

**Submission
No 1**

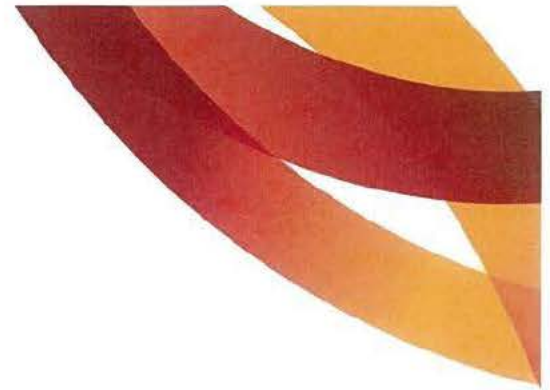
INQUIRY INTO HUMAN TRAFFICKING

Organisation: Office of the Privacy Commissioner

Date received: 5 December 2016



office of the
privacy
commissioner
new south wales



The Hon. Paul Green
Committee's Chair
Select Committee on Human Trafficking
Parliament House
Macquarie Street
SYDNEY NSW 2000

Our reference: **IPC16/A000379**

- 1 DEC 2016

*via- email to: Sam Griffith, Main Contact
humantraffickingcommittee@parliament.nsw.edu.au*

Dear Mr Green

Submission to inquiry into Human Trafficking

I write to provide you with my submission to the Committee's inquiry into Human Trafficking.

The purpose of my submission is to highlight the importance of the International instruments on the rights of victims of human trafficking in light of their right of privacy.

While my Office has not had any allegations or matters arising from this area, I believe that privacy needs to be fact checked into this inquiry and to be considered in the formulation of any recommendations. I believe that victims' privacy should not be intruded upon any more than is necessary.

International Instruments that apply to the privacy of trafficked persons:

There are a number of international instruments relevant to this inquiry discussing the right of privacy of human trafficking victims that affect the practical measures a government can put in place to protect their identity.

1. *The Palermo Protocol, a supplement to the UN Convention against Transnational Organised Crime (2000)*¹

The Protocol was adopted by the United Nations in 2000 and it entered in force on 25 December 2005. The aim of the Protocol is to instruct State Parties to prevent and combat

¹ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, <<http://www.refworld.org/docid/4720706c0.html>>

trafficking in persons and to protect and support the victims of this crime. Regarding the right of privacy of victims, the Protocol states at Article 6:

"1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including inter alia, by making legal proceedings relating to such trafficking confidential.

2. *The Convention on the Rights of the Child (1989)² and the Optional Protocol to the Convention on the rights of the Child on the Sale of Children, Child Prostitution and Child Pornography³*

Both instruments confer specific provisions concerning the trafficking of children. The Optional Protocol discusses at Article 8 the right of privacy of children victims of human trafficking:

"Article 8

1. States Parties shall adopt appropriate measures to protect the right and interests of child victims of the practices prohibited under the present protocol at all stages of the criminal justice process, in particular by:

...[e] Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;"

The rights conferred in these instruments are complemented by the *Recommended Principles and Guidelines on Human Trafficking⁴* and the *Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking⁵*.

In relation to the measures State Parties can implement to protect the victims' right of privacy, the Guidelines recommend:

² UN Office of the High Commissioner for the Human Rights, *Convention on the Rights of the Child*, A/RES/44/25 (2 September 1990) < <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>>

³ UN Office of the High Commissioner for the Human Rights, *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, A/RES/54/263 (18 January 2002) < <http://www.ohchr.org/Documents/ProfessionalInterest/crc-sale.pdf>>

⁴ UN Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, (20 May 2002_ < <http://www.refworld.org/docid/3f1fc60f4.html>>

⁵ United Nations, *Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking*, HR/PUB/10/2 (November 2010) <<http://www.refworld.org/docid/4d2eb7cf2.html>>

1. To promote the need for current and accurate information by governmental and non-governmental organisations and to balance the role of law enforcement and the media in sharing of information on trafficking incidents and the need to preserve the privacy of trafficked persons:

“ Guideline 3: Research, analysis, evaluation and dissemination:

... 7 Recognizing the central role that non-governmental organizations can play in improving the law enforcement response to trafficking by providing relevant authorities with information on trafficking incidents and patterns taking into account the need to preserve the privacy of trafficked persons.”

2. To promote appropriate measures to protect victims from harm and treats of intimidation by traffickers. For example, the guidelines recommend that there should be no public disclosure of the identity of the victim and the respect of privacy in criminal proceedings:

“Guideline 6: Protection and Support of Trafficked Persons:

.. 6. Ensuring that trafficked persons are effectively protected from harm, threats, or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.”

3. To promote the need to implement special measures for children victims of human trafficking because of their vulnerable condition makes them more susceptible to exploitation:

“Guideline 8: Special measures for the protection and support of child victims of trafficking:

.. 9. Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.”

The Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking gives further guidance regarding practical measures to protect the privacy of trafficked persons.⁶

⁶ Ibid.

It illustrates how the European Trafficking Convention⁷ has addressed the issue of privacy. The European Convention prescribes a general obligation to protect the identity of victims by:

- setting up standards for the storage of personal information;
- making sure the media respect the privacy and identity of victims; and
- putting in place higher standards to protect the privacy of trafficked children.

The commentary also recommends measures to assist child victims to participate, safely and meaningfully, in court processes. This includes the provision of alternatives to direct testimony – such as video, closed hearings and witness concealment – in order to protect the child witness's identity, privacy and dignity, while at the same time ensuring that the rights of accused persons to a fair trial are at all times respected.⁸

I consider organisations and non-government organisations such as law enforcement entities and the media should be made aware of the obligations contained in these international instruments and the possibility to implement them as a policy objective.

This will enhance the protection of privacy rights of trafficked persons during legal proceedings, and their reintegration to society and enable more consistency between privacy legislation and the principles prescribed by international instruments dealing with human trafficking.

I am happy to assist the Standing Committee further with any questions raised by this submission.

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

Yours sincerely

Dr Elizabeth Coombs
AI NSW Privacy Commissioner

4/12/2016.

⁷ Council of Europe, *Convention on Action against Trafficking in Human Beings*, 16.V.2005 (16 May 2006) <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008371d>>

⁸ United Nations, *Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking*, HR/PUB/10/2 (November 2010) page 170-171