

24 February 2005

Inquiry into the Privacy Act 1988

A submission from: Mary Lander
Canberra ACT

Notes:

1. *Address and contact details 'not for publication' for privacy reasons but provided to Senator Allison for the purpose of authenticating my submission to this Inquiry.*
2. *I have no objection to this submission being published.*

I would like to take this opportunity to express my concern about the inadequacies of the existing Privacy Act to protect an individuals right to privacy with regard to personal information being collected by companies, organisations and governments. This information is often later shared or sold to other parties for purposes other than that which it was originally provided and intended, without the express permission or authority of the individual concerned.

People are often unaware that the information they may be providing for a specific purpose will be used at a later date for other purposes eg. direct marketing. It is both very difficult and extremely time consuming, for an aggrieved party (or the Privacy Commissioner), to track down the originating source of the data given neither party has direct access to the relevant companies, organisations or governments records.

How then, does an aggrieved party obtain any proof, for the purpose of pursuing a case against a company or organisation that may have violated our right to privacy and ensure that we maintain our right to withhold personal details for purposes other than that which they were originally provided and intended. Given the difficulties in obtaining such proof companies, organisations and governments are fully aware that the balance of control and therefore power in such situations works clearly in their favour. Without an admission on their part it, is almost impossible for an aggrieved party to pursue a case.

Yet, despite the requirements imposed on companies, organisations and governments under the existing Privacy Act and the 'Assurances' and 'Privacy Statements' they make available publicly, we have all, no doubt, received unsolicited marketing material via post or have been approached by telemarketing companies via phone. I have a silent phone number and my address does not appear in the telephone book. I do not actively seek marketing material from any company or organisation and yet I still receive it from time to time.

It has become fairly obvious that existing measures are simply not adequate and that stricter controls and regulations need to be imposed to ensure that an individuals details, their right to privacy and their right to withhold personal details from 'other' parties is maintained.

Given this situation and the difficulties that occur as a result, I would like to see that it is made mandatory that companies and organisations using direct marketing techniques are required, by law, to disclose the originating source of an individuals contact details ie. state from the outset where they obtained those details. For example:

- In the case of marketing material sent via mail, the material and/or covering letter should state something along the lines of "We obtained your personal details from and would like to offer you this opportunity to.... "

In the case of telemarketing companies or surveys being conducted by phone:

- that the caller identifies themselves and gives their ID;
- that they state whether they are employed by the company, organisation or government authority making the approach directly or whether they are a telemarketing company that has been engaged by them for this purpose; and
- that they provide details of where/how they obtained a phone number and/or personal contact details.

In instances where a person may object to their details having being disclosed for this purpose then either they, or the Privacy Commissioner would be in a far better position to identify the originating source and request they provide a copy of the persons 'written consent and authority to use their contact details for this purpose' and in particular their consent and authority to 'forward or sell the information to other parties, including marketing companies.

To support the issues I've outlined above, I wish to provide following examples.

1. AMERICAN EXPRESS GOLD CARD MARKETING MATERIAL (RECEIVED VIA POST):

I recently received marketing material from American Express Gold Card via post dated 8 December 2004. I have no existing relationship with American Express nor have I requested information from them. How I came to be on their distribution list for marketing purposes, I have no idea.

I have a silent number so my phone number and address do not appear in the telephone book. With regard to this particular marketing letter, they indicate on the bottom on the letter "If you do not wish to receive any further mailings from American Express at this address please call 1300 650 350 and follow the instruction to enter your reference number AX01-047-0029907765

Questions I would like answered are:

- Why should I have to be subjected to this inconvenience when I didn't request information from them in the first instance?
- Are my personal details available to companies such as American Express (either free-of-charge or sold) from Telstra despite the fact I have a silent number and pay additional fees for this privilege?
- Does the Commonwealth Government make available or sell personal details from the Electoral Roll to companies or organisations?
- If not, how can I possibly track down the source (ie. who forwarded or sold my details to American Express for this purpose)?
- Is American Express (in this instance) under any obligation to provide this information, in the event I was to contact them directly and request this information from them?
- Does the Commonwealth government recognise the problems associated with the time and effort required to pursue such cases on a 'case by case' basis?

- Why does the Privacy Commissioner and Commonwealth Government not make known more publicly individuals rights under the Act to pursue such cases and options available?

Note: If I have provided my details to companies or organisations with whom I have an existing relationship I have certainly not, to my knowledge, authorised the release of my details to other parties, in doing so.

2. LOTTERIES – THE AUSTRALIAN PARALYMPIC TEAM (PERMIT No. R04/0409)

On 18 December 2004, I agreed to purchase a lottery/raffle ticket for \$5 from people selling raffle tickets to raise money for the Australian Paralympic Team. (Permit No. R04/0409).

I noticed on the ticket stub (as they were taking my details ie. name, address and phone etc.) that they had little boxes for each character (alpha/numeric) being entered.

