



Reference: s 22

Commonwealth of Australia

Privacy Act 1988

Notice to Give Information [and/or] Produce Documents
to the Privacy Commissioner

TO:
s 22

The Privacy Commissioner ('the Commissioner') is conducting an investigation under s 40(1) of the Privacy Act 1988 (Cth) (the Act) into a complaint dated s November 2010 from s 22 ('the complainant'), in which she alleges that s 22 has interfered with her privacy ('the investigation'). The complainant alleges that s 22 has disclosed her personal information by listing her details in the phone book when she had requested that her details be silent. The personal information is s 22

The Commissioner is considering whether the conduct the subject of the complaint constitutes a breach of the following information privacy principles:

- (a) NPP 2.1 regulates the use and disclosure of personal information. NPP 2.1(a) provides that an organisation must not use or disclose personal information about an individual for a purpose (the *secondary purpose*) other than the primary purpose of collection unless the individual has consented to the use or disclosure, or both of the following apply:
 - (i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;
 - (ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose.

The exceptions listed in NPP 2.1 (b) to (h), also authorise the disclosure of personal information in certain circumstances.

- (b) NPP 3 requires an organisation take reasonable steps to ensure the personal information it collects, uses or discloses is accurate, complete and up to date.

I believe that you have information identified in Schedule 1 to this notice and that the information is relevant to the investigation. I believe the information is relevant to the investigation for the following reason:

- (a) This Office believes that by identifying the steps s 22 [REDACTED] took which lead up to s 22 [REDACTED] details being printed in the 2010-11 s 22 [REDACTED] White Pages, we may be able to identify the reason for their release.

Under subsection 44(1) of the Act, I require you to produce this notice and the documents and to give the information in writing signed by you or in the case of a body corporate by an officer of the body corporate specified in the attached Schedule to the Office of the Privacy Commissioner at Level 8 Piccadilly Tower, 133 Castlereagh Street, Sydney in the State of New South Wales, by no later than 5:00 pm on Wednesday, 23 February 2011,

Dated this day of February 2011

.....

Mark Hummerston
Delegate of the Privacy Commissioner

A copy of the sections of the Act that relate to this notice are set out in Annexure A. Your attention is drawn to the provisions of s 66(1) of the Act which makes it an offence to refuse or fail to comply with a notice without a reasonable excuse. In the case of an individual, the penalty is a fine of up to \$2,000 or imprisonment for 12 months, or both or in the case of a body corporate, a fine of up to \$10,000.

SCHEDULE 1 TO THE NOTICE UNDER SECTION 44 OF THE PRIVACY ACT 1988

Dated: 2 February 2011

Information required to be given

You are required to give the information to the Commissioner in writing signed by you, or in the case of a body corporate, by an officer of the body corporate:

1. Did s 22 receive a request for a silent number listing for service number s 22 on s 22 October 2009. Did s 22 action this request?
2. On what basis was s 22 personal information printed in the 2010-11 s 22 White Pages by s 22

Documents required to be produced

You are required to produce the following document(s) to the Commissioner:

1. Please provide any file notes, com s 22 er documentation held by s 22 relating to s 22 This information is sought to assist in our consideration of whether s 22 has complied with the requirements of the Act.

If you do not have possession, custody or control of any document but you know who does have possession custody or control of the document please provide the Commissioner in writing signed by you or in the case of a body corporate by an office of the body corporate with the identity of the document and the full name and address of the person who has possession, custody or control of that document. If you gave that person the document please also provide the Commissioner with the date upon which, and the purpose for which the document passed into their possession, custody or control.

If any document does not disclose on its face:

- (a) the date it was created;
- (b) the identity of the person who created it; or
- (c) the meaning of any abbreviations, technical scientific or other symbols;

please provide that information to the Commissioner in writing signed by you or in the case of a body corporate by an officer of the body corporate in relation to each such document.

Definitions

In this Notice and the attached Schedule, unless the contrary intention appears:

- (a) the singular includes the plural and the plural includes the singular
- (b) the masculine includes the feminine
- (c) "Code of Conduct" means the Code of Conduct issued under section 18A of the Act
- (d) "Commissioner" means the Privacy Commissioner
- (e) "communication" means any transfer of information between two or more persons by any oral or written means including by telephone or by document
- (f) "consent" means express consent or implied consent
- (g) "credit" means a loan sought or obtained by an individual from a credit provider in the course of the credit provider carrying on a business or undertaking as a credit provider, being a loan that is intended to be used wholly or primarily for domestic, family or household purposes
- (h) "credit reporting complaint" means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because:
 - it breached the Code of Conduct, or
 - it breached a provision of Part IIIA
- (i) "credit reporting infringement" means:
 - a breach of the Code of Conduct, or
 - a breach of a provision of Part IIIA
- (j) "document" includes -
 - a book, plan, visitors card, paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them

- a disc, tape, paper, film or other device on which sounds, images or messages which are capable of being reproduced are recorded (including diary, appointment book, dictaphone tape, computer tape or disc, shorthand book)

(j) "individual" means a natural person

(k) "record" means:

- a document
- a database (however kept), or
- a photograph or other pictorial representation of a person;, but does not include:
 - a generally available publication;
 - anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition;
 - Commonwealth records as defined by subsection 3 (1) of the Archives Act 1983 that are in the open access period for the purposes of that Act;
 - documents placed by or on behalf of a person (other than an agency) in the memorial collection within the meaning of the Australian War Memorial Act 1980; or
 - letters or other articles in the course of transmission by post.

ANNEXURE A

Statutory provisions

Section 44 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- “44. (1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:
- (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
 - (b) to produce the document to the Commissioner.
- (2) A notice given by the Commissioner under sub-section (1) shall state:
- (a) the place at which the information or document is to be given or produced to the Commissioner; and
 - (b) the time at which, or the period within which, the information or document is to be given or produced.
- (2A) If documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner:
- (a) may take possession of , and may make copies of, or take extracts from, the documents; and
 - (b) may retain possession of the documents for any period that is necessary for the purpose of the investigation to which the documents relate; and
 - (c) during that period must permit a person who would be entitled to inspect any one or more of the documents if they were not in the Commissioner’s possession to inspect at all reasonable times any of the documents that the person would so be entitled to inspect.
- (3) If the Commissioner has reason to believe that a person has information relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person

to attend before the Commissioner at a time and place specified in the notice to answer questions relevant to the investigation.

(4) This section is subject to sections 69 and 70 but it has effect regardless of any other enactment.

(5) A person is not liable to a penalty under the provisions of any other enactment because he or she gives information, produces a document or answers a question when required to do so under this Division”.

Section 65(3) of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

“65 (3) A person shall not furnish information or make a statement to the Commissioner knowing that it is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both”.

Section 66 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

“66 (1) A person shall not refuse or fail:

- (a) to give information; or
- (b) to answer a question or produce a document or record;

when so required under this Act.

Penalty:

- (a) in the case of an individual-\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate-\$10,000.

(1A) For the purposes of subsection (1B), a journalist has a reasonable excuse if giving the information, answering the question or producing the document or record would tend to reveal the identity of a person who gave information or a document or record to the journalist confidence.

(1B) Subsection (1) does not apply if the person has a reasonable excuse.

(2) For the purposes of subsections (3) to (11) (inclusive):

document includes a record.

information includes an answer to a question.

(3) Subject to subsections (4), (7) and (10), it is a reasonable excuse for the purposes of subsection (1B) for an individual:

(a) to refuse or fail to give information when so required under this Act; or

(b) to refuse or fail to produce a document when so required under this Act;

that giving the information, or producing the document, as the case may be, might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(4) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of the Commonwealth or of a Territory, if the Director of Public Prosecutions has given the individual a written undertaking under subsection (5).

(5) An undertaking by the Director of Public Prosecutions shall:

(a) be an undertaking that:

(i) information given, or a document produced, by the individual; or

(ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the Commonwealth or of a Territory, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

(b) state that, in the opinion of the Director of Public Prosecutions, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

- (c) state the general nature of those reasons.
- (6) The Commissioner may recommend to the Director of Public Prosecutions that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (5).
- (7) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of a State, if the Attorney-General of the State, or a person authorised by that Attorney-General (being the person holding the office of Director of Public Prosecutions, or a similar office, of the State) has given the individual a written undertaking under subsection (8).
- (8) An undertaking by the Attorney-General of the State, or authorised person, shall:
- (a) be an undertaking that:
 - (i) information given, or a document produced, by the individual; or
 - (ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the State, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;
 - (b) state that, in the opinion of the person giving the undertaking, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and
 - (c) state the general nature of those reasons.
- (9) The Commissioner may recommend to the Attorney-General of a State that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (8).

(10) For the purposes of subsection (1B):

- (a) it is not a reasonable excuse for a body corporate to refuse or fail to produce a document that production of the document might tend to incriminate the body corporate or make it liable to forfeiture or a penalty; and
- (b) it is not a reasonable excuse for an individual to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, if the individual is or has been an employee, a document that sets out details of earnings received by the individual in respect of his or her employment and does not set out any other information) that production of the document might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(11) Subsections (4), (7) and (10) do not apply where proceedings, in respect of which giving information or producing a document might tend to incriminate an individual or make an individual liable to forfeiture or a penalty, have been commenced against the individual and have not been finally dealt with by a court or otherwise disposed of”.

Section 69 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- “69. (1) Information relating to an individual shall not be furnished, in connection with a complaint, in such a manner as to reveal the individual's identity, unless the individual has made the complaint or has consented to the information being so furnished.
- (2) A document that contains information relating to an individual and that reveals the individual's identity shall not be produced, in connection with a complaint, unless:
- (a) the person has made the complaint or has consented to the document being so produced; or
 - (b) the document is a copy of another document and has had deleted from it such information as reveals the identity of the person.
- (3) A person shall not furnish, in connection with a complaint, prescribed information that relates to an individual other than the complainant and does not also relate to the complainant.

(4) A person shall not furnish, in connection with a complaint, prescribed information that relates both to the complainant and to another individual, unless the information is so furnished in such a manner as not to reveal the identity of the other person.

(5) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates to an individual other than the complainant and does not also relate to the complainant, unless the document is a copy of another prescribed document and has had that information deleted from it.

(6) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates both to the complainant and to another individual, unless the document is a copy of another prescribed document and has had deleted from it such information as reveals the identity of the other individual.

(7) This section has effect notwithstanding any other provision of this Part.

