



Privacy Protocol

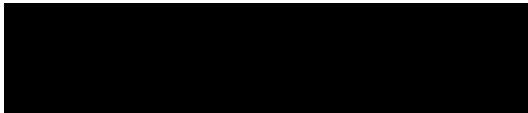


NSW Police Force

Police Access to Photos Major Crime & Missing Persons Investigations

Commencement Date: 6th June, 2014

End Date: 5th June, 2019



Privacy Commissioner

6th June 2014

Date Signed

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Background

- A. Section 23(5) of the *Privacy and Personal Information Protection Act 1998* permits the Roads and Maritime Services (“RMS”) RMS to disclose “personal information” about an individual for “law enforcement purposes” or “for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person.”
- B. However, Part 3.5 of the *Road Transport Act 2013* imposes additional restrictions in relation to the release of driver licence photographs. In particular, s. 57(2) of the 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.
- C. Part 4 of the *Photo Card Act 2005* and Part 6 Subdivision 4 of the *Road Transport (General) Regulation 2013* make contain similar provisions concerning photo card and mobility parking photos respectively.
- D. The purpose of this Privacy Protocol (“the Protocol”) is to establish the parameters for the release by RMS of photographs to the NSW Police Force for the purpose of s. 57(2) of the *Road Transport Act 2013*, s. 19(2) of the *Photo Card Act 2005* and clause 109(2) of the *Road Transport (General) Regulation 2013* so to minimise unnecessary intrusion on the privacy of RMS customers.

Operative provisions

1. Definitions and interpretation

- 1.1 In the Protocol, unless the context otherwise requires:
 - (a) “**Commencement Date**” means the date shown on the front page.
 - (b) “**Commissioner of Police**” means the Commissioner of the NSW Police Force as appointed under the *Police Act 1990*.”
 - (c) “**Commissioner’s Delegate**” means the member of the NSW Police Force to whom the Commissioner of Police has delegated the Commissioner’s functions for the purposes of this Protocol.
 - (d) “**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 1999* authorising the holder to drive one or more classes of motor vehicle on a road or related area.
 - (e) “**End Date**” means the date shown on the front page, being five (5) years after the Commencement Date.

- (f) **“DRIVES database”** means the database or databases on which RMS holds driver licence, photo card and mobility parking permit photographs.
- (g) **“Investigation”** means an investigation of:
- a major crime, or
 - an investigation for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person.
- (h) **“Major crime”** means the commission or attempted commission of any one or more of the following offences:
- | | |
|----------------------------|----------------------------|
| (i) homicide; | (vii) arson; |
| (ii) child abuse; | (viii) terrorist offences; |
| (iii) extortion; | (ix) violent crime; |
| (iv) kidnapping/abduction; | (x) drug trafficking; |
| (v) bombings; | (xi) complex fraud; |
| (vi) money laundering; | (xii) armed hold-up; |
- (xiii) any other crime or incident which, due to its organisation or other special circumstances, is designated as a “major crime” by the Commissioner of Police, or the Commissioner’s Delegate
- (i) **“Mobility Parking Permit”** means a mobility parking scheme authority issued by RMS under clause 97 of the *Road Transport (General) Regulation 2013*
- (j) **“Operational Information Agency”** or **“OIA”** means the Operational Information Agency within the Operational Communications and Information Group of the NSW Police Force.
- (k) **“photograph”** means any photograph, including a digitised, electronic or computer generated image, issued by RMS in connection with a driver licence, photo card, mobility parking permit and any other matter contained in any database of such photographs.
- (l) **“Photo Card”** means a photo card issued by RMS under *Photo Card Act 2005*.
- (m) **“Privacy Commissioner”** means the Privacy Commissioner appointed under the *Privacy and Personal Information Protection Act 1998* or his or her delegate.

- (n) **“the 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.
- (o) **“Term”** means the duration of the Protocol (refer clause 2).

