

Privacy Commissioner Case Note

Case Citation:

O v Commonwealth Agency [2008] PrivCmrA 15

Subject Heading:

Improper disclosure of personal information

Law:

Information Privacy Principle 11 in Part III Division 2 of the *Privacy Act 1988* (Cth)

Facts:

The complainant was a client of the Australian Government agency. The agency requested information from the complainant relevant to a decision the agency was making between the complainant and a third party. This included details about the complainant's occupation. When providing details about their occupation to the agency, the complainant raised the importance of the secrecy of this information. The client requested that information about their occupation not be disclosed to anyone unless there was sufficient justification for the agency to do so.

The agency finalised its decision between the complainant and the third party. Information about the complainant's occupation was an integral component of this decision. As part of the decision-making process, the agency disclosed information relating to the occupation of the complainant to the third party.

In a written complaint to the agency, the complainant alleged that the agency had improperly disclosed personal information pertaining to the occupation of the complainant to the third party.

The agency provided the complainant with a written response to the complaint, in which it accepted that it had disclosed their personal information to the third party, but advised that it was of the view that the disclosure was required by a Commonwealth law.

The complainant then lodged a written complaint against the agency with the Privacy Commissioner.

Issues:

Information Privacy Principle 11 prohibits agencies from disclosing personal information to third parties unless one of a number of exceptions applies. One of these exceptions, Information Privacy Principle 11.1(d), applies where the disclosure is required or authorised by or under law.

Outcome:

The Commissioner treated the complainant's letter as a complaint under section 36 of the Privacy Act and opened an investigation into the matter under section 40(1) of the Privacy Act.

Privacy Commissioner Case Note

The agency advised that it had investigated the matter internally, and had formed the view that the disclosure was required by law. The agency directed the Commissioner to a valid Commonwealth law that required that it disclose the complainant's personal information in certain circumstances. The agency then provided the Commissioner with information to support its view that these circumstances had been met in this case.

The Commissioner reached the view that the agency was required by a Commonwealth Act to disclose to the third party information relating to the complainant's occupation. The Commissioner also reached the view that the legal doctrine of procedural fairness obliged the agency to provide the information upon which it based its decision, including information relating to the complainant's employment, to the third party who had been affected by the decision.

The Commissioner came to the view that the exception in Information Privacy Principle 11.1(d) applied and decided not to investigate the matter further under section 41(1)(a) of the Privacy Act as she was satisfied that there was no interference with the privacy of the individual.

OFFICE OF THE PRIVACY COMMISSIONER

June 2008