We were up to my address when I asked 'unprompted':

- "Do you provide or sell this information to anyone else"
- He (the ticket seller) quickly replied with "Oh, we can stop that if you like". He then wrote "NFP" across the stub. I noticed there were no boxes on the stub for this option (only boxes for my personal details). It was interesting that the ticket seller did not ask me this question unprompted, nor did he deny it was their intention to forward or sell this data with other parties. There was no provision on the ticket stub for an answer to that question. eg. Do you agree to your personal details being forwarded or sold to other parties etc. YES/NO.
- The existence of boxes for alpha/numeric characters on the ticket stubs may also possibly suggests the information will be scanned. If so, will letters such as NFP - written outside of these boxes be picked up and read by a scanner.
- What are the methods used to input this information into a central database and what other purposes will the data be used for? If it is their intention to forward or sell this information to other parties, there are people who may not ask the question, be asked the question and then subsequently find their personal details are used for another purpose or provided to other parties without their knowledge, consent or authority.
- Do these organisation have the right to 'sell' personal information obtained this way, use it for other purposes themselves or give it to another party eg. a marketing company either free of charge or for a fee?
- Are the ticket sellers volunteers working for the organisation in question or does a marketing company working on a collaborative basis eg engage them, providing their time free of charge on the basis they have rights to the personal details obtained via ticket stubs/sales?
- Given the lottery is not drawn until Dec 1 2005 - How many people are also going to be effected and possibly caught out by ticket sellers who may not disclose the organisations intentions regarding use of personal information.
- Can many organisations raise additional money using this technique ie. raise money via ticket sales plus make money selling personal information obtained from people who have purchased tickets without requesting the consent of the individuals concerned?

I would very much object to my personal details being used for other purposes and the fact it may be a fund-raising exercise does not automatically give them the right to my personal details.

3. RECENT MEDIA REGARDING THE COMMONWELTH DEPARTMENT OF HEALTH AND AGEING'S TOTAL DISREGARD FOR PERSONAL INFORMATION AND RIGHTS TO PRIVACY THROUGH THE IMPLEMENTATION OF IT'S HEALTHCONNECT PROJECT:

I refer to this article:

Alarm raised over health network

<http://australianit.news.com.au/articles/0,7204,12346587%5E15306%5E%5Enbv%5E,00.html>

- Will the Commonwealth Government give it's assurance that health data (either personal details or collated data showing demographics) will not be provided to Drug Companies who may wish to promote their products to individuals directly or promote it them through GP's in an area where a high incidence of a particular condition may exist?
- Will the Commonwealth Government give it's assurance that patient care and advice given by GP's will not be undermined as a result of Drug Companies offering GP's incentives to prescribe their drugs over others?
- I would like to bring to your attention that this appears to be a trend in the US and given Canberra is after all the 'Bush Capital' will the Prime Minister, give his assurance just for once, that he will follow in the US's footsteps and ensure that the welfare of individuals and their right to privacy comes above that of commercial interests?
- Will aggressive marketing by US Drug Companies have any influence on drugs being prescribed in Australia? Will testing and the rights of Australian Regulatory Authorities such as TGA to reject or approve the use of certain drugs in Australia be compromised as a result of the FTA?

I thank you for the opportunity of providing this submission to the Inquiry and welcome a response to the issues I have raised and questions I have asked.

Mary Lander

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I would like to take this opportunity to express my concern to this Inquiry about the insidious violation of privacy and loss of an individuals right to their own personal information that results when public sector employees are falsely accused by management of having 'psychiatric problems' and are subsequently forced to undergo a psychiatric assessment as a result of:

- blowing-the-whistle on issues that may have implications for public officials or management in the public sector; or
- raising issues of concern to them in the workplace.

I refer to these articles – links attached herewith:

<http://members.dodo.net.au/~shallcross/PASSMORE%20SECTION%2085.doc>

<http://www.uow.edu.au/arts/sts/bmartin/dissent/documents/psychiatry.html>

I would like to know the views of the Privacy Commissioner with regard to this matter. It is clearly quite insulting and degrading for people to be falsely accused of having psychiatric problems and particularly devastating when they are forced to undergo a psychiatric assessment as a result of whistleblowing or raising workplace issues. It can and should be considered a form of abuse and bullying in this context as well as a violation of privacy.

A forced psychiatric assessment is a clearly a forced intrusion into an individuals personal space and private life by people who are both unwelcome and uninvited. This personal information is of no relevance to the issues they have raised and being forced to undergo a psychiatric assessment has a devastating effect on those who are subjected to it under such circumstances. A 'forced psychiatric assessment' and a 'violation of that individuals right to their personal information and privacy' cannot be separated given the nature of psychiatric assessments. If individuals are 'forced' to disclose such personal information 'under duress' they are obviously not willing participants. Whether or not a psychiatrist finds anything wrong with the person is irrelevant. The fact they have been subjected to this does considerable damage to their emotional well-being.

This practice should be banned, is nothing but another form of bullying and abuse and it should be recognised as such. I welcome a response from the Inquiry with regard to this issue and welcome to any amendments under the Privacy Act to legislate against this insidious practice.

Mary Lander