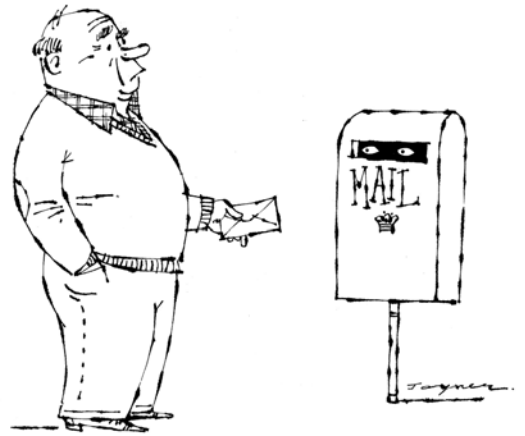


7 PRIVACY

7.1 What is Privacy?

Privacy has sometimes been described as:

- (a) the right to be left alone, or
- (b) the right to exercise control over one's personal information, or
- (c) a set of conditions necessary to protect our individual dignity and autonomy.



But we often think about privacy in different ways, for example:

- (d) physical privacy - such as bag searching;
- (e) information privacy – the way in which governments or organisations handle our personal information such as our age, address, sexual preference and so on;
- (f) freedom from excessive surveillance – our right to go about our daily lives without being under surveillance or having all our actions caught on camera;

And in different situations we may prefer one or other definition. We may also choose to emphasise different aspects of privacy depending on the reasons why we think that privacy is important.

For instance, privacy is important because it is:

- (g) a way of controlling the power which people or organisations gain through collecting and storing information about others,
- (h) a means of securing the trust which people expect in return for providing accurate information about themselves,
- (i) a necessary condition for living in a society which values freedom and diversity, and
- (j) the basis on which we form meaningful relations with other people by deciding how much of ourselves to reveal or conceal to any given person.

Given the importance of privacy and the rapid speed of technological change in our world, the area of privacy is a growing area of both social concern and legal development.

7.2 What does the law say about privacy?

The invasion of privacy, including the misuse of personal information, is unlawful under various state and federal laws which govern both the NSW and the whole of Australia. In NSW, there are four main laws that protect the privacy of individuals. These are:

- (a) the *Privacy Act 1988 (Cth)* which:
 - (i) sets privacy standards for dealing with personal information;
 - (ii) applies to Australian Government (Commonwealth) and ACT government agencies;
 - (iii) applies to private sector organisations across Australia; and

- (iv) is administered by the Office of the Federal Privacy Commissioner;
- (b) the *Privacy and Personal Information Protection Act 1998 (NSW)* which
 - (i) sets privacy standards for dealing with personal information;
 - (ii) applies to NSW state and local government agencies; and
 - (iii) is administered by Privacy NSW;
- (c) the *Health Records and Information Privacy Act 2002 (NSW)* which
 - (i) sets privacy standards for dealing with health information;
 - (ii) applies to NSW state and local government agencies;
 - (iii) applies to private sector persons and organisations in NSW; and
 - (iv) is administered by Privacy NSW;
- (d) the *Workplace Surveillance Act 2005 (NSW)* which
 - (i) regulates public and private sector organisations as employers in NSW;
 - (ii) allows overt (obvious) surveillance of employees if it meets certain standards;
 - (iii) prohibits covert (hidden) surveillance except in certain circumstances; and
 - (iv) is administered by the NSW Attorney General's Department.

There are also other laws which impact on particular aspects of privacy, such as privacy of communications, such as the *Listening Devices Act 1984 (NSW)* and the *Telecommunications (Interception) Act 1979 (Cth)* which, among other things, control the way verbal communications can be recorded or phone lines tapped.

Many organisations are covered by either state or federal privacy laws, which place limits on what personal information can be collected from you, and how your personal information can subsequently be used. If the organisation does record your personal information, these privacy laws may give you the right to access and correct your personal information held by government agencies or businesses.

7.3 How to make a complaint

Due to the patchwork of legislation in the field of privacy, not all privacy complaints can be dealt with by a single office. First, you need to know who your complaint is against. If you are complaining about a NSW public sector agency (eg. the RTA or a local council) you should direct your complaint to Privacy NSW.

If you are complaining about an Australian Government department (eg. Centrelink or a private sector organisation (eg. a bank or a private health service provider (eg. your GP), you should direct your complaint to the Office of the Federal Privacy Commissioner.

The contact details for Privacy NSW and the Office of the Federal Privacy Commissioner are listed in Chapter 14.

7.4 Direct marketing

Direct marketing organisations compile and match personal information including names, addresses and telephone numbers from a variety of sources such as phone directories, competition entries and customer records.

Since 1 July 2000, councils in NSW have been prevented from supplying their rates records for direct marketing purposes as a result of the *Privacy and Personal Information Protection Act 1998 (NSW)*. Nevertheless, marketing organisations may have a database that relates to information collected from councils before 1 July 2000 or they may have access to property data through a commercial database provider. Commercial database operators are able to buy land title information from the Department of Lands. The provision of this information by the Department is exempt from the *Privacy and Personal Information Protection Act 1998 (NSW)*.

You can write to the marketing organisation that contacted you and ask them to remove your details from their mailing lists. Most marketing organisations are members of the Australian Direct Marketing Association (**ADMA**). If you do not receive a satisfactory response from the company, you should write to the National Director of ADMA and ask for your name to be removed from certain mailing lists.

You cannot be removed from the mailing list of organisations of which you are a customer but ADMA will have the name of deceased persons removed from all mailing lists. More information about their free consumer "Do not Contact / Opt-out" services can be found at their website (see Chapter 14 for ADMA's contact details).