New South Wales Privacy Commissioner

("Privacy Commissioner")

PRIVACY PROTOCOL

FOR ACCESS BY ISST MEMBERS

TO PHOTOGRAPHS HELD BY THE RTA

FOR IDENTITY CRIME PURPOSES

I V KNIGHT
Crown Solicitor
60-70 Elizabeth Street
SYDNEY NSW 2000

DX 19 SYDNEY
Tel: (02) 9224 5223
Fax: (02) 9224-5222
Ref: 201000649
T01 Jessica Kavanagh

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PRIVACY PROTOCOL

THIS PRIVACY PROTOCOL is made on the 12th of October 2011.

PROTOCOL DETAILS	
Commencement Date:	12 October 2011
Term:	5 years

Background

A. The Identity Security Strike Team (Sydney) ("ISST") members seek to have access to information held by the Roads and Traffic Authority of New South Wales ("RTA") for the purposes of investigating identity crime. The RTA has agreed to enter into a Memorandum of Understanding with the ISST members to permit that access subject to the Privacy Commissioner approving this Privacy Protocol. The ISST comprises of persons employed by or seconded to the New South Wales Police Force ("NSWP"), the Australian Crime Commission ("ACC"), the Australian Federal Police ("AFP"), and the Commonwealth Department of Immigration and Citizenship ("DIAC").

B. Section 23(5)(a) of the *Privacy and Personal Information Protection Act 1998 ("PPIP Act")* permits the RTA to disclose "personal information" about an individual for "law enforcement purposes". To the extent necessary, s. 23(5)(a) exempts the RTA from the application of the *PPIP Act* when it discloses personal information to an ISST member for law enforcement purposes. However, there are additional legislative requirements that prevent the disclosure of photographs held by the RTA, details of which are provided in Schedule 1.

C. The purpose of this Protocol is to provide for the release by the RTA of photographs and any photographic image or other matter on the DRIVES database to the ISST members as may be authorised by law (as further detailed in Schedule 1).

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 the Protocol, unless the context otherwise requires:

(a) "**Commencement Date**" means the date on which the Protocol is made.

(b) "**Driver licence**" means a licence issued by the RTA authorising the holder to drive one or more classes of motor vehicle on a road or road related area.

(c) "**DRIVES database**" means the database or databases on which the RTA holds photographs and registration and licensing information.

(d) "**ISST**" means the Identity Security Strike Team (Sydney) that comprises of persons employed by or seconded to NSWP, ACC, AFP or DIAC and operates in accordance with a memorandum of understanding between the NSW Crime Commission, NSWP, ACC and AFP, entered into on 22 September 2008.

(e) "**ISST agencies**" means the NSWP, the ACC, the AFP and DIAC.

(f) "**ISST Coordinator**" means the National Coordinator of the ISST or the Coordinator, Crime Operations, ISST.

(g) "**ISST member**" means a person employed by or seconded to an ISST agency to work in the ISST.

(h) "**Offender**" means a person who has been convicted of a criminal offence.

(i) "**Permitted Purpose**" means the purpose described at paragraph 4 of this Protocol.

(j) "**Photograph**" means:

(i) a photograph taken or provided in relation to an application for the issue or renewal of a driver licence, "proof of age" card, or a licence under the *Firearms Act 1996* or the *Security Industry Act 1997*, to which Part 5 of the *Road Transport (Driver Licensing) Act 1998* applies;

(ii) a photograph taken or provided in relation to an application for the issue of a Photo Card to which Part 4 of the *Photo Card Act 2005* applies;

(iii) a photograph taken or provided pursuant to photo-access arrangements to which Div 3 of Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002* applies;

(iv) any other photograph held by the RTA which is subject to legislation which authorises or requires its release under Part 5 of the *Road Transport (Driver Licensing) Act 1998* in respect of the release of photographs to which that Part applies; or

(v) any photographic image or other matter contained in any database of photographs referred to in (i) to (iv) (including customer name and change of name information, customer date of birth, customer address and address history, customer licence history and vehicle registration history).

(k) "**Privacy Commissioner**" means the Privacy Commissioner appointed under the *Privacy and Personal Information Protection Act 1998* or his or her delegate.

(l) "**PROMIS**" means the AFP's Police Realtime Online Management Information System.

(m) "**the Protocol**" means this Privacy Protocol, as amended from time to time in accordance with the terms of this Protocol.

(n) "**Protocol Details**" means the section of this Protocol so named.

(o) "**RTA secondee**" means a person employed by the RTA who is seconded to work for the ISST.

(p) "**Serious identity related crime**" means the syndicated or organised:

(i) production and manufacture of false identity documents; or

(ii) obtaining of genuine identity documents with fraudulent details; or

(iii) use or distribution of false identity documents or genuine identity documents with fraudulent details.

