



Western Australia Police Force

Submission on Privacy and Responsible Information Sharing

October 2019

CONTENTS

1.0	EXECUTIVE SUMMARY	1
1.1	Key recommendations (8 of 18)	1
2.0	INTRODUCTION	2
3.0	WESTERN AUSTRALIA POLICE FORCE	2
4.0	PRIVACY IN A LAW ENFORCEMENT CONTEXT	3
4.1	Safer communities	3
4.1.1	<i>Victim support</i>	3
4.1.2	<i>Community safety</i>	3
4.1.3	<i>Improved social outcomes</i>	3
4.1.4	<i>Research supporting community and road safety</i>	4
4.2	Prevent crime and enforce the law	4
4.2.1	<i>The efficacy of law enforcement and the collection, notification, use and disclosure of personal information</i>	4
	<i>Collection</i>	5
	<i>Notification</i>	5
	<i>Use or disclosure</i>	6
4.3	Supporting outcomes of other government agencies	7
4.3.1	<i>Information sharing, compliance and governance</i>	7
4.4	Access to and correction of <i>personal information</i>	8
4.4.1	<i>Release mechanism outside of the FOI process</i>	8

1.0 EXECUTIVE SUMMARY

Privacy and information sharing in the sphere of law enforcement presents unique challenges. As a police force representing the interests and rights of the community, we must strike a balance between protecting the broader community and an individual's right to privacy.

The Western Australia Police Force submits that the below key recommendations address the key threshold issues that may lessen or advance our ability to provide better policing services to the community of Western Australia.

1.1 Key recommendations (8 of 18)

1. *There be a presumption in favour of a victim or their representative, to have the right to know the identity of an alleged offender.*
2. *The threshold for the release of personal information for a secondary purpose under a permitted general situation is decreased from a serious threat to the life, health or safety and includes a consideration for a threat to property.*
3. *A police officer be authorised by law to provide behavioural and propensity information about a person when delivering that person into the care or custody of another.*
4. *Consideration be given to a simplified non-consensual approach to referring individuals to diversion programs, support services and treatment.*
6. *An express exemption or exception to the anticipated collection, notification, use or disclosure principles of any privacy legislation, is required for policing business to be performed without undue impact, consideration or administrative burden.*
7. *Legislative provisions that are used to target serious and organised crime have absolute primacy over privacy provisions.*
8. *To cover the many and varied aspects outside of the strict definition of law enforcement, the functions and activities of the WA Police Force need to be clearly articulated to encompass the legislated functions of a police officer and associated activities in support of policing generally.*
10. *The WA Police Force seek the ability to use and disclose personal information without consent in support of community safety initiatives, that are broader than law enforcement functions and activities, for purposes that include:*
 - i. *Referring an individual to social services provided by NGOs and other service providers to divert that individual from the criminal justice system.*
 - ii. *Conducting risk assessments for Emergency Department presentations conveyed by police.*
 - iii. *Supporting victim's access to a civil remedy – restitution, protective orders etc.*
 - iv. *Mitigating risks not only to health but also property.*
 - v. *Supporting the right of victims to know the personal information of someone who has offended against them or a person in their care.*

2.0 INTRODUCTION

The Western Australian State Government has committed to delivering legislative reform to protect the *personal information* it holds, and to further harness opportunities for improved service delivery to the Western Australian community. The responsibility for coordinating this work sits with the Privacy and Responsible Information Sharing project team, Department of the Premier and Cabinet.

In August 2019, the State Government released a discussion paper inviting comment and commenced community, agency and industry consultation. This approach included whole-of-government workshops to understand opportunities, implementation challenges and specific agencies perspectives.

The WA Police Force is actively involved in these processes and welcomed the opportunity to take part in a bilateral engagement with the Project team to explore privacy and information sharing issues in the practical context of policing.

The recommendations contained in this submission address the key threshold issues that were informed by a business impact assessment and consultation across government, internally and with our Australian and New Zealand partner policing jurisdictions.

3.0 WESTERN AUSTRALIA POLICE FORCE¹

The vision of the WA Police Force is to be an exceptional Police Force for our community. The agency is responsible for serving the WA community, the world's largest police jurisdiction covering 2.6 million square kilometres, with a structure comprising over 8,900 employees, 15 police districts and more than 200 police facilities.

