

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
OFFICE OF THE PRIVACY COMMISSIONER

Question No. 150

Senator Nettle asked the following question at the hearing on 13 February 2007:

I refer to reports in the media regarding the leaking of patient medical files by insurance company HCF to McKesson Asia Pacific the company contracted to run the government's pregnancy help line.

- a) Is your Office conducting an investigation of this matter?
- b) When will you conclude your investigation?
- c) Are you able to provide any preliminary assessment of the matter, has the Privacy law been breached?
- d) What form will your report take?
- e) In general terms what obligations does a company have when it passes personal information to a contractor, does it have to inform the person whose information is transferred?
- f) Is it possible for a contractor that collects information in one area of its work to transfer it to another? For example would a contractor like McKesson be able to use information collected on the pregnancy help line to inform its work for HCF?

The answer to the honourable senator's question is as follows:

- a) On 5 February 2007, the Office commenced an investigation into the alleged inappropriate disclosure of patient medical files reported in the media. The investigation was commenced under investigation powers provided at section 40(2) of the *Privacy Act 1988*.
- b) The Office intends to conclude the investigation as soon as possible. However, at this stage it is not in a position to advise on a specific timeframe. The Office gave HCF and McKesson Asia Pacific 28 days to respond to investigation letters. The responses have been received and are currently being considered.
- c) The Office's practice is generally not to discuss or disclose any details or specifics of any investigation it is undertaking in order to ensure the integrity of the complaint process. This approach is supported by section 43(2) of the *Privacy Act 1988* (Cwth) which states, in part, that any investigation undertaken must be conducted in private. In saying that the Office is aware that, in this instance, the media has reported the alleged disclosure of personal and sensitive information by the organisations named, and the Office has confirmed that it is investigating the matter. However, in response to the specific question the Office has not yet formed a view on the matter.
- d) Following its investigation the Office will provide HCF and/or McKesson Asia Pacific with its opinion as to whether or not either organisation has breached the Act. If it is considered that a breach of the Act has occurred the Office will seek a commitment from HCF and /or McKesson Asia Pacific to undertake appropriate remedial action.
- e) Where a contracting organisation usually discloses personal information to a contractor, the contracting organisation must take reasonable steps when collecting the individual's

personal information to ensure that the individual is made aware, in accordance with National Privacy Principle 1.3(d), of those types of disclosures.

- f) The privacy rules applying to contracting situations are dependant on a number of circumstances. For example, an organisation may be contracting to a public sector body, or to another private sector organisation.

For Australian Government agencies, section 95B of the Privacy Act requires an agency to take contractual measures to ensure that a contractor does not do an act, or engage in a practice, that would breach an Information Privacy Principle (IPP) if that act or practice was done by the agency. This would be achieved, for example, by contracts that specify permitted uses and disclosures of the personal information provided for in the contract.

In the circumstances of a contractor dealing with another private sector organisation, generally the contractor would be subject to the National Privacy Principles (NPPs) (unless the contractor was an organisation that is exempt from the Privacy Act) as well as any specific provisions in the contract. The NPPs prevent use or disclosure of personal information other than for the original purpose of collection unless an exception applies.