(8) A reference in this section to furnishing information, or to producing a document, in connection with a complaint is a reference to furnishing the information, or to producing the document, as the case may be, to the Commissioner in connection with the performance or exercise by the Commissioner, in relation to that complaint, of the Commissioner's functions or powers.

(9) In this section:

"complaint" means:

- (a) a complaint under section 36; or
- (b) a complaint that the Commissioner accepts under subsection 40(1B).

"document" includes any other record;

"prescribed document" means a document that was furnished or obtained under or for the purposes of a relevant law or a copy of such a document;

"prescribed information" means information that the person furnishing the information acquired by reason of holding or having held an office, or being or having been employed, under or for the purposes of a relevant law;

"relevant law" means a taxation law or a law of the Commonwealth relating to census and statistics;

"taxation law" means:

- (a) an Act of which the Commissioner of Taxation has the general administration (other than an Act prescribed for the purposes of paragraph (b) of the definition of "taxation law" in section 2 of the Taxation Administration Act 1953); or
- (b) regulations under an Act referred to in paragraph (a) of this definition".

Section 70 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

"70. (1) Where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information concerning a specified matter (including the giving of information in answer to a question), or the production to the Commissioner of a specified document or other record, would be contrary to the public interest because it would:

- (a) prejudice the security, defence or international relations of Australia;
- (b) involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government and the Government of a State;
- (c) involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;
- (d) involve the disclosure of deliberations or advice of the Executive Council;
- (e) prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued, or prejudice the fair trial of any person;
- (f) disclose, or enable a person to ascertain, the existence or identity a confidential source of information in relation to the enforcement of the criminal law;

- (g) prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
- (h) endanger the life or physical safety of any person;

the Commissioner is not entitled to require a person to give any information concerning the matter or to produce the document or other record.

(2) Without limiting the operation of subsection (1), where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information as to the existence or non-existence of information concerning a specified matter (including the giving of information in answer to a question) or as to the existence or non-existence of any document or other record required to be produced to the Commissioner would be contrary to the public interest:

- (a) by reason that it would prejudice the security, defence or international relations of Australia; or
- (b) by reason that it would prejudice the proper performance of the functions of the National Crime Authority;

the Commissioner is not entitled, pursuant to this Act, to require a person to give any information as to the existence or non-existence of information concerning that matter or as to the existence of that document or other record”.



Reference: s 22 [REDACTED]

Commonwealth of Australia

Privacy Act 1988

**Notice to Give Information [and/or] Produce Documents
to the Information Commissioner**

TO:

s 22 [REDACTED]

The Information Commissioner ('the Commissioner') is conducting an investigation under s 40(1) of the *Privacy Act 1988 (Cth)* (the Act) into a complaint dated s 22 January 2012 from a complainant, in which s/he alleges that s 22 [REDACTED] has interfered with her/his privacy ('the investigation').

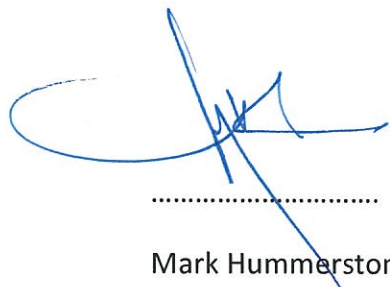
The Commissioner is considering whether the organisation against which the complaint is made is an organisation as defined within the Act.

I believe that you have the information identified in Schedule 1 to this notice and that the information is relevant to the investigation. I believe the information is relevant to the investigation for the following reasons:

- (a) To determine whether s 22 [REDACTED] is covered by the Privacy Act.

Under subsection 44(1) of the Act, I require you to produce this notice and to give the information in writing signed by you [or in the case of a body corporate by an officer of the body corporate*] specified in the attached Schedule to the Office of the Australian Information Commissioner at Level 2 175 Pitt Street, Sydney in the State of New South Wales, by no later than 5:00 pm on **Wednesday 15 August 2012**.

Dated this 31ST day of July 2012

A handwritten signature in blue ink, consisting of a large loop followed by a series of vertical and diagonal strokes, crossing over a dotted line.

Mark Hummerston

Delegate of the Privacy Commissioner

A copy of the sections of the Act that relate to this notice are set out in Annexure A. Your attention is drawn to the provisions of s 66(1) of the Act which makes it an offence to refuse or fail to comply with a notice without a reasonable excuse. In the case of an individual, the penalty is a fine of up to \$2,000 or imprisonment for 12 months, or both or in the case of a body corporate, a fine of up to \$10,000.

SCHEDULE 1 TO THE NOTICE UNDER SECTION 44 OF THE *PRIVACY ACT 1988*

Dated: 31 July 2012

Information required to be given

You are required to give the following information to the Commissioner in writing signed by you, or in the case of a body corporate, by an officer of the body corporate:

1. Has s 22 had an annual turnover^[1] greater than \$3 million in any financial year since 21 December 2001?
2. If not, please advise if any of the following statements are true for s 22
 - a. it provides a health service to another individual and holds any health information except in an employee record. 'Health service' is defined as:

an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the person performing it:
 - i. to assess, record, maintain or improve the individual's health; or
 - ii. to diagnose the individual's illness or disability, or
 - iii. to treat the individual's illness or disability or suspected illness or disability.
 - b. it is related to a business (that is, its holding company or any subsidiary company) that has had an annual turnover greater than \$3 million in any financial year since 21 December 2001
 - c. it discloses personal information about another individual to anyone else for benefit, service or advantage (unless it does so with the consent of the individual concerned or is required or authorised to do so under legislation)
 - d. it provides a benefit, service or advantage to collect personal information about another individual from anyone else (unless it does so with the consent of the individual concerned or is required or authorised to do so under legislation)

^[1] Annual turnover is defined in Section 6DA(1) of the Act as the total of the following earned in the financial year in the course of the business: (a) the proceeds of sales of goods and/or services; (b) commission income; (c) repair and service income; (d) rent, leasing and hiring income; (e) government bounties and subsidies; (f) interest, royalties and dividends; (g) other operating income.

- e. it is a contracted service provider for a Commonwealth contract (even if it is not a party to the contract)
- f. it is a reporting entity for the purposes of the AML/CTF Act.

Definitions

In this Notice and the attached Schedule, unless the contrary intention appears:

- (a) the singular includes the plural and the plural includes the singular
- (b) the masculine includes the feminine
- (c) "Code of Conduct" means the Code of Conduct issued under section 18A of the Act
- (d) "Commissioner" means the Privacy Commissioner
- (e) "communication" means any transfer of information between two or more persons by any oral or written means including by telephone or by document
- (f) "consent" means express consent or implied consent
- (g) "credit" means a loan sought or obtained by an individual from a credit provider in the course of the credit provider carrying on a business or undertaking as a credit provider, being a loan that is intended to be used wholly or primarily for domestic, family or household purposes
- (h) "credit reporting complaint" means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because:
 - it breached the Code of Conduct, or
 - it breached a provision of Part IIIA
- (i) "credit reporting infringement" means:
 - a breach of the Code of Conduct, or
 - a breach of a provision of Part IIIA
- (j) "document" includes -
 - a book, plan, visitors card, paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them
 - a disc, tape, paper, film or other device on which sounds, images or messages which are capable of being reproduced are recorded (including diary, appointment book, dictaphone tape, computer tape or

disc, shorthand book)

(j) "individual" means a natural person

(k) "record" means:

- a document
- a database (however kept), or
- a photograph or other pictorial representation of a person;, but does not include:
 - a generally available publication;
 - anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition;
 - Commonwealth records as defined by subsection 3 (1) of the Archives Act 1983 that are in the open access period for the purposes of that Act;
 - documents placed by or on behalf of a person (other than an agency) in the memorial collection within the meaning of the Australian War Memorial Act 1980; or
 - letters or other articles in the course of transmission by post.

ANNEXURE A

Statutory provisions

Section 44 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- "44. (1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:
- (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
 - (b) to produce the document to the Commissioner.
- (2) A notice given by the Commissioner under sub-section (1) shall state:
- (a) the place at which the information or document is to be given or produced to the Commissioner; and
 - (b) the time at which, or the period within which, the information or document is to be given or produced.
- (2A) If documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner:
- (a) may take possession of , and may make copies of, or take extracts from, the documents; and
 - (b) may retain possession of the documents for any period that is necessary for the purpose of the investigation to which the documents relate; and
 - (c) during that period must permit a person who would be entitled to inspect any one or more of the documents if they were not in the Commissioner's possession to inspect at all reasonable times any of the documents that the person would so be entitled to inspect.
- (3) If the Commissioner has reason to believe that a person has information relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person to attend before the Commissioner at a time and place specified in the notice to answer questions relevant to the investigation.
- (4) This section is subject to sections 69 and 70 but it has effect regardless of any other enactment.

- (5) A person is not liable to a penalty under the provisions of any other enactment because he or she gives information, produces a document or answers a question when required to do so under this Division”.

Section 65(3) of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- “65 (3) A person shall not furnish information or make a statement to the Commissioner knowing that it is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both”.

Section 66 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- “66 (1) A person shall not refuse or fail:
- (a) to give information; or
 - (b) to answer a question or produce a document or record;

when so required under this Act.

Penalty:

- (a) in the case of an individual-\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate-\$10,000.

(1A) For the purposes of subsection (1B), a journalist has a reasonable excuse if giving the information, answering the question or producing the document or record would tend to reveal the identity of a person who gave information or a document or record to the journalist confidence.

(1B) Subsection (1) does not apply if the person has a reasonable excuse.

(2) For the purposes of subsections (3) to (11) (inclusive):

document includes a record.

information includes an answer to a question.

(3) Subject to subsections (4), (7) and (10), it is a reasonable excuse for the purposes of subsection (1B) for an individual:

- (a) to refuse or fail to give information when so required under this Act; or
- (b) to refuse or fail to produce a document when so required under this Act;

that giving the information, or producing the document, as the case may be, might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(4) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of the Commonwealth or of a Territory, if the Director of Public Prosecutions has given the individual a written undertaking under subsection (5).

(5) An undertaking by the Director of Public Prosecutions shall:

(a) be an undertaking that:

(i) information given, or a document produced, by the individual; or

(ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the Commonwealth or of a Territory, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

(b) state that, in the opinion of the Director of Public Prosecutions, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

(c) state the general nature of those reasons.

(6) The Commissioner may recommend to the Director of Public Prosecutions that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (5).

