

**QUESTION TAKEN ON NOTICE**

**ADDITIONAL ESTIMATES HEARING: 17 February 2004**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(76) Output 2.1: Settlement Services**

Senator Kirk (L&C 76) asked:

What is the cost to implement the statistical reporting system?

*Answer:*

The estimated development cost of the statistical reporting system in 2003-04 is \$127,283. This amount consists of salary costs of the IT specialist staff working on the development of the system.

The estimated expenditure for implementation of the system in 2004-05 is \$270,000 in capital costs and \$30,000 on consultations and training for funded organisations and DIMIA staff.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(77) Output 2.1: Settlement Services**

Senator Kirk (L&C 79) asked:

In relation to MRCs collecting visa numbers for DIMIA, did the legal advice sought canvass the issue about the third-party collection of information which is private to an individual? Also, provide a copy of the legal advice.

*Answer:*

Preliminary legal advice was received in December 2003. This was subsequently confirmed with more formal legal advice in March 2004.

The legal advice notes that the third parties involved, ie Migrant Resource Centres and Migrant Service Agencies (MRCs/MSAs) will be required to comply with the *Privacy Act*. Clause 7 of the 2004-05 Service Agreement between DIMIA and these organisations requires an MRC/MSA to be treated as if it were an "agency" and to comply with the Information Privacy Principles.

A copy of the legal advice is attached.



"Jurkiewicz, Wal" <wjurkiewicz@claytonutz.com> on 12/12/2003 08:33:11 AM

To: "'lin.white@immi.gov.au'" <lin.white@immi.gov.au>  
cc: "'michael.gardiner@immi.gov.au'" <michael.gardiner@immi.gov.au>

Subject: Privacy issues

Lin

As discussed yesterday. I have mentioned your privacy issue to our privacy specialists here. I also found the previous advice we had done that I also mentioned yesterday. That advice related to DIMIA's rights to pass certain information contained on ARMS to AMEP service providers. We considered that this was permitted because under IPP 10 this is a "use" that is the same as the initial intended use. That is, the information is being used for the same purpose for which it was initially collected. I think this applies to your circumstances as well.

The other part of our advice which may be relevant related to the DIMIA Form 886 - DIMIA Settlement Information Form. That Form states that the answers provided to questions on that Form "...will help government agencies plan and co-ordinate services, such as English tuition, health and education, more effectively." If the clients of MRCs have completed one of these Forms that there is not going to be any problem. However, even if they do not complete the Form 886, the uses to which you would be putting any personal information is essentially the same. A further test is whether DIMIA would be retaining control over the information even though it is an outside body (in this case the MRCs) collecting it. Clearly the information being collected by the MRCs is information that probably originated from DIMIA in the first place, and is being used by and under the control of DIMIA for essentially the same purposes. Therefore, you are covered in a number of ways.

Our privacy people concur with the view I presented to you yesterday. Please call if you require further assistance on this.

regards

Wal

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1 March 2004

**By Email - lin.white@immi.gov.au**

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Our reference: 252/80001231

Dear Lin

## **Collection of Visa Numbers by MRCs/MSAs: Privacy Issues**

Thank you for your instructions received by email dated Thursday 19 February 2004 in which you have sought further advice on whether there are any privacy issues, on which the Department of Immigration and Multicultural and Indigenous Affairs ("DIMIA") should be concerned, if MRCs/MSAs were asked to collect visa numbers from clients attending those centres.

### **1. Background and Instructions**

- 1.1 On 12 December 2003 we provided you with an advice ("**first advice**") on a privacy issue arising from a proposal by DIMIA to request MRCs/MSAs (please note that for convenience we will simply refer to MRCs even though the issues will be relevant to both types of organisations) to collect visa numbers from their clients, and pass this information to DIMIA as part of the MRC Client Statistical Reports. You indicated at the time that the objective of seeking visa numbers from clients was to enable DIMIA to produce aggregated statistics on client characteristics and requirements which could then be used by DIMIA to undertake appropriate planning in identifying whether or not resources were being appropriately allocated. It was also important for DIMIA, for its own accountability purposes, to determine whether funding it was providing to MRCs was well targeted and being used most effectively. In short, the purpose of collecting the visa numbers was for internal DIMIA purposes to identify the best way of allocating resources to meet the needs of the MRC client base. It was on that basis that we provided our advice.
- 1.2 We provided this advice with a very quick turnaround because DIMIA was in the process of completing a discussion paper, which canvassed the proposal to collect visa numbers which it was proposing to distribute to MRCs imminently. Accordingly, we provided a short advice that summarised our view of whether or not this proposed collection of visa numbers had any privacy implications of which DIMIA should be aware, including any potential infringement, and on which it should act. As the advice was time-critical we did not at the time, provide detailed reasons to support our conclusions, but rather, having considered the privacy implications of DIMIA's proposal, presented our conclusion that the proposed use of the visa numbers collected by MRCs would not infringe the Privacy Act. The advice we provided at that time is **attached** to this advice.

