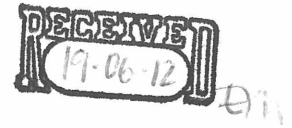




information  
and privacy  
commission  
new south wales



The Hon Catherine Cusack MP  
Chair  
Committee on the Office of the  
Ombudsman and Police Integrity Commission  
Parliament of New South Wales  
Macquarie Street  
Sydney NSW 2000

18 June 2012

Dear Ms Cusack

**Response to questions on notice following 21 May hearing**

Please find attached the responses from the Information Commissioner and the Privacy Commissioner to the questions posed by the Committee both at and following the 21 May 2012 hearing.

Yours sincerely

Deirdre O'Donnell  
**Information Commissioner**

Att

## **Committee on the Office of the Ombudsman and Police Integrity Commission**

Questions following the 21 May 2012 General meeting with the Privacy Commissioner and the Information Commissioner

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### **Questions Taken on Notice**

- i. **On page “OMBUDSMAN AND POLICE INTEGRITY COMMITTEE24” of the transcript, Mr Evans MP asked**

**‘Has a time line been placed on this (the publication of guidelines with respect to disclosure of genetic information)?**

The Office of the NSW Privacy Commissioner and the NSW Ministry of Health will jointly undertake the development and publication of guidelines on the disclosure of genetic information. At present we are discussing with NSW Health when resources will be available to commence this project.

- ii. **On page “OMBUDSMAN AND POLICE INTEGRITY COMMITTEE28” of the transcript, the Chair asked**

**‘Does anyone have the capacity (to review private sector privacy issues)? Is it governed by any privacy legislation?**

This issue relates to hotels and clubs requesting personal information as a condition of entry (specifically fingerprints and drivers’ licences for scanning).

There is privacy legislation that covers the private sector and its handling of privacy matters:

- A) The National Privacy Principles (NPPs) in the Commonwealth *Privacy Act 1988* apply to the private sector but not to ‘small business’. Section 6D of that Act defines a small business as one that turns over less than \$3m per annum. So whether a hotel or club is required to comply with the restrictions on dealings with personal information in the NPPs will depend on whether they are a small business for the purpose of that Act. However, a company engaged by a hotel or club to process personal information from fingerscans or drivers’ licences may fall outside the definition of a small business if they are seen to ‘provide a benefit, service or advantage’ involving the collection or disclosure of personal information. This means that these data processing companies may be required to comply with the NPPs. The Office of the Australian Information Commissioner (OAIC) has issued an information sheet for clubs and hotels which provides more detailed information about how the NPPs will apply in this context.

It is available at <http://www.privacy.gov.au/materials/types/infosheets/view/7074>

Individuals who believe that clubs and pubs have improperly collected, used, disclosed or stored their personal information may make a complaint to the OAIC, which may decide to investigate the conduct in question. The contact number for the OAIC is 1300 363 992.

- B) More generally on the coverage of the private sector in NSW, the *NSW Health Records and Information Privacy Act 2002* covers private sector health providers as well as every organisation that collects, holds and uses health information in NSW except small business operators (ie those which turn over less than \$3m per annum) that are not health service providers.
- C) In addition, the long title to the *Privacy and Personal Information Protection Act 1998* states that it 'provide[s] for the protection of personal information, and for the protection of the privacy of individuals generally...' among other things. In addition, the general functions of the NSW Privacy Commissioner which are set out in Division 2 section 36 of that Act include powers to 'conduct research and collect and collate information, about any matter relating to the protection of personal information and the privacy of individuals', and to 'prepare reports and publish reports and recommendations about any matter (including developments in technology) that concern the need for, or the desirability of, legislative, administrative or other action in the interest of the privacy of individuals'. The ability of successive Privacy Commissioners to fulfil these general functions has been limited by the resources available to the Office to date.

iii. On page "OMBUDSMAN AND POLICE INTEGRITY COMMITTEE 31" of the transcript, the Chair asked

**'Are there any guidelines or restrictions or would it be appropriate to have any in place for the police use of that facility [CCTV]?'**

Generally speaking, police do not fund, operate or control CCTV. When police conduct video surveillance, it is usually covert surveillance done under a warrant pursuant to the *Surveillance Devices Act 2007* (NSW).

The use of CCTV by the public or private sector is largely unregulated by statute. However, as far as the public sector is concerned, a whole of government guideline exists: "*NSW Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television in Public Places*". That Guideline was developed in 2000 by the Crime Prevention Unit of the (now) Department of Attorney General and Justice.

