



# Privacy Complaint Investigation Report

## Excessive personal information on security industry licence cards

NSW Police Force  
Roads and Traffic Authority of NSW (now Roads and Maritime Services)

Privacy and Personal Information Protection Act 1998

March 2012

*This report is made pursuant to section 50(1) of the Privacy and Personal Information Protection Act 1998 (PPIP Act). As the issue in this complaint materially affects the complainant and other members of the security industry, this report is to be placed in the public domain pursuant to section 50(2) of the PPIP Act. Notwithstanding the provisions of section 50(2), the public sector agencies concerned have either consented to this action or have been placed on notice and no objection has been raised.*

### Introduction

From January to April 2011 a member of the NSW security industry made a complaint and provided the Privacy Commissioner<sup>1</sup> with information about the practice in the security industry of requiring licenced security personnel to wear and display while on duty a licence card issued to them under the provisions of the *Security Industry Act 1997* and the *Security Industry Regulation 2007*. The complaint expressed concern that the licence card displayed to the general public the licensee's name and date of birth, which may place licensees in physical and financial risk by helping individuals who view these details ascertain further personal information, such as the licensee's residential address and/or their banking details.

The Privacy Commissioner considered the volume of information required to be displayed on the security licence cards a potential risk to the physical and financial privacy of licensees and accepted the complaint.

### Outline of the complaint management scheme in the PPIP Act

Section 45 of the PPIP Act entitles a person to make a complaint about the alleged violation of, or interference with, the privacy of the person.

Under section 46 of the PPIP Act the Privacy Commissioner is empowered to conduct a preliminary assessment of a privacy complaint to determine whether to deal with it.

If the Privacy Commissioner determines to accept to deal with a complaint, section 48 of the PPIP Act empowers the Privacy Commissioner to conduct an investigation.

Under section 49 of the PPIP Act the Privacy Commissioner must endeavour to resolve a complaint by conciliation.

Under section 50 of the PPIP Act the Privacy Commissioner is empowered to make a written report in relation to a complaint and may give the report to the complainant and other persons or bodies that are materially involved in matters concerning the complaint.

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<sup>1</sup> Management of this complaint was commenced by the former Acting Privacy Commissioner and finalised by the present Privacy Commissioner.

## The process of investigation and conciliation

From January to April 2011 the complainant provided relevant information to the Privacy Commissioner.

In April 2011 the Privacy Commissioner commenced preliminary enquiries with the New South Police Force (NSWPF) in order to determine whether to deal with the complaint.

The NSWPF's response of June 2011 indicated that the then Roads and Traffic Authority (RTA) had a role in the issuing of licences to security industry personnel.

In June 2011 the Privacy Commissioner included the RTA in the preliminary enquiries.

In July 2011 the RTA made responses to various questions and produced various documents in response to the Privacy Commissioner's request for information.

In August 2011 the Privacy Commissioner determined to deal with the complaint under the provisions of section 48(1) of the PPIP Act.

In September 2011 the RTA made responses to further questions and produced further documents in response to the Privacy Commissioner's requests for further information.

In response to requests for further information, in November 2011 and January 2012 the Privacy Commissioner received further responses and documents from the NSWPF.

In April and August 2011 and January 2012 the Privacy Commissioner provided progress information to the complainant.

As the complainant had requested anonymity, the Privacy Commissioner did not bring the parties to the complaint together for purposes of conciliating the complaint. Rather, the Privacy Commissioner used communications with the complainant to determine whether or not the outcomes achieved were satisfactory.

In February 2012 the complainant confirmed to the effect that the outcomes were satisfactory as concerns the circumstances of the complainant.

In March 2012 the Privacy Commissioner provided the NSWPF and the RTA with a copy of a draft report for comment.

In March 2012 the NSWPF and Roads and Maritime Services (the agency that replaced the RTA after a re-organisation of government services) provided comment in response to the draft report.

*This report does not refer to all the information that the agencies provided. Rather, it refers to information that is considered relevant to the resolution of the issues of the name and the date of birth being displayed on the licence cards.*

## Outline of relevant security industry legislative provisions

The *Security Industry Act 1997* and the *Security Industry Regulation 2007* deal with the issuing of licences to members of the security industry, the contents of licence cards, costs regarding issuing of licences and the obligation of licensees to wear their licence card at all times while on duty so as to be clearly visible.

Generally, the term of a licence is 5 years and the term of a provisional licence is 1 year.<sup>2</sup> Applicants for a Class 1 and/or Class 2 licence may elect to apply for a licence term of 1 or 5 years.

Where a licence card has been lost, stolen, destroyed, defaced or mutilated, or, a licensee wishes to amend particulars on their licence card, a licensee may apply for a replacement. The replacement fee is \$65.<sup>3</sup>

Unless an exemption has been granted by the Police Commissioner, it is an offence for a security industry licensee not to wear their licence card so as to be clearly visible. The maximum penalty for this offence is 50 penalty units.<sup>4</sup>

A licence card must display:

- (a) A recent photograph of the licensee,
- (b) The signature of the licensee,
- (c) The class of licence granted, and

<sup>2</sup> Section 24 of the Security Industry Act and clause 11 of the Regulation.

<sup>3</sup> Clauses 23(1) and 26 of the Regulation.

<sup>4</sup> Section 36 of the Security Industry Act.

(d) Such details as prescribed by the Regulation.<sup>5</sup>

The Regulation has not prescribed any additional information that must be displayed on a licence card.

### The contents of a licence card according to the complaint

The complaint, which included a copy of the complainant's licence card, showed that cards display the following information on their front face:

- Card number,
- ID number,
- Licence number,
- Class of licence,
- Expiry date,
- Licensee's photograph,
- Licensee's name,
- Licensee's date of birth,
- Licensee's signature.