1.2 Except where the context otherwise requires:

- (a) **Actions by an agency.** Where there occurs a reference to the doing of anything by an agency including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the agency.
- (b) **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 shall unless the context otherwise requires have a corresponding meaning.
- (c) **Headings.** The headings and index in the Protocol are for convenience only and do not affect the interpretation of the Protocol.
- (d) **Including.** “Including”, “for example” and other similar expressions are not words of limitation.
- (e) **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.
- (f) **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.
- (g) **Reasonableness.** Where an agency is required to act reasonably in the performance of the Protocol, that shall be read as a requirement to act as would a party in the position of the agency which is acting reasonably in its own best interests.
- (h) **References to groups.** A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.
- (i) **References to persons.** Persons will be taken to include any natural or legal person.
- (j) **Time Limits.** Where any time limit pursuant to the Protocol falls on a non-business day then that time limit shall be deemed to have expired on the next business day.

2. Term, Suspension, Termination & Review

- 2.1 The Protocol commences on the Commencement Date and will end five (5) years after the Commencement Date (End Date).
- 2.2 The Privacy Commissioner may suspend the operation of the Protocol for a fixed period in writing.
- 2.3 The Privacy Commissioner may amend this Protocol at any time including by extending it.
- 2.4 The Privacy Commissioner may terminate the Protocol in writing at any time.
- 2.5 The Privacy Commissioner will inform the Chief Executive Officer of RMS and the Commissioner of Police, in writing at least 3 business days in advance of any suspension or termination or amendment of the Protocol.
- 2.6 At any time the Privacy Commissioner may (whether at the request of RMS or the NSW Police Force or not) undertake a review of this Protocol in order to consider whether this Protocol should be amended, suspended, terminated or extended and RMS and NSW Police Force must provide such assistance and cooperation as the Privacy Commissioner may require.
- 2.7 No later than 6 month before the 5th anniversary of the Commencement Date RMS, NSW Police Force and the Privacy Commissioner must commence discussions to review this Protocol.

3. Approval of Protocol

- 3.1 The Protocol is hereby approved by the Privacy Commissioner for the purpose of s. 57(2) of the *Road Transport Act 2013* and s.19(2) of the *Photo Card Act 2005* and clause 109(2) of the *Road Transport (General) Regulation 2013*.

4. Purpose for which release of photographs is permitted

- 4.1 Photographs must only be released to the NSW Police Force in relation to an Investigation (as defined in clause 1.1) being conducted by the NSW Police Force.

5. Authorisation process for release of photographs

- 5.1 All requests by the NSW Police Force for release of photographs must be made through officers deployed within the OIA and authorised by the Commissioner of Police, or the Commissioner's Delegate for this purpose ("Requesting Officers").
- 5.2 Prior to making any request for release of photographs, Requesting Officers must ensure that an officer holding the rank of Inspector or above has approved the making of the

request and make a record that the requisite approval has been obtained together with the name and rank of the approving officer.

6. Mode of access to photographs

- 6.1 Requesting Officers must request release of photographs on-line via the DRIVES database by use of operator numbers in combination with passwords.
- 6.2 The DRIVES database must only permit read-only access to photographs by the NSW Police Force, but may permit photographs to be viewed, exported or printed from the DRIVES database.

7. Security of access to and responsibility for photographs

- 7.1 Requesting Officers must each be assigned unique operator numbers to be used in combination with unique passwords for the purpose of requesting release of photographs on-line via the DRIVES database.

Requesting Officers must not disclose or share their operator numbers or passwords.

- 7.2 RMS must allocate a reasonable number of operator numbers and passwords to the NSW Police Force for the purpose of facilitating on-line access to the DRIVES database.
- 7.3 The Commissioner of Police must maintain a current list of Requesting Officers together with details of their unique operator numbers.
- 7.4 The NSW Police Force is solely responsible for the use, disclosure and storage of photographs viewed, exported or printed from the DRIVES database pursuant to, or in contravention of, the Protocol, including, but not limited to, the export of any information to third parties or use within the NSW Police Force.

8. Audit of access to photographs

- 8.1 In so far as concerns on-line requests by NSW Police Force for release of photographs, the DRIVES database must have an audit capability that:
 - (a) Assigns access rights by reference to unique identification numbers and passwords for each user; and
 - (b) Generates an audit trail of each and every record accessed by reference to the user's unique identification number and password combination, and IP address, including a record of the sequence of records accessed and functions undertaken, and the date and time of every access.
- 8.2 The NSW Police Force is responsible for conducting audits to ensure that access is in accordance with the Protocol.

