

June 20, 2022

Ms. Rebecca Cross,
Director General,
ACT Health Directorate.
DGACTHealth@act.gov.au

Dear Ms. Cross,

ACT COVID 'Case Investigation Interview' form

The APF is the nation's preeminent civil society body concerned with privacy. A brief backgrounder is attached.

We refer to the online 'Case Investigation Interview' form that people who register a positive SARS-CoV-2 (COVID) 19 Rapid Antigen, Polymerase Chain Reaction (PCR) or Reverse Transcription PCR test result complete as part of the mandatory report process.

The form is administered by ACT health authorities to support isolation requirements during the pandemic and demands a considerable amount of information unrelated to that purpose. The extraneous information includes questions about ethnicity, country of birth, smoking status, past medical history, education level and pregnancy. The data might be useful in a clinical context but not in an administrative one and certainly not without asking for the registrant's consent before collecting it.

The registrant must respond to every inquiry in the questionnaire, including extraneous ones requiring their consent, in order to comply with a legal obligation to submit the online form. This submission process ostensibly breaches Australian Privacy Principle 3 (APP3) – Collection of Solicited Personal Information – because the form collects information that is not reasonably necessary for, or directly related to, the agency's or organisation's functions or activities.¹ A registrant who is not prepared to provide extraneous data is precluded from complying with a legal requirement.


This apparent breach of APP 3 is also coercive and arguably constitutes extortion. That is, the form submission process seems to amount to an unwarranted demand for irrelevant data with menaces, intending to influence the exercise of a public duty.

The current COVID 'Case Investigation Interview' form approach is counterproductive. The problem of excessive government COVID data collection (function creep) was a significant fear expressed by more than half of the participants in the 2020 Office of the Australian Information Commissioner (OAIC) survey of community attitudes to privacy in the COVID context.² As in other States, the public has been very accepting of the endeavours of ACT Health to balance public health needs against economic and social freedoms. The Interview form threatens to undermine public goodwill in relation epidemic responses and public health more generally.

The APF is deeply concerned that the continued existence of a form like this will become a norm, and "form creep", in the context of online questionnaires seeking unnecessary data points about individuals in order to submit forms, will see an extension of this approach into more health and non-health related information gathering in the ACT, and elsewhere. If the community is to trust digital service implementations into the future, balancing public health needs with privacy concessions, reliable administrative controls must minimise "form creep".

We look forward to your reply, and would be happy to help with developing further responses to this issue.

Yours sincerely,

A handwritten signature in blue ink that reads "Juanita Fernando". The signature is written in a cursive style with a long horizontal stroke at the end.

Dr. Juanita Fernando
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Australian Privacy Foundation
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REFERENCES

1. Office of the Australian Information Commissioner. *Chapter 3: APP 3 — Collection of solicited personal information*. 22 July 2019. <https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-3-app-3-collection-of-solicited-personal-information>
2. Lonergan Research. 2020 Australian Community Attitudes to Privacy Survey, September 2020. Office of the Australian Information Commissioner (OAIC) <https://www.oaic.gov.au/engage-with-us/research/australian-community-attitudes-to-privacy-survey-2020-landing-page/2020-australian-community-attitudes-to-privacy-survey>

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 frequent 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 worldwide 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 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 and former Ministers of the Crown.

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 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/>