



New South Wales Privacy Commissioner

("Privacy Commissioner")

PRIVACY PROTOCOL

FOR

**Access to driver licence photographs via mobile data
terminals in Police vehicles**

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Attachment A PROTOCOL DETAILS

Privacy Protocol

THIS PRIVACY PROTOCOL is made on 10th of June 2011.

Background

- A. Section 23(5) of the *Privacy and Personal Information Protection Act 1998* permits the Roads and Traffic Authority of New South Wales ("RTA") to disclose "personal information" about an individual for "law enforcement purposes" or to a law enforcement agency "for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person." However, Part 5 of the *Roads Transport (Driver Licensing) Act 1998* imposes additional restrictions in relation to the release of driver licence photographs. In particular, s. 41(1)(a) and (2) of that Act requires that the release of driver licence photographs to the New South Wales Police Force ("NSW Police Force") must be in accordance with any protocol approved by the Privacy Commissioner.
- B. The purpose of this Privacy Protocol ("the Protocol") is to approve the release by the RTA of driver licence photographs to the NSW Police Force for the purpose of s. 41(2) of the *Road Transport (Driver Licensing) Act 1998*, so that the RTA may lawfully release this information to the NSW Police Force.
- C. The Protocol applies to the release by the RTA of driver licence photographs to the NSW Police Force through mobile data terminals in Police vehicles for a Permitted Purpose.
- D. The Protocol imposes safeguards with respect to the release of this information in order to minimise interference with the privacy of individuals.

Operative provisions

1. Definitions and interpretation

1.1 In this Protocol, unless the context otherwise requires:

- (a) **"Commencement Date"** means the date specified as such in the Protocol Details.
- (b) **"Driver licence"** means a licence (including a conditional licence, a provisional licence and a learner licence) issued in accordance with the *Road Transport (Driver Licensing) Regulation 2008* authorising the holder to drive one or more classes of motor vehicle on a road or road related area.
- (c) **"Driver licence photograph"** means any photograph, including a digitised or electronic image, issued by the RTA in connection with a driver licence, and any other related matter contained in any database of such photographs.
- (d) **"DRIVES database"** means the database or databases on which the RTA holds driver licence photographs.
- (e) **"Mobile data terminal"** means a computer system located in a Police vehicle through which Police Officers may access Personal Information stored on the DRIVES database.
- (f) **"MOU"** means the "Memorandum of Understanding between the NSW Police Force and the RTA for access to driver licence photographs via mobile data terminals in Police vehicles" which the RTA and NSW Police Force intend to enter into when this Protocol has been made.
- (g) **"Permitted Purpose"** means a purpose set out at clause 4.1 of this Protocol.
- (h) **"Police Officer"** has the meaning given in s. 3 of the *Police Act 1990*.
- (i) **"Privacy Commissioner"** means the Privacy Commissioner appointed under the *Privacy and Personal Information Protection Act 1998* or his or her delegate.
- (j) **"Protocol"** means this Privacy Protocol, which includes the attachments that are incorporated into this Protocol by reference, as amended from time to time in accordance with the terms of this Protocol.
- (k) **"Protocol Details"** means the details specified in Attachment A.
- (l) **"Term"** means the duration of the Protocol as specified in the Protocol Details or until the date on which the Protocol is terminated, whichever occurs first.

1.2 Except where the context otherwise requires:

- (a) **References to legislation.** A reference to a statute, regulation, ordinance or by-law ("Law") will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that Law from time to time.
- (b) **Reconstitution of person, agency or part of agency.** A reference to a person, agency or part of an agency which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.
- (c) **Time Limits.** Where any time limit pursuant to the Protocol falls on a non-business day then that time limit will be deemed to have expired on the next business day.
- (d) **Grammatical forms.** Where a word or phrase is given a defined meaning in the Protocol, any other part of speech or other grammatical form in respect of such word or phrase will unless the context otherwise requires have a corresponding meaning.
- (e) **Rules of Construction.** No rule of construction operates to the detriment of a party only because that party was responsible for the preparation of the Protocol or any part of it.
- (f) **Actions by the parties.** Where there occurs a reference to the doing of anything by a party to the Protocol, this may be done by any duly authorised officer of the party.
- (g) **Headings.** The headings and index in the Protocol are for convenience only and do not affect the interpretation of this Protocol.
- (h) **Including.** "Including", "for example" and other similar expressions are not words of limitation.