(see [http://www.lawlink.nsw.gov.au/lawlink/cpd/ll\\_cpd.nsf/vwfiles/cctv.pdf/\\$file/cctv.pdf](http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwfiles/cctv.pdf/$file/cctv.pdf)).

That Guideline is principally aimed at local councils as major users of CCTV, and states that CCTV should only be used as part of an integrated crime prevention strategy. The Guideline states at p 5:

Local councils are democratically organised, are close and accountable to local communities, and generally have the capacity to co-ordinate local activities in crime prevention and the promotion of community safety. It must be recognised that ownership brings with it accountability, responsibility for securing funding, responsibility to consult with and inform the community as interested parties, and responsibility for design, management, running costs, evaluation and audit activities.

The authority of local councils to use CCTV is derived from s 24 of the *Local Government Act 1993* (NSW).

The Guideline requires compliance with the PPIP Act, and refers to the role played by police. One of the Guiding Principles of the Guideline refers to police involvement in CCTV schemes:

#### **Police Involvement in Public Area CCTV Schemes**

While the NSW Police Service should not fund or operate public area CCTV schemes, it should be closely involved in the assessment and planning phase, including risk analysis and evaluation. The Standard Operating Procedures for the scheme should incorporate protocols covering communication and liaison between the scheme operators and the police.

Police also have a specific policy on the development and use of CCTV: see [http://www.police.nsw.gov.au/about\\_us/policies\\_and\\_procedures/policies/nsw\\_police\\_policy\\_on\\_the\\_development\\_and\\_use\\_of\\_cctv](http://www.police.nsw.gov.au/about_us/policies_and_procedures/policies/nsw_police_policy_on_the_development_and_use_of_cctv)

That policy endorses the Guideline, and states what police will and will not do regarding CCTV.

The NSWPF will:

Contribute to the assessment and planning phases, including initial research, risk analysis, setting objectives, camera placement and operational issues in a Program;  
Through Local Area Command, determine the level of response to incidents identified by CCTV, according to available resources and existing priorities;  
Contribute to the development of comprehensive Codes of Practice, Protocols and Police Standing Operating Procedures that clearly set out the operational aspects for a CCTV Program in a local area and are consistent with the Government Guidelines. This would include practice principles encompassing, but not limited to:

- o nature and level of involvement of the Police in management and operation of the CCTV Program;
- o roles and responsibilities of all agencies involved;
- o communication methods between police and the scheme owner/ managers;
- o the scope of police response to reported incidents, routine and urgent, including early identification of potential incidents to facilitate timely police responses.

Contribute to training programs for police and owner/ managers' staff in CCTV operations;  
Participate in the monitoring and evaluation of the program.

The NSWPF will NOT:

- Fund nor operate CCTV equipment;
- Routinely monitor CCTV cameras. The Police role is to respond to incidents identified by control room operators.
- Monitor- control for specific incidents can be transferred to police in emergency situations, to assess incidents and determine appropriate response.
- Be involved in a scheme that does not comply with the Government Guidelines.

In addition, police have a voluntary register for businesses that use CCTV from which they can obtain footage to use in investigations: see [http://www.police.nsw.gov.au/services/additional\\_services/register\\_my\\_business\\_cctv\\_details](http://www.police.nsw.gov.au/services/additional_services/register_my_business_cctv_details)

#### **Privacy aspects**

It is understandable that there is a degree of community concern about the use of CCTV. To the extent that it deals with personal information (which is not always clear cut), its use is regulated by the IPPs in the PPIP Act, unless an exemption or exception applies.

The main concerns from a privacy perspective are that CCTV be overt, and afford people the opportunity to give meaningful consent. If the IPPs apply, the information must be collected for a lawful purpose directly related to the function or activity of the agency, and the information obtained be stored, used and disclosed in accordance with the IPPs. The Privacy Commissioner has made submissions to the ADT on the use of CCTV by local councils.

With regard to police, if their involvement with CCTV were for law enforcement purposes, the PPIP Act would not apply, as this would fall within the section 27 exemption.

#### **Information access aspects**

There are no specific issues from a GIPA Act perspective. Information obtained from CCTV footage is treated the same as any other information.