### Responsibility regarding issuing licences and charging of fees

The combined effect of the responses the Privacy Commissioner received from the NSWPF and the RTA indicated along the lines that the NSWPF is the public sector agency with responsibility for:

- Approving the issuing of licences,
- Approving replacement of licences,
- The charging of any fees in relation to the management of the licensing scheme, and
- Approving the contents of the licence cards.

Further, that:

- The RTA acted as agent for the NSWPF in printing licence cards, and
- The inclusion of the licensee's name and date of birth on the licence card reflected adoption of a standard design template used in producing other types of licences.

The RTA submitted that:

*"The information to be displayed on a security industry licence is determined by the police. In the past, the RTA has assisted with the design of the card template in consideration of the card stock used and other technical parameters in the printing process. The display of the date of birth may have been influenced by similar inclusion on other photo licences by the RTA."*

The NSWPF submitted:

*"Photo licensing was introduced for firearms and security licence holders in 1992. The NSW Police Force approved the adoption of the then NSW Roads and Traffic Authority's (RTA) licence card template, which included the licensee's date of birth, for the production of these licence cards."*

The NSWPF accepted as correct the proposition along the lines that it was the State (through the relevantly responsible public sector agency) that caused the printing of dates of birth on security licences without legislative authority.

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<sup>5</sup> Section 22 of the Security Industry Act.

## Resolution of privacy concern regarding the display of licensee's name

The NSWPF submitted that the *Security Industry Act 1997* does not expressly provide for the inclusion of a licensee's name on the licence card. Further,

*"That the absence of an express provision was a drafting oversight may be demonstrated by the requirement in section 22 of the Act that the licence must bear the signature of the licensee and the second reading speech for the Security Industry Bill 1997. The relevant extract is provided below:*

*Licences will bear the person's name and his or her photograph. The licence holder will be required to wear the licence where it is visible at all times when on duty, except where the Commissioner has granted an exemption."*

The NSWPF acknowledged the need to request an amendment to the legislation so as to avoid doubt.

The Privacy Commissioner accepted that the intention of Parliament was that the licence card should display the licensee's name and that a drafting oversight occurred.

The Privacy Commissioner also accepted the NSWPF's undertaking to request a legislative amendment as a reasonable resolution to an issue that is not otherwise a contravention of privacy standards as they should be understood in the context of the requirement to display security industry licence cards.

The Privacy Commissioner notes that, until the making of the proposed amendment, as a matter of formality the display of the licensee's name on the licence card will continue to give the appearance of contravention of the security industry legislation.

## Resolution of privacy concern regarding the display of licensee's date of birth

In response to the Privacy Commissioner's enquiries the NSWPF and the RTA advised that, at the request of the NSWPF, the agencies agreed to change the system of issuing licence cards, so as not to print the licensee's date of birth on the cards. The RTA advised that roll out of this change was completed on 10 August 2011 and that the new arrangements did not require changes to its database.

The Privacy Commissioner considers that the two agencies concerned responded effectively to ameliorate the risks that the printing of the licensee's date of birth without legislative authority had created in issuing of:

- New licences, or
- Replacement licence cards when licensees apply for a renewal of their licence, or, when the card is stolen or damaged, or, when the licensee requires some amendment.

Similarly, the Privacy Commissioner considers that the NSWPF took adequate steps to inform the security community about this change by way of:

- Publishing a news items on its website, and
- Writing to major stakeholders in the security industry.

As concerns a licensee's application to receive a new licence card solely for the purpose of not having the date of birth printed on it, the 26 August 2011 news item contained the following:

*"Licensees may request a replacement licence card at any time by completing an 'Application for amendment or replacement of an individual licence' (form P645), and sending that along with the fee of \$65 ..."*

The Privacy Commissioner remained concerned regarding the issue of cost for replacing licence cards that are in circulation. This was because it was considered that licensees should not have to pay a fee in order to correct the State's error in requiring them to display their date of birth, contrary to legislative requirements and placing them at risk of some detriment. To that end the Privacy Commissioner invited the NSWPF to consider facilitating the replacement of existing cards at no cost to licensees.

The NSWPF advised along the lines that it proposed to waive the applicable fee regarding requests for card replacement where the sole reason is that the date of birth not be printed on them. On 5 December 2011 it published another news item on its website making the replacement offer available for a period to 1 March 2012 and later updated the news item extending the time. The NSWPF's updated news item contains the following:

*“Licensees may request that they be immediately issued with a replacement licence card that does not display their date of birth by emailing or writing to the SLED ([sled@police.nsw.gov.au](mailto:sled@police.nsw.gov.au) or Locked Bag 5099, Parramatta NSW 2124). The SLED will waive the \$65 replacement fee for all such requests received on this basis, where the request is made at any time up to three months before the expiry date of the licence.”*

The NSWPF also advised that from 5 December 2011 to 29 February 2012 it received 42 card replacement requests.

### Conclusion

1. The Privacy Commissioner considers that both NSW public sector agencies responded adequately to the concerns in this complaint by:
  - Implementing an improved licence card issuing process that ameliorates the risk to the physical or financial privacy of members of the security industry, and
  - Making available a suitable remedial process of licence card replacement at no cost to any licence holders concerned about the display of their date of birth on the card they currently have.
2. The Privacy Commissioner considers that the remedial actions taken by the two agencies effectively resolved the complaint from the complainant’s point of view and that there is no need for further action by the Privacy Commissioner.

**Dr Elizabeth Coombs**

**Privacy Commissioner**

**Information and Privacy Commission**

30 March 2012