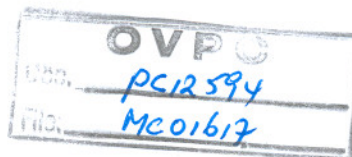




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Mr Roger Clarke
Chair, for the Board of the Australian Privacy Foundation
GPO Box 1196
SYDNEY NSW 2001

Dear Mr Clarke

Anonymous use of public roads and public transport

I refer to your letter of 23rd September 2008. I apologise for the delay in responding but have been endeavouring to obtain some information to inform my comments.

Toll Roads

As you are no doubt aware, Victoria has two toll roads, the City Link and the East Link.

City Link was created prior to the enactment of the *Victorian Information Privacy Act 2001* and the extension of the *Commonwealth Privacy Act 1998* to private sector organisations. It is operated by Transurban. The *Melbourne City Link Act 1995* which ratifies the agreement for the Melbourne City Link Project gives the City Link Corporation certain powers and authorises the collection of road tolls. Part 4 Division 3, restricts the use and disclosure of tolling information.

In early 2002, the former Privacy Commissioner, Paul Chadwick, entered into correspondence with the former Federal Privacy Commissioner, Malcolm Crompton regarding which Office had jurisdiction over Transurban in relation to its administration of Melbourne City Link. The correspondence arose following unlawful access by a former employee to the database of Transurban customers and their credit card details in relation to the use of the Melbourne City Link. Although Transurban had initially claimed that it was an organisation acting under a state contract, and thus exempt from the Federal Privacy Act, the Federal Privacy Commissioner, after taking legal advice, took a different view and believed that Transurban was not acting under a state contract and came within his jurisdiction. Although this Office obtained legal advice to the contrary, the matter was finally resolved by an advice to the Minister by the then Solicitor General of Victoria confirming that in his view Transurban was not acting under a state contract and therefore this Office had no jurisdiction in relation to the operation of City Link. I have sought and received confirmation from Karen Curtis the Federal Privacy Commissioner that this remains her view of our respective Offices' jurisdiction.

The situation in relation to East Link is different in that under section 30 of the *East Link Project Act 2004*, the agreement between East Link and State of Victoria is deemed to be a state contract for the purposes of the *Information Privacy Act 2000* and the East Link

Corporation is subject to the Victorian Act. I therefore have jurisdiction in relation to East Link.

As you are aware, under the Victorian Act, Information Privacy Principle 8 requires that where lawful and practicable individuals must have the option of not identifying themselves when entering transactions with an organisation subject to the Act.

The question of whether or not a road is to be a toll road is not a matter for this Office, but for government. Therefore, the issue is whether it is practicable for individuals to be allowed to travel anonymously on toll roads by the use of cash only toll booths, rather than automated number plate recognition technology.

In my view, given the nature of the roadway, it would not be practicable for there to be toll booths installed on East Link to collect the tolls anonymously. I might add that although I don't have jurisdiction, I would have the same view in relation to the operation of City Link. I am aware that in the 1980s, an effort was made to install toll booths on the Westgate Bridge, but the attempt had to be abandoned because the use of toll booths created such traffic congestion and there were some additional occupational health and safety concerns regarding the persons who collected the tolls, because of exhaust fumes.

I have endeavoured to find out what alternatives there are to the use of toll booths which would make travel on the tollways completely anonymous. However, on the limited information I have, it does not appear to me that there is any ability for there to be complete anonymity. City Link operates a day pass system which can also be used on East Link. A day pass can be purchased at a Maxi Kiosk site (usually petrol stations) and if the person pays in cash, then the only information recorded against a day pass is the car registration number. That, however, does not alter the fact that potentially the driver of the vehicle, if also the registered owner, can be identified through the ANPR system on the tollways.

Unless there is an alternative to toll booths which I am unaware of, but which does not involve the use of an ANPR system for checking whether the toll has been paid, then I think that I must conclude that it is not practicable for a person using a toll road to be completely anonymous. In my view the important privacy issues are use and disclosure of the tollway information, who has access to it, how secure it is, and how long it is retained.

It is worth noting that drivers are not obliged to use either City Link or East Link, although not to do so is no doubt inconvenient, especially in the case of City Link. There are however large warning signs indicating when the tollway commences and giving drivers the opportunity to leave the road and take alternative routes should they so desire. Therefore, drivers do retain the right to travel anonymously on Victorian roads.

Should Victoria extend the use of tollways, then clearly the privacy issues relating to loss of anonymous travel and the handling and security of information collected by the tollway operators will be considered by this Office and the subject of advice to government. If the Privacy Foundation is aware of a tollway system which can provide anonymous travel without the use of toll booths, then I would be pleased to hear from you.

Public Transport

The second matter which you raise is the introduction of smartcard based ticketing for public transport.

As you are aware, Victoria is developing a smartcard ticketing system known as 'MYKI'. The Transport Ticketing Authority, which has the responsibility for this project, has from the outset, both consulted this Office and employed an expert privacy consultant to advise it in relation to the introduction of this scheme.

This Office was very clear that there should always be an option for persons to travel anonymously and that those choosing to travel anonymously should not be penalised for doing so. This has always been a part of the scheme except for those wishing to claim concessions and thus travel at a reduced cost. In that case the Transport Ticketing Authority was clear that it would be necessary for those persons to be identified in order to check their concession status with CentreLink. Under the present ticketing system, if a person purchases a concession ticket, then they can be required by an authorised officer to produce identifying evidence that they are entitled to travel on a reduced cost ticket.

This Office will continue to work with the Transport Ticketing Authority and its privacy consultant to ensure privacy concerns are addressed.

I am happy to discuss these issues further with Australian Privacy Foundation representatives.

Yours sincerely,



HELEN VERSEY
Privacy Commissioner