We recognise that policing is a dynamic profession and we will need to continually evolve to better respond to the ever-changing needs of our community. To support our strategic direction, the Commissioner of Police has identified priorities for the agency to respond to some of these greater issues being family violence, youth offending, Aboriginal offending and victimisation, illicit drugs and organised crime, road safety, and emergency management.

We are committed to contributing to community safety and security and we will ensure our services continue to benefit the WA Government's 'Our Priorities: Sharing Prosperity' Statement of Intent introduced in February 2019.

Specifically, we play a significant role in meeting the priorities '**A Safer Community**' and '**Aboriginal Wellbeing**'. Complementing this government initiative, we will continue to align and focus our collective effort around the WA Police Force Strategic Direction and the three pillars of policing:

- **Enforce the Law** – enforce the laws in our community and on our roads.
- **Prevent Crime** – collaborate with partners to prevent crime and protect our community.
- **Manage and Coordinate Emergencies** – coordinate multi-agency approaches to manage emergencies.

¹ Western Australia Police Force, *Annual Report* (2019) pp 7, 18.

4.0 PRIVACY IN A LAW ENFORCEMENT CONTEXT

4.1 Safer communities

4.1.1 *Victim support*

- a. WA legislation is silent on the right of a victim to be provided with the *personal information* of an alleged or actual offender.
- b. In the absence of guiding legislation the narrowest view is generally taken in favour of protecting the privacy of an individual as per the *Australian Privacy Principles*.
- c. The WA Police Force maintain a policy position that supports the release of *personal information* only when a person has been charged.
- d. This approach does not support the right of a victim to know the details of an alleged perpetrator, where a victim may allege an offence that does not meet the evidentiary burden required for police to charge a suspect.
- e. This limits the ability for a victim to progress a civil remedy they may be entitled to advance such as restitution, trespass, or a misconduct/violence restraining order.
- f. The WA Police Force has developed a policy position that enables a victim to obtain the *personal information* of an alleged offender (with the requisite checks and balances) to facilitate the application for a violence restraining order.

4.1.2 *Community safety*

- a. On a daily basis, officers of the WA Police Force deliver people into the care or custody of others.
- b. Examples may include presentations to hospital Emergency Departments, handovers to custodial service providers or delivery to community support services, e.g. alcohol and other drug treatment services.
- c. Recent and relevant behavioural information is necessary for a risk assessment to be performed by the persons taking care or custody of an individual.
- d. It is not prudent or practicable for an officer to perform a subjective assessment as to the actual or perceived threat an individual may present in every instance.

4.1.3 *Improved social outcomes*

- a. The WA Police Force is focussed on improving social outcomes through diversion, support and treatment opportunities.
- b. These activities are generally not legislated nor captured under the regular definition of the prescribed functions of law enforcement (i.e. these activities do not generally qualify for an exemption for the secondary use of *personal information*).
- c. These include schemes to divert offenders from the justice system, or referral to diversion programs, support services and treatment.

- d. Treatment services are generally provided by non-government organisations (NGOs) and service providers engaged by government agencies.
- e. The use of *personal information* to refer individuals to treatment and diversion is currently managed under a consent based model.
- f. If evidence supports that better outcomes are achieved through treatment and diversion, consideration should be given to diversion and treatment in the first instance.
- g. Seeking, obtaining and recording informed consent for any number of diversion options that may be available is impracticable and challenging for frontline officers.

4.1.4 Research supporting community and road safety

- a. The WA Police Force uses and provides access to de-identified data (gleaned from *personal information*), to inform research that supports policing and government objectives for community and road safety.
- b. Better access to larger and more complex datasets will improve the validity and reliability of research findings for community and road safety.

