to investigate, and how many are referred to other agencies?

In the previous 12 months (1/3/2012 – 28/2/2013) the Privacy Commissioner received 91 formal privacy complaints.

The Privacy Commissioner determined to decline to deal with 61 complaints during the previous 12 months out of a total of 91 complaints received. 67% of the total number of complaints received were declined for the various reasons set out at sections 43 of the PPIP Act and the HRIP Act. 33% or approximately one third of the complaints received were dealt with by the Privacy Commissioner.

Both the PPIP Act and HRIP Act allow the referral of complaints to another agency. Of the 61 declined complaints, 47 were referred to other agencies. The majority of these were referred to the NSW public sector agency that the allegation related to, under the provisions of section 43 (2) (3) of the PPIP Act (i.e.: to conduct an Internal Review). Of the remaining 14 complaints, 10 were declined because the alleged conduct was permitted by law, and four were declined under the lacking in substance, not in good faith, frivolous vexations or trivial provisions.