(7) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of a State, if the Attorney-General of the State, or a person authorised by that Attorney-General (being the person holding the office of Director of Public Prosecutions, or a similar office, of the State) has given the individual a written undertaking under subsection (8).

(8) An undertaking by the Attorney-General of the State, or authorised person, shall:

(a) be an undertaking that:

(i) information given, or a document produced, by the individual; or

(ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the State, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

(b) state that, in the opinion of the person giving the undertaking, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

(c) state the general nature of those reasons.

(9) The Commissioner may recommend to the Attorney-General of a State that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (8).

(10) For the purposes of subsection (1B):

(a) it is not a reasonable excuse for a body corporate to refuse or fail to produce a document that production of the document might tend to incriminate the body corporate or make it liable to forfeiture or a penalty; and

(b) it is not a reasonable excuse for an individual to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, if the individual is or has been an employee, a document that sets out details of earnings received by the individual in respect of his or her employment and does not set out any other information) that production of the document might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(11) Subsections (4), (7) and (10) do not apply where proceedings, in respect of which giving information or producing a document might tend to incriminate an individual or make an individual liable to forfeiture or a penalty, have been commenced against the individual and have not been finally dealt with by a court or otherwise disposed of".

Section 69 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- “69. (1) Information relating to an individual shall not be furnished, in connection with a complaint, in such a manner as to reveal the individual's identity, unless the individual has made the complaint or has consented to the information being so furnished.
- (2) A document that contains information relating to an individual and that reveals the individual's identity shall not be produced, in connection with a complaint, unless:
- (a) the person has made the complaint or has consented to the document being so produced; or
 - (b) the document is a copy of another document and has had deleted from it such information as reveals the identity of the person.
- (3) A person shall not furnish, in connection with a complaint, prescribed information that relates to an individual other than the complainant and does not also relate to the complainant.
- (4) A person shall not furnish, in connection with a complaint, prescribed information that relates both to the complainant and to another individual, unless the information is so furnished in such a manner as not to reveal the identity of the other person.
- (5) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates to an individual other than the complainant and does not also relate to the complainant, unless the document is a copy of another prescribed document and has had that information deleted from it.
- (6) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates both to the complainant and to another individual, unless the document is a copy of another prescribed document and has had deleted from it such information as reveals the identity of the other individual.
- (7) This section has effect notwithstanding any other provision of this Part.
- (8) A reference in this section to furnishing information, or to producing a document, in connection with a complaint is a reference to furnishing the information, or to producing the document, as the case may be, to the Commissioner in connection with the performance or exercise by the Commissioner, in relation to that complaint, of the Commissioner's functions or powers.
- (9) In this section:
- "complaint"** means:
- (a) a complaint under section 36; or

- (b) a complaint that the Commissioner accepts under subsection 40(1B).

"document" includes any other record;

"prescribed document" means a document that was furnished or obtained under or for the purposes of a relevant law or a copy of such a document;

"prescribed information" means information that the person furnishing the information acquired by reason of holding or having held an office, or being or having been employed, under or for the purposes of a relevant law;

"relevant law" means a taxation law or a law of the Commonwealth relating to census and statistics;

"taxation law" means:

- (a) an Act of which the Commissioner of Taxation has the general administration (other than an Act prescribed for the purposes of paragraph (b) of the definition of "taxation law" in section 2 of the *Taxation Administration Act 1953*); or
- (b) regulations under an Act referred to in paragraph (a) of this definition".

Section 70 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- "70. (1) Where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information concerning a specified matter (including the giving of information in answer to a question), or the production to the Commissioner of a specified document or other record, would be contrary to the public interest because it would:
- (a) prejudice the security, defence or international relations of Australia;
 - (b) involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government and the Government of a State;
 - (c) involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;
 - (d) involve the disclosure of deliberations or advice of the Executive Council;
 - (e) prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued, or prejudice the fair trial of any person;

- (f) disclose, or enable a person to ascertain, the existence or identity a confidential source of information in relation to the enforcement of the criminal law;
- (g) prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
- (h) endanger the life or physical safety of any person;

the Commissioner is not entitled to require a person to give any information concerning the matter or to produce the document or other record.

(2) Without limiting the operation of subsection (1), where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information as to the existence or non-existence of information concerning a specified matter (including the giving of information in answer to a question) or as to the existence or non-existence of any document or other record required to be produced to the Commissioner would be contrary to the public interest:

- (a) by reason that it would prejudice the security, defence or international relations of Australia; or
- (b) by reason that it would prejudice the proper performance of the functions of the National Crime Authority;

the Commissioner is not entitled, pursuant to this Act, to require a person to give any information as to the existence or non-existence of information concerning that matter or as to the existence of that document or other record”.



Reference: s 22

Commonwealth of Australia

Privacy Act 1988

**Notice to Give Information and Produce Documents
to the Information Commissioner**

TO:

s 22

The Information Commissioner ('the Commissioner') is conducting an investigation under section 40(1) of the *Privacy Act 1988 (Cth)* (the Act) into a complaint dated s 22 May 2012 from s 22 ('the complainant'), in which he alleges that s 22 has interfered with his privacy ('the investigation'). The complainant alleges s 22 has denied him access to his medical records.

The Commissioner is considering whether the conduct the subject of the complaint constitutes a breach of the following national privacy principle:

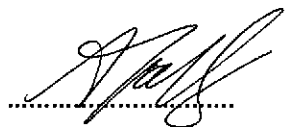
(a) National Privacy Principle 6.1

I believe that you have the information and documents identified in Schedule 1 to this notice and that the information and documents are relevant to the investigation. I believe the information and documents are relevant to the investigation for the following reasons:

- (a) They are required to determine if you have complied with National Privacy Principle 6.1
- (b) s 22 medical records are the subject of the complaint and under National Privacy Principle 6.1 you should provide him with access to them unless you are able to rely on an exception.

Under subsection 44(1) of the Act, I require you to produce this notice and the documents and to give the information in writing signed by you specified in the attached Schedule to the Office of the Australian Information Commissioner at Level 2 175 Pitt Street, Sydney in the State of New South Wales, by no later than 5:00 pm on **8 November 2012**.

Dated this 25th day of October 2012

A handwritten signature in black ink, appearing to read 'A. Falk', is written over a horizontal dotted line.

Angelene Falk

Delegate of the Privacy Commissioner

A copy of the sections of the Act that relate to this notice are set out in Annexure A. Your attention is drawn to the provisions of s 66(1) of the Act which makes it an offence to refuse or fail to comply with a notice without a reasonable excuse. In the case of an individual, the penalty is a fine of up to \$2,000 or imprisonment for 12 months, or both or in the case of a body corporate, a fine of up to \$10,000.

SCHEDULE 1 TO THE NOTICE UNDER SECTION 44 OF THE *PRIVACY ACT 1988*

Dated: 25 OCTOBER 2012

Information required to be given

You are required to give the information to the Commissioner in writing signed by you:

1. Are you willing to provide s 22 [REDACTED] with access to all of his medical records, as he has requested? If not, please provide reasons and refer to the exception under NPP 6.1, if any, on which you rely.

Documents required to be produced

If you are unable to rely upon any exception under NPP 6.1 to withhold s 22 [REDACTED] medical records from him, you are required to produce the following documents to the Commissioner:

1. s 22 [REDACTED] entire medical record including, but not limited to, all records, notes, reports, memorandums, letters, clinical notes, test results, charts and referrals relating to his treatment and consultations with you.

If you do not have possession, custody or control of any document but you know who does have possession custody or control of the document please provide the Commissioner in writing signed by you with the identity of the document and the full name and address of the person who has possession, custody or control of that document. If you gave that person the document please also provide the Commissioner with the date upon which, and the purpose for which the document passed into their possession, custody or control.

If any document does not disclose on its face:

- (a) the date it was created;
- (b) the identity of the person who created it; or
- (c) the meaning of any abbreviations, technical scientific or other symbols;

please provide that information to the Commissioner in writing signed by you in relation to each such document.

Definitions

In this Notice and the attached Schedule, unless the contrary intention appears:

- (a) the singular includes the plural and the plural includes the singular
- (b) the masculine includes the feminine
- (c) "Code of Conduct" means the Code of Conduct issued under section 18A of the Act

- (d) "Commissioner" means the Privacy Commissioner
- (e) "communication" means any transfer of information between two or more persons by any oral or written means including by telephone or by document
- (f) "consent" means express consent or implied consent
- (g) "credit" means a loan sought or obtained by an individual from a credit provider in the course of the credit provider carrying on a business or undertaking as a credit provider, being a loan that is intended to be used wholly or primarily for domestic, family or household purposes
- (h) "credit reporting complaint" means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because:
 - it breached the Code of Conduct, or
 - it breached a provision of Part IIIA
- (i) "credit reporting infringement" means:
 - a breach of the Code of Conduct, or
 - a breach of a provision of Part IIIA
- (j) "document" includes -
 - a book, plan, visitors card, paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them
 - a disc, tape, paper, film or other device on which sounds, images or messages which are capable of being reproduced are recorded (including diary, appointment book, dictaphone tape, computer tape or disc, shorthand book)
- (j) "individual" means a natural person
- (k) "record" means:
 - a document
 - a database (however kept), or
 - a photograph or other pictorial representation of a person; but does not include:
 - a generally available publication;

- anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition;
- Commonwealth records as defined by subsection 3 (1) of the Archives Act 1983 that are in the open access period for the purposes of that Act;
- documents placed by or on behalf of a person (other than an agency) in the memorial collection within the meaning of the Australian War Memorial Act 1980; or
- letters or other articles in the course of transmission by post.

ANNEXURE A

Statutory provisions

Section 44 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- "44. (1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:
- (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
 - (b) to produce the document to the Commissioner.
- (2) A notice given by the Commissioner under sub-section (1) shall state:
- (a) the place at which the information or document is to be given or produced to the Commissioner; and
 - (b) the time at which, or the period within which, the information or document is to be given or produced.
- (2A) If documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner:
- (a) may take possession of, and may make copies of, or take extracts from, the documents; and
 - (b) may retain possession of the documents for any period that is necessary for the purpose of the investigation to which the documents relate; and
 - (c) during that period must permit a person who would be entitled to inspect any one or more of the documents if they were not in the Commissioner's possession to inspect at all reasonable times any of the documents that the person would so be entitled to inspect.
- (3) If the Commissioner has reason to believe that a person has information relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person to attend before the Commissioner at a time and place specified in the notice to answer questions relevant to the investigation.
- (4) This section is subject to sections 69 and 70 but it has effect regardless of any other enactment.