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## **Further Questions on Notice**

### **Planning**

**iv. The Committee understands that the Information Commissioner and the Privacy Commissioner undertook important business decisions following the commencement of Dr Coombs in November 2011. Could you outline the kinds of business decisions that were made?**

- Initiated a process to select potential members of the Information and Privacy Advisory Committee.
- Initiated the development of a new position description for a Senior Officer position within the office establishment. Previously the highest level below the Commissioners was a Clerk Grade 11/12. This new role, titled Executive Director, will report to both Commissioners, and have two managers reporting to them: the Manager Communications and Stakeholder Engagement, and the Manager Programs. They will also take on the function of Chief Audit Executive, which is an important compliance obligation under Treasury's Audit and Risk Framework. The creation of this position allows for either Commissioner to be deputised for in the event of absence from the office, since neither Commissioner can act as the other.
- Developed a strategic plan. The one the office developed in 2011 was an interim plan in recognition of the fact that the new Privacy Commissioner would be key to the setting of the overall direction of the IPC.
- Finalised decisions about organisational structure and deployment of resources to ensure the Parliament's intention for the IPC became central to service delivery.
- At a more strategic level, developed new relationships with key stakeholders, especially senior executives of cluster agencies; and built on existing relationships with practitioners through the quarterly practitioner forum and other consultative mechanisms.

**v. In response to the questions on notice regarding the 2010/2011 annual report, the Information Commissioner outlined that in March 2012 the organisation embarked on a whole of IPC business planning exercise to guide future operations. Can you please tell the Committee about the outcomes of this task?**

The plan developed in March 2012 identified seven priority areas that the work of the office would focus on. These are as follows:

- IPC entity (focused on the merger of the two offices)

- Relationships and stakeholder engagement
- Legislation and policy
- Systems
- Our people
- Our clients
- Corporate governance.

The planning exercise was a very constructive one, led by the two Commissioners, with the aim of reinforcing the service imperative of the IPC for both government agencies and members of the public, harnessing the skills and abilities of every member of the IPC team. Performance against the milestones in the plan is measured each month. All staff members are involved in ensuring the plan is a success.

The model we adopted is one that has been used by the NSW Audit Office, and is well suited to an independent accountability agency focused on service delivery. A report on the plan and our performance against it will be provided in the 2011/12 Annual Report of the IPC.

**vi. Following on from this, can you explain to the Committee what informs the strategic direction of the Information and Privacy Commission? What processes does the Commission undertake when preparing its strategic plan?**

The strategic direction of the IPC is informed by the public interest considerations in our legislation, as explicitly outlined by the NSW Parliament in setting up the merged entity. The Commissioners want to ensure a number of key outcomes result, such as:

- Good service delivery and outcomes for our clients
- More efficient and effective use of resources
- Minimising duplication
- Strengthening opportunities to deliver against the IPC's objectives
- Identifying and planning to address any gaps in current service provision, and
- Strengthening relationships with all key stakeholders to help ensure the Commissioners deliver against their legislative mandates, with a specific focus on central agencies that can assist promote the rights and obligations under the legislation in a coordinated way across the sector, while also ensuring that privacy and access issues, where relevant, are identified early in any major policy developments.

In a very practical sense, the strategic plan makes sure that the IPC is focused on delivering outcomes such as one website, one contact number, coordinated advice and assistance to the public, and training to assist agency compliance with both access and privacy obligations. The plan also focuses on the fundamentals that ensure the office delivers on its purpose - staff engagement in contributing to the overall success of the IPC, and the successful implementation of key business systems.

**vii. The Committee notes the Privacy Commissioner's comments that much of the reform with respect to privacy and data sharing arrangements falls within the powers of the Commonwealth. Given this, are you aware of any planned national meetings, symposia, or inquiries which the Privacy Commissioner might attend and contribute to? Are you aware of what mode of consultation the Commonwealth might be planning in this regard?**

There is a range of mechanisms available for the NSW Privacy Commissioner to engage and influence developments in this area:

