

Our reference: C11096:pg

Mr Roger Clarke
78 Sidaway St
CHAPMAN ACT 2611

IN CONFIDENCE

Dear Mr Clarke

PRIVACY COMPLAINT AGAINST ROAM TOLLING PTY LTD

I refer to your correspondence received on 9 January 2008 in which you allege that Roam Tolling Pty Ltd (Roam) interfered with your privacy by collecting unnecessary personal information about you, and by not providing you with the option to transact with them anonymously. As you are aware your letter was treated as a complaint under section 36 of the *Privacy Act 1988* (Cth) (the Act).

I also refer to your email dated 24 April 2008 in which you complain that Roam, by wrongfully issuing two toll notices to you for your use of the M7 Motorway on 20 March 2008 and 25 March 2008, accessed your personal information and disclosed it to the NSW Roads and Traffic Authority (RTA), and also possibly to the ACT Registry of Motor Vehicles. You further indicate that these accesses were not justified by any operational requirement and were therefore in breach of the privacy principles, and you requested that this be considered as a further aspect of your existing privacy complaint.

As you may be aware the National Privacy Principles (NPPs) that form part of the Act apply to all private organisations with an annual turnover of more than \$3 million, to all private health service providers, and to businesses which trade in personal information irrespective of turnover.

However a State or Territory authority, such as the RTA, or a prescribed instrumentality of a State or Territory, is not an organisation in terms of section 6C(1) the Act, and therefore is not covered by the NPPs. Additionally section 7B(5) of the Act states that an act done, or practice engaged in, by an organisation is exempt ..if:

- (a) the organisation is a contracted service provider for a State contract (whether or not the organisation is a party to the contract); and
- (b) the act is done, or the practice is engaged in for the purposes of meeting (directly or indirectly) an obligation under the contract.

Whilst the Act gives the Commissioner the power to investigate complaints about breaches of the Act, section 41(1)(a) gives her the discretion not to investigate a complaint if she is satisfied that the act or practice complained about is not an interference with privacy, as defined in the Act.

Following enquiries made into your complaint Roam, a Transurban Group Company, has advised that it has an agreement with WSO Co Ltd (WSO) to provide tolling and customer management services for the M7 Motorway. The agreement requires Roam to comply with obligations set out in

the M7 Motorway Project Deed which was entered into by the RTA, Westlink Motorway Limited (Westlink) and WSO.

Further information concerning the Project Deed is contained within the document entitled "Westlink M7 motorway: Summary of contracts" which is accessible on the NSW Treasury (Office of Financial Management) website at <http://www.treasury.nsw.gov.au/wwg/projects> *but not the contract ??*

It appears therefore that Toll is an organisation that is a contract service provider for a NSW state contract, and as such is exempt from the Act.

This means that your complaint does not appear to constitute a breach of the Act, and I intend therefore to decline to investigate your complaint. However before doing so you are invited to provide any additional information which might support your complaint. If no further information from you is received by Friday 30 May 2008 your complaint will be closed under section 41(1)(a) of the Act.

If you would like to discuss this matter, I may be reached on 1300 363 992 (local call cost, but calls from mobile and pay phones may incur higher charges) or (02) 9284 9714 during business hours, by fax on (02) 9284 9666 or e-mail peter.giles@privacy.gov.au.

For your information New South Wales has enacted privacy legislation which applies to NSW government bodies and contracted service providers for NSW state contracts. Further details may be obtained by contacting Privacy NSW. Contact details for Privacy NSW are:

Mail: Locked Bag 5111
Parramatta NSW 2124

Office: Justice Precinct Offices
160 Marsden Street
Parramatta NSW 2150

Phone: (02) 8688 8585
Fax: (02) 8688 9660

Email: privacy_nsw@agd.nsw.gov.au
Website: http://www.privacy.gov.au/privacy_rights/laws/index.html

Yours sincerely

Peter Giles
Compliance Officer

15 May 2008