

**INQUIRY INTO THE CONDUCT AND PROGRESS OF THE
OMBUDSMAN'S INQUIRY "OPERATION PROSPECT"**

Organisation: NSW Privacy Commission

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information
and privacy
commission
new south wales

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The Director
Select Committee on the conduct and progress
of the Ombudsman's inquiry "Operation Prospect"
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

15 JAN 2015

By email: operationprospect@parliament.nsw.gov.au

Dear Director,

Re: *Legislative Council Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect"*

I appreciate the opportunity to make a submission to the Legislative Council Select Committee inquiry into the conduct and progress of the Ombudsman's inquiry "Operation Prospect".

As NSW Privacy Commissioner, it is my role to champion and promote the privacy rights of the people of NSW with respect to both their personal and health information. The *Privacy and Personal Information Protection Act 1998* (PIIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act) are beneficial legislation that provides for the protection of personal information and for the protection of the privacy of individuals.

I recognise that the Select Committee has a difficult task ahead considering the potential scope of issues raised by the terms of reference. In light of this, and considering my role, my submission is confined to issues of privacy. I am concerned about the privacy issues raised by the operations which are the subject of Operation Prospect most notably the possibility that the privacy rights of individuals were impinged. My concern is for individuals who were the subject of Operations Mascot and Florida and any individuals who may have been incidentally involved through association with others who were the subject of the operations.

The PIIP Act contains the information protection principles (IPP) and the HRIP Act contains the Health Protection Principles (HPP). These principles govern how NSW public sector agencies collect, store, use and disclose personal information. The PIIP Act and HRIP Act also confer rights on individuals including the right to know if a public sector agency holds personal information about them and, if it does, the nature of that information.

At the same time, the PIIP Act and HRIP Act acknowledge that there will be circumstances when it is necessary to impinge on these rights for the effective operation of public sector agencies.

The NSW Police Force (NSWPF), NSW Crime Commission (NSWCC), NSW Police Integrity Commission (PIC) and the NSW Ombudsman, who are the subject of the Select Committee's inquiry, are public sector agencies that are subject to NSW privacy legislation. However, the PPIP Act and HRIP Act contain exemptions in relation to law enforcement and related matters, and investigative agencies (whether or not they are law enforcement agencies). These apply to all four agencies mentioned in the Select Committee's terms of reference.

The NSWPF, NSWCC and PIC are specifically provided exemptions from compliance with the IPPs in the PPIP Act. These exemptions respectively assist law enforcement agencies to conduct their primary functions of preventing, detecting and investigating crime covertly and to protect sensitive information. The NSWPF, NSWCC and PIC must comply with the IPPs in connection with their administrative and educative functions.

A 2010 report by the NSW Law Reform Commission, "Protecting Privacy in New South Wales", stated that privacy legislation should cover the activities of agencies where possible and reasonable to do so. On this basis, it stated:

"...we are of the view that there is no justification for the current level of exemption for the NSW Police Force. It will often be appropriate in circumstances to subject personal information held by the NSW Police Force to privacy principles. While it is important to recognize that their investigative and law enforcement functions are immune from privacy protection, other functions should otherwise remain subject to privacy principles."

The Report stated that the PIC and NSWCC's roles, functions and powers were such that these agencies should remain exempt from complying with the PPIP Act and the HRIP Act. The report can be found on the NSW Law Reform Commission's website at:

http://www.lawreform.justice.nsw.gov.au/agdbasev7wr/lrc/documents/pdf/r127_final_revised.pdf

The Committee on the Ombudsman, the Police Integrity Commission and the NSW Crime Commission considered the *Surveillance Devices Act 2007* (SD Act) in its Report 7/55, published in October 2013. It recommended that a review of the system for granting surveillance device warrants be undertaken with the aim of strengthening integrity checks on affidavits submitted in support of warrants.

The report can be found at:

[http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/07749c189159b00fca257c060081af19/\\$FILE/Final%20Report%20General%20Meetings%202013.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/07749c189159b00fca257c060081af19/$FILE/Final%20Report%20General%20Meetings%202013.pdf)

The inquiry may wish to consider these findings of the NSW Law Reform Commission and the Committee on the Ombudsman, the Police Integrity Commission and the NSW Crime Commission. The inquiry may also wish to consider whether the operational practices of law enforcement and investigatory public sector agencies could adopt a best practice approach to the handling of personal information during investigations.

I consent to this letter being published, should the Committee decide to publish submissions. Please ensure that prior to any publication of this letter that my signature is redacted from the version to be published.

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Please do not hesitate to contact Roxane Marcelle-Shaw, Director Investigation and Reporting, on (02) 8071 7020, or by email at roxane.marcelle-shaw@ipc.nsw.gov.au if you have any queries.

Yours sincerely

Dr Elizabeth Coombs
NSW Privacy Commissioner

16 JAN 2015