RECOMMENDATIONS

1. *There be a presumption in favour of a victim or their representative, to have the right to know the identity of an alleged offender.*
2. *The threshold for the release of personal information for a secondary purpose under a permitted general situation is decreased from a serious threat to the life, health or safety and includes a consideration for a threat to property.*
3. *A police officer be authorised by law to provide behavioural and propensity information about a person when delivering that person into the care or custody of another.*
4. *Consideration be given to a simplified non-consensual approach to referring individuals to diversion programs, support services and treatment.*
5. *The use of de-identified data for research purposes is supported where it is endorsed through a research governance framework that meets the national standard.*

4.2 Prevent crime and enforce the law

4.2.1 The efficacy of law enforcement and the collection, notification, use and disclosure of personal information

- a. It is contended that a basic tenet of policing is the collection, use and disclosure of *personal* and *sensitive information* without the consent of an individual.
- b. This information is recorded and retained for intelligence, covert, witness protection, enforcement and general purposes.
- c. The WA Police Force relies on a variety of legislative provisions that forego an individual's right to privacy to facilitate policing outcomes for serious and organised crime, e.g. terrorism, covert,

witness protection, telephone intercept, surveillance device purposes.

- d. Other Australian jurisdictions are exempted or excepted from privacy legislation by virtue of their status as a law enforcement agency or through the performance of a law enforcement activity.

Collection

- e. The WA Police Force continuously receives large volumes of a range of unsolicited *personal information* as a part of the business of policing.
- f. Provisions that require an assessment to determine whether the collection of *personal information* is reasonably necessary for law enforcement are onerous and do not consider hindsight for a forensic or intelligence purpose, given a reason may not be apparent until well after the collection of the information, e.g. field reports that collect information about a person at a time and place.
- g. Even where an assessment determines collection is reasonably necessary, it creates an impracticable obligation to record decision-making in every instance for future reference.
- h. Police officers face a myriad of scenarios in the collection of *personal information* in their everyday business. It is unfeasible that a simple rule or formula could be adequately employed by an officer to decide whether *personal information* being collected is reasonably necessary.

Notification

- i. The requirement for a police officer to provide notification of *matters* (i.e. the information conveyed via a privacy collection statement that may include the purpose of collection, privacy policy and whom the information may be disclosed to) at every point of contact in police daily business from issuing infringements, taking incident reports and dealing with highly stressful and emotionally charged situations would be resource intensive, impracticable and counterproductive.
- j. It is contended that any notification of *matters* to a witness, suspect, or accused is wholly afforded as a right or obligation that already exists in criminal law. Any further rights or obligations having regard to privacy should be specifically provided for in that relevant law.
- k. Notification of *matters* may jeopardise the purpose of collection or safety of an individual.
- l. In support of the roll-out of body worn cameras (BWCs) across the agency, it is the policy of the WA Police Force to give an alert to members of the public that a BWC is in use. Although not required in law, this proviso is given insofar that it is practicable to do so.
- m. Individuals accessing police services and products such as a National Police Certificate or Crash Report can be provided notification of *matters* as a standard practice or referred to the agency privacy policy.

Use or disclosure

- n. A narrow definition of law enforcement activities limits the scope and quality of community outcomes that can be achieved by using or disclosing *personal information* for a secondary purpose.
- o. A secondary purpose that police may wish to use *personal information* for that is broader than a narrow definition of law enforcement activities could include: issuing a court diversion, a referral to treatment services, supporting a victim to access a civil remedy, providing vehicle owner details to a ranger, or assisting health services to conduct a risk assessment of an individual taken into their care.
- p. WA Police Force systems do not readily identify the purpose *personal information* is collected. This becomes problematic if the proposed privacy scheme requires the purpose of collection to be known to determine the eligibility to use or disclose information, and the use or disclosure is not exempt.
- q. The WA Police Force release *personal information* to the media for purposes that extend beyond the direct functions of law enforcement whereby a narrow definition of law enforcement activities or a high threshold of serious and imminent risk to safety would not easily or always be met. This includes the release of vision to highlight operational outcomes, matters in the public interest, human interest stories or the search for missing persons.

