

Right to Information and Privacy Practitioners Meeting

Jubilee Room of NSW Parliament

Date

12 June 2019

9:35am to 12:45pm

Session 1 – Practitioners Only

1 – Welcome and Apologies, minutes of previous meeting, actions arising

- Nikki welcomed all to the meeting.
- Apologies:
 - Robert Sparshott is currently on leave
 - Lilli Tzinberg is acting Deputy Chairperson
 - Tanya O’Dea has stepped down from the Consultative Committee
- A call for new members may be required
- No issues raised from previous meeting

2 – Update from the Consultative Committee

- The consultative committee did not meet with the IPC this quarter. Instead members of the committee met to discuss strategies for improvements to Network meetings.
- As a result the following was implemented:
 - A fresh website
 - A survey was created and distributed to the Network for feedback
 - A general reminder to raise systemic issues with the Committee to take to the IPC,

3 – Presentation of the Practitioners Survey

- Lilli presented the results of the survey and outlined trends.
- Some of the main issues and opportunities for change are noted below:
 - Resourcing for privacy and information access was raised as an issue by practitioners
 - Practitioners generally happy with meetings however opportunities to improve include exploring live streaming to enable inclusion for remote network members
 - Recommending the network to others was low by members from NSW agencies and high in Councils.
- Lilli discussed the possibility of moving the meeting to the McKell Building where the facilities to hold live streaming are available. Use of interactive presentation software such as Slido or Mentimeter would allow real time anonymous questions/responses to be provided.
- The change to the meeting venue would not inhibit face to face meetings where practitioners can still network.
- Lilli also noted that the committee would be conducting further analysis of the results.

4 – Presentation from the Department of Justice

- Open government team at Justice dealing with fixated person/vexatious applicants.
- They are conducting a study/preliminary assessment of fixated persons/vexatious applicants and are calling for feedback on issues practitioners are facing.
- The Department representative advised she is happy to share template letters for dealing with fixated persons/vexatious applicants.
- One of the suggested approaches to managing the issue is to limit access to email only.
- Department of Justice is reminding practitioners there is a call for submissions on the performance of NCAT whether it be positive or negative.
- One of the issues is dealing with fixated persons. A possible strategy discussed, reviews requested from both the agency and applicant, to provide a submission on paper which is then considered by the Member. This may assist with unmeritorious applications.
- Email Jodie.Cobbin@justice.nsw.gov.au for copies of templates or any feedback.
- Discussion and questions from the floor

5 – Megan Carter – Q&A on GIPA Act/Reg. amendments

- Megan ran through key changes to the Act and impacts on practitioners and discussed amongst other things:
 - strategies to deal with requests that impact the agency such as unreasonable diversion of resources.
 - using s. 54(A) to manage 'business interests' where they affect operations of other agencies
 - clarified the amendment to s. 60(1)(a)
 - discussed addition of 60(1)(e) to Refuse to Deal options
- Megan asked how the changes to the Regs for Open Access information had impacted on Councils and provided suggestions for managing requests for large amounts of information.
- Megan suggested that the amendments be a topic of discussion at a future network meeting.

6 – Other business, questions, events and training

None

Session 2 – Open session

7 – IPC Update – Information Commissioner

- Information Commissioner provided an update on the work they have carried out over the last quarter.
- Review of Guideline 7 underway
- e-learning modules – Contract Register and Access training for decision makers coming
- Decision templates and workshop for:
 - Preliminary assessment
 - Amendment to s.60 (3)(a) & (4) (Unreasonable diversion)
- Statutory Guideline 1 reviewed by changes to Model Code of Conduct
- Information Access Self-Assessment Tool on website

The Commissioner opened the floor to questions/comments from practitioners.

8 – IPC Update – Privacy Commissioner

- 2019 PAW held with a citizen event which included staff from the IPC
- Thanked the Privacy Champions who promoted PAW, highest number of participants this year from agencies.
- e-learning available on website
- Factsheet – bundled consent
- Factsheet – IPC Privacy Statement of jurisdiction
- Privacy Agency Self-Assessment Tool
- Privacy Code of Practice – received number of submissions around that – will update when they have the facts
- Updates on review of HRIPA – health sector now working on that – discussion paper will come back and fed through the Chair

9 – GIPA Case Updates

- Importance of consultation with 3rd parties
- Application of public interest to ‘information’ not documents
- Options when tribunal not satisfied agency has complied with search obligations under s.53
- Categorise what information is relevant
- Require agency consultation to 3rd parties
- Tribunal facilitated further 3rd parties consultation
- Lack of evidence of relevant consideration
- Lack of specific probity of prejudice

Cases

1. Zonneville v Minister Education and Early Childhood Learning
 - Repeat players using GIPAA
 - Approach of High Court – abuse of process – to provide collateral damage
 - Breached GIPAA
 - Looked at previous history of applicant
 - Claims under s112 – on 5 occasions to the same agency
 - Applicant continued with proceedings even after receipt of information

<p>2. Hillyer v NSW Fire Services</p> <ul style="list-style-type: none"> ▪ Overriding public interest against disclosure ▪ Requested complainants names and identifying details (even though known to applicant) ▪ Wanted 'background information' provided to the agency by the complainant (not directly relevant to allegations subject of complaint) - cl 1(d) and (g) applicable ▪ OPIAD – complainant names – to release, little benefit ▪ OPIAD – background material – clear best understood – 1(d) & (g) – significant – No benefit in releasing background material
<p>10 – Privacy case update – Salinger Privacy</p>
<ul style="list-style-type: none"> • New South Wales v Waters (Nos 2) [2019] NSWCATAP 96. Opal Card - Appeal case, overturned original decision. No breach of IPP 1.
<p>11 – Questions from the floor / any other business / close</p>
<ul style="list-style-type: none"> • IAPP – practitioners encouraged to join/register • A Private members bill was recently introduced in the Legislative Assembly to amend the Privacy and Personal Information Protection Act 1998 to require public sector agencies that cause a serious violation of an individual’s privacy to notify the individual and the NSW Privacy Commissioner. (A similar Bill was introduced previously and did not get passed). Look out for any amendments. • Links to job ads added to Network Website • Guideline 1 – summary of submissions available to practitioners after meeting • Please provide feedback on the new website to privacy-access.network@icare.nsw.gov.au • Next meeting 28 August to be held at 2.00pm
<p>13 – Close meeting</p>
<p>Meeting closed at 12:45pm</p>