



Our reference: C10786: AT

Mr Nigel Waters
Chair
Australian Privacy Foundation
GPO Box 1196
SYDNEY NSW 2001

IN CONFIDENCE

Dear Mr Waters

**DISCLOSURE OF FINANCIAL TRANSACTION DATA BY
AUSTRALIAN FINANCIAL INSTITUTIONS**

I refer to the Australian Privacy Foundation's (APF) letter dated 12 October 2006 concerning information disclosures by Australian financial institutions to the Society for Worldwide Interbank Financial Telecommunications (SWIFT). In this letter the APF reformulates its allegations to focus on the privacy compliance of Australian financial institutions using the SWIFT network.

As advised in my letter dated 12 October 2007, this Office has been making enquiries with the Australian Bankers' Association Inc (ABA) since December 2006 regarding the privacy compliance of Australian financial institutions using the SWIFT network. This Office decided to approach the ABA as the banking industry's peak body whose members include the major banks.

I acknowledge that there have been delays in the progress of this matter and I apologise for that.

The ABA has provided this Office with information about 13 of its members, including the four major banks, and their compliance with the National Privacy Principles (NPPs), in particular NPP 1.3 and NPP 9.

This Office has reviewed ABA's response and based on the information available is satisfied that there is currently no evidence before the Office to support an allegation that Australian financial institutions have interfered with the privacy of individuals. I also note that this Office has not received complaints from individuals in relation to this matter.

The Office has assessed ABA's responses with respect to NPP 1.3, NPP 2 and NPP 9.

NPP 1.3

As you are aware, NPP 1.3 requires an organisation, collecting personal information from an individual, to inform the individual, at or before the time of collection, about:

- (a) the identity of the organisation and how to contact it; and
- (b) the fact that he or she is able to gain access to the information; and
- (c) the purpose for which the information is collected; and
- (d) the organisations (or the types of organisations) to which the organisation usually discloses information of that kind; and
- (e) any law that requires the particular information to be collected; and

(f) the main consequence (if any) for the individual if all or part of the information is not provided.

Based on the information available, it appears that Australian financial institutions as represented by the majority of ABA's members, have complied with NPP 1.3. It is important to note that NPP 1.3 only requires that an organisation ensures that the individual is aware of 'the purposes for which the information is collected and the organisations or type of organisations to which the organisation usually discloses information of that kind'.

For this reason, Australian financial institutions are not required to specifically identify SWIFT or any other organisation to which financial institutions usually disclose personal information.

I note that while financial institutions will normally disclose that customers' information may be sent overseas to overseas banks or beneficiaries, external service providers and to third parties as required or permitted by law, ABA has advised that its members have updated or are in the process of updating their international money transfer customer instruction forms. The amendments include in most cases, a reference to the need of the bank to transfer certain personal information of the customer overseas in order to complete the transaction and in one case a reference to SWIFT specifically.

NPP 2

NPP 2 regulates the use and disclosure of personal information by organisations that are subject to the legislation. NPP 2 does not restrict an organisation's use or disclosure of personal information where it is done for the purpose for which the information was collected. However, personal information may only be used or disclosed by organisations for a secondary purpose if that use or disclosure is permitted by one of the exceptions to NPP 2.1, which include:

- where the use or disclosure is for a secondary purpose that is related (or in the case of sensitive information, directly related) to the primary purpose of collection and the use or disclosure is within the reasonable expectations of the individual (NPP 2.1(a)); or
- where the individual has consented to the use or disclosure (NPP 2.1(b))

Based on the information available, it appears that Australian financial institutions have complied with NPP 2.

As long as financial institutions disclose personal information to SWIFT (or any other organisation) for the primary purpose that the information was collected, in this case, conducting an international money transfer, it appears that the Australian financial institutions comply with NPP 2.

NPP 9

NPP 9 regulates transborder data flows, and outlines the circumstances in which an organisation can transfer personal information outside Australia. In the simplest terms, NPP 9 prohibits an organisation from disclosing personal information to someone in a foreign country except where it has the individual's consent or where other criteria are met, including where:

- the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the NPPs (NPP 9(a)).
- the transfer is necessary for the performance of a contract between the individual and the organisation (NPP 9(c)).
- the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party (NPP 9(d)).

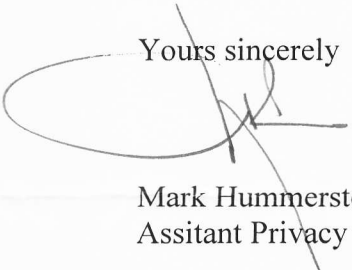
While financial institutions have relied on a customer's consent to transfer their personal information overseas as part of conducting an international money transfer, ABA has advised that its members have or are amending their telegraphic transfer forms to incorporate explicit consent for the transfer of personal information to organisations who are in a foreign country in accordance with NPP 9(b).

In addition I note that NPP 9(c) and NPP 9(d) could be relied upon by Australian financial institutions as the transfer of personal information is necessary for the performance of the international money transfer.

For the reasons stated above, this Office is satisfied that there is insufficient evidence to support an allegation that Australian financial institutions have interfered with the privacy of individuals and I intend to conclude our enquiries into this matter. If you would like to provide comments on this approach you are welcome to do so. Please provide written comments by Friday 20 June 2008.

If you would like to discuss this matter further I may be contacted directly on 02 9284 9638 or via email at mark.hummerston@privacy.gov.au.

Yours sincerely



Mark Hummerston
Assitant Privacy Commissioner

5 June 2008