RECOMMENDATIONS

- 6. An express exemption or exception to the anticipated collection, notification, use or disclosure principles of any privacy legislation, is required for policing business to be performed without undue impact, consideration or administrative burden.*
- 7. Legislative provisions that are used to target serious and organised crime have absolute primacy over privacy provisions.*
- 8. To cover the many and varied aspects outside of the strict definition of law enforcement, the functions and activities of the WA Police Force need to be clearly articulated to encompass the legislated functions of a police officer and associated activities in support of policing generally.*
- 9. By repute, a plain English privacy statement would convey a common and enduring understanding of how and why the WA Police Force collects, uses and discloses personal information negating the need for frontline officers to do this at every point of contact.*
- 10. The WA Police Force seek the ability to use and disclose personal information without consent in support of community safety initiatives, that are broader than law enforcement functions and activities, for purposes that include:*
 - i. Referring an individual to social services provided by NGOs and other service providers to divert that individual from the criminal justice system.*
 - ii. Conducting risk assessments for Emergency Department presentations conveyed by police.*
 - iii. Supporting victim's access to a civil remedy – restitution, protective orders etc.*

- iv. *Mitigating risks not only to health but also property.*
 - v. *Supporting the right of victims to know the personal information of someone who has offended against them or a person in their care.*
- 11.** *Consideration be given for an agency or organisation to be able to apply to a governing entity for an exemption to any or all privacy provisions, as a measure to readily deal with new or fluid business requirements.*

4.3 Supporting outcomes of other government agencies

4.3.1 Information sharing, compliance and governance

- a. The sharing of *personal information* is necessary to support policing and to achieve whole-of-government outcomes.
- b. The sharing of *personal information* across government is a critical but resource intensive exercise.
- c. Information sharing arrangements and supporting governance arrangements can be cumbersome and onerous.
- d. Disparate agencies are unlikely to support a particular information sharing proposal that does not directly support their own key objectives.
- e. The lack of a framework or clear expectations around the sharing of *personal information* regularly leads to inordinate periods of engagement and negotiation to establish an information sharing arrangement.
- f. External agency access to other agency systems can be an operationally and cost effective solution to sharing information.
- g. The risk that *personal information* will not be secured or used in accordance with agreements impacts the willingness of the WA Police Force to share *personal information*.

RECOMMENDATIONS

- 12.** *Government agencies be able to share personal information to support their own or another government agency's outcomes.*
- 13.** *External agency access to another agency's information systems should be a due consideration to mitigate costs of developing resource intensive sharing platforms or products.*
- 14.** *Any proposed Chief Data Officer, develops a simplified framework and standard documentation to negotiate and authorise information sharing agreements between agencies.*
- 15.** *Any proposed Privacy Commissioner, be responsible for assuring the protection of individual privacy, through measures that warranty compliance with the security and use of information supplied in accordance with respective information sharing agreements, i.e. it does not become the responsibility of each agency to develop their own governance regimes to oversee the compliance of another agency.*

4.4 Access to and correction of *personal information*

4.4.1 Release mechanism outside of the FOI process

- a. An individual can obtain access to particular *personal information* about them via the Freedom of Information (FOI) process, or cost recovery pathways created by the WA Police Service.
- b. FOI is about the provision of documents.
- c. FOI is rarely a fit-for-purpose mechanism to provide an individual the tailored *personal information* they may seek.
- d. The FOI process does not enable full cost recovery.
- e. In many cases, providing an individual access to much of the information that the WA Police Force hold, would impair enforcement of the law, prejudice investigations, and endanger the safety of people and security of property.
- f. An individual currently has the right to apply under FOI to amend *personal information*, if they believe the information is inaccurate, incomplete, out of date or misleading.
- g. The WA Police Force is not obliged to correct information in accordance with an application from an individual, but must provide an applicant written notice of any decision.
- h. As a matter of course, the WA Police Force correct information that is recorded incorrectly as part of a data quality function, e.g. spelling of a name, date of birth, criminal history etc.

RECOMMENDATIONS

16. *A parallel pathway be developed to release tailored information (rather than documents), outside of the FOI process at cost recovery, to redirect effort from resource intensive FOI and deliver fit-for-purpose products to individuals.*
17. *The WA Police Force seek an exemption or exception from providing an individual access to personal information that is not self-reported information, and that would on the balance of probabilities impair enforcement of the law, prejudice investigations, and endanger the safety of people and security of property.*
18. *Any obligation to correct personal information the WA Police Force holds, must only relate to incorrectly recorded verifiable facts, e.g. criminal history, date of birth or ethnicity.*

End of submission