

International regulators boost privacy investigations and enforcement co-operation

The Office of the Australian Information Commissioner (**OIAC**), as a member of the Global Privacy Enforcement Network (**GPEN**), has signed a Memorandum of Understanding with enforcement agencies from 7 other countries that will provide for information sharing across international jurisdictions during the course of privacy investigations.

GPEN Alert System

The Memorandum of Understanding provides for a new information sharing system called GPEN Alert. Based on a system already in place in the US, GPEN Alert is a multilateral system that will enable GPEN members to alert other members about their investigations and to find out whether other members are investigating the same company or practice, confidentially.

The initial participants in GPEN Alert are:

- Australia: OAIC
- Canada: Office of the Privacy Commissioner
- Ireland: Office of the Data Protection Commissioner
- Netherlands: Data Protection Authority (“College Bescherming Persoonsgegevens”)
- New Zealand: Office of the Privacy Commissioner
- Norway: Data Protection Authority (“Datatilsynet”)
- United Kingdom: Information Commissioner’s Office

- United States of America: Federal Trade Commission

It is anticipated that further GPEN members will participate in GPEN Alert.

The arrangement re-enforces the co-operation between global privacy enforcement authorities that has begun to develop in international privacy and data protection investigations, as well as in other commercial regulatory enforcement activities.

Background

International business and consumer activity increasingly involves the free flow of information across various jurisdictions. The information of corporations and personal information of individuals can be held by entities in multiple jurisdictions. Given the global reach of information held by companies, and the ability of hackers to be able to access that information no matter where they or the information is located, companies are becoming increasingly exposed to the risk of multi-jurisdictional data breaches.

Key issues

- The OIAC has signed a Memorandum of Understanding with enforcement agencies from 7 other countries that will provide for information sharing across international jurisdictions during the course of privacy investigations.
- GPEN Alert will enable GPEN members to alert other members about their investigations and to find out whether other members are investigating the same company or practice, confidentially.
- Recent investigations into data protection and privacy breaches demonstrate the global nature of such breaches and the need for cross jurisdictional regulatory co-operation.

Recent privacy investigations

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Earlier this year the dating website Ashley Madison, whose parent company (Avid Life Media Inc) is based in Canada, experienced a highly publicised data breach where the personal information of the website's users, reportedly including that of clients in Australia, was obtained and released by hackers. This incident has resulted in lawsuits in the US and Canada against Avid Life Media Inc. On 25 August 2015, the OIAC announced that it commenced an investigation, to be conducted jointly with the Canadian regulator.

In 2013 Adobe, the software company, experienced a cyber attack that affected 38 million of its customers including 1.7 million customers in Australia. In June 2015 the Australian Privacy Commissioner found the conduct of Adobe to be a breach of the requirement set out in the Privacy Act (Cth) (as it then was) that an organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure¹. The Commissioner conducted his investigation of the incident in co-operation with the Data Protection Commissioner of Ireland and the Office of the Privacy Commissioner of Canada and referred to the analysis of the data breach conducted by those regulators in making his findings.

Implications

The GPEN Alert system will enhance the co-ordination between enforcement authorities that already takes place in cross-jurisdictional investigations. In its initial stages, the GPEN Alert system provides for member authorities to notify other members of their privacy investigations, for purposes of potential co-ordination and co-operation. It is envisaged that the GPEN Alert functions will also extend to allow the sharing of confidential, non-public enforcement information relating to specific investigations and enforcement matters. This information sharing will maximise investigation efficiency and prevent duplication in the course of investigations.

As information relating to breaches becomes more readily available to regulators, it is likely that we will see an increase in the number of cross-border investigations into privacy and data protection breaches.

¹ The Privacy Act (Cth) has since been amended to extend the obligation to protect information the organisation holds from misuse, *interference* and loss and from unauthorised access, modification or disclosure (Australian Privacy Principle 11.1)

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