



**Australian
Privacy
Foundation**

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<http://www.privacy.org.au/About/Contacts.html>

3 March 2015

The Honourable Colin Barnett MEd MLA
The Premier of W.A.
wa-government@dpc.wa.gov.au

cc. COAG Secretariat
coag-wa@dpc.wa.gov.au

Dear Mr Barnett

Re: Draft Open Data Policy

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

We note that your Department recently published a Draft Whole of Government Open Data Policy, and called for submissions. It would have been helpful if this had been drawn to the attention of civil society organisations working in the area.

APF is strongly supportive of all aspects of open government, including appropriate forms of FoI, and open data initiatives.

We note that the Draft says that "exceptions apply, including ... privacy – where personal or sensitive information is involved, or may be involved as a result of unintended data aggregation".

It is of course essential that no data be released into open data collections that does, may, or may ever be able to be associated with an individual. We applaud the Draft's recognition that the 'mashing' activities that are so valuably applied to open data-sets create the risk of seemingly unidentified data giving rise to privacy breaches.

We believe, however, that the brief statement of exception quoted above is insufficient, and that it needs to be more fully articulated. This has the twin purposes of ensuring privacy is protected and providing clarity to agencies as they consider what data to release.

This is all the more necessary because WA, almost alone among Australian jurisdictions, has not passed a privacy law that implements even the somewhat dated OECD provisions of 1980, let alone the additional features of contemporary privacy laws. (We acknowledge, however, that the FoI Act does provide subject access and correction rights, and that WA led the country in implementing surveillance devices legislation which affords some degree of protection in relation to the use of listening, optical and tracking devices).

APF submits that it is timely for you to bring forward a draft Privacy Bill for consultation with all stakeholders. This should cover both the public sector and those parts of the private sector that fall within the State's jurisdiction, such as contractors to government, public-private partnerships / joint ventures, health care providers and educational institutions.

We note, however, that the Australian Privacy Principles enacted by the Commonwealth Parliament in 2012, and which took effect in March 2014, are not an appropriate basis for WA law. They are far too wordy and bureaucratic, and they also greatly reduced privacy protections. This has made Australia an outlier in a world in which most countries are strengthening, not weakening, privacy laws.

Weak privacy laws are detrimental not only to human rights but also to economic progress, because they undermine trust between consumers and corporations, and between citizens and government agencies.

APF further submits that, whether or not your Government brings forward a suitably balanced privacy law, **it is very important that privacy protections be expressed much more specifically within the Open Data Policy.**

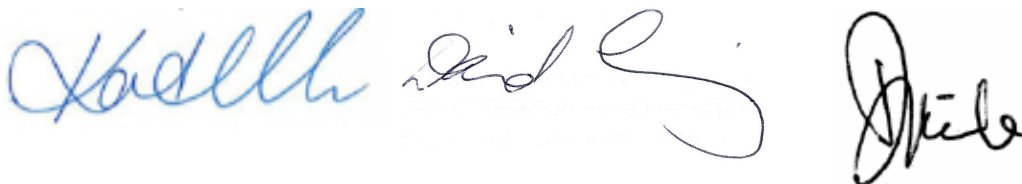
The following aspects are particularly important:

- (1) the exception needs to be phrased so as to impose on each agency the specific obligation to address privacy concerns prior to the release of each data-set;
- (2) the requirement needs to be that data that is released must not be associated with any particular individual, and must not be able to be associated with any individual.
This is consistent with the conventional definition of 'personal information' as 'information about an identified individual, or an individual who is reasonably identifiable'; and
- (3) the text should draw attention to techniques and resources relating to de-identification / anonymisation, and to means of addressing the risks of re-identifiability.

The APF would be pleased to provide assistance in relation to the drafting of a Privacy Bill and/or of the relevant segments of the Open Data Policy.

Thank you for your consideration.

Yours sincerely



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Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby and Elizabeth Evatt, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>