- A) The NSW Privacy Commissioner and the Federal Privacy Commissioner (whose functions sit within the Office of the Australian Information Commissioner (OAIC)) have established effective working arrangements that are collaborative and complementary. A recent example is the response to the NSW Roads and Maritime Services' advice to certain members of the public concerning the provision of personal data to car park operators. Enhancing strategic collaboration with the OAIC will be a focus for 2012 as it will contribute to providing better service delivery and outcomes for the people of NSW.
- B) The NSW Privacy Commissioner is a member of the Asia Pacific Privacy Association (APPA) which meets twice each year and which shares information and undertakes joint initiatives on matters concerning privacy. Recent combined efforts have concerned privacy issues raised about Google's privacy policies and practices. In addition, APPA works collaboratively on campaigns such as the annual Privacy Awareness Week, deciding upon the theme and sharing resources to maximise the effectiveness of the campaigns.
- C) The NSW Privacy Commissioner is also a member of the Privacy Authorities Australia, a body that meets twice a year to jointly examine issues, for example those arising from the National Reform Agenda and the COAG processes that impact on privacy. This has been a very effective forum.
- D) Within NSW, the Privacy Commissioner has established working relationships within the NSW State Government sector, with central agencies and with agency heads, since her appointment. The outcomes sought include better understanding of the NSW Government's position on matters impacting on privacy, with a focus on how to
  - o assist NSW public sector agencies deal with privacy issues identified within the business operations, and
  - o best assist agencies addressing national reform initiatives and developing initiatives to identify and address privacy issues that may arise.

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## **Compliance**

**viii. In the answers to the questions on notice, the Information Commissioner also mentioned that many agencies have poor information management systems, and that this is a lead contributor to agency non-compliance. How difficult is it to upgrade, change or improve these systems? Do you think the main issue here the**



**existing IT infrastructure, or the costs association with new systems, or just general resistance to change?**

There is no simple answer to this question, in my view. It is a complex interplay of elements, including those identified in this question.

Many issues are being raised under this heading for those agencies undergoing integration. One cluster, as noted in the recent Commission of Audit report, has 6 payroll systems, and similar difficulties occur in financial and HR systems and records management areas. In these circumstances it is difficult for the agency head and managers to receive timely and accurate information and to identify and track information. This situation is not due to resistance to change but the realities of integrating systems, which takes both time and money.

A key development that will assist with the challenges agencies face has been the development of the NSW ICT Strategy 2012, launched in May 2012, and the lead role being played by the Department of Finance and Services in ensuring a sector-wide focus on better service delivery outcomes. The strategy focuses on:

- Putting citizens first
- Leveraging industry best practice
- Increasing productivity.

As Information Commissioner, I am strongly supportive of any initiatives that will deliver better services to the people of NSW through more efficient and effective use of ICT.

The key enablers of access to government information under the GIPA Act are good records management, appropriate IT systems, and a culture of openness. Good information management is vital not just to the success of GIPA, but to better service delivery across the board for public sector agencies, allowing greater innovation through the use of government data, and enhancing collaboration with the community. NSW is at the start of a key transformational process in its approach to ICT strategy that, if successful, will lead to greatly improved outcomes for the whole community.

**ix. While the targets based on the data outlined by the Information Commission appear to be sufficient, do you think agencies currently have enough time under the guidelines to respond to requests for information?**

Timelines are proving challenging for those agencies that have high volumes of interactions with the public. They are also challenging for agencies that receive large and complex requests. It will be important for the Office of the Information Commissioner to monitor agency performance against timelines; to benchmark NSW Government performance against that of other comparable jurisdictions; and to work with agencies that have specific challenges to see whether these result from administrative processes, or whether a more proactive approach to releasing information may assist.

Once we have more comprehensive data from agencies, and have built up a picture of trends and patterns across the sector, we will be in a better position to comment.



**x. Can you tell the Committee what key challenges you have identified in relation to the acquittal of your statutory roles? How does the Information and Privacy Commission plan to overcome these challenges?**

Key challenges:

- communicating the message that good management of access to information and protection of privacy are tenets of good public sector administration
- helping agencies understand that getting these right in the first instance can assist them to effectively deliver their business objectives, while reducing the amount of administrative work that arises from dealing with allegations of breaches, complaints and requests for review of access decisions
- fulfilling the Commissioners' mandates under the legislation we administer within existing constraints.

How we plan to overcome these:

- building strong relationships and partnerships across government at both senior and officer levels so that agencies themselves help promote the objects of our legislation while making their operations and corporate governance more effective and efficient
- working collaboratively with other watchdog or regulatory agencies both within NSW and across the country on successful solutions to common problems
- being proactive in identifying risks and investing in addressing these as a priority (for example, as may become evident in terms of agency systems and processes, or patterns of behaviour evident from complaints)
- finding constructive ways to assist agencies efficiently comply with both access to information and privacy legislation.