(q) "**Suspect**" means a person who an ISST member suspects may have committed a criminal offence.

(r) "**Term**" means the period of time specified in the Protocol Details or as extended in accordance with paragraph 2.3.

(s) "**Victim**" means a person who has had a serious identity related crime perpetrated against him or her.

1.2 In this Protocol, 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) **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.

(d) **Headings.** The headings and index in the Protocol are for convenience only and do not affect the interpretation of the Protocol.

(e) **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.

(f) **References to persons.** Persons will be taken to include any natural or legal person.

(g) **Including.** "Including" and "for example" and their various forms are not words of limitation.

2. Term and Scope

2.1 The Protocol commences on the Commencement Date and continues for the term of the Protocol.

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 in writing, including after the term of the Protocol has ended.

2.4 The Privacy Commissioner may terminate the Protocol in writing.

2.5 The Privacy Commissioner must inform the NSWP, ACC, AFP, DIAC and RTA 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.

2.6 Notwithstanding any other provision of this Protocol, the RTA must not allow ISST members to access photographs under this Protocol in respect of which Schedule 1 indicates a legislative amendment is required until such time as that amendment is made.

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* (including as applied by s.

19(1)(g) of the *Photo Card Act 2005* and s. 80I(1)(f) and (2) of the *Licensing and Registration (Uniform Procedures) Act 2002* without limitation).

4. Purpose for which access and use of photographs is permitted ("Permitted Purpose")

4.1 The ISST members may access photographs for the purpose of investigating or prosecuting (provided that the photograph is not tendered in court) serious identity related crime ("Permitted Purpose").

4.2 The following are examples of the uses which the ISST members may make of the photographs which they access for the Permitted Purpose:

(a) Locating and/or identifying suspects, offenders and victims;

(b) Identifying histories of suspects and offenders, including licence history, vehicle history and address history;

(c) Carrying out surveillance in respect of suspects and offenders;

(d) Matching suspects and offenders with photographs of RTA customers, including by using the AFP's Facial Recognition System and PROMIS;

(e) Obtaining various warrants and authorisations to employ criminal investigation methodology; and

(f) Investigating and prosecuting offences including:

(i) Manufacturing, distributing, possessing or using a false identity related instrument;

(ii) Obtaining financial advantage by deception;

(iii) Money laundering;

(iv) Opening and operating a false bank account;

(v) Applying for, manufacturing or possessing a false foreign or Australian travel document;

(vi) Compromising financial data equipment such as Automatic Teller Machines (ATMs) and Electronic Funds Transfer (EFTPOS) terminals; or

(vii) Public and private sector corruption.

4.3 The RTA will not inform the ISST members that an identity is protected or an assumed identity to ensure that the RTA does not breach the *Law Enforcement and National Security (Assumed Identities) Act 1998* or the *Witness Protection Act 1995.*

4.4 The ISST members may not use photographs they access in accordance with this Protocol for court purposes.

5. Authorisation process for release of photographs

5.1 In ordinary circumstances, an ISST member will make a face to face request to the RTA secondee, for information on the DRIVES database.

5.2 In urgent circumstances, where a face to face request is not practicable, an ISST member may make a request by telephone and the RTA secondee may accept this request.

5.3 The ISST member will inform the RTA secondee of the information required, the intended purpose for which the information will be used (which must fall within the Permitted Purpose) and the PROMIS (or case file) reference for the investigation.

5.4 The RTA secondee may release the information requested to the ISST member for the Permitted Purpose.

5.5 The RTA secondee will record the details of the request in an electronic register of access to the DRIVES database. The details recorded will include the ISST member making the request, the intended purpose provided by the ISST member, the PROMIS (or case file) reference and a short descriptor of what was accessed.

5.6 If the RTA secondee is not available, an ISST member may contact the RTA General Manager, Government Information and Privacy Branch and request that information be released to the ISST member. The ISST member will inform the RTA General Manager, Government Information and Privacy Branch of the intended purpose for which the information will be used (which must fall within the Permitted Purpose) and the PROMIS (or case file) reference for the investigation.

5.7 The RTA General Manager, Government Information and Privacy Branch may release the information requested to the ISST member for the Permitted Purpose.

5.8 The RTA General Manager, Government Information and Privacy Branch will inform the RTA secondee of a request under paragraph 5.6, the name of the ISST member who made the request, the intended purpose provided by the ISST member, the PROMIS (or case file) reference and a short descriptor of what was accessed. The RTA secondee will record this access in the electronic register.

5.9 The ISST Coordinator will review the electronic register on a monthly basis and certify that the requests were made by ISST members for the Permitted Purpose. This certification will be used for auditing purposes in accordance with paragraph 10.

5.10 Where an ISST member has access to RTA information under another arrangement nothing in this Protocol affects that other access and the terms of that other access (including auditing and reporting) will be governed by that arrangement.