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Ms Lin White, Department of Immigration and Multicultural and Indigenous Affairs

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1.3 Since the time we provided our advice this issue has been considered by the Senate Estimates Committee (Legal and Constitutional). In that Committee's hearings, DIMIA officers indicated that DIMIA had received legal advice that the proposal to secure visa numbers from clients did not infringe the Privacy Act. The Committee requested a copy of the legal advice. You have therefore instructed me to make this advice available, so that it can be presented to the Committee. Further, as the Committee is obviously concerned about the privacy issues, you have asked us to review our advice of 12 December 2003, confirm its accuracy, and provide you with a more formal advice. We are pleased to do so, and in order to assist both DIMIA and the Committee, we provide more detailed reasoning to support the conclusions reached in our advice.

## 2. Our Advice

2.1 We have again reviewed our advice of 12 December 2003 as instructed and confirm that advice. As the 12 December 2003 advice was provided at short notice, and as a consequence, in brief, we will provide more details of the reasons for our advice. We have also had a further opportunity to review issues arising from DIMIA's proposal to collect visa numbers as part of its preferred reporting processes and can provide further reasoning in support of our advice.

2.2 We have reviewed the materials you have provided which outline the proposal for the collection of visa numbers by MRCs, and also the transcript of the Senate Estimates Committee hearing. From the review we consider that a key threshold issue to determine is whether providing visa numbers in the manner that is proposed would contribute a disclosure of personal information at all. It appears to us that if an MRC provided the visa numbers in an aggregated form, it would not be possible to identify any individual without undertaking further steps. In that circumstance, it is probably the case that providing visa numbers in that way would not represent a disclosure of personal information, and therefore the Privacy Act, and in particular, the Information Privacy Principles ("IPPs") would not apply. This has generally been a view that Clayton Utz has taken where the collection of certain information results in aggregate reporting or preparation of statistics, for example, to determine the evidence of particular types of cancer in certain regions for the purpose of determining an appropriate level of resourcing for the region. However, as the circumstances of such collection of data can be influenced by regional factors which may make the identification of an individual possible from the data, and to consider the worst case scenario from DIMIA's perspective, we have prepared this advice on the assumption that providing visa numbers in the proposed way does represent a disclosure of personal information, even though that is unlikely to be the case. We also worked on that assumption when we prepared our first advice.

2.3 To reaffirm the issues under consideration, DIMIA is proposing to ask MRCs to collect visa numbers from clients who use their services, and then asking the MRCs to pass the visa numbers to DIMIA as part of the reporting requirements. It is intended that the reports which include the visa numbers, will be fed into other DIMIA reporting systems, such as the ARMS database, to provide DIMIA with a better understanding of settlement patterns and client needs. We were instructed that the purpose of collecting the visa numbers is to supplement data already collected by DIMIA, and would be in some aggregate form, and would not be collected or used to identify individuals. The issue on which you sought advice, and which you now wish to confirm, is whether the collection of visa numbers by MRCs and passing these to DIMIA infringes the *Privacy Act* 1988.

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2.4 In our first advice, we referred to an earlier advice we had provided to DIMIA on privacy issues arising from DIMIA's passing of information contained on ARMS to AMEP service providers. We considered that this was permitted because under Information Privacy Principle ("IPP") 10 this was a "use" that was the same as the initial intended use. In preparing that advice, we also considered the fact that AMEP service providers also collect personnel information about AMEP clients which is fed into the ARMS database. Much of this information is necessary because it relates to eligibility for the AMEP entitlements, whether clients take up the service, and so on. This is necessary to enable DIMIA to monitor participation in the AMEP and better plan for its delivery. That is why we advised in our first advice, that what happens in the AMEP case is similar to the circumstances of collecting visa numbers and passing these to DIMIA for planning purposes. The main difference is that what is proposed for the collection of visa numbers appears to be less of a privacy issue because the numbers would only be provided as part of aggregate reports, and not for the purpose of identifying the individuals who use the services provided by MRCs. In short, the information is being used for a directly related purpose.

2.5 In our first advice, we also referred to the DIMIA Form 886, which we indicated may be relevant to the issue of visa numbers. We had previously advised on this in our advice on DIMIA's rights to pass certain information contained on ARMS to AMEP service providers. Form 886 states that the answers provided to the questions in the form:

*"... will help government agencies plan and co-ordinate services, such as English tuition, health and education, more effectively".*

In our view, the collection of visa numbers and passing this information to DIMIA for planning is consistent with this objective. We indicated in our first advice that if clients of MRCs have completed one of these forms, they would be reasonably aware that any information they have provided would be passed into DIMIA for that purpose. This also, in our view, represents an implied consent. Even where a Form 886 has not been completed by a client, the information would be used for the same purpose.

2.6 The 2 issues dealt with above are also important when considered from the perspective of the role of the MRCs in providing services, and reporting on those services, on behalf of DIMIA. We note that under the proposed 2004-05 Service Agreement, MRCs will be required to comply with the Privacy Act. Clause 7 of that Agreement requires an MRC to be treated as if it were an "agency" and to comply with the IPPs. On that basis, if an MRC collected visa numbers from its clients and then passed these to DIMIA, it would be making a disclosure to DIMIA and IPP 11 would be the relevant IPP with which the MRCs would need to comply. IPP 11 provides as follows:

*"1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:*

*(a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed on to that person, body or agency;*

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(b) *the individual concerned has consented to the disclosure*."