- (5) A person is not liable to a penalty under the provisions of any other enactment because he or she gives information, produces a document or answers a question when required to do so under this Division”.

Section 65(3) of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- “65 (3) A person shall not furnish information or make a statement to the Commissioner knowing that it is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both”.

Section 66 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- “66 (1) A person shall not refuse or fail:
- (a) to give information; or
 - (b) to answer a question or produce a document or record;

when so required under this Act.

Penalty:

- (a) in the case of an individual-\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate-\$10,000.

(1A) For the purposes of subsection (1B), a journalist has a reasonable excuse if giving the information, answering the question or producing the document or record would tend to reveal the identity of a person who gave information or a document or record to the journalist confidence.

(1B) Subsection (1) does not apply if the person has a reasonable excuse.

(2) For the purposes of subsections (3) to (11) (inclusive):

document includes a record.

information includes an answer to a question.

(3) Subject to subsections (4), (7) and (10), it is a reasonable excuse for the purposes of subsection (1B) for an individual:

- (a) to refuse or fail to give information when so required under this Act; or
- (b) to refuse or fail to produce a document when so required under this Act;

that giving the information, or producing the document, as the case may be, might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(4) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of the Commonwealth or of a Territory, if the Director of Public Prosecutions has given the individual a written undertaking under subsection (5).

(5) An undertaking by the Director of Public Prosecutions shall:

(a) be an undertaking that:

(i) information given, or a document produced, by the individual; or

(ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the Commonwealth or of a Territory, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

(b) state that, in the opinion of the Director of Public Prosecutions, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

(c) state the general nature of those reasons.

(6) The Commissioner may recommend to the Director of Public Prosecutions that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (5).

(7) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of a State, if the Attorney-General of the State, or a person authorised by that Attorney-General (being the person holding the office of Director of Public Prosecutions, or a similar office, of the State) has given the individual a written undertaking under subsection (8).

(8) An undertaking by the Attorney-General of the State, or authorised person, shall:

(a) be an undertaking that:

(i) information given, or a document produced, by the individual; or

(ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the State, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

(b) state that, in the opinion of the person giving the undertaking, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

(c) state the general nature of those reasons.

(9) The Commissioner may recommend to the Attorney-General of a State that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (8).

(10) For the purposes of subsection (1B):

(a) it is not a reasonable excuse for a body corporate to refuse or fail to produce a document that production of the document might tend to incriminate the body corporate or make it liable to forfeiture or a penalty; and

(b) it is not a reasonable excuse for an individual to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, if the individual is or has been an employee, a document that sets out details of earnings received by the individual in respect of his or her employment and does not set out any other information) that production of the document might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(11) Subsections (4), (7) and (10) do not apply where proceedings, in respect of which giving information or producing a document might tend to incriminate an individual or make an individual liable to forfeiture or a penalty, have been commenced against the individual and have not been finally dealt with by a court or otherwise disposed of.

Section 69 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- "69. (1) Information relating to an individual shall not be furnished, in connection with a complaint, in such a manner as to reveal the individual's identity, unless the individual has made the complaint or has consented to the information being so furnished.
- (2) A document that contains information relating to an individual and that reveals the individual's identity shall not be produced, in connection with a complaint, unless:
- (a) the person has made the complaint or has consented to the document being so produced; or
 - (b) the document is a copy of another document and has had deleted from it such information as reveals the identity of the person.
- (3) A person shall not furnish, in connection with a complaint, prescribed information that relates to an individual other than the complainant and does not also relate to the complainant.
- (4) A person shall not furnish, in connection with a complaint, prescribed information that relates both to the complainant and to another individual, unless the information is so furnished in such a manner as not to reveal the identity of the other person.
- (5) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates to an individual other than the complainant and does not also relate to the complainant, unless the document is a copy of another prescribed document and has had that information deleted from it.
- (6) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates both to the complainant and to another individual, unless the document is a copy of another prescribed document and has had deleted from it such information as reveals the identity of the other individual.
- (7) This section has effect notwithstanding any other provision of this Part.
- (8) A reference in this section to furnishing information, or to producing a document, in connection with a complaint is a reference to furnishing the information, or to producing the document, as the case may be, to the Commissioner in connection with the performance or exercise by the Commissioner, in relation to that complaint, of the Commissioner's functions or powers.
- (9) In this section:
- "complaint"** means:
- (a) a complaint under section 36; or

- (b) a complaint that the Commissioner accepts under subsection 40(1B).

"document" includes any other record;

"prescribed document" means a document that was furnished or obtained under or for the purposes of a relevant law or a copy of such a document;

"prescribed information" means information that the person furnishing the information acquired by reason of holding or having held an office, or being or having been employed, under or for the purposes of a relevant law;

"relevant law" means a taxation law or a law of the Commonwealth relating to census and statistics;

"taxation law" means:

- (a) an Act of which the Commissioner of Taxation has the general administration (other than an Act prescribed for the purposes of paragraph (b) of the definition of "taxation law" in section 2 of the *Taxation Administration Act 1953*); or
- (b) regulations under an Act referred to in paragraph (a) of this definition".

Section 70 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- "70. (1) Where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information concerning a specified matter (including the giving of information in answer to a question), or the production to the Commissioner of a specified document or other record, would be contrary to the public interest because it would:
- (a) prejudice the security, defence or international relations of Australia;
 - (b) involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government and the Government of a State;
 - (c) involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;
 - (d) involve the disclosure of deliberations or advice of the Executive Council;
 - (e) prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued, or prejudice the fair trial of any person;

- (f) disclose, or enable a person to ascertain, the existence or identity a confidential source of information in relation to the enforcement of the criminal law;
- (g) prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
- (h) endanger the life or physical safety of any person;

the Commissioner is not entitled to require a person to give any information concerning the matter or to produce the document or other record.

(2) Without limiting the operation of subsection (1), where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information as to the existence or non-existence of information concerning a specified matter (including the giving of information in answer to a question) or as to the existence or non-existence of any document or other record required to be produced to the Commissioner would be contrary to the public interest:

- (a) by reason that it would prejudice the security, defence or international relations of Australia; or
- (b) by reason that it would prejudice the proper performance of the functions of the National Crime Authority;

the Commissioner is not entitled, pursuant to this Act, to require a person to give any information as to the existence or non-existence of information concerning that matter or as to the existence of that document or other record".



Reference: s 22 [REDACTED]

Commonwealth of Australia

Privacy Act 1988

Notice to Give Information to the Information Commissioner

TO:

s 22 [REDACTED]

Information required to be given

1. Did s 22 [REDACTED] apply s 22 [REDACTED] TFN to s 22 [REDACTED] as alleged? Please provide details.
 - a. If so, does s 22 [REDACTED] consider it has met the requirements of Guideline 2 (Paragraph 2.3) and Guidelines 5 and 6 of the TFN guidelines, in relation to this matter? Please provide a detailed response including any information or documents to support s 22 [REDACTED] view.
2. Please comment on s 22 [REDACTED] claim that the TFN it applied to her recent s 22 [REDACTED] was provided in 2001 for an unrelated s 22 [REDACTED]. Did s 22 [REDACTED] retain s 22 [REDACTED] TFN from 2001-2013, and if so, does it consider that any common law, taxation law, personal assistance law or superannuation law (including the administration of such law) allows it to do so?
3. Please advise how long s 22 [REDACTED] retains personal information about clients, whether there are legislative requirements about its retention of client information, and provide any relevant policies which cover s 22 [REDACTED] retention procedures.
4. In relation to a previous complaint s 22 [REDACTED] representative, s 22 [REDACTED] in February 2012, s 22 [REDACTED] commenced a comprehensive system computer code review which aimed to prevent a previous computer error where a TFN was linked to an account holder (individual) rather than to a particular holding s 22 [REDACTED] of that account holder. s 22 [REDACTED] stated that it anticipated that the process would be finalised in March 2012.

During your conversation with the OAIC's Mr Andrew Secombe on 26 May 2014, you advised s 22 [REDACTED] computer upgrade was applied and activated on 10 January 2014. Please outline the reasons why the upgrade was finalised close to two years after the process commenced.

5. Please advise what steps s 22 took in the intervening period (February 2012 - 10 January 2014) to address the issues raised by the the previous complaint through business processes or practices. In your response, please advise whether these interim steps were applied to s 22 on s 22 November 2013.
6. Please advise the current status of s 22 computer software which holds/uses TFNs, what upgrades have been made since 2012 in relation to the privacy complaints the OAIC has investigated, and whether any further software upgrades are outstanding. Please include specific reference to:
 - whether s 22 allocation of TFNs are specific to a holding, as opposed to an individual
 - the circumstances when s 22 will request that a client provide new TFN information for a s 22
 - any anomalies within s 22 transition data (such as in s 22 case); which indicates s 22 holds a TFN, when it actually doesn't.
7. Any other information, relevant to this complaint, that s 22 would like to provide to the OAIC?

I believe that you have the information identified in this notice that is relevant to the investigation. I believe the information and documents are relevant to the investigation as they are required to determine if s 22 has complied with TFN Guidelines 2, 5 and 6.

Under subsection 44(1) of the Act, I require you to produce this notice and the documents and to give the information in writing signed by specified in the attached Schedule to the Office of the Australian Information Commissioner at Level 3, 175 Pitt Street, Sydney in the State of New South Wales, by no later than 5.00 pm **Tuesday 2 September 2014**.

Dated this 19th day of August 2014



Karen Toohey

Delegate of the Privacy Commissioner

A copy of the sections of the Act that relate to this notice are set out in Annexure A. Your attention is drawn to the provisions of s 66(1) of the Act which makes it an offence to refuse or fail to comply with a notice without a reasonable excuse. In the case of an individual, the penalty is a fine of up to \$2,000 or imprisonment for 12 months, or both or in the case of a body corporate, a fine of up to \$10,000.

