



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queenslanders' individual rights and liberties since 1967

Watching Them While They're Watching You

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
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Identity matching Services Bill 2018

The Queensland Council for Civil liberties was established over 50 years ago to secure the individual rights and liberties of Queenslanders.

Kindly accept this submission on this Bill, which is supplementary to the Joint submission by the Civil Liberties Councils of Australia.

The driver's license photographic database represents a store of highly sensitive personal information.

The proposal to amalgamate existing databases and open them up for wider access than allowed for by existing arrangements is a very disturbing fulfillment of a prediction made by us when the Queensland database was established. Our starting point is that the measure should not proceed. We once again predict that function creep will come into play and result in further expansion of its use.

If the matter does proceed, privacy principles dictate that access to that database be strictly limited. The circumstances in which the database can be accessed should be restricted to those where the individual to whom the data relates consents, to further the purposes for which the data was collected including the investigation of offences relate to those purposes and to emergency situations. In relation to the investigation of offences not related to the purposes for which the data was originally collected, access should be granted only after a warrant has been obtained from a judicial officer.

Broadly speaking, those principles were reflected in the relevant Queensland legislation until it was amended a few weeks ago as part of implementing the COAG agreement. Under that legislation police could only have access to the photo database in the following circumstances:

1. To investigate breaches of the *Transport Operations (Road Use Management) Act 1995* (Qld) and of relevant provision of the *Criminal Code* relating to traffic matters.
2. Where the police reasonably suspect there is an actual or imminent serious risk to a person's life or health or to public health or safety and they reasonably believe that immediate access to the database will enable them to take action to reduce that risk.
3. On the issue of a warrant.

We make the following comments on those provisions:

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1. The first provision is consistent with the purpose for which the photos were collected and is entirely acceptable
2. In relation to the second provision, we accept that protecting a person is a legitimate reason for disclosure, but would prefer the formulation of the principle as referring to a 'serious and imminent threat to an individual's welfare'
3. The Smart Card Driver's Licence legislation allowed the warrant to be issued by a Justice of the Peace. We do not consider that to be satisfactory. In the Council's experience, Justices of the Peace do not have sufficient independence or legal training to be making these decisions. The warrant should be issued by a judicial officer.
4. Furthermore, we would say that not only should police be subject to these restrictions, but the necessity to apply for a warrant should apply to any investigation where a person is possibly exposed to some sanction be it criminal or otherwise.

This legislation incorporates the driver's license data into an entirely new database and makes it accessible for wide range of different purposes.

It is our position that absent consent of the individuals involved, legislation providing for access to the data for purposes other than those for which it was collected and emergency situations, should be limited to cases where the person seeking access has obtained a warrant from a judicial officer. This follows from the proposition that where a legislature has decided to legislate to enable data to be accessed for a different purpose or purposes for which was originally collected, it must take steps to ensure that access to the data is limited to those cases in which it is strictly necessary and in a way which respects the right to privacy which has been violated. It is our submission that that can only occur where access is subject to judicial authorization.¹

This problem is compounded under this legislation by the fact that there is no limit to the type of offences that can justify access to the database. This is extraordinarily wide. Access to the database for non-transport related offences should be restricted to genuinely serious offences.

We accept that circumstances may arise which make it impractical to obtain a warrant. However, impracticality should be assessed in the context of current technology given the provisions allowing for electronic applications for a warrant. If an official exercises a power to access the database in circumstances of impracticality, that official must then, as soon as reasonably possible, justify that action to a judicial officer.

We trust this is of assistance to you in your deliberations.

Yours faithfully

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
20 March 2018

¹ This principle is reflected in the jurisprudence on the European Convention on Human Rights see Human Rights Files No. 15 *The exceptions to Articles 8 to 11 of the European Convention on Human Rights* by Steven Greer Reader in Law University of Bristol. Council of Europe Publishing