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<https://privacy.org.au/about/contacts/>

8 March 2021

Commissioner Angelene Falk
Australian Information Commissioner and Privacy Commissioner
GPO Box 5218,
Sydney, NSW, 2008.

angelene.falk@oaic.gov.au

Dear Ms. Falk,

Re: OAIC guidance: Privacy guidance for employers on the collection of staff vaccination status

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

We are glad to see a range of guides, including advice about Privacy Impact Assessments, published on the Office of the Australian Information Commissioner (OAIC) web site, supporting employers collecting staff COVID-19 vaccination status.⁽¹⁾ However discomfort about the serious issues published on the OAIC web site has prompted further concerns of interest to the Australian community as follows:

1. Under Australian Privacy Principle (APP) 3, employers may collect sensitive information about the health of individuals if the individual has provided express or implied consent, where the information is reasonable necessary or directly related to one of its functions or activities such as to prevent or manage COVID-19 in the workplace.⁽¹⁾ **The APF submits that regardless of legislation, employers seeking implied consent for collecting**

sensitive information should notify employees of the action and specify the identity and contact details of the entity collecting data; the types of data collected and the purposes for which each type of data is collected, and whether the data will be disclosed to any third parties and, if so, which third parties and for what purposes. It is essential that individuals be told the purposes for which their personal data is collected, so that they can insist that the collector should only use the data for that purpose (subject to legislative exceptions).⁽²⁾

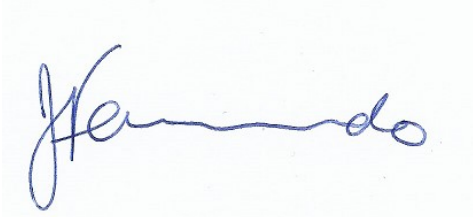
There has already been widespread concern that actions said to be necessary to support public health in relation to the Covid-19 pandemic can or will lead to breaches and encroachment on privacy, and that measures flagged as temporary responses to the peak of the crisis could be expanded or perpetuated, taking advantage of the pandemic as a cover or excuse. Given that so many of the public health measures that work require the trust, confidence and cooperation of individual Australians, it is critical to do everything possible to require transparency, accountability and, in this case, temporariness for exceptional measures.

2. Key points published in OAIC guide to employers collecting staff vaccination status indicate that “ ... reasonable steps must be in place to keep personal information secure, including where employees are working remotely”.⁽¹⁾ The OAIC supports employers that are required to implement a Privacy Impact Assessment (PIA) by publishing advice, useful links and templates on their web site. **The APF requests that similar resources are provided for other employers, with no such legislative requirement, to support the development of a Privacy Impact Policy template in support of all employers that may collect sensitive information about the health of individuals where the information is reasonable necessary or directly related to one of its functions or activities such as to prevent or manage COVID.**

As above, in order to secure public trust and confidence, these exceptional and intrusive actions taken under the justification of the Covid-19 situation need to be accompanied with exceptionally helpful and explicit guidance on matters around assessing, identifying and taking action to respond to heightened personal information security risks, including the likelihood that remote working technical environments (home-, phone- or coffee-shop-office etc.) will be effectively impossible to secure against motivated intruders, and the subsequent critical importance of data minimisation, among other technical, operational and training measures.

The need for transparency and explicit notification measures and emphasis on responding to increased information security threats, in the context of the community trust required to progress pervasive health implementations across Australia, is vital. I look forward to your reply, and would be happy to help with developing responses to these issues.

Yours sincerely

A handwritten signature in blue ink that reads "Fernando". The signature is written in a cursive style with a large initial 'F'.

Dr. Juanita Fernando
Chair, Health Committee
APF
0408131535 Juanita.Fernando@privacy.org.au

ACKNOWLEDGMENT:

I acknowledge and thank the members of the APF Health Committee for their guidance herein.

REFERENCE

1. OAIC. Coronavirus (COVID-19) : Understanding your privacy obligations to your staff. 18 March 2020. Available from: <https://www.oaic.gov.au/privacy/guidance-and-advice/coronavirus-covid-19-understanding-your-privacy-obligations-to-your-staff/>
2. Greenleaf, G., Waters, N. & Lane, K. et al. Bringing Australia's Privacy Act up to international standards. Australian Privacy Foundation submission to Privacy Act Review – Issues Paper; 18 December 2020: p.19. Available from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3752152

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby AC CMG and The Hon Elizabeth Evatt AC, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <https://privacy.org.au/publications/by-date/>
- Media <https://privacy.org.au/home/updates/>
- Current Board Members <https://privacy.org.au/about/contacts/>
- Patron and Advisory Panel <https://privacy.org.au/about/contacts/advisorypanel/>

The following pages provide outlines of some of the campaigns that the APF has conducted:

- The Australia Card (1985-87) <https://privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <https://privacy.org.au/campaigns/consumer-credit-reporting/>
- The Census (2006) <https://privacy.org.au/campaigns/census2006/>
- The Access Card (2006-07) <https://privacy.org.au/campaigns/id-cards/hsac/>
- The Media (2007-) <https://privacy.org.au/campaigns/privacy-media/>
- The MyHR (2012-) <https://privacy.org.au/campaigns/myhr/>
- The Census (2016) <https://privacy.org.au/campaigns/census2016/>