



Our reference: 13/001311

Dr Juanita Fernando  
Chair, Health Sub Committee  
Australian Privacy Foundation  
By email: [juanita.fernando@med.monash.edu.au](mailto:juanita.fernando@med.monash.edu.au)

Dear Dr Fernando

## Privacy and electronic health records

Thank you for your letter of 21 February 2014 to the Australian Privacy Commissioner, Timothy Pilgrim. Mr Pilgrim has asked me to respond on his behalf.

Your letter raises a number of issues relating to eHealth generally here and overseas, the personally controlled electronic health records (PCEHR) system and some potential issues at a regional health care service in Victoria.

### Request for investigation

You raise what you believe may be an instance of mishandling of personal or sensitive information by a regional health care service in Victoria and request that the OAIC conduct a formal investigation into this matter. As you will be aware, the Commissioner has a discretionary power under s 40(2) of the Privacy Act to conduct investigations on his own motion (OMI). Section 40(2) states that:

*'The Commissioner may investigate an act or practice if:*

- (a) the act or practice may be an interference with the privacy of an individual; and*
- (b) the Commissioner thinks it is desirable that the act or practice be investigated.'*

The Commissioner uses the OAIC's own risk assessment criteria to determine whether to investigate. The criteria include:

- the number of people affected and the possible consequences for those individuals
- the sensitivity of the personal information involved
- the progress of an agency's or organisation's own investigation into the matter and consideration of the actions taken by the entity in response
- the likelihood that the investigation will reveal acts or practices that involve systemic interferences with privacy and/or that are unidentified.

Further information can be found in the *OAIC Annual Report 2013* (p 77)<sup>1</sup> and on the OMI page of the OAIC website.<sup>2</sup>

From the information you have provided I cannot determine whether the issue you raise meets the criteria noted above or, indeed, if we have jurisdiction to conduct an OMI. To allow us to assess this issue we would need some more information, including:

- about the Victorian regional health care service you refer to (including whether it is a public or private organisation)
- the nature of the records involved – does it involve the PCEHR or is it the health care service’s own records system
- whether there is any indication there has been unauthorised access to or use of the information
- the source of your information about the mishandling of health records - for example are they members of staff or patients
- any further information on the access portals you refer to – for example on which website are they located
- any further information you may have on claims that the security protocols are non-existent or unenforced
- whether any of your sources have made complaints to the health care service and the outcome of those complaints.

Once we receive further information we can further consider the issue.

### **Other matters**

You state in paragraph six of your letter that ‘Evidently several credible complaints have been expressed to your Office and there has been no effective response yet’. I am unsure what complaints you are referring to. To date the OAIC has not received any complaints from individuals relating to the PCEHR system.

I note you refer to correspondence you have received and comments made which, put in general terms, relate to public anxiety about the security and privacy of eHealth records and the implementation of eHealth, the PCEHR system and systemic problems.

To the extent these relate to issues around the design and implementation of the PCEHR system, these are matters that may be best addressed by the System Operator in the first instance. If you have questions or want to discuss these issues, you may wish to contact the System Operator (who is the Secretary of the Department of Health).

If you have specific concerns relating to security of the PCEHR system which you would like us to consider from a privacy perspective after you have discussed them with the System Operator, we would need more detailed information on those concerns to assess them.

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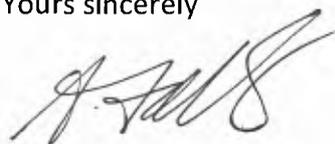
<sup>1</sup> [www.oaic.gov.au/about-us/corporate-information/annual-reports/oaic-annual-report-201213/](http://www.oaic.gov.au/about-us/corporate-information/annual-reports/oaic-annual-report-201213/)

<sup>2</sup> [www.oaic.gov.au/privacy/applying-privacy-law/privacy-omi-reports/](http://www.oaic.gov.au/privacy/applying-privacy-law/privacy-omi-reports/)

If these issues relate to the OAIC's view about a consumer's rights under the PCEHR system from a privacy perspective, you may find our consumer factsheets helpful. They can be found on our website.<sup>3</sup>

If you would like to discuss this letter, or provide any further information about these matters, please contact Jacob Suidgeest, Director, Health and Audit, at [jacob.suidgeest@oaic.gov.au](mailto:jacob.suidgeest@oaic.gov.au) or 02 9284 9809.

Yours sincerely



Angelene Falk  
Assistant Commissioner  
Regulation and Strategy Branch

7 March 2014

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<sup>3</sup> [www.oaic.gov.au/privacy/privacy-topics/health-for-individuals/resources-on-health-for-individuals](http://www.oaic.gov.au/privacy/privacy-topics/health-for-individuals/resources-on-health-for-individuals)