



**Australian
Privacy
Foundation**

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8 August 2014

Mr. Timothy Pilgrim
Australian Privacy Commissioner
GPO Box 5218
Sydney NSW 2001
Email: enquiries @oaic.gov.au
CC: enquiries@health.gov.au

Dear Commissioner Pilgrim

RE: DOH SURVEYMONKEY TOOL TO COLLECT FEEDBACK

ABOUT THE PCEHR

The Australian Privacy Foundation (APF) understands from recent invitations published in the Medical Observer and other trade journals that the Department of Health is using the SurveyMonkey tool (surveymonkey.com) to seek online community feedback about the Personally Controlled eHealth Record System (PCEHR). My follow up visit to the online survey indicates that it specifically targets health care providers/professionals, vendors and consumers/patients.

Survey participants are not assured their comments will remain confidential. However we have been advised that they have an expectation of such under national health privacy legislation. All survey participants are generally identified or identifiable and linked to their responses when Survey Monkey is used by researchers. Moreover, SurveyMonkey is owned by an American organisation, coming under the auspices of US legal protections such as TrustE and Safe Harbor, which are weaker than Australian legislative requirements. The data is subject to US national security access under the Patriot and FISAA provisions, US court warrants and sub poenas.

SurveyMonkey can consolidate all data that a person discloses, providing Australian sales information to companies without participant consent. Indeed The Australian newspaper reports this has already occurred.¹

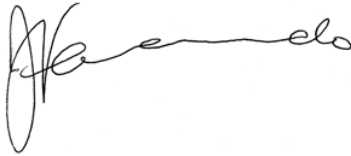
Publicly available information suggests the survey breaches several Australian Privacy Principles (APPs).

These include APP 2 – Anonymity and Pseudonymity, APP 6 – Use and Disclosure of Personal Information, APP

7 - Direct Marketing and APP 8 – Cross-Border Disclosures.² The public expects the Privacy Commissioner to use his existing powers to the full extent available to ensure health organisations recognise their responsibilities to the community and that the public is properly informed about the use of their personal and health information. Therefore we respectfully ask that you conduct an own motion investigation into the matter.

Thank you for consideration of our request

Yours sincerely

A handwritten signature in black ink, appearing to read 'Juanita Fernando', written in a cursive style.

Chair, Health Committee
Australian Privacy Foundation

Dr Fernando is in Medicine, Nursing & Health Sciences, Monash University.

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Contact Details for the APF and its Board Members are at: <http://www.privacy.org.au/About/Contacts.html>

References

1. Sinclair, L. SurveyMonkey mines details for database. The Australian, August 5 2014.
2. Office of the Australian Information Commissioner. Australian privacy principles and national privacy principles – Comparison guide. April 2013. <http://www.oaic.gov.au/privacy/privacy-resources/privacy-guides/australian-privacy-principles-and-national-privacy-principles-comparison-guide>