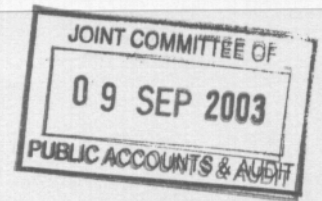




Our reference: 2002/0472/02

Mr Tas Luttrell
Sectional Committee Secretary
Joint Committee of Public Accounts and Audit
Parliament House
Canberra ACT 2600

Submission No. 71



Dear Mr Luttrell

Matters taken on notice: JCPAA Inquiry into the Management and Integrity of Electronic Information in the Commonwealth

I refer to matters taken on notice from my appearance of 2 April 2003 before the Committee in relation to its inquiry into the management and integrity of electronic information in the Commonwealth. I apologise for the delay in providing this information.

There were two matters about which the Privacy Commissioner wishes to provide further information.

i) Report from Consumers International on Internet Privacy

During the hearing the Privacy Commissioner undertook to provide a link to a survey and report (released in January 2001), by Consumers International. This report is entitled 'Consumer privacy threatened on the net' and is available at the web address www.consumersinternational.org/document_store/Doc30.pdf.

Discussion of the report arose following a question about the respective efficacy of Australian and European Union privacy protection, given the detailed regulatory approach in the latter jurisdiction. In light of that discussion, it is interesting to note that the report makes the observation, for instance, that "despite tight EU regulation, (internet) sites within the EU are no better at telling users how they use their data than sites based in the US. Indeed, some of the best privacy policies were found on US sites."

We hope the Committee finds this report of use.

ii) Further data on complaints received by the Office of the Federal Privacy Commissioner (last financial year) under the Information Privacy Principles in relation to alleged breaches of privacy by Commonwealth agencies

The Committee asked for more detail on the number of complaints about federal agencies that were upheld, the number of breaches that were severe and which agencies were subject of the majority of complaints. Answers to these questions and additional background information, are set out below.

Background

The Act provides that the Privacy Commissioner should investigate complaints about matters that may be an interference with an individual's privacy provided that, in most cases, the respondent has first had an opportunity to deal with the matters direct.

The Office aims to resolve complaints quickly and to the satisfaction of both parties where possible. The complaint handling process involves an assessment to establish if the act or practice complained about is interference with privacy, investigation where there appears to be an interference with privacy and attempts to conciliate a resolution. If the parties agree to an outcome, that is the end of the matter. The Commissioner may also close a complaint if he or she is satisfied that there is no breach of privacy or that the matter would be better dealt with by another body. If conciliation is unsuccessful, the Office decides whether a breach of the Act has occurred or not and what remedial action should be taken. If the respondent does not accept the decision, the Commissioner may make an enforceable determination under s. 52 of the Privacy Act. This happens only rarely. There was one determination made in 2002–2003, the first in ten years. If the complainant disagrees with the outcome, the decision can be reviewed by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

The Office closed a total of 955 complaints in 2002–2003, compared with 359 in 2001–2002, and 133 in 2000–2001

The following table shows a breakdown of the types of complaints resolved.

Area of Jurisdiction	Complaints Closed
National Privacy Principles	651
Information Privacy Principles	147
Credit Reporting Provisions	186
Other	11
TOTAL	995

Outcome of Privacy Complaints about Federal Agencies

As noted in the table, the Office finalised 147 complaints about the information handling practices of federal and ACT agencies. Approximately 60% amounting to 90 of these complaints were investigated. In 25% of the cases investigated, that is in about 22 complaints, breaches were found and consequently remedied. In one case the Commissioner made a formal determination that a breach of privacy had occurred.

In 75% of the cases investigated the Office found there was no breach of privacy. Generally, in these cases, the complaint had not been substantiated or an exception to the IPPs applied.

Approximately 40% of complaints were closed without investigation in accordance with the Commissioner's discretion under s. 41(1) of the Privacy Act. The grounds included, amongst others, that the matter was more than twelve months old or the respondent had not been given an opportunity to resolve the matter.

Complaints received by Agency for 2002-03

The table below sets out the agencies that were most frequently the respondents in complaints. It may be useful to note here that the Office will generally not commence an investigation unless the respondent has first had a chance to resolve the issues. To gain a more complete picture of agencies performance in handling personal information it would be necessary to consider other factors, including complaints made directly to the agency. For example, Centrelink's annual report for 2001-2002 notes that the agency received 1383 complaints from individuals of which 365 were proven.

