

**Statement by the  
Commissioner for Privacy and Data Protection**

19 August 2016

My comments on the Freedom of Information (Office of the Victorian Information Commissioner) Bill 2016 (**Bill**) recently published on this web site dated 16 August 2016 (**comments**) have been the subject of a number of media reports.

**Contradictory statements**

In [‘The Mandarin’](#) on 18 August 2016, a report on the comments included a statement by an unnamed ‘government spokesperson’ that:

*‘The Commission for Privacy and Data Protection was consulted on the proposed reforms and invited to provide feedback ahead of the drafting of the Bill. The government has offered further opportunities for the commission to give feedback and to date we have not received any formal feedback on the Bill.’*

This statement is apparently a response to the statement I made in the comments that:

*‘I was first advised [of the proposed Bill] at a meeting on 3 March 2016. The concerns I expressed were dismissed as being ‘too late’ because cabinet had already approved the proposal ...’*

These two statements are directly contradictory. Rather than allow uncertainty to arise from this contradiction, this statement sets out the events relating to when and to what extent the ‘Commission’ knew that the government intended to introduce the Bill.

**The sequence of events – is this consultation?**

Responsibility for the Bill within the Victorian public service rests with the Department of Premier and Cabinet (**DPC**). All my dealings with government regarding the Bill have been with DPC. Accordingly when the ‘government spokesperson’ refers to the government, I understand that to mean DPC. As far as I am aware, the only discussions that have taken place with my office regarding the Bill have involved me.

I first learnt that the government intended to amend the legislation I currently work under (the *Privacy and Data Protection Act 2014 (PDPA)*) at a meeting on 3 March 2016 between me and Chris Eccles, the Secretary of DPC. Prior to that meeting there was no suggestion that the meeting would involve discussion of statutory amendments. As a result, Chris Eccles raising amendment of the PDPA was a complete surprise to me. Prior to that date there had been no consultation regarding the Bill or any policy decision or discussion that might have led to it.

At that meeting Chris Eccles said that:

- the government had decided to merge the commissioner and office of privacy and data protection with the commissioner and office of freedom of information;
- this would mean the creation of a new commissioner and office of the information commissioner and two deputies, a privacy commissioner and an FOI commissioner [This is the structure I referred to in the comments as the **information commissioner model**.];
- this means that both the existing commissioner roles for privacy and FOI would be abolished;
- if I unsuccessfully applied for the information commissioner role I would be paid 4 months’ salary in lieu of notice, although he said I was not entitled to such a payment; and

- he apologised to me for the ‘appalling way’ in which I had been treated by DPC and told me that those responsible had been counselled and disciplined. By this I took him to be referring to the response of DPC to issues I had managed during the restructuring of previous statutory authorities that were merged by the passage of the PDPA. Those issues involved the redeployment of staff, to which the Community and Public Sector Union (**CPSU**) had objected.

When at that meeting I immediately expressed concern regarding the workability and policy basis of the information commissioner model Chris Eccles said that it was too late to express those concerns because the matter had already been decided. That discussion did not provide me with any notice of the issues to be discussed or any reasonable period in which to respond to the proposal.

I did not then, and have not since, thought of that meeting and what was said during that meeting, as an invitation to consult with DPC regarding the Bill or any proposal made by DPC.

On 5 May 2016 I attended a meeting with Tony Bates of DPC. Tony Bates is the Deputy Secretary of DPC responsible for coordinating the relationship between DPC and the Office of Privacy and Data Protection. That meeting was also unexpectedly (for me) attended by two lawyers from DPC, Sam Porter and Chris Millar. During that meeting, Tony Bates told me that:

- so far as the PDPA was concerned, the Bill would only amend governance arrangements by introducing the information commissioner model;
- the commissioners would be appointed and removed by executive government, rather than by Parliament; and
- the Bill was planned to be introduced in June and passed by September 2016.

Prior to that meeting I had formed the view that a key reason for the introduction of the information commissioner model was that the CPSU had disagreed with management decisions I had taken (referred to above) and wanted the government to restructure to remove me.

In the later stages of the meeting on 5 May 2016, Tony Bates and I were still present and Sam Porter and Chris Millar had left. At that time I asked Tony Bates why the legislation was being amended specifically to remove me at the instigation of the CPSU. Tony Bates did not contradict that construction of events. Rather, he commented that ‘the unions have long memories’.

I did not then and have not since thought of that meeting and what was said during the meeting as an invitation to consult regarding the Bill or any proposal made by it.

On 24 May 2016 I received an email from Chris Millar marked ‘Cabinet in Confidence’ and attaching a preliminary draft of the Bill which included the information commissioner model. That email said that ‘the Bill ... is still being refined ... we would greatly appreciate your comments on it’ and sought any comments by 27 May 2016, 3 days after the date of the email. On the same day I received a further email from Chris Millar providing me with a copy of a press release that was published that day, which in part stated that the Bill would be introduced into Parliament and that the information Commissioner model would be adopted. A response period of 3 days and a press release committing to the structure in relation to which I had previously raised concerns did not appear to be a realistic approach to seeking comment and I did not comment in response to that email.

I did not then and have not since thought of either of those emails as an invitation to consult regarding the Bill or any proposal made by it.

The Bill was introduced into Parliament on 22 June 2016, without any further correspondence being sent or received or any meeting having occurred which was relevant to the issue of consultation.

**Conclusion**

On the basis of these events and this correspondence, I consider that neither I, nor my office have been 'consulted' in relation to the Bill. Nor had my views been sought on the policy approach taken in the Bill, in particular the governance structure it proposes.

It may be that my understanding of events is mistaken. If so I would welcome correction from a government spokesman, perhaps including providing me with a copy of any document I have overlooked.

DAVID WATTS

**Commissioner for Privacy and Data Protection**

19 August 2016