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To whom it may concern,

PRIVACY AND RESPONSIBLE INFORMATION SHARING DISCUSSION PAPER

Please accept this formal feedback submission from the City of Subiaco in regards to your Privacy and Responsible Information Sharing Discussion Paper.

The City of Subiaco thanks you for this opportunity and would appreciate being kept informed about any outcomes and/or further opportunities for comment

Yours sincerely,



Rachael Davern
SENIOR RECORDS ADMINISTRATOR
CITY OF SUBIACO

1. What issues should be considered when developing privacy and information sharing legislation for Western Australia?

In order for Privacy Legislation and Data Sharing Legislation to be effective they need to be separate stand-alone pieces of legislation and not combined. This is a point raised by the Office of the Information Commissioner in their 2019 Annual Report. Whilst there would be some overlap between these piece of legislations and they would need to complement each other, this would be no different to the implications regarding the *Freedom of Information Act 1992*. As there will also be some overlap there as well, and it is important to consider these pieces of legislation do not contradict or make the FOI process more cumbersome.

The discussion paper speaks of the benefits to the public and state government agencies. However it does not seem reference the uniqueness of local government agencies who are at the front line of dealing with the community. The implications regarding the *Local Government Act 1995* also need to be considered to ensure the Privacy Legislation and Data Sharing Legislation do not contradict or make it cumbersome for local government agencies to carry out their usual operations. An example of this would be Section 5.94 of the *Local Government Act 1995* – Public can inspect certain local government information.

2. What privacy principles should WA adopt for regulating the handling of personal information by the public sector? Are any of the existing Australian Privacy Principles, or principles on other Australian jurisdictions, unsuitable for WA?

Privacy principals 1-11 as outlined on page 29 of the discussion paper would be suitable. These being:

- Open and transparent management of personal information
- Anonymity and pseudonymity
- Collection of solicited personal information
- Notification of the collection of personal information
- Use or disclosure of personal information
- Direct marketing
- Cross-border disclosure of personal information
- Adoption, use or disclosure of government related identifiers
- Quality of personal information
- Security of personal information

Principals 12 and 13 being “Access to personal information” and “Correction of personal information” are already aspects covered by the Freedom of Information Act 1992. These would only be suitable if they were transferred from the FOI Act to the Privacy Legislation

3. What should the role of a Privacy Commissioner be, and how can this role best protect privacy and ensure public trust?

The role of the Privacy Commissioner should be similar to the role of the Information Commissioner. Dealing with complaints made under the Privacy Act. The Office of the Privacy Commissioner should be there as support to the public and to agencies.

The dot points on page 30 made about responsibilities of similar roles in other jurisdictions seem like fair and reasonable responsibilities of a Privacy Commissioner, these being:

- Administering regulation
- Receiving, investigating and resolving complaints about privacy related matters
- Identifying and reporting on breaches of the privacy requirements
- Undertaking research, issuing reports, guidelines and other materials regarding information privacy
- Issuing protective data security standards and promoting their uptake
- Monitoring and assurance activities to assess compliance with standards
- Providing advice and proposals to Government or Ministers for legislative or administrative change
- Providing submissions to enquiries and reviews on privacy-related matters
- Providing oversight for the exemption of an agency from privacy principles in limited circumstances

4. How should breaches of privacy be managed, and what action should be taken in response?

It would be reasonable for the Office of the Privacy Commissioner to issue privacy breach notifications to those whose privacy has been impacted, similar to that of the Office of the Victorian Information Commissioner. These statistics should be provided in the Annual Report, along with complaints received, decisions made, etc. similar to the Office of the Information Commissioner of WA.

Taking steps to address the matter, seeking apology, requiring changes to procedures, direct staff training, and the imposition of fines; all seem like reasonable actions to be taken when there has been a breach of privacy.

Compensation for losses may open up avenues for individuals to sue agencies and lead to a considerable impact upon government human and financial resources. The amount of resources required by smaller agencies such as Local Governments to handle privacy breach allegations would be quite substantial without having to pay compensation if there has been a serious breach of privacy. Even if compensation claims are based upon and subsequent criteria and capped this is likely to lead to substantial costs for legal advice and representation. This action would cause more issues than it would deter.