LEGISLATION

Definitions

In this Notice and the attached Schedule, unless the contrary intention appears:

- (a) the singular includes the plural and the plural includes the singular
- (b) the masculine includes the feminine
- (c) "Code of Conduct" means the Code of Conduct issued under section 18A of the Act
- (d) "Commissioner" means the Privacy Commissioner
- (e) "communication" means any transfer of information between two or more persons by any oral or written means including by telephone or by document
- (f) "consent" means express consent or implied consent
- (g) "credit" means a loan sought or obtained by an individual from a credit provider in the course of the credit provider carrying on a business or undertaking as a credit provider, being a loan that is intended to be used wholly or primarily for domestic, family or household purposes
- (h) "credit reporting complaint" means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because:
 - it breached the Code of Conduct, or
 - it breached a provision of Part IIIA
- (i) "credit reporting infringement" means:
 - a breach of the Code of Conduct, or
 - a breach of a provision of Part IIIA
- (j) "document" includes -
 - a book, plan, visitors card, paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them
 - a disc, tape, paper, film or other device on which sounds, images or messages which are capable of being reproduced are recorded (including diary, appointment book, dictaphone tape, computer tape or disc, shorthand book)

(j) "individual" means a natural person

(k) "record" means:

- a document
- a database (however kept), or
- a photograph or other pictorial representation of a person;, but does not include:
 - a generally available publication;
 - anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition;
 - Commonwealth records as defined by subsection 3 (1) of the Archives Act 1983 that are in the open access period for the purposes of that Act;
 - documents placed by or on behalf of a person (other than an agency) in the memorial collection within the meaning of the *Australian War Memorial Act 1980*; or
 - letters or other articles in the course of transmission by post.

ANNEXURE A

Statutory provisions

Section 44 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- "44. (1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:
- (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
 - (b) to produce the document to the Commissioner.
- (2) A notice given by the Commissioner under sub-section (1) shall state:
- (a) the place at which the information or document is to be given or produced to the Commissioner; and
 - (b) the time at which, or the period within which, the information or document is to be given or produced.
- (2A) If documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner:
- (a) may take possession of , and may make copies of, or take extracts from, the documents; and
 - (b) may retain possession of the documents for any period that is necessary for the purpose of the investigation to which the documents relate; and
 - (c) during that period must permit a person who would be entitled to inspect any one or more of the documents if they were not in the Commissioner's possession to inspect at all reasonable times any of the documents that the person would so be entitled to inspect.
- (3) If the Commissioner has reason to believe that a person has information relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person to attend before the Commissioner at a time and place specified in the notice to answer questions relevant to the investigation.
- (4) This section is subject to ss 69 and 70 but it has effect regardless of any other enactment.

- (5) A person is not liable to a penalty under the provisions of any other enactment because he or she gives information, produces a document or answers a question when required to do so under this Division”.

Section 65(3) of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- “65 (3) A person shall not furnish information or make a statement to the Commissioner knowing that it is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both”.

Section 66 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- “66 (1) A person shall not refuse or fail:
- (a) to give information; or
 - (b) to answer a question or produce a document or record;

when so required under this Act.

Penalty:

- (a) in the case of an individual-\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate-\$10,000.

(1A) For the purposes of subsection (1B), a journalist has a reasonable excuse if giving the information, answering the question or producing the document or record would tend to reveal the identity of a person who gave information or a document or record to the journalist confidence.

(1B) Subsection (1) does not apply if the person has a reasonable excuse.

(2) For the purposes of subsections (3) to (11) (inclusive):

document includes a record.

information includes an answer to a question.

(3) Subject to subsections (4), (7) and (10), it is a reasonable excuse for the purposes of subsection (1B) for an individual:

- (a) to refuse or fail to give information when so required under this Act; or
- (b) to refuse or fail to produce a document when so required under this Act;

that giving the information, or producing the document, as the case may be, might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(4) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of the Commonwealth or of a Territory, if the Director of Public Prosecutions has given the individual a written undertaking under subsection (5).

(5) An undertaking by the Director of Public Prosecutions shall:

(a) be an undertaking that:

(i) information given, or a document produced, by the individual; or

(ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the Commonwealth or of a Territory, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

(b) state that, in the opinion of the Director of Public Prosecutions, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

(c) state the general nature of those reasons.

(6) The Commissioner may recommend to the Director of Public Prosecutions that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (5).

(7) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of a State, if the Attorney-General of the State, or a person authorised by that Attorney-General (being the person holding the office of Director of Public Prosecutions, or a similar office, of the State) has given the individual a written undertaking under subsection (8).

(8) An undertaking by the Attorney-General of the State, or authorised person, shall:

(a) be an undertaking that:

(i) information given, or a document produced, by the individual; or

(ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the State, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

(b) state that, in the opinion of the person giving the undertaking, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

(c) state the general nature of those reasons.

(9) The Commissioner may recommend to the Attorney-General of a State that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (8).

(10) For the purposes of subsection (1B):

(a) it is not a reasonable excuse for a body corporate to refuse or fail to produce a document that production of the document might tend to incriminate the body corporate or make it liable to forfeiture or a penalty; and

(b) it is not a reasonable excuse for an individual to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, if the individual is or has been an employee, a document that sets out details of earnings received by the individual in respect of his or her employment and does not set out any other information) that production of the document might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(11) Subsections (4), (7) and (10) do not apply where proceedings, in respect of which giving information or producing a document might tend to incriminate an individual or make an individual liable to forfeiture or a penalty, have been commenced against the individual and have not been finally dealt with by a court or otherwise disposed of".

Section 69 of the Privacy Act provides, so far as is relevant for the purposes of this Notice, as follows:

- "69. (1) Information relating to an individual shall not be furnished, in connection with a complaint, in such a manner as to reveal the individual's identity, unless the individual has made the complaint or has consented to the information being so furnished.
- (2) A document that contains information relating to an individual and that reveals the individual's identity shall not be produced, in connection with a complaint, unless:
- (a) the person has made the complaint or has consented to the document being so produced; or
 - (b) the document is a copy of another document and has had deleted from it such information as reveals the identity of the person.
- (3) A person shall not furnish, in connection with a complaint, prescribed information that relates to an individual other than the complainant and does not also relate to the complainant.
- (4) A person shall not furnish, in connection with a complaint, prescribed information that relates both to the complainant and to another individual, unless the information is so furnished in such a manner as not to reveal the identity of the other person.
- (5) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates to an individual other than the complainant and does not also relate to the complainant, unless the document is a copy of another prescribed document and has had that information deleted from it.
- (6) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates both to the complainant and to another individual, unless the document is a copy of another prescribed document and has had deleted from it such information as reveals the identity of the other individual.
- (7) This section has effect notwithstanding any other provision of this Part.
- (8) A reference in this section to furnishing information, or to producing a document, in connection with a complaint is a reference to furnishing the information, or to producing the document, as the case may be, to the Commissioner in connection with the performance or exercise by the Commissioner, in relation to that complaint, of the Commissioner's functions or powers.
- (9) In this section:
- "complaint"** means:
- (a) a complaint under s 36; or

- (b) a complaint that the Commissioner accepts under subsection 40(1B).

"document" includes any other record;

"prescribed document" means a document that was furnished or obtained under or for the purposes of a relevant law or a copy of such a document;

"prescribed information" means information that the person furnishing the information acquired by reason of holding or having held an office, or being or having been employed, under or for the purposes of a relevant law;

"relevant law" means a taxation law or a law of the Commonwealth relating to census and statistics;

"taxation law" means:

- (a) an Act of which the Commissioner of Taxation has the general administration (other than an Act prescribed for the purposes of paragraph (b) of the definition of "taxation law" in section 2 of the *Taxation Administration Act 1953*); or
- (b) regulations under an Act referred to in paragraph (a) of this definition".



Australian Government

Office of the Australian Information Commissioner

Our reference: s 22

s 22

Dear Ms s 22

Notice to Produce Information

I refer to s 22 complaint about s 22

The Office of the Australian Information Commissioner (OAIC) provided you with a summary of the complaint in a letter dated 26 November 2014 and requested information relevant to s 22 complaint by 19 December 2014. s 22 sought an extension of time and we agreed the response would be provided by 23 January 2015. s 22 advised on 4 February it could not confirm when it would provide the response.

Given it has now been more than eight weeks since we notified s 22 of this matter in order to progress this matter I have decided to issue a notice requiring production of the information and documents relevant to the investigation.

Under s 44 of the *Privacy Act 1988* (Cth) (the Privacy Act), I require you to produce the information requested in the OAIC's letter of 26 November 2014, as specified in Annexure A as part of the OAIC's investigation into the complaint.

I require you to provide this information by **Wednesday 25 February 2015** to:

The Office of the Australian Information Commissioner
Level 3
175 Pitt Street
Sydney NSW 2000

You are legally obliged to comply with the requirements of this notice. I would also draw your attention to s 66(1) of the Privacy Act, which outlines the penalty for failing to comply with this notice.

Dated this 9th day of February 2015

Karen Toohey

Delegate of the Australian Privacy Commissioner

ANNEXURE A

Information required – as previously requested in 26 November 2014 letter

1. Did s 22 disclose s 22 personal information to s 22 as alleged? Please provide a detailed response, including the circumstances surrounding the alleged disclosure of the information from s 22 Statement of Reasons (SOR).
2. If yes to question one, does s 22 consider Information Privacy Principle (IPP) 11.1 allows for this disclosure? Please provide a detailed response, including any exception to IPP 11.1 s 22 is seeking to rely on, and any information or evidence in support of your view.
3. Please provide details of any directions, policies or procedures that relate to the disclosure of this type of information from an SOR.
4. What steps did s 22 take to investigate and respond to s 22 allegations? Please provide copies of any response(s) provided to s 22 in response to his complaint.
5. Is there any other information, relevant to this complaint that s 22 would like to provide to the OAIC?

Statutory provisions

Section 44 of the Privacy Act:

- (1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:
- (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
 - (b) to produce the document to the Commissioner.

Section 66 of the Privacy Act:

- (1) A person shall not refuse or fail:
- (a) to give information; or
 - (b) to answer a question or produce a document or record;

when so required under this Act.

Penalty:

- (a) in the case of an individual-\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate-\$10,000.



Australian Government

Office of the Australian Information Commissioner

Our reference: s 22

s 22

Dear s 22

Notice to Provide Information

I refer to s 22 complaint regarding access to her clinical note dated s 22 November 2011.

The Office of the Australian Information Commissioner (OAIC) provided you with the details of s 22 complaint in emails dated s 22 December 2014 and s 22 December 2014. I have attached copies of our correspondence to you, for your reference.

On 11 February 2015 we advised you that, as we have been unable to satisfactorily resolve this matter with you and s 22 and the reason you are refusing to provide the information is not consistent with the obligations imposed by the Privacy Act, the OAIC will need to take steps to progress this matter.

