

JOHNSON WINTER & SLATTERY  
LAWYERS

Partner:  
Email:  
DocID:

s 47F

73536070.3

26 April 2018

Ms Angelene Falk  
Acting Privacy Commissioner  
Office of the Australian Information Commissioner  
Level 3, 175 Pitt Street  
SYDNEY NSW 2001

POST & EMAIL

Dear Ms Falk

**Representative Complaint about Facebook Inc and Facebook Australia Pty Ltd**

- 1 We act on behalf of Mr Edward Poljak (**Mr Poljak**).
- 2 We are instructed, by Mr Poljak to make on his behalf a complaint pursuant to section 36 of the *Privacy Act 1988* (Cth) (**Privacy Act**) against Facebook Inc. and Facebook Australia Pty Ltd (together, **Facebook**) in relation to the conduct described at paragraphs 8 to 13 below (**Complaint**).
- 3 Mr Poljak's Complaint is also made on behalf of the other individuals the subject of the conduct complained of, namely, the, at least, 311,127 Australian users of Facebook who have suffered an interference with their privacy due to the improper use of Facebook data by Cambridge Analytica which is further described at paragraphs 8 to 13 below (**Facebook Privacy Breach**).
- 4 We confirm that the conditions outlined in section 38(1) of the Privacy Act for a representative complaint are met because:
  - (a) the other individuals (class members) have the same complaint against Facebook;
  - (b) all of the complaints arise in respect of, and arise out of, the Facebook Privacy Breach; and
  - (c) all of the complaints give rise to a substantial common issue of law and fact (described further below).
- 5 For completeness, **attached** is a copy of your office's Privacy Complaint Form for Mr Poljak completed with appropriate cross-references to this letter.

**Nature of the Complaint**

- 6 We set out in paragraphs 8 to 12 below, information from publicly available sources that sets out the relevant background for the Complaint.
- 7 On 17 March 2018, a story appeared in the *New York Times* and *The Observer* newspapers stating that a company, "Cambridge Analytica", had accessed the Facebook profiles of, and acquired data from, approximately 50 million users. The data harvest was a result of approximately 270,000 Facebook users accessing a website or an app called "This Is My Digital Life" (**Life App**) and logging into the Life App using their Facebook login details.

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- 8 The Life App was built by an academic researcher, Aleksandr Kogan and Global Science Research Ltd (GSR), and published by a company associated with Dr Kogan. The approximately 270,000 individuals who downloaded the Life App apparently provided their consent to GSR and/or Dr Kogan accessing information associated with their Facebook profile such as the city they set on their profile and/or content they had liked.
- 9 In addition to the 270,000 original users, the Life App also collected the information of the users' Facebook friends, effectively harvesting, without permission, a large of pool of data. This data was subsequently acquired by Cambridge Analytica. The information is said to include Facebook users':
- (a) Political views;
  - (b) Religious beliefs;
  - (c) Friends; and
  - (d) "Likes".
- 10 We are instructed that Mr Poljak did not access the Life App, however, one or more of the Mr Poljak's Facebook friends did, and as a consequence, Mr Poljak's private information was provided to Dr Kogan and/or GSR and subsequently acquired by Cambridge Analytica.
- 11 Sometime in late 2015, Facebook became aware that information had been harvested beyond the 270,000 original users of the Life App. At that time, Facebook failed to alert users and took only limited steps to recover and secure the information. We are instructed that Mr Poljak was not contacted by Facebook at this time.
- 12 On or about 9 April 2018, Facebook provided a message to Facebook users which were affected by the Facebook Privacy Breach. At least 311,127 Australian users of Facebook have been affected by the Facebook Privacy Breach.
- 13 Mr Poljak is an affected Facebook user and received a message from Facebook to that effect. A copy of the message received by Mr Poljak is **Attachment A** to this letter.

### Complaint to Facebook

- 14 As at the date of this letter, Mr Poljak has not made a complaint to Facebook.
- 15 In the circumstances of the Facebook Privacy Breach, we submit that you should not require Mr Poljak to first complain to Facebook. As you are aware, section 40(1A) of the Privacy Act states that you may decide to investigate the Complaint if you consider that it was not appropriate for Mr Poljak to complain to Facebook.
- 16 Such a course is particularly apt in respect of the Facebook Privacy Breach as:
- (a) you have already determined and publicly declared, on your own initiative that it is necessary to investigate the Facebook Privacy Breach<sup>1</sup>;
  - (b) the circumstances of the Facebook Privacy Breach have already received widespread global public attention; and
  - (c) it is not in the interests of justice that individual users make complaints to Facebook about their concerns; rather the interests of justice are best served by way of a representative complaint that ensures fairness and equity in the process.