Agency	No	How resolved
Centrelink	52	<p>In 9 cases the Office formed the view that there had been a breach of privacy and closed the complaints on the basis that the agency had dealt adequately with the matter.</p> <p>In 11 of the complaints the Office did not commence an investigation as the complainant had not yet raised the issue with the respondent.</p> <p>25 cases were closed on the grounds that there was no breach.</p> <p>The other cases were closed one of the other grounds open to the Office; for example that the matter was too old or out of jurisdiction.</p>
Child Support Agency	27	<p>In 7 cases the Office formed the view that there had been a breach of privacy and closed the complaints on the basis that the agency had dealt adequately with the matter.</p> <p>In 1 case the Office did not commence an investigation as the complainant had not yet raised the issue with the respondent.</p> <p>16 cases were closed on the grounds that there was no breach.</p> <p>The other cases were closed one of the other grounds open to the Office; for example that the matter was too old or out of jurisdiction.</p>
The Australian Taxation Office	12	<p>In 2 cases the Office formed the view that there had been a breach of privacy and closed the complaints on the basis that the agency had dealt adequately with the matter.</p> <p>In 1 case the Office did not commence an investigation as the complainant had not yet raised the issue with the respondent.</p> <p>6 cases were closed on the grounds that there was no breach.</p> <p>The other cases were closed one of the other grounds open to the Office; for example that the matter was too old or out of jurisdiction.</p>

Department of Defence	8	<p>In 4 cases the Office formed the view that there had been a breach of privacy and closed the complaints on the basis that the agency had dealt adequately with the matter.</p> <p>In 1 case the Office did not commence an investigation as the complainant had not yet raised the issue with the respondent.</p> <p>1 case was closed on the grounds that there was no breach.</p> <p>The other cases were closed one of the other grounds open to the Office; for example that the matter was too old or out of jurisdiction.</p>
Department of Immigration and Multicultural and Indigenous Affairs	7	<p>In 1 case the Office formed the view that there had been a breach of privacy and closed the complaints on the basis that the agency had dealt adequately with the matter.</p> <p>In 1 case the Office did not commence an investigation as the complainant had not yet raised the issue with the respondent.</p> <p>4 cases were closed on the grounds that there was no breach.</p> <p>The other cases were closed one of the other grounds open to the Office; for example that the matter was too old or out of jurisdiction.</p>
Health Insurance Commission	5	<p>In 1 case the Office formed the view that there had been a breach of privacy and closed the complaints on the basis that the agency had dealt adequately with the matter.</p> <p>3 cases were closed on the grounds that there was no breach.</p> <p>The other cases were closed one of the other grounds open to the Office; for example that the matter was too old or out of jurisdiction.</p>

In addition to complaints from individual the Office is also able to investigate, on its own initiative, acts or practices that may be an interference with the privacy of individuals.

In the period 1 July 2001 to 30 June 2003 the Office initiated 20 such investigations in relation to federal agencies. The agencies most frequently the subject of investigations were as follows:

The Child Support Agency	4
The Department of Health and Aging	3
Centrelink	2
The Australian Taxation Office	

The matters raised in investigations included:

- Web site disclosures of third party information
- Misuse of email address
- Personal information stolen

- Personal information disposed of improperly
- Personal information lost in transfer
- IT systems design leading to disclosure of personal information contrary
- Insufficient information included in privacy notices
- Personal information collected via a website used for unrelated purposes

Nature and Severity of Complaints and Own Motion Investigations

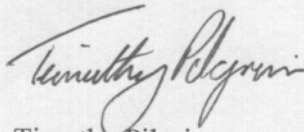
As noted above, the Office found breaches of privacy in about 20 of the complaints. The majority of complaints, 44%, involved agencies disclosing personal information (IPP 11); about 15% of cases concerned security issues (IPP 4); about 13% involved the collection of personal information (IPP 1); and about 9% the accuracy of personal information before use (IPP8).

Our experience is that the impact of privacy breaches on individuals varies considerably; a breach regarded as severe by one person may be considered quite unimportant by another. For this reason the Office does not generally categorise complaints by severity. We do find that privacy breaches often arise through inadequate procedures, insufficient training or human error. Complaint resolutions will aim to address these systemic issues that are identified. However, the resolution also will focus on the loss or damage suffered by the complainant.

In a number of the own motion investigations mentioned above the incident involved considerable numbers of individuals and had the potential to have serious consequences. However, the matters were all resolved without there being evidence that individuals had been badly affected.

I hope that this information assists the Committee. Should you require further information, please contact Chris Cowper, Director, Compliance on (02) 9284 9651, or chriscowper@privacy.gov.au.

Yours Sincerely



Timothy Pilgrim
Deputy Privacy Commissioner

3 September 2003