At this time, we offered you the opportunity to provide a response to our inquiries by 13 February 2015. To date, the OAIC has not received any further information from you.

As we have been unable to resolve this complaint informally to date, I have decided to conduct an investigation under s 40(1) of the Privacy Act.

Under s 44 of the Privacy Act, I require you to produce a copy of s 22 clinical note of s 22 November 2011, as requested in the OAIC's email of 4 December 2012.

I require you to produce this document to me by **Thursday, 12 March 2015** either by:

- fax on (02) 9284 9666; or
- email at abby.aldana@oaic.gov.au; or
- post to: The Office of the Australian Information Commissioner, Level 3, 175 Pitt Street, Sydney, NSW 2000.

You are legally obliged to comply with the requirements of this notice. I would also draw your attention to s 66(1) of the Privacy Act, which outlines the penalty for failing to comply with this notice.

Thank you for your assistance in this matter.

Dated this 26th day of February 2015

A handwritten signature in black ink, appearing to read 'Karen Toohey', with a stylized, cursive script.

Karen Toohey

Delegate of the Privacy Commissioner

Statutory provisions**Section 44 of the Privacy Act:**

- (1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:
- (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
 - (b) to produce the document to the Commissioner.

Section 66 of the Privacy Act:

- (1) A person shall not refuse or fail:
- (a) to give information; or
 - (b) to answer a question or produce a document or record;

when so required under this Act.

Penalty:

- (a) in the case of an individual-\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate-\$10,000.



Australian Government

Office of the Australian Information Commissioner

Our reference: s 22

Your reference: s 22

s 22

Dear Mr s 22

Notice to produce documentation under the *Privacy Act 1988*

I am writing in relation to a complaint made by s 22 who alleges that s 22
s 22 interfered with his privacy by disclosing his Tax File Number (TFN) to the s 22
s 22

Under s 44 of the Privacy Act, I require you to produce the information specified in the attached Schedule to:

The Office of the Australian Information Commissioner
Level 3
175 Pitt Street
SYDNEY NSW 2001

You are legally obliged to comply with the requirements of this notice. I would also draw your attention to section 66(1) of the Privacy Act which outlines the penalty for failing to comply with this notice.

Should you or one of your staff wish to discuss before providing the response, please contact Juliet Morris, the Investigations Officer handling this matter. Ms Morris may be reached on 1300 363 992 (local call) or (02) 9284 9823 during business hours, by fax on (02) 9284 9666 or by email at Juliet.Morris@oaic.gov.au. Thank you for your assistance in this matter.

I require you to produce the information **no later than 14 days after the day on which you are given this notice.**

Dated this 20th day of May 2015

.....
Karen Toohey
Assistant Commissioner



Australian Government

Office of the Australian Information Commissioner

Schedule 1 Notice to produce documents

Information required to be produced

You are required to produce the following information to the Australian Information Commissioner:

- personal income tax returns of ^{s 22} [REDACTED] for the years ended 30 June 2004, 2005, 2006 and 2007 as provided by ^{s 22} [REDACTED] in relation to the matter of ^{s 22} [REDACTED]
^{s 22} [REDACTED]



Notice to Produce Documents to the Information Commissioner under section 44 of the Privacy Act 1988

Reference: s 22

Dated: 10 July 2015

Place for the information / documents to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street, Sydney, NSW, 2000

Date and time the information / documents must be produced by:

5pm AEST Friday 24 July 2015.

Schedule 1: Documents required to be produced

You are required to produce to the Australian Information Commissioner any and all records held by s 22 containing s 22 personal information, *including* any records held in computer backups or other electronic archives held by or on behalf of s 22

The records include:

1. All records containing s 22 name (or variations thereof such as s 22) OR email address s 22 OR telephone numbers OR postal address.
2. All file notes or documents containing s 22 name (or variations thereof) with reference to clients for whom he was identified as s 22 on s 22 systems.
3. All information held in s 22 account record.
4. All communication or correspondence between s 22 and s 22
5. All phone recordings between s 22 and s 22 whether held as an audio/electronic recording or as a transcript.

If you do not have possession, custody or control of any document but you know who does have possession custody or control of the document please provide the Commissioner the identity of the document and the full name and address of the person who has possession, custody or control of that document.

Ms Karen Toohey
Assistant Commissioner



Notice to Produce Documents to the Information Commissioner under section 44 of the Privacy Act 1988

Reference: s 22

Dated: 14 August 2015

Place for the information / documents to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street, Sydney, NSW, 2000

Date and time the information /documents must be produced by:

4pm AEST Monday 31 August 2015.

Schedule 1: Documents required to be produced

You are required to produce to the Australian Information Commissioner a full and complete copy of the report entitled s 22
s 22

If you do not have possession, custody or control of this document but you know who does have possession custody or control of the document please provide the Commissioner the identity of the document and the full name and address of the person who has possession, custody or control of that document.

A handwritten signature in cursive script that reads 'Andrew Solomon'.

Mr Andrew Solomon
Director, Dispute Resolution Branch
Delegate of the Commissioner



Notice to Produce Documents to the Information Commissioner under section 44 of the *Privacy Act 1988*

Reference: s 22 [REDACTED]

Dated: 16 November 2015

Place for the information / documents to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street, Sydney, NSW, 2000

or by email to: enquiries@oaic.gov.au

Date and time the information / documents must be produced by:

4pm AEDT Monday 30 November 2015

Schedule 1: Documents required to be produced

You are required to produce to the Australian Information Commissioner a full and complete response to all questions listed below, as outlined to you in the OAIC's letter dated 2 September 2015:

1. Does s 22 [REDACTED] hold the personal information s 22 [REDACTED] is seeking? Specifically, does s 22 [REDACTED] hold a copy of the s 22 [REDACTED] completed for s 22 [REDACTED] in or around December 2014?
 - a. If so, has access to this personal information been provided to s 22 [REDACTED] as per his request?
 - b. If not, will s 22 [REDACTED] provide s 22 [REDACTED] with access to his personal information? If so, when? Note that under APP 12 an APP entity must provide access to the personal information within a 'reasonable period' after the request is made.
2. If s 22 [REDACTED] holds the information and is not willing to provide the information in its current form, can s 22 [REDACTED] provide access in another way that meets the needs of s 22 [REDACTED] as a health service provider and s 22 [REDACTED] as required by APP 12.5?
3. If s 22 [REDACTED] holds the information and is not willing to provide s 22 [REDACTED] with access to it, please advise which exception/s under APP 12.3 you are relying on to deny s 22 [REDACTED] s 22 [REDACTED] access to his personal information. Please provide detailed reasons for your reliance on any exception.

If you do not have possession of this information or are unable to provide a full and complete response, but you know who does have possession of this information or is able

to provide a full and complete response please provide the Commissioner the full name and address of the person who has possession of this information or is able to provide a full and complete response.

A handwritten signature in black ink that reads "Andrew Solomon". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mr Andrew Solomon
Acting Assistant Commissioner
Dispute Resolution Branch



Australian Government

Office of the Australian Information Commissioner

Our reference: s 22
Your reference: s 22

s 22

Dear Mr s 22

Notice to Produce Documents

I refer to s 22 privacy complaint about the s 22 dated s 22 2016.

Under s 44 of the *Privacy Act 1988* (Cth) (the Privacy Act) I require you to produce an unredacted copy of the s 22 documents that were identified as within the scope of s 22 request for access to personal information under Australian Privacy Principle 12, namely the documents listed in the schedule to your decision letter of s 22 December 2015.

I require you to produce the documents to me by **Friday, 11 March 2016** either by:

- email at caitlin.emery@oaic.gov.au; or
- post at Office of the Australian Information Commissioner, Level 3, 175 Pitt Street, Sydney, NSW 2000.

You are legally required to comply with the requirements of this notice. I draw your attention to s 66(1) of the Privacy Act, which outlines the penalty for failing to comply.

If you would like to discuss this notice, please contact Caitlin Emery, the officer handling this matter, on (02) 8231 4223 or by email at caitlin.emery@oaic.gov.au.

Thank you for your assistance in this matter.

Yours sincerely

Karen Toohey
Delegate of the Privacy Commissioner
Assistant Commissioner
Dispute Resolution Branch
19 February 2016

Statutory provisions

Section 44 of the Privacy Act:

- (1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:
 - (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
 - (b) to produce the document to the Commissioner.

...

Section 66 of the Privacy Act:

- (1) A person shall not refuse or fail:
 - (a) to give information; or
 - (b) to answer a question or produce a document or record;
 when so required under this Act.

Penalty:

- (a) in the case of an individual—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

...



Commonwealth of Australia

Privacy Act 1988

Notice to give information to the Information Commissioner

TO:

s 22

Via email: s 22

The Information Commissioner (Commissioner) is conducting an investigation under s 40(1) of the *Privacy Act 1988 (Cth)* (the Act) into a privacy complaint, dated s 22 September 2015, from s 22 (the complainant), in which s 22 alleges that you s 22 s 22 have interfered with her privacy under the Act.

The complainant alleges that you have interfered with her privacy by failing to provide her with access to her personal information on request as required by Australian Privacy Principle 12 in the Act. The Commissioner is considering whether the conduct the subject of the complaint constitutes a breach of APP 12.

You have advised that you are not willing to provide s 22 with a number of documents and that you are relying on a number of exemptions under APP 12 in the Act, however you have, to date, not provided any specific information to support your reliance on these exceptions as requested by officers of the Office of the Australian Information Commissioner.

Under subsection 44(1) of the Act, I now require you to give the information specified in the attached Schedule to the Commissioner by delivering it to:

Place: Level 3, 175 Pitt Street, Sydney or by email to: enquiries@oaic.gov.au,

Time and date: By no later than 4.30 pm on 27 April 2016.

Director, Dispute Resolution Branch
Delegate of the Information Commissioner

Notice dated: 13 April 2016

SCHEDULE 1 TO THE NOTICE UNDER SECTION 44 OF THE *PRIVACY ACT 1988*

Dated: 13 April 2016

Information required to be given

You are required to give the information to the Commissioner in writing signed by you.

You have denied s 22 access to a number of documents she has requested under her right to access personal information as provided for in Australian Privacy Principle 12 in Schedule 1 of the *Privacy Act 1988*.

1. In relation to a document addressed to persons entitled s 22
s 22

you have indicated that you are relying on APP 12.3(b), APP 12(c) and APP 12(f) to deny s 22 with access to these documents.

Please provide detailed reasons for relying on these, or any other, exceptions under APP 12 in relation to denying access to s 22 under APP 12 in relation to these documents.

