



Our reference: D2014/022006

Dr Bernard Robertson-Dunn
Chair, Health Committee
Australian Privacy Foundation
By email: Bernard.Robertson-Dunn@privacy.org.au

Dear Dr Robertson-Dunn

Privacy concerns raised in relation to the Department of Health PCEHR Review survey

The Office of the Australian Information Commissioner (OAIC) received a letter from Dr Juanita Fernando, former Chair of the Health Committee of the Australian Privacy Foundation (APF) on 8 August 2014. The OAIC thanks the APF for the letter and has provided you this response in your capacity as the current Chair of the Health Committee.

The letter raises several privacy concerns about an online survey powered by SurveyMonkey, which was released by the Department of Health (Health) on 4 August 2014. The survey sought to capture the views of stakeholders on recommendations made in the [PCEHR Review](#), and particularly the recommendation that the PCEHR system become opt-out.

Specifically, the letter raised concerns that survey participants were identifiable and linked to their responses, that SurveyMonkey is owned by an American organisation and not subject to Australian legislative requirements, and that the survey potentially breaches several Australian Privacy Principles (APPs).

I appreciate the APF bringing these concerns to our attention. I have considered the issues raised in the letter and staff from the OAIC reviewed the PCEHR Review survey questions and made inquiries with Health about the survey. The OAIC was also contacted by a SurveyMonkey representative in relation to the concerns raised in the letter.

PCEHR Review survey and the Australian Privacy Principles

Health has advised the OAIC that no personal information or IP addresses were collected through the PCEHR Review survey. Health also advised that the survey was designed to be anonymous and that there was no intention of trying to identify participants. This means that the survey was consistent with APP 2, which provides that individuals must have the option of dealing anonymously or by pseudonym with an APP entity. Since personal information was not collected through the survey, the OAIC is also satisfied that the survey was conducted in compliance with the other APPs.

If any unsolicited personal information had been provided by survey participants (for example, in the free text fields), Health would have been required to treat this information in

accordance with APP 4. However, the OAIC understands that no unsolicited information was collected through the survey.

The OAIC has advised Health that best privacy practice would involve providing a notice to survey participants explaining how information collected through the survey (including unsolicited personal information) would be handled and advising participants that the survey was intended to be anonymous. Health has responded that for future surveys, they would provide a privacy notice to survey participants.

Using SurveyMonkey

The engagement of SurveyMonkey to power the survey occurred under a Commonwealth contract. Section 95B(1) of the Privacy Act provides that an agency entering into a Commonwealth contract must take contractual measures to ensure that a contracted service provider does not do an act, or engage in a practice, that would breach an APP if done by that agency. The contract must also contain provisions to ensure that such an act or practice is not authorised by a subcontract (s 95B(3)). By virtue of s 5B of the Privacy Act, these obligations apply regardless of whether the contracted service provider is in Australia or overseas. Section 5B(4) ensures that the Commissioner has jurisdiction to investigate a complaint in these circumstances.

The OAIC wrote to Health querying whether they had considered the requirements of s 95B of the Privacy Act before entering contracts under which an online survey would be conducted on their behalf. Health has since confirmed that they complied with s 95B of the Privacy Act by taking contractual measures to ensure that both contractors and subcontractors who were engaged to conduct the PCEHR Review survey, complied with the APPs. The OAIC is satisfied that Health met the requirements of s 95B.

If you would like to discuss the issues raised in your letter in more detail, please contact Jacob Suidgeest, Director, Health and Privacy Assessments, at jacob.suidgeest@oaic.gov.au or 02 9284 9809.

Yours sincerely



Jacob Suidgeest
Director, Health and Privacy Assessments

22 December 2014