2. Term

- 2.1 The Protocol commences on the Commencement Date and will continue for the Term.
- 2.2 The Privacy Commissioner may suspend the operation of the Protocol for a fixed period in writing.
- 2.3 The Privacy Commissioner may extend the Term of the Protocol or renew the Protocol in writing.
- 2.4 The Privacy Commissioner may terminate the Protocol in writing.
- 2.5 The Privacy Commissioner will inform the Chief Executive Officer of the RTA and the Commissioner of Police, NSW Police Force, in writing at least 3 business days in

advance of any suspension of, or extension to, the Term of the Protocol, or termination of the Protocol.

3. Approval of Protocol

- 3.1 The Protocol is hereby approved by the Privacy Commissioner for the purpose of s. 41(2) of the *Road Transport (Driver Licensing) Act 1998*.

4. Purpose for which release of driver licence photographs is permitted ("Permitted Purpose")

- 4.1 The RTA must only release driver licence photographs to the NSW Police Force under this Protocol for the purpose of verifying that:
- (a) a driver licence produced by an individual is genuine; or
 - (b) an individual holds a current driver licence, including where the individual is unable to produce a licence; or
 - (c) an individual is who he or she claims to be, including where the individual is unable to produce a driver licence.

5. Grant of access to driver licence photographs

- 5.1 The RTA will provide access to driver licence photographs for a Permitted Purpose to all Police Officers who use Police vehicles equipped with mobile data terminals.

6. Mode of access to driver licence photographs

- 6.1 A Police Officer will enter his or her operator number and password into a mobile data terminal. The Police Officer will enter a driver licence number into the mobile data terminal, sending an online request to the NSW Police Force server which in turn will interrogate the RTA DRIVES database to obtain the relevant driver licence photograph.
- 6.2 The RTA will provide read-only access to driver licence photographs in real-time at mobile data terminals. The NSW Police Force mobile data terminals must be configured so that Police Officers only see real time images and are not able to print or transmit them.
- ### **7. Security of access to driver licence photographs**
- 7.1 The NSW Police Force must assign a unique operator number and password to each Police Officer who may access the DRIVES database via a mobile data terminal, and must inform Police Officers that they are not to disclose or share their operator numbers or passwords.

- 7.2 The NSW Police Force must maintain a current list of Police Officers who have been assigned operator numbers and passwords, together with details of their operator numbers.

8. Audit of access to driver licence photographs

- 8.1 The DRIVES database must have an audit capability that allows it to identify and record every access (and its date and time) and the information that was accessed.
- 8.2 The NSW Police Force must maintain an auditable access log showing (by assigned operator number) the date and time Police Officers attempt to access the DRIVES database.
- 8.3 The NSW Police Force is responsible for conducting audits to ensure that access is in accordance with the Protocol. For the first two years during which the Protocol is in force, audits are to be conducted every six months. Thereafter audits must be conducted as directed in writing by the Privacy Commissioner following consultation with the RTA and the NSW Police Force, but no less than once per calendar year.
- 8.4 Audits must review a reasonable number of driver licence photographs accessed via mobile data terminals and verify whether the driver licence photographs were accessed for a Permitted Purpose and whether the request for access was made by a Police Officer.
- 8.5 The NSW Police Force must inform the RTA, the Ministry for Police and Emergency Services and the Privacy Commissioner of the results of each audit, within one month of conducting the audit, in the form of a written audit report. The report must specify:
- (a) the size of the random samples used in the audit; and
 - (b) the number of requests made via mobile data terminals for the release of driver licence photographs during the audit period; and
 - (c) whether, in all cases sampled, release was in accordance with a Permitted Purpose and, if not, details of each case in which it was not, and why not; and
 - (d) whether, in all cases sampled, release was sought by a Police Officer and, if not, details of each case in which it was not, and why not; and
 - (e) whether the NSW Police Force has any evidence that Police Officers have disclosed or shared their operator numbers and passwords and, if so, details of the alleged disclosures and action taken in relation thereto; and
 - (f) whether any complaints were made during the audit period under clause 8.3 in relation to the access to, use of, or disclosure of driver licence photographs, and the results of the investigation of these complaints.

