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Brahman Thiyagalingham
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Standards Australia International Ltd
286 Sussex Street
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Re: Handbook on Management of IT Evidence

I understand that you are collating comments on the draft Handbook. Ajoy Ghosh spoke about this at a recent conference and invited those present to make submissions.

The Australian Privacy Foundation is concerned about the potential effect of the guidance in the Handbook on the retention of personal information.

While the Handbook will not have the same status as a Standard, it may nevertheless prove influential — this is presumably the intention of Standards Australia in developing it. Unfortunately, the fact that it is not a formal Standard means that there is a less transparent process and important interests may not have been involved or consulted. For example, the federal Privacy Commissioner does not appear to be aware of the initiative (I am copying this to his office).

Our main concern is that the overall effect of the guidance is likely to be to encourage managers to retain more computerized data and for longer periods, on the basis that it might be required as evidence in the event of future litigation or investigations. Any advice to this effect has the potential to conflict with the statutory privacy principles that encourage the

deletion of personal information as soon as practicable — NPP 4 in the federal Privacy Act 1988, and the equivalent principles in state and territory laws.

The Handbook makes reference to the Privacy Act but only in the context of record-keeping requirements (1.7.1). The Handbook correctly identifies that there may well be statutory obligations to keep information for specified periods (see also 3.2.1) but does not adequately balance this with the need to only keep *personal* information for the minimum time necessary for a legitimate purpose.

Given that use as evidence in future litigation or investigations could always be seen as a legitimate purpose, the overall effect of the Handbook could be to encourage indefinite storage of all information. Former barriers of storage and retrieval difficulties and associated costs have all but disappeared with technical advances, so the only real constraint on storage is a policy decision on possible future needs.

In our view, any guidance on these needs in relation to *personal* information should emphasise the necessity of a balance between privacy and other interests. The extent and duration of personal data retention should be proportional to the benefit to be gained by retention, which will in turn be related to the likelihood of the need for evidence and the consequences to the organization of the information not being available.

In some contexts, the balancing decision will favour long-term retention of personal information, but in others, the remote likelihood of it being required as evidence or the marginal value that it could add to any foreseeable dispute or investigation will favour early disposal in line with NPP 4.2 (or its equivalents).

The Handbook correctly draws attention to the need for evidence collection and retention to be done in the context of record-keeping requirements and archiving standards, but there is insufficient recognition of privacy law and practice as a countervailing public interest.

We hope that the committee responsible for this Handbook will be able to take these comments into account and modify the guidance accordingly. We strongly suggest that the federal Privacy Commissioner, as the official responsible for promoting and enforcing NPP 4, should be consulted before the guidance is finalized.

Yours faithfully

Nigel Waters
Board Member
Australian Privacy Foundation.

cc. Brant Pridmore, Director Policy, Office of the Federal Privacy Commissioner