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<sup>1</sup> Statements by Ms Falk on 20 March 2018 and 5 April 2018, published on the Office of the Australian Information Commissioner website: <https://www.oaic.gov.au/media-and-speeches/statements/facebook-and-cambridge-analytica>.

**Nature of the Relief Sought**

- 17 Mr Poljak seeks the following relief on behalf of himself and the class members affected by the Facebook Privacy Breach:
- (a) That you enquire as to the circumstances that lead to the Facebook Privacy Breach;
  - (b) That you identify to what extent there has been a breach by Facebook of Australian Privacy Principles in relation to information relating to Mr Poljak and the class members;
  - (c) That you make a determination under section 52(1) in which you make:
    - (i) declarations that Facebook has engaged in conduct constituting interference with the privacy of an individual and must not repeat or continue such conduct;
    - (ii) a declaration that Facebook should apologise to the class members;
    - (iii) a declaration that Facebook must take specified steps to ensure that the conduct is not repeated and/or continued;
    - (iv) a declaration that Facebook must perform any reasonable act you deem necessary or take any course of conduct you consider appropriate to redress any loss or damage suffered by Mr Poljak and the other class members;
    - (v) a declaration that Mr Poljak and the other class members have suffered, amongst other loss and damage, injury to their feelings and humiliation as a result of the Facebook Privacy Breach; and
    - (vi) a declaration that Mr Poljak and each of the other class members are entitled to a specified amount by way of compensation for the loss and damage that they have suffered by reason of the Facebook Privacy Breach; and
    - (vii) provision for the payment of the money to the complainants concerned.
- 18 Having regard to the proposed relief sought in paragraph 17(c)(vi) above, Mr Poljak proposes that \$10,000 be awarded to each class member. The amount of \$10,000 is reasonable having regard to:
- (a) the global size and scale of Facebook;
  - (b) the nature and extent of the Facebook Privacy Breach; and
  - (c) the need to provide a suitable deterrent to Australian and global corporations from engaging in such data breaches in the future.

**Questions of law and fact common to all class members**

- 19 The following questions of law and fact are common to Mr Poljak and all individuals (class members) affected by the Facebook Privacy Breach:
- (a) Has Facebook breached the Australian Privacy Principles contained in schedule 1 of the Privacy Act?
  - (b) Are Facebook's practices, procedures and systems consistent with the requirements of the Privacy Act?

**Benefits of a representative complaint**

- 20 As referred to above, we note that you have already commenced your own investigation into the Facebook Privacy Breach.
- 21 We are instructed to confirm that if you are minded to allow the Complaint to proceed as a representative complaint, our client will provide appropriate undertakings to the effect that he will:
- (a) write to class members and/or take appropriate steps, including advertising, to bring the existence of the Complaint to the attention of potential class members;
  - (b) having identified potential class members, inform them that they were included in the representative complaint and advise them of their right to "opt-out" should they wish to do so; and
  - (c) in the event that you make a determination in accordance with section 52(1)(b)(iii), seek appropriate directions from you in relation to:
    - (i) the manner in which a class member is to establish their entitlement to the payment of any amount under the determination; and
    - (ii) the manner for determining any dispute regarding the entitlement of a class member to the payment; and
  - (d) comply with any other reasonable requirement you might have.

**Next steps**

- 22 As you will appreciate, the circumstances of the Facebook Privacy Breach are continuing to evolve and on that basis, we reserve our clients' rights to provide further additional information and/or to amend the Complaint.
- 23 In the event that you determine to investigate the Complaint, we are instructed to request that you hold a hearing in accordance with section 43A(1) of the Privacy Act prior to making any determination pursuant to section 52(1) of the Privacy Act.
- 24 In the interim, please do not hesitate to contact us if you would like to discuss the Complaint further or if we may be of any further assistance.

We look forward to hearing from you.

Yours faithfully



Attachment A

The screenshot shows the Facebook Help Center interface. At the top, there is a search bar with the text "Hi Edward, how can we help?" and a "Return to Facebook" button. Below the search bar is a navigation menu with links for Home, Using Facebook, Managing Your Account, Privacy and Safety, Policies and Reporting, and Support Inbox. On the left side, there is a vertical list of navigation options: Creating an Account, Friending, Your Home Page, Messaging, Photos, Videos, Pages, Groups, Events, Payments, Apps, Facebook Mobile and Desktop Apps, and Accessibility. The main content area features the article title "How can I tell if my info was shared with Cambridge Analytica?" with a "Share Article" link. The article text reads: "Recently, we shared information about the potential misuse of your Facebook data by apps and websites. We also shared plans for how we're taking action to prevent this from happening in the future. Check below to see if your information may have been shared with Cambridge Analytica by the app 'This Is Your