

From: Dan Svantesson  
Sent: Wednesday, 14 December 2011 3:46 PM  
To: John McMillan  
Cc: Timothy Pilgrim; 'nigelwaters@pacificprivacy.com.au'  
Subject: RE: inquiry [SEC=UNCLASSIFIED]

Dear Prof McMillan,

Thank you for your e-mail. I think I speak for all members of the Board of the Australian Privacy Foundation when I say that we have always encouraged a productive dialogue with Australia's privacy commissioners.

As to my statements in the news article you refer to, you will of course note that all my comments are directed at online privacy generally, rather than the matter in focus in the article:

"Dan Svantesson, an associate professor in law at Bond University and a spokesman for the Australian Privacy Foundation, said the site was a reminder of the risks of sharing sensitive information electronically.

"For Australians to have any hope of keeping some level of privacy in our online world, we need stronger legal protection, a more active approach from the privacy commissioner and a more privacy friendly attitude from those sites that ask us to trust them with our personal information, such as Facebook," he said." (emphasis added)

Therefore, on a proper reading of what I stated, it is clear that I make no suggestions as to how you should act in relation to the website in question (you wrote: "I would be grateful if you could point me to the specific provisions of the Privacy Act that I should be exercising in relation to the website referred to in the above article.")

However, since you show an interest in my views on the activities of your office, I note that, using Facebook as an example, there is a significant difference between the approach taken by Australian privacy commissioners compared to the very active approach taken e.g. by the Canadian privacy commissioner. A similar comparison can be made, in the context of Google's collection of WiFi data, between the Australian approach and the approach taken e.g. in parts of Europe. Many additional examples could be given just from the seven years or so that I have been following the privacy regulation in Australia.

Having said this, I also stress that my statement in the quoted news article does not specify what is required for the privacy commissioner to take "a more active approach". Expanded powers through a legislative change may very well be an important ingredient. But focusing on existing powers, arguably more could be done by way of research (s.27(1)(c)), education (s.27(1)(m)) and the broad power "to do anything incidental or conducive to the performance of any of the Commissioner's other functions" (s.27(1)(s)).

I hope this clarifies the matter. However, should you have any questions or concerns, feel free to contact me further.

With kind regards,

Dan Svantesson

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