2. In relation to correspondence between yourself and s 22 dated s 22
s 22 May 2010 and s 22 June 2010 you have indicated that you are relying on APP 12.3(b), APP 12.3(d) and APP 12.3 (g) to deny s 22 with access to these documents.

Please provide detailed reasons for relying on these, or any other, exceptions under APP 12 in relation to denying access to s 22 under APP 12 in relation to these documents.

3. In relation to emails between s 22 at s 22 relating to complaints made by s 22, facsimiles dated s 22 2010 and correspondence from the s 22 You have indicated that you are relying on APP 12.3(a), APP 12.3(b), APP 12.3(c), and APP 12.3(d) to deny s 22 with access to these documents.

Please provide detailed reasons for relying on these, or any other, exceptions under APP 12 in relation to denying access to s 22 under APP 12 in relation to these documents.



Reference: s 22

Section 44 of the *Privacy Act 1988* -- Notice to Give Information and Produce Documents to the Information Commissioner

Dated: 12 May 2016

To:

s 22

And by email: s 22

Background

The Information Commissioner ('the Commissioner') is conducting an investigation under s 40(1) of the *Privacy Act 1988 (Cth)* (the Act) into a complaint dated s 22 October 2015 from s 22 ('the complainant'), in which he alleges that s 22 has interfered with his privacy by improperly disclosing his email address, s 22 to a third party organisation for the purposes of direct marketing.

The complainant has provided to the OAIC a copy of a marketing email he received on s 22 October 2015 at s 22 from s 22 s 22 states he only provided this email address to s 22 and claims he did not provide consent to s 22 for his email address to be used for direct marketing.

On 8 January 2016, the s 22 wrote to the OAIC to advise that it had purchased a list of email addresses (the list) from s 22 on the basis that the individuals concerned had provided 'opt-in' consent to receive direct marketing messages at their email address. s 22 noted the list included the email address s 22

On 27 January 2016 the OAIC wrote to s 22 and asked s 22 to confirm how and from where it collected the email addresses s 22 and the circumstances under which the complainant provided the 'opt-in' consent to receive commercial and direct marketing emails.

Section 44 of the *Privacy Act 1988* -- Notice to Give Information and Produce Documents to the Information Commissioner (cont)

On 24 April 2016 s 22 advised the OAIC that it had purchased the list from s 22 s 22. The OAIC has been unable to contact s 22 using the contact details provided by s 22.

Based on the above correspondence with s 22 I believe that you have the information and documents identified in Schedule 1 to this notice and that the information and documents are relevant to our investigation of this matter.

Under subsection 44(1) of the *Privacy Act 1988*, I now require you to give the information and documents specified in the attached Schedule to the Commissioner by delivering the documents to:

Place for the documents to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street, Sydney, NSW, 2000
or by email to: enquiries@oaic.gov.au

Date and time the information /documents must be produced by:

4pm AEST Wednesday 26 May 2015

Notice issued by:



Andrew Solomon
Director, Dispute Resolution
Delegate of the Information Commissioner

SCHEDULE 1

Information and documents required to be produced

You are required to produce the following to the Commissioner:

1. Information and/or documents which includes the company details and contact information for s 22 including any email addresses, phone or facsimile numbers or other contact details used by s 22 to communicate with s 22
2. A copy of the contract or agreement between s 22 and s 22 regarding s 22 acquisition of the list described above.
3. A copy of any written correspondence between s 22 and s 22 related to the provision of the list, including any written correspondence which contains information about the source of the email addresses provided in the list by s 22 and/or the circumstances of the collection of those email addresses by s 22
4. The date the list was received by s 22
5. Information and/or documents which indicate that s 22 advised s 22 whether it had obtained 'opt-in' consent from the individuals whose email addresses are included in the list.
6. Any file or system notes, transcripts or recordings held by s 22 which provide a record of phone calls with s 22 relating to the list.

If you do not have possession, custody or control of any of the documents described above but you know who does have possession custody or control of the document/s please provide the Commissioner in writing signed by you with the identity of the document and the full name and address of the person who has possession, custody or control of that document.



Notice to Produce Documents to the Information Commissioner under section 44 of the *Privacy Act 1988*

Reference: s 22 [REDACTED]

Dated: 3 June 2016

Place for the information / documents to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street, Sydney, NSW, 2000

or by email to: enquiries@oaic.gov.au

Date and time the information / documents must be produced by:

4pm AEDT Friday 17 June 2016

Schedule 1: Documents required to be produced

You are required to produce to the Australian Information Commissioner a full and complete response to all questions listed below, as outlined to s 22 [REDACTED] who acts on behalf of s 22 [REDACTED] in the OAIC's letter dated 27 April 2016:

1. Has s 22 [REDACTED] had an **annual turnover** (as defined below) greater than \$3 million in **any** financial year since 21 December 2001?
2. If not, please advise if any of the following statements are true for s 22 [REDACTED]
 - a) it provides a health service to another individual and holds any health information except in an employee record. 'Health service' is defined as:
 - a. an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the person performing it:
 - (i) to assess, record, maintain or improve the individual's health; or
 - (ii) to diagnose the individual's illness or disability, or
 - (iii) to treat the individual's illness or disability or suspected illness or disability.
 - b) it is related to **any** business (that is, its holding company or any subsidiary company) that has had an annual turnover greater than \$3 million in any financial year since 21 December 2001

- b. Note that section 6(8) of the Privacy Act says:
- (i) "For the purposes of this Act, the question whether bodies corporate are related to each other is determined in the manner in which that question is determined under the *Corporations Act 2001*."
 - c) it discloses personal information about another individual to anyone else for benefit, service or advantage (unless it does so with the consent of the individual concerned or is required or authorised to do so under legislation)
 - d) it provides a benefit, service or advantage to collect personal information about another individual from anyone else (unless it does so with the consent of the individual concerned or is required or authorised to do so under legislation)
 - e) it is a contracted service provider for a Commonwealth contract (even if it is not a party to the contract)
3. If s 22 [REDACTED] did not have an **annual turnover** greater than \$3 million in **any** financial year since 21 December 2001, please provide documentation to support this by producing one or more of the following items:
- a) s 22 [REDACTED] BAS or IAS over a 12-month period which shows the income reported on the PAYG income tax instalment section
 - b) A statutory declaration which attests that s 22 [REDACTED] did not have a turnover greater than \$3 million in any financial year since 21 December 2001.

Please note that **annual turnover** is defined in s 6DA(1) of the Privacy Act as the total of the following earned in the financial year in the course of the business: (a) the proceeds of sales of goods and/or services; (b) commission income; (c) repair and service income; (d) rent, leasing and hiring income; (e) government bounties and subsidies; (f) interest, royalties and dividends; (g) other operating income. Annual turnover includes all income from all sources. It does not include assets held by the small business, capital gains or proceeds of capital sales. When calculating annual turnover, organisations should also include any income from related bodies corporate.

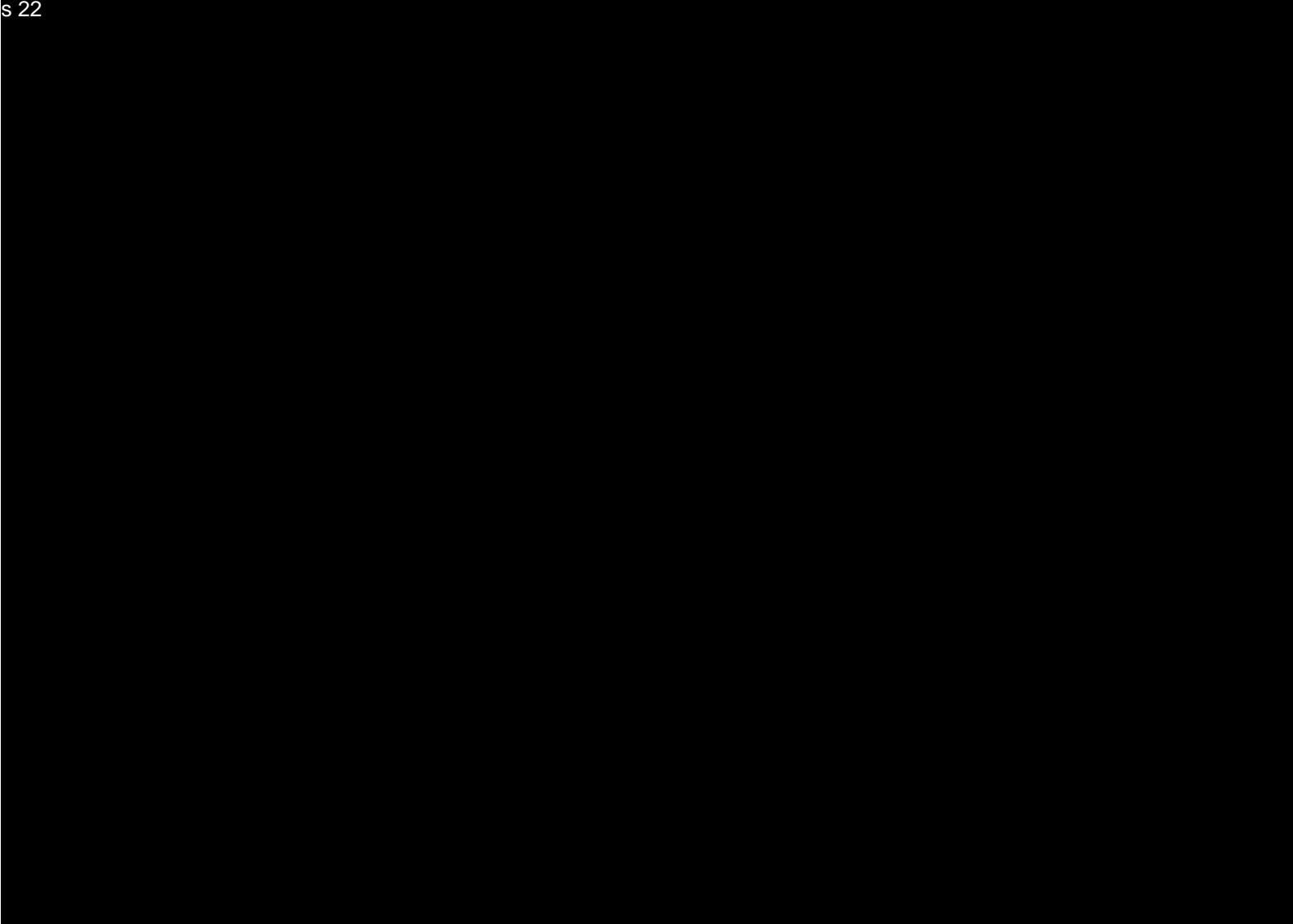
If you do not have possession of this information or are unable to provide a full and complete response, but you know who does have possession of this information or is able to provide a full and complete response, please provide the Commissioner the full name and address of the person who has possession of this information or is able to provide a full and complete response.