5. When should government agencies be allowed to share personal information? Are there any circumstances in which it would not be appropriate to do so?

Sharing of information between government agencies should be done when it improves the provision of services, to reduce/remove duplicate and/or inaccurate data, improve security and safety; and does not contradict other legislation.

Information should not be shared for the purposes of marketing or commercial gain.

In practical terms it would be difficult for a government agency to be able to determine the level of information security the agency receiving the information has. An accreditation process combined with a released accreditation list that can be checked would make this workable. The accreditation process could be a self assessment with accountability of the receiving agency, or State Government certified to ensure information integrity and security. It would be important

to ensure that the level of security of the information shared would be similar or higher at the agency receiving the information in comparison to the agency sharing the information.

6. What should the role of a Chief Data Officer be? How can this role best support the aims of Government and the interests of the public?

It is important that Privacy and Data Sharing legislation be kept as separate pieces of legislation, which would require the Chief Data Officer to take on a high level of responsibility. The responsibilities outlined on page 36 about the responsibilities of similar roles in other jurisdictions seem like fair and reasonable responsibilities of a Chief Data Officer, these being:

- Setting common standards
- Providing tools, guidance and expertise
- Resolving disputes
- Championing data sharing
- Facilitating information sharing
- Performing data analytics
- Compelling agencies to provide data
- Advising Ministers, executives and relevant entities
- Advising best practice
- Building government data analytics capacity
- Advocacy for the proper management, use and reuse, and release of public sector data
- Regulation of data sharing
- Oversight and accreditation of organisations

7. Should the WA Government facilitate sharing of information outside the WA public sector? What should be considered when making a decision to share outside the WA public sector?

Sharing with other government agencies such as those in other jurisdictions would be beneficial, assuming the receiving agency is able to ensure a similar level of protection, when it improves the provision of services, reduces/removes duplicate and/or inaccurate data, improves security and safety; and does not contradict other legislation.

Information should not be shared for the purposes of marketing or commercial gain.

Information shared with non-government agencies would need to meet a level of accreditation.

The data provided should be anonymised with individual's identifying information removed before shared. It might be more appropriate for this to be considered after the Privacy Legislation and Data Sharing Legislation are implemented and agencies have had an opportunity to become compliant. This could form part of regulations to these pieces of legislation

8. What criteria should be included as part of a risk management framework such as the Five Safes?

The five safes framework appears to be a good general guide for risk management, however it needs to be used in conjunction with other frameworks or methodology to make it more robust. Privacy legislation needs to be as far removed from ambiguity as possible to ensure a high level of public trust in the levels of WA Government.

The proposed Australian Government Data Sharing and release Framework appears to a good foundation to enable Open Data which is a space WA needs to catch up on.

9. Under what circumstances would it be considered acceptable to share confidential information within the public sector?

Sharing of confidential information within the public sector would be acceptable if the receiving agency is able to ensure a similar level of protection, when it improves the provision of services, to reduce/remove duplicate and/or inaccurate data, improve security and safety; and does not contradict other legislation. Information should not be shared for the purposes of marketing or commercial gain.

10. What should the WA Government be doing to support successful implementation of privacy and information sharing?

The WA State Government should be providing resources and training to support the successful implementation of privacy and information sharing. This is not going to be an economical or straightforward task for agencies and it is unreasonable to expect them to navigate the changes such legislations will impose on their own, without guidance and assistance from the Government. Initial implementation resources will be incredibly difficult for government agencies to source as all government agencies will be vying for skilled people at exactly the same time. It would be best for the legislation to be effective for the State Government to provide a large number of skilled human resources for the implementation period (for example 2 years) to help government agencies to meet requirements. These resources should be allocated across both local and state government sector.

In addition, implementation will require changes to enterprise software systems that will pass substantial costs onto government agencies. Funding to contribute to these costs will enable effective implementation.

The WA Government should continue to provide training resources after successful implementation similar to how the Office of the Information Commissioner currently does.