- 8.6 The RTA may conduct a desktop compliance audit of the NSW Police Force at any time and NSW Police Force must cooperate with that audit.

9. Accountability for driver licence photographs released to the NSW Police Force

- 9.1 The NSW Police Force is solely responsible for the use of driver licence photographs accessed from the DRIVES database via mobile data terminals pursuant to, or in contravention of, the Protocol.

- 9.2 The NSW Police Force must not print, save, export or email a driver licence photograph.

- 9.3 The driver licence photograph must cease to be displayed on the mobile data terminal 10 minutes after each online request.

10. Complaints in relation to the release of driver licence photographs

- 10.1 Complaints in relation to the release of photographs by the RTA to the NSW Police Force may be made to the RTA, the Privacy Commissioner or to the NSW Police Force at the discretion of the complainant.

- 10.2 The address for lodging a complaint with the RTA is:

General Manager, Government Information and Privacy Branch
Roads and Traffic Authority
Locked Bag 928 NORTH SYDNEY NSW 2059

- 10.3 The address for lodging a complaint with the Privacy Commissioner is:

Office of the Privacy Commissioner
GPO Box 7011
SYDNEY NSW 2001
Email: privacy_nsw@agd.nsw.gov.au

- 10.4 The address for lodging a complaint with the NSW Police Force is:

Customer Assistance Unit
PO Box 3427
TUGGERAH NSW 2259

- 10.5 The RTA may, at its discretion, refer a complaint in writing to the NSW Police Force for investigation. On receipt of such a referral, the NSW Police Force must

investigate the complaint and report to the RTA within one month. If the NSW Police Force fails to do so, the RTA must report the matter to the Privacy Commissioner. If the NSW Police Force fails to investigate and report in writing to the RTA within 6 weeks of referring the complaint to the NSW Police Force, the matter must be referred to the respective Chief Officers of the RTA and NSW Police Force for resolution in accordance with the Guidelines established by the NSW Premier for the resolution of disputes between public authorities.

- 10.6 If the NSW Police Force or the RTA becomes aware of any significant failures of the audit capabilities of the DRIVES database or the mobile data terminals, or any breaches of clause 7 of the Protocol ("Security of access to driver licence photographs"), the NSW Police Force or the RTA will immediately refer the matter to the Privacy Commissioner for any further action deemed appropriate.
- 10.7 The NSW Police Force will cooperate with the investigation of any complaint by the RTA or the Privacy Commissioner.

11. Protocol to operate concurrently with other protocols

- 11.1 The Protocol operates concurrently with the "Protocol for the access, retrieval and release of photographic images held on the Roads and Traffic Authority's DRIVES Computer System for counter terrorism purposes", which permits release of driver licence photographs to the NSW Police Force and to the New South Wales Crime Commission for the purpose of counter-terrorism investigations and with the "Protocol for the release by the Roads and Traffic Authority of New South Wales of driver licence photographs to the New South Wales Police Force for non counter-terrorism investigations", which permits release of driver licence photographs to the NSW Police Force for the purpose of non counter-terrorism major crime investigations.

12. Requests for release of driver licence photographs otherwise than in accordance with an approved protocol

- 12.1 Any requests by the NSW Police Force for the release of driver licence photographs otherwise than in accordance with a protocol approved by the Privacy Commissioner pursuant to s. 41(2) of the *Road Transport (Driver Licensing) Act 1998* must be made pursuant to a search warrant or as otherwise provided for by law.

13. Amendment of Protocol

- 13.1 The Privacy Commissioner may amend the Protocol at any time in writing.
- 13.2 The Privacy Commissioner will consult with the Chief Executive of the RTA and the Commissioner of Police, NSW Police Force, prior to making any amendments to the

Protocol, and will inform the Chief Executive of the RTA and the Commissioner of Police, NSW Police Force, in writing, at least 3 business days in advance of any amendment to the Protocol.

Execution by the Privacy Commissioner:

Signed for and on behalf of the Privacy Commissioner

by..



(signature of Privacy Commissioner or delegate)

in the presence of.
(insert name of witness)



(signature of witness)

ATTACHMENT A PROTOCOL DETAILS

This attachment forms part of the Protocol.

Item 3 TERM

Commencement

Date: *1 JULY 2011*

Duration: 5 years