6. Mode of access by ISST members to photographs

6.1 The RTA secondee and the RTA General Manager, Government Information and Privacy Branch will access the DRIVES database at the request of an ISST member for the Permitted Purpose in accordance with paragraph 5.

6.2 The RTA secondee will use a unique identification number when accessing the DRIVES database for ISST purposes to make it clear that the access is for the ISST.

6.3 An ISST member who has previously been granted direct access to the DRIVES database in accordance with another Privacy Protocol or otherwise as authorised by law, will use the unique identification number assigned to him or her when accessing the DRIVES database for the ISST for the Permitted Purpose.

6.4 Except where paragraph 6.1 or 6.3 applies, an ISST member may not access RTA information directly.

7. Form of photographs released to ISST members

7.1 The RTA will release photographs to an ISST member in electronic form.

7.2 The RTA will not release photographs to an ISST member in hardcopy form unless it is served with a subpoena, search warrant or notice to produce in accordance with any applicable legislation.

7.3 The RTA secondee, or ISST member with direct access to the DRIVES database, may transfer a photograph from DRIVES to the limited access folder on the AFPNET Wide Area Network. The photograph will be transferred using an AFP approved security USB flash drive or using another method approved by the Privacy Commissioner.

7.4 The ISST members may print copies, for use by ISST members for the Permitted Purpose, of photographs released to the ISST members by the RTA.

8. Security of access to photographs

8.1 The RTA secondee must be assigned by the RTA a unique identification number to be used in combination with a unique password for the purpose of accessing photographs for the ISST.

8.2 The RTA secondee must not disclose or share his or her identification number or password with ISST agencies and ISST agencies must not seek to obtain or use the RTA secondee's identification number or password.

8.3 The ISST Coordinator will maintain an up to date register (electronic or otherwise) of all authorised ISST personnel who have been granted access to the information under this Protocol. The register will be the subject of regular audits in accordance with paragraph 10 of this Protocol.

9. Storage of photographs by ISST agencies

9.1 The ISST agencies will store photographs released to the ISST members by the RTA electronically in a limited access folder within the AFPNET Wide Area Network.

9.2 The ISST Coordinator will authorise each ISST member's access to the limited access folder and will ensure that a former ISST member ceases to have access when he or she ceases working for the ISST.

9.3 AFP ICT (information and communication technologies) support staff will have access to the limited access folder for the purposes of carrying out system administration duties.

9.4 The ISST members will delete from the limited access folder duplicate images and images that are no longer required for the Permitted Purpose.

9.5 The ISST Coordinator will review the limited access folder periodically to ascertain whether duplicate images and images that are no longer required for the Permitted Purpose have been deleted. This review will be included in the audit conducted in accordance with paragraphs 10.5, 10.6 and 10.7.

10. Audit of access to photographs

10.1 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 and function undertaken by a user (including viewing, exporting and printing), by reference to the user's unique identification number and password combination, and physical location, including a record of the sequence of records accessed and functions undertaken, and the date and time of every record accessed and function undertaken.

10.2 An AFP auditor independent of the ISST will conduct audits to ensure that access is in accordance with the Protocol.

10.3 The AFP auditor must conduct audits every three months.

10.4 The RTA must provide the AFP auditor with the electronic record of accesses and functions undertaken by the RTA secondee and ISST members. If the RTA General Manager, Government Information and Privacy Branch has accessed the DRIVES database at the request of an ISST member the electronic record of that access will also be provided to the AFP auditor for auditing purposes.

10.5 Audits conducted by the AFP auditor must review all accesses and verify whether:

(a) the photographs were released for the Permitted Purpose; and

(b) the photographs were accessed by a person with authorisation to access the DRIVES database; and

(c) the electronic register has been certified in accordance with paragraph 5; and

(d) duplicate photographs and photographs that are no longer required for a Permitted Purpose have been deleted in accordance with paragraph 9.4.

10.6 The AFP auditor will provide annual certification to the RTA and the Privacy Commissioner that the Protocol has been complied with and that the required controls remain in place and remain effective.

10.7 The RTA will also conduct an audit of all access to photographs by ISST members.

11. Privacy logs

11.1 Each time access is made to a customer's personal information on the DRIVES database, the access is written to a privacy log.

12. Complaints in relation to the release of photographs

12.1 Subject to the operation of the *PPIP Act*, complaints in relation to the release of photographs by the RTA to the ISST members may be made to the Privacy Commissioner, the RTA, or to one of the ISST agencies at the discretion of the complainant as authorised in this paragraph 12.

