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10 June 2021

Rebecca Wark
Chief Executive Officer
NSW Health Infrastructure
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via email to

Claire.Muir@healthnsw.gov.au

Dear Ms. Wark,

Re: NSW Accellion Data Breach

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

I refer to several publicly available articles indicating that NSW Health, along with others, were subject to a data breach linked to the use of Accellion File Transfer Appliance product. The product was 20 years old, security threats were known and evidently 'patched' by NSW Health in December 2020.¹⁻³

The reportage originally quotes a spokesperson from NSW Health, on June 4, indicating that there is no evidence the citizen information collected had been 'misused'.¹ By June 7, NSW Health admitted that personal health details, such as identity and some health information, is indeed among the information accessed by the breach and so may be misused.⁴⁻⁵

The quality, integrity and usefulness of data in electronic health and medical records is part of the risk/benefit equation inherent in privacy protection; that is privacy is a matter of balancing risk. In this case, reports of Health NSW's actions after the Accellion breach occurred are unsatisfactory.⁶ Indeed, given issues with Accellion were evident from at least mid-December 2020, why was NSW Health's data not robustly protected from known "hacks"?⁶ The APF is unsurprised by Australian individuals' general lack of trust in the risk/benefit equation of the privacy and security measures used to manage government information holdings.

The APF is disappointed by the NSW Health privacy and security controls, data management protocols and the breach itself. The department still needs to contact all individual's affected by the breach, despite the passage of months. We are also troubled by their alleged dishonesty speaking in the public domain about the range information stolen from NSW Health.

The APF maintains that 'information privacy' is not about making things strict for data users in order to restrain obvious abuses; it is about good data practice. It is just as much about promoting the recognition that high data security and privacy is every individual's right. Evidently this right is not being accorded by NSW Health to the community.

The NSW Health breach is a foundation of the APF's strong endorsement of a statutory tort for invasion of privacy, of the type recommended by the Australian Law Reform Commission (ALRC) in 2008. The recommendation has been supported by all relevant public inquiries that have considered this issue, and is a long-overdue reform that fills a glaring gap in the law.⁷ The Accellion breach is a serious invasion of privacy, where affected people should enjoy the right to expect accountability from NSW Health.

What actionable changes have NSW Health implemented since February 2021 (other than to replace the Transfer Appliance Product) to ensure public accountability and control serious invasions of privacy, such as the Accellion breach, do not reoccur?

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, appearing to read 'Fernando', is displayed on a light blue background.

Acknowledgment

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

References

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3. Arghire, I. Australian health and transport agencies hit by Accellion hack. *Security Week*, 23 February 2021. Available from <https://www.securityweek.com/australian-health-and-transport-agencies-hit-accellion-hack>

4. Staff Writers Personal information accessed after cyber attack on NSW Health. *news.com.au*, 4 June 2021.
Available from <https://www.news.com.au/technology/online/hacking/personal-information-accessed-after-cyber-attack-on-nsw-health/news-story/fb6fd41d6ec351030d81abf8ffdb439f>
5. Crozier, R. NSW Health admits personal data accessed in Accellion breach. *IT News*, 7 June 2021.
<https://www.itnews.com.au/news/nsw-health-admits-personal-data-accessed-in-accellion-breach-565551>
6. Arghire, I. Attacks targeting Accellion product linked to FIN11 cybercrime group. *Security Week*, 22 February 2021. <https://www.securityweek.com/attacks-targeting-accellion-product-linked-fin11-cybercrime-group>
7. Australian Law Reform Commission (ALRC) Australian Law Reform Commission (ALRC) *For your information: Australian Privacy Law and Practice* (ALRC Report 108) (Report tabled August 2008)
<https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/>

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, Committees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, Committees 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/>