- 8.3 Audits must be conducted as directed in writing by the Privacy Commissioner following consultation with RMS and the NSW Police Force, but no less than once per financial year and for the first two financial years at least twice per financial year.
- 8.4 Audits must review a reasonable number of audit trails in relation to photographs accessed via the DRIVES database and verify whether the photographs were viewed, exported or printed for the purposes of an "Investigation," whether the request for access was made and obtained by an officer deployed within the OIA who was authorised by the Commissioner of Police or the Commissioner's delegate for this purpose, and whether the requesting officer obtained approval from an officer holding the rank of Inspector or above prior to making the request.
- 8.5 The NSW Police Force must inform:
- RMS,
 - the NSW Police Force Deputy Commissioner, Specialist Operations;
 - the Privacy Commissioner; and
 - (unless it provides a written waiver) Ministry of Police & Emergency Services ("MPES")

of the results of each audit in writing in the form of an audit report which must be served no later than 30 September each year in respect of annual audits and no later than 30 March in respect of half-yearly reports. The address for service of audit reports is shown in the Schedule. If MPES provides advises that it waives its right to receive audit reports then NSW Police Force must provide a copy of that waiver to the Privacy Commissioner.

In addition, at any time RMS may require NSW Police Force to undertake a special audit in respect of any period or accesses nominated by RMS and to provide an audit report to RMS within such time as RMS (acting reasonably) may nominate and a copy to the Privacy Commissioner.

RMS must provide a copy of each audit report to its "Audit and Risk Committee" and NSW Police Force must provide a copy to its "Commissioner's Executive Team".

RMS's annual report must report on the most recent audit report.

The report must specify:

- (a) The size of the random samples used in the audit and that it is considered statistically robust and appropriate to support the conclusions of the audit report;
- (b) The number of on-line requests for the release of photographs made by NSW Police Force users during the audit period by reference to the type of Investigation in relation to which access was sought;



- (c) Whether, in all cases, release was in relation to an Investigation within the meaning of the Protocol and, if not, details of each case in which it was not, and why not;
- (d) Whether, in all cases, release was sought by an officer deployed within the OIA who was authorised by the Commissioner of Police or the Commissioner's delegate for this purpose and, if not, details of each case in which it was not, and why not;
- (e) Whether, in all cases, the Requesting Officer obtained approval from an officer holding the rank of Inspector or above prior to making the request and, if not, details of each case in which it was not, and why not;
- (f) Whether the NSW Police Force has any evidence that Requesting Officers have disclosed or shared their operator numbers and passwords and, if so, details of the alleged disclosures and action taken in relation thereto;
- (g) Whether any complaints were made during the audit period in relation to the access to, use of, or disclosure of photographs, and the results of the investigation of these complaints.

9. Non-Compliance

- 9.1 If RMS or NSW Police or the Privacy Commissioner is aware of a material non-compliance with the terms of this Protocol (whether its own or not) it must give written notice to the other parties.
- 9.2 RMS and NSW Police must also report any material non-compliance with the terms of this Protocol to RMS's "Audit & Risk Committee" and NSW Police Force's "Commissioner's Executive Team" respectively.
- 9.3 When an alleged non-compliance with this Protocol is notified RMS and NSW Police Force must provide such information as may reasonably be required by the other party or the Privacy Commissioner in relation to the alleged non-compliance (including proposed rectification, mitigation and steps to be taken to prevent any re-occurrence).

10. Privacy Complaints in relation to the release of photographs

- 10.1 Privacy complaints in relation to the release of photographs by RMS to the NSW Police Force may be made to RMS, the Privacy Commissioner or to the NSW Police Force at the discretion of the complainant.
- 10.2 The address for service of privacy complaints is shown in the Schedule.
- 10.3 Subject to all privacy obligations, where privacy complaints are made by a third party to RMS, RMS may, where appropriate and at RMS' discretion, request NSW Police Force to assist RMS in the investigation of such complaint. On receipt of such a request, the NSW Police Force must provide all such reasonable assistance to RMS as is appropriate in the



circumstances (having regard to all the facts and circumstances of the privacy complaint) and investigate the complaint and report to RMS within one month.