Ms Karen Toohey

Assistant Commissioner
Dispute Resolution Branch

3 June 2016





Notice to produce information or documents to the Information Commissioner

This notice is issued under section 44 of the *Privacy Act 1988*.

Under section 66 of the *Privacy Act 1988* penalties apply for not complying with this notice.

References: s 22

Notice issued: Thursday 6 October 2016

Notice issued to:

s 22

And by email: s 22

Documents or information to be produced:

See the attached Schedule and Annexures

Place for the information or documents to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street
Sydney NSW 2000

Or by email to: amanda.baird@oaic.gov.au

Date and time the documents must be produced by:

4pm AEDT Thursday 27 October 2016

Notice issued by:

A handwritten signature in black ink that reads 'Andrew Solomon'.

Andrew Solomon
Acting Assistant Commissioner, Dispute Resolution

Schedule 1: Information or documents required to be produced

You are required to produce the following information or documents to the Information Commissioner:

1. A schedule of documents in relation to each access request, listing each document in issue, whether access has been provided or access is refused, and any reasons for refusing access.
2. To allow the OAIC to be satisfied that all relevant documents have been located, a detailed description of the steps taken by s 22 to locate all relevant documents in response to points 1-3 of the second request. A copy of s 22 second request can be found at Annexure 2.
3. Is s 22 willing to provide access to the email of 2 May 2014 that relates to point 4 of s 22 second request? A copy of s 22 second request can be found at Annexure 2.
4. Given the OAIC's view in its letter of 29 August 2016, and with reference to the records that s 22 is refusing access to under APP 12.3(c) in relation to the first and third request, is s 22 seeking to rely on any other exception under APP 12? Copies of s 22 first and third request can be found at Annexures 1 and 3 respectively.
 - a. If s 22 is not seeking to rely on another exception, is s 22 willing to provide s 22 with access to these records?
 - b. If not, on what basis is s 22 refusing to provide s 22 with access to these records? Please provide details reasons for your view.



Reference: s 22

Section 44 of the *Privacy Act 1988* - Notice to give information and produce documents to the Australian Information Commissioner

Dated: 18 October 2016

To:

s 22

Background

The Australian Information Commissioner ('the Commissioner') is conducting an investigation under s 40(1) of the *Privacy Act 1988 (Cth)* (the Act) into a privacy complaint, received on s 22 March 2016, from s 22 ('the complainant'), in which s 22 s 22 alleges that s 22 interfered with her privacy by failing to provide access to her personal medical information held by s 22

On 7 July 2016 the OAIC wrote to you indicating it had opened an investigation into s 22 s 22 complaint. You provided a response to the OAIC dated 28 July 2016.

The OAIC wrote to you again on 18 August 2016. You have so far not responded to the OAIC's request for information and any supporting documentation outlined in that letter.

Under subsection 44(1) of the Act, I now require you to give the information and documents specified in the attached Schedule to the Commissioner by delivering the information and documents to:

Place for the information to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street, Sydney, NSW, 2000

OR

by email to: enquiries@oaic.gov.au

Date and time the information /documents must be produced by:

4pm AEDT Tuesday 8 November 2016

Penalties for not complying with this notice without reasonable excuse

\$2,000 or imprisonment for 12 months, or both, or in the case of a body corporate, \$10,000.

Notice issued by:

Mr Andrew Solomon
Assistant Commissioner
Dispute Resolution Branch

SCHEDULE 1

Information and documents required to be given

1. A copy of the consent form that s 22 requires s 22 to sign before it will release her s 22
2. Information regarding the quantity of information / documents to be provided to s 22 (for example; the types of document and the numbers of pages), any fees s 22 intends to charge and how s 22 has calculated the fee it intends to charge and information about how s 22 may make payment if she is amenable to doing so.*

* In deciding whether to charge, and the amount of the charge, for the provision of personal information reference should be had to the [APP guidelines paragraphs 12.77 to 12.81](#)



Notice to produce information or documents to the Information Commissioner

This notice is issued under section 44 of the *Privacy Act 1988*.

Under section 66 of the *Privacy Act 1988* penalties apply for not complying with this notice.

References: s 22 [REDACTED]

Notice issued: Friday 9 December 2016

Notice issued to:

s 22 [REDACTED]

Documents or information to be produced:

Copies of all the documents that s 22 [REDACTED] is refusing to provide to s 22 [REDACTED] identified in the Schedules provided by s 22 [REDACTED] to the OAIC on 14 November 2016, clearly labelled in accordance with the numbering scheme used in the schedule.

Place for the information or documents to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street
Sydney NSW 2000

Or by email to: amanda.baird@oaic.gov.au

Date and time the documents must be produced by:

12 noon AEDT Friday 23 December 2016

Notice issued by:

Andrew Solomon
Assistant Commissioner
Dispute Resolution



Section 44 of the *Privacy Act 1988* -- Notice to Give Information and Produce Documents to the Information Commissioner

Reference:

s 22

Notice issued:

22 December 2016

Notice issued to:

s 22

Information and/or documents to be produced:

See Schedule 1 below.

Place for the information or documents to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street, Sydney, NSW, 2000
or by email to: enquiries@oaic.gov.au

Date and time the information and/or documents must be produced by:

4pm Tuesday 24 January 2017 AEDT

Notice issued by:

A handwritten signature in black ink that reads 'Andrew Solomon'.

Andrew Solomon
Assistant Commissioner
Dispute Resolution Branch

SCHEDULE 1

Information and documents required to be produced

You are required to produce the following to the Commissioner:

1. A copy of the notice, if any ^{s 22} provided to ^{s 22} about how it would use his personal information, and to whom it would be disclosed
2. If ^{s 22} used or disclosed ^{s 22} personal information for direct marketing purposes:
 - a. An explanation how this use or disclosure satisfied the requirements of APP 7, and which exception under APP 7.2 or APP 7.3 applies to this use or disclosure.
 - b. Confirmation of whether ^{s 22} provides its customers with a simple means by which they may easily request not to receive direct marketing communications from ^{s 22} and any associated companies? If yes, did ^{s 22} offer this option to ^{s 22}
3. Confirmation that ^{s 22} removed ^{s 22} personal information from its database.



Notice to produce information or documents to the Australian Information Commissioner

This notice is issued under section 44 of the *Privacy Act 1988*. Under section 66 of the *Privacy Act 1988* penalties apply for not complying with this notice.

References: s 22

Notice issued: Friday 23 December 2016

Notice issued to:

s 22

Documents or information to be produced:

I require s 22 to provide the following information or documents to the OAIC:

1. An updated schedule of documents relevant to s 22 request.
2. For documents that s 22 intends to rely on APP 12.3(f) to refuse access to s 22 evidence (on affidavit or otherwise) that supports s 22 claim for legal professional privilege over these documents.

I require s 22 to produce the following documents to the OAIC for inspection:

3. All documents for which s 22 relies on APP 12.3(b) to refuse access to s 22

The documents identified at point 3 will be returned to s 22 after the inspection is complete.

Place for the documents or information to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street
Sydney NSW 2000

Date and time the documents must be produced:

By 12 noon AEDT Wednesday 25 January 2017

Notice issued by:

Andrew Solomon
Assistant Commissioner
Dispute Resolution Branch

Commonwealth of Australia

Notice under section 44(1) of the *Privacy Act 1988*

Date: 22 March 2017

Reference: s 22 [REDACTED]

To:

s 22 [REDACTED]

Under subsection 44(1) of the *Privacy Act 1988*, I now require you to give the information and documents specified in the attached Schedule to the Commissioner by delivering the information and documents to:

Place for the information to be produced:

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street, Sydney, NSW, 2000

OR

by email to: enquiries@oaic.gov.au

Date and time the information must be produced by:

4pm AEDT, 4 April 2017

Penalties for not complying with this notice without reasonable excuse

\$2,000 or imprisonment for 12 months, or both, or in the case of a body corporate, \$10,000.

Notice issued by:

Mr Andrew Solomon
Assistant Commissioner
Dispute Resolution Branch

SCHEDULE 1

Information required to be given

1. Has s 22 had an annual turnover greater than \$3 million in any financial year since 21 December 2001?
2. If not, please advise if any of the following statements are true for s 22
 - a) it provides a health service to another individual and holds any health information except in an employee record. 'Health service' is defined as:

an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the person performing it:

 - (i) to assess, record, maintain or improve the individual's health; or
 - (ii) to diagnose the individual's illness or disability, or
 - (iii) to treat the individual's illness or disability or suspected illness or disability.
 - b) it is related to a business (that is, its holding company or any subsidiary company) that has had an annual turnover greater than \$3 million in any financial year since 21 December 2001
 - c) it discloses personal information about another individual to anyone else for benefit, service or advantage (unless it does so with the consent of the individual concerned or is required or authorised to do so under legislation)
 - d) it provides a benefit, service or advantage to collect personal information about another individual from anyone else (unless it does so with the consent of the individual concerned or is required or authorised to do so under legislation)
 - e) it is a contracted service provider for a Commonwealth contract (even if it is not a party to the contract).

If s 22 did not have an annual turnover greater than \$3 million, in any financial year since 21 December 2001, you need to **provide documentation** in support of this claim.

Please note that annual turnover is defined in s 6DA(1) of the Privacy Act as the total of the following earned in the financial year in the course of the business:

- (a) the proceeds of sales of goods and/or services;
- (b) commission income;
- (c) repair and service income;
- (d) rent, leasing and hiring income;
- (e) government bounties and subsidies;
- (f) interest, royalties and dividends;
- (g) other operating income.

Annual turnover includes all income from all sources. It does not include assets held by the small business, capital gains or proceeds of capital sales. When calculating annual turnover, organisations should also include any income from related bodies corporate.

The OAIC holds the view that the income reported on the PAYG income tax instalment section of your BAS or IAS over a year will give a good estimate of annual turnover for the Privacy Act for most businesses. Please provide the relevant BAS or IAS documents to the Commissioner.