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

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

12.3 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
Email: privacy@rta.nsw.gov.au

12.4 The address for lodging a complaint with the NSWP is:

Commander, Fraud Squad, State Crime Command
New South Wales Police Force
Locked Bag 5102
PARRAMATTA NSW 2124

12.5 The address for lodging a complaint with the ACC is:

Manager Sydney Office
Australian Crime Commission
GPO Box 5260
SYDNEY NSW 2001

12.6 The address for lodging a complaint with the AFP is:

Care of the National Co-ordinator ISST
Locked Bag A3000
SYDNEY SOUTH NSW 1232

12.7 The address for lodging a complaint with the DIAC is:

Director, National Investigations Section (Canberra)
Department of Immigration and Citizenship
PO Box 25
BELCONNEN ACT 2616

12.8 The RTA must refer a complaint made by a member of the public in writing to the ISST members for investigation. While the investigation is ongoing, the RTA will not divulge any information to the complainant. On receipt of such a referral, the ISST members must investigate the complaint and report to the RTA, within one month, as to whether the photograph was accessed, when it was initially accessed, by whom it was initially accessed, the nature of the investigation for which it was initially accessed and whether the initial access was for the Permitted Purpose. The RTA must, in turn, advise the Privacy Commissioner of the outcome of the ISST members' investigations within one month of receiving the ISST members' report.

12.9 The RTA will report to the Privacy Commissioner as to whether it has identified any access to photographs for a purpose other than the Permitted Purpose.

12.10 If the ISST members fail to investigate a complaint and report to the RTA in accordance with paragraph 12.8, the RTA must report the matter to the Privacy Commissioner. If the ISST members fail to investigate and report in writing to the RTA within two months of the RTA referring the complaint to the ISST members, the matter must be referred to the Chief Executives of ISST agencies for resolution.

12.11 If an ISST agency or the RTA becomes aware of any significant failures of the audit capabilities of the DRIVES database, or any breaches of paragraph 8 of the Protocol ("Security of access"), it will immediately refer the matter to the Privacy Commissioner for any further action deemed appropriate.

12.12 The ISST agencies must cooperate with the investigation of any complaint by the RTA or the Privacy Commissioner.

13. Requests for release of photographs otherwise than in accordance with the Protocol

13.1 Any requests by the ISST members for the release of photographs otherwise than in accordance with this Protocol must be made pursuant to a subpoena, notice to produce or search warrant or as provided for by law.

14. Amendment of Protocol

14.1 The Privacy Commissioner may amend the Protocol at any time in writing.

14.2 The Privacy Commissioner will consult with the ISST agencies, prior to making any amendments to the Protocol, and will inform these persons, 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 [redacted]) [redacted]

) (Signature of Privacy Commissioner or delegate)

in the presence of [redacted]) [redacted] .....

(insert name of witness)) (Signature of witness)

SCHEDULE 1

LEGISLATION	REQUIRED AMENDMENTS
Road Transport (Driver Licensing) Act 1998 Part 5 Applies to photos held for driver licences, proof of age cards, firearms licences, security industry licences and weapons permits and allows disclosure upon making of a Regulation subject to the approval of a privacy protocol.	None
Photo Card Act 2005 Part 4 Applies to photo cards and allows disclosure as permitted under the Road Transport (Driver Licensing) Act Part 5	None
Licensing and Registration (Uniform Procedures) Act 2002 Div 3 of Part 4A Applies to photographs which the RTA has taken on behalf of another agency under a tri-partite "photo access arrangements" with the Director-General of the Department of Commerce under s.80C and allows disclosure as permitted under the Road Transport (Driver Licensing) Act Part 5. (Note that at the date of this Protocol the RTA does not hold any photographs the subject of the Licensing and Registration (Uniform Procedures) Act and this Protocol does not apply to such photographs).	Not applicable
Road Transport (Safety and Traffic Management) Regulation 1999 Clause 126I Applies to mobility parking permits and restricts photograph disclosure to the agencies listed in the Regulation subject to a privacy protocol.	The amending of this Regulation to permit disclosure to ISST Members for investigating or prosecuting serious identity related crime.
Commercial Agents and Private Inquiry Agents Act 2004 Applies to photos taken for the purposes of commercial agents and private inquiry licences issues by Police. Sections 12 and 36 provide for delegation (the latter by invoking the delegation power set out in s.30 of Licensing and Registration (Uniform Procedures) Act 2002). Police have delegated the photo management function to the RTA as a contractor which the RTA may accept under s.53 of the Transport Administration Act 1988. The Commercial Agents and Private Inquiry Agents Act makes	None

no provision in relation to disclosure of such photographs therefore the provisions of the Privacy & Personal Information Protection Act 1998 apply. Under s.23(5) of that Act disclosure is permitted for law enforcement purposes. (Note the RTA is considering requesting that Road Transport (Driver Licensing) Act 1998 Part 5 be amended to include these photos and remove them from the operation of the Privacy & Personal Information Protection Act 1998)	