

14 November 2011

Members of the Board
Australian Privacy Foundation (APF)

Via email

Dear Dr Clarke,

Re: Communication Standards

Over the past two years, people within NEHTA and the APF have taken many steps to support respectful dialogue on eHealth matters. NEHTA views the APF as a key and valued partner as eHealth becomes a reality in Australia, and having open dialogue is a high priority.

These discussions have been mutually beneficial for both parties. Through dialogue and consultation, the APF has been able to influence and change many aspects of the Personally Controlled Electronic Health Record (PCEHR). Specifically, PCEHR features advocated by the APF include opt-in registration, access by a consumer to any item in their PCEHR, comprehensive access controls and audit logs, multiple repositories which allow existing data stores to remain in place and not be merged, and options for allowing (or denying) access to different healthcare providers. These elements are all published in the PCEHR Concept of Operations which is the key design document for the system.

So it is with great regret that I now see the APF actively moving away from the sort of respectful dialogue which had been achieving results and leading to a better PCEHR for Australian consumers and patients.

On 29 October 2011, Mr Roger Clarke sent an email to a relatively junior NEHTA staff member. The email was highly inappropriate in its form and content as communication between organisations and was distressing to the staff member involved.

I am advised that the NEHTA executive member responsible for the Privacy team contacted Mr Clarke to request that he refrain from sending similar correspondence in the future. Mr Clarke advised that not only did he disagree that the communication was inappropriate in the circumstances, but he advised that he may choose to communicate with NEHTA staff in a similar way again in the future.

As an employer, NEHTA has a duty of care to its employees. We advised Mr Clarke that had the offending email been sent by a NEHTA employee, there would have been grounds for a harassment claim. Mr Clarke advised us that in his view, the standards required for appropriate communication in a workplace did not apply to him as an advocate communicating with a government agency.

I do not accept that one standard of communication is required for NEHTA employees and a different standard applies to others communicating with NEHTA staff members.

As Mr Clarke refuses to recognise that his communication was inappropriate, and continues to hold the position that he may choose to communicate in a similar way with NEHTA staff again, we are left with no choice but to limit direct contact Mr Clarke has with NEHTA staff. This is a necessary step to ensure NEHTA staff are not exposed to inappropriate communication within our workplace.

Despite this extraordinary situation, NEHTA would value continued dialogue with the APF on eHealth matters at this critical time. We would be pleased to have another representative from the APF participate in our engagement sessions and communicate directly with our staff on system design and implementation. Indeed, we would also be willing to continue working with Mr Clarke if he accepted that his communication was inappropriate in the circumstances and if he assured us that he would not communicate in this way with NEHTA staff at any time in the future. We have never requested an apology from Mr Clarke, although it is my view that an apology would be appropriate. However, we do need an assurance from the APF that future communication will be conducted in a spirit of cooperation and respect.

I hope that the action of one member of the APF does not affect your organisation's impact on the future of eHealth in Australia by inhibiting the level of participation you can have in our work. We greatly value the contribution the APF has made over the past year and would welcome continued respectful dialogue.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Peter Fleming', is positioned above the typed name.

Peter Fleming
Chief Executive Officer