We consider that the collection of visa numbers and passing to DIMIA would in fact fall within the exception in paragraph (a) given that the visa number was allocated by DIMIA in the first place, and when a person utilises services provided by an MRC but funded by DIMIA, that this information would be passed to DIMIA. If DIMIA and MRCs make clients aware that visa numbers will be collected and the purposes for which this will be used before they are collected, this will satisfy IPP 2. Form 886, for example, effectively does this. Therefore, we do not consider that there would be an infringement of IPP 11.

2.7 It is also important as a matter of principle to consider the origin of visa numbers and implications for use. Visa numbers are issued by DIMIA in accordance with the *Migration Act 1958*. To that extent they represent Commonwealth Material. DIMIA retains certain rights to ensure compliance with terms of the visas. Migrants who are issued with visas then may have certain entitlements to receive various services funded by the government. It is our view that once issued with a visa number, a migrant would be aware that the visa number would be recorded and passed onto DIMIA when the person seeks to use the services made available by government. Therefore, the collection of visa numbers and the proposed use are, in our view, consistent with the IPPs, particularly IPPs 10 and 11 in any event.

### 3. Way Forward

3.1 For the reasons stated above, we consider that DIMIA is entitled to ask MRCs to collect visa numbers and pass these onto DIMIA as part of aggregated reports, and that this would not constitute an infringement of the Privacy Act 1988. However, there are some important issues DIMIA should consider and measures it can take in the process of implementing its proposal. These issues and measures would provide a level of reassurance to DIMIA, to MRCs and MSAs, and to clients of those organisations. These include:

- (a) ensuring that DIMIA's internal processes are such that steps were not taken internally to identify individuals from the visa numbers supplied by MRCs. We note that DIMIA has a code of conduct and other measures are in place, and provided that there is compliance with these procedures, the risk of unauthorised disclosure of personal information should be low;
- (b) IPP 2 provides that where there will be a collection of personal information, the individual concerned should generally be made aware of the purpose for which the information is being collected, and the practices that are followed for doing so. This could be built into the procedures that are established;
- (c) putting in place a specific consent procedure. Where there is an express consent, this will generally remove any doubt about whether or not the collection of personal information is authorised.

While the latter 2 measures are not strictly necessary because in our view the collection, disclosure and use of visa numbers in the manner contemplated is defensible under the IPPs, it may provide some comfort to the parties involved if these measures were implemented. This is a matter for DIMIA to determine.

# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Adelaide

1 March 2004

Ms Lin White, Department of Immigration and Multicultural and Indigenous Affairs

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Please contact us if you require further assistance with this matter.

Yours sincerely

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Enclosure



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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(78) Output 2.1: Settlement Services**

Senator Kirk (L&C 79) asked:

Was the Privacy Commissioner consulted and was his advice sought in relation to this identification system?

*Answer:*

No. Legal advice obtained by the Department indicated that disclosure of visa numbers by Migrant Resource Centres to DIMIA does not constitute a breach of the *Privacy Act*.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(79) Output 2.1: Settlement Services**

Senator Kirk (L&C 80) asked:

Is it compulsory or obligatory for individuals to provide their visa numbers?

*Answer:*

No.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(80) Output 2.1: Settlement Services**

Senator Kirk (L&C 82 ) asked:

What was the total allocation for the AMEP Special Preparatory Program for the year 2003-04?

*Answer:*

The 2003-04 allocation for the Special Preparatory Program is \$4 million.

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### **(81) Output 2.1: Settlement Services**

Senator Kirk (L&C 82) asked:

Can you give me some guide as to how the 2003-04 allocation compares to those of earlier years? Has it gone up or down?

*Answer:*

The Special Preparatory Program (SPP) allocation is part of the government measure "Increased assistance for the Adult Migrant English Programme".

The SPP allocation has been as follows:

1997-98	\$3.8 million
1998-99	\$3.9 million
1999-00	\$4.0 million
2000-01	\$4.0 million
2001-02	\$4.0 million
2002-03	\$4.0 million
2003-04	\$4.0 million

In the 2002-03 budget context the government agreed to the measure "Continuation of Adult Migrant English Program special initiatives" which includes \$4.0 million annually for the SPP until 2005-06.

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**(82) Output 2.1: Settlement Services**

Senator Kirk (L&C 82) asked:

How many refugees and humanitarian entrants are likely to be eligible for the scheme of assistance in 2003-04?

*Answer:*

Eligibility for the Special Preparatory Program (SPP) is determined by AMEP service providers on the basis of an assessment of an individual's special need.

In the 2003-04 program year, as of 24 February 2004, 3,340 clients have accessed the SPP following an assessment of their needs.

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**(83) Output 2.3: Australian Citizenship**

Senator Kirk (L&C 83) asked:

How much of the allocation for DIMIA's citizenship promotional activities for 2003-04 has been spent to date?

*Answer:*

As at 31 January 2004 around \$1.7m of the \$1.9m allocation for citizenship promotional activities for 2003-04 had been spent.