Where privacy complaints are made by a third party directly to the NSW Police Force, the NSW Police Force must comply with Part 5 of the *Privacy and Personal Information Protection Act 1998* in dealing with the complaint and have regard to all the facts and circumstances of the complaint.

- 10.4 If the NSW Police Force or RMS becomes aware of any failures of the audit capabilities of the DRIVES database, or any breaches of paragraph 8.1 of the Protocol (“Audit of Access”), it will immediately refer the matter and details to the Privacy Commissioner for any further action deemed appropriate.
- 10.5 The NSW Police Force must cooperate with the investigation of any privacy complaint by RMS or the Privacy Commissioner.
- 10.6 When a privacy complaint is received in relation to this Protocol the Privacy Commissioner must be notified and kept informed throughout the complaint handling process.

11. Protocol to operate concurrently with counter terrorism protocol

- 11.1 The Protocol operates concurrently with the “Protocol for the access, retrieval and release of photographic images held on the DRIVES database for “counter terrorism purposes” which permits release of photographs to the NSW Police Force and to the New South Wales Crime Commission (“the NSW Crime Commission”) for the purpose of counter-terrorism investigations.

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

- 12.1 Any requests for the release of photographs otherwise than in accordance with a protocol approved by the Privacy Commissioner must be made pursuant to a search warrant or as provided for by law.

13. Contact Addresses and Service of Notices

- 13.1 A notice under this Protocol must be in writing and forwarded to the address, email address or facsimile number of that representative as specified in the Schedule or the address last notified to the sender by the intended recipient.
- 13.2 Business-as-usual correspondence should be addressed as shown in (1) in the Schedule.
- 13.3 Audit Reports should be served as shown in (1) in the Schedule.
- 13.4 Privacy Complaints should be served as shown in (2) in the Schedule.

13.5 Legal notices should be served as shown in (3) in the Schedule.



SCHEDULE

(1) Audit Reports and Business as Usual Issues - Address for Service

RMS	NSW Police Force	Privacy Commissioner	MPES
Manager Customer Liaison & Document Verification, Driver & Vehicle Administration Section, Roads and Maritime Services, Level 4, 99 Phillip Street, Parramatta, NSW 2150 Fax 02 8848 8689	Deputy Commissioner Specialist Operations NSW Police Force, Police Executive Office, Level 15 201 Elizabeth Street Sydney, NSW 2000 Ph: 02 8263 6382 Fax: 02 8263 6541	Information and Privacy Commission, GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au Phone: 1800 472 679 Fax: (02) 8114 3756	Chief Executive Officer, Ministry for Police & Emergency Services, Level 13 Bligh House, 426 Bligh St Sydney NSW 2000 Fax 02 9228 3551 Tel 02 9228 51

(2) Privacy Complaints – Address for Service

RMS	NSW Police Force	Privacy Commissioner
Manager Information & Privacy Unit, Roads & Maritime Services, Locked Bag 928, North Sydney 2059 Phone: 02 8588 4990 Fax: 02 8588 4109	Office of the General Counsel, Privacy Co-ordinator, NSW Police Force PO Box 1678, Woolloomooloo NSW 1335 Phone: (02) 9506 5199	Information and Privacy Commission GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au Phone: 1800 472 679 Fax: (02) 8114 37

(3) Legal Notices - Address for Service

RMS	NSW Police Force	Privacy Commissioner
The Chief Executive Roads & Maritime Services 101 Miller Street North Sydney 2060 Fax: 8588 5991 Copy to: Senior Manager Driver & Vehicle Administration, Roads & Maritime Services, Locked Bag 14 Grafton NSW 2460 Tel: 02 6640 2803 Fax: 02 6640 2898	Office of the General Counsel, Privacy Co-ordinator, NSW Police Force PO Box 1678, WOOLLOOMOOLOO NSW 1335 Phone: (02) 9506 5199	Information and Privacy Commission GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au Phone: 1800 472 679 Fax: (02) 8114 3756

