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Privacy
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Australian Privacy Foundation Submission to the Office of the Australian Information Commissioner

Submission: Revocation of the Biometrics Institute Privacy Code

About the Australian Privacy Foundation

The Australian Privacy Foundation is the main non-governmental organisation dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians. Since 1987, the Foundation has led the defence of the right of individuals to control their personal information and to be free of excessive intrusions. For information about the Foundation see www.privacy.org.au

About this submission

This submission sets out the formal policy of the Australian Privacy Foundation in relation to the revocation of the Biometrics Institute Privacy Code. We are grateful for the opportunity to comment on your office's Consultation Paper on this issue. **The APF strongly supports the revocation of the Code.**

You will recall that the APF has raised numerous problems with the Code with your Office, both verbally and in formal submissions. We first asked your Office to de-register the Code in 2009. We held a formal meeting to discuss our concerns in 2010 and entered into further correspondence in 2011. None of these concerns or actions is mentioned in the current Consultation Paper.

We request that you treat the arguments contained in APF's earlier communications as part of this Submission. See:

<http://www.privacy.org.au/Papers/BioCode-OFPC-091203.pdf> (3 Dec 2009)

<http://www.privacy.org.au/Papers/Biom-LtrToOPC-110308.txt> (8 Mar 2011)

While we support the current move to revoke the Code, we are concerned that this process has taken an extremely long time. We also believe there may be some lessons for the overall management of codes from this incident.

Problems with the Biometrics Institute Privacy Code

The Biometrics Institute Privacy Code was heavily promoted by the biometrics industry as a positive form of privacy protection and as a significant achievement of the Biometrics Institute.

In reality, after six years of operation, the Code never had more than five subscribers (out of a base of well over 100 members). The Code had no support from major biometrics vendors or users - the subscribers were small organisations or consultants.

In addition, as reported to your Office on numerous occasions, none of the subscribers ever provided a link or any information about the Code on their websites or in their privacy policies.

APF wrote to your Office in 2009 noting that the low level of support revealed the true nature of the Code: "It is a token form of privacy protection that provides positive PR for the biometrics industry, without providing any additional requirements for the real providers and users of biometrics in Australia."

Problems with the Code Review

The Commissioner's Code Development Guidelines (Sept 2001) include an expectation of an independent and adequately resourced review at least once every three years.

The Biometrics Institute Privacy Code includes a review process, which includes the establishment of an Independent Code Review Panel, comprising:

1. An independent chairperson; and
2. An equal number of consumer and industry representatives which the Biometrics Institute Board may from time to time nominate.

In fact, the Independent Code Review Panel for the first and only review of the Code consisted entirely of panelists who were members of the Biometrics Institute. The supposedly independent Chair was in fact a Code subscriber. Three of the four members of the Panel were consultants to the biometrics industry and subscribers to the Code at the time of the Review.

The composition of the Panel bore absolutely no resemblance to the requirements for the establishment of an Independent Code Review Panel as set out in the Code.

APF raised concerns about this issue in formal correspondence with the OAIC in 2009 and again in 2010 and 2011. In our view, OAIC took no effective or public action to address this clear failure of a key code requirement, and the clear flouting of the OAIC registration process.

We note that this entire issue is not mentioned in the current Consultation Paper on the Code. The result is that a wide range of stakeholders have been asked to comment on the potential revocation of a Code without being provided with any background on over three years of detailed submissions, meetings and concerns about the effectiveness of the code and the code review.

Revocation

We support the revocation of the Code. This should be completed as soon as possible, and steps should be taken to ensure that a consumer visiting the OAIC website or Biometrics Institute website has a clear understanding that the Code has been revoked.

We note that the Institute has developed a new Privacy Charter (hidden behind a membership pay-wall). We trust that the OAIC will ensure there is no confusion between the two documents.

Lessons

APF believes that the OAIC should take a more active role in ensuring that Codes meet basic standards of good practice, especially in relation to industry coverage.

The OAIC should also take steps to ensure that key Code governance requirements, such as the requirement in this case for an independent review, are not ignored or flouted to the point where it has a negative impact on the reputation of the Office.

Thank you again for the opportunity to comment on this matter.

Roger Clarke

Chair

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