

Immigration Data Breach Privacy Complaint

Review of the Determination made by the Commissioner in January 2021

Summary

On 11 January 2021, the Australian Information and Privacy Commissioner (**Commissioner**) made a Determination relating to a data breach by the former Department of Immigration and Border Protection.

In February 2021, an application was lodged with the Administrative Appeals Tribunal seeking a review of the Commissioner's Determination. In response to that application the Administrative Appeals Tribunal will be reviewing all aspects of the Determination, except for the finding that the former Department of Immigration and Border Protection engaged in conduct interfering with the privacy of those affected by the data breach, and that it must not repeat that conduct.

On 21 June 2021, the Administrative Appeals Tribunal decided to 'stay' (that is, put on hold) the operation and implementation of the Commissioner's Determination until the Tribunal has made a decision in response to the application for review, and that decision has come into operation.

That means that no assessment or payment of compensation under the Determination is currently taking place. At this stage the Tribunal's review is expected to be completed no earlier than December 2021, and possibly not until 2022.

After the completion of its review, the Administrative Appeals Tribunal can confirm, set aside, or change those parts of the existing Determination which it is reviewing. Once it does that, the OAIC will publish another update.

Further background information is set out below.

Background

On 10 February 2014, the Department of Immigration and Border Protection (now the Department of Home Affairs) (**Department**) published, in error, a detention report on its website that contained embedded personal information (**Data Breach**).

The report contained the personal information of all 9,258 persons who were in immigration detention on 31 January 2014.

On 30 August 2015, a representative complaint was made to the Office of the Australian Information Commissioner (**OAIC**) on behalf of all persons whose information was published by the Department in error (**Class Members**). The complaint requested the Department provide an apology and compensation.

On 9 February 2018, the original representative complainant's solicitor advised the OAIC that their client had passed away. On 10 October 2018 the Commissioner made a decision to replace the original representative complainant with another class member (the **representative complainant**) pursuant to s 38B(1) of the *Privacy Act 1988* (Cth) (**Privacy Act**).

On 11 January 2021, the Commissioner issued a determination under section 52 of the Privacy Act (**Determination**).

The Determination found that:

- as a result of the Data Breach, the Department had engaged in conduct that interfered with the privacy of an individual; and

- Class Members who made submissions and/or provided evidence of loss or damage in response to the Notice (**Participating Class Members**) are to be paid compensation in the manner determined by the Commissioner.

The Commissioner determined that compensation is to be paid to Participating Class Members.

You can read the determination online [here](#).

Stay of the Determination

On 24 February 2021, a Class Member filed an application with the Administrative Appeals Tribunal (the **Tribunal**) seeking review of the Determination on behalf of all persons whose interests are affected by the Determination (the **Application**). Since then, the representative complainant has also been joined to the proceeding.

The Application seeks review of:

- the Commissioner's declaration that it is inappropriate for further action to be taken in relation to class members who did not make submissions and/or provide evidence of loss or damage (the **Non-Participating Class Members**);
- the Commissioner's compensation scheme including amount(s) payable to Participating Class Members; and
- the Commissioner's decision not to include a declaration requiring the Department to provide translation services to Class Members during the course of implementing the compensation scheme.

There is no dispute about – and the Tribunal will not be reviewing - the finding that the Department engaged in conduct interfering with the privacy of those affected by the data breach, and that it must not repeat that conduct.

The Tribunal provides independent merits review of administrative decisions and has the power to set aside, vary or affirm the Determination. In light of that function, on 21 June 2021, the Tribunal has ordered that the operation and implementation of the Determination be stayed until the Tribunal reaches its decision in relation to the Application.

What happens now?

If you are one of the Participating Class Members, the Department's assessment and payment of compensation to you is **on hold** until the Tribunal makes a decision in relation to the Application.

If you are a Class Member, and you wish to seek free advice or information about how the proceeding may affect you, you may contact the organisations listed [here](#).

If you have further enquiries about this matter, you may contact the OAIC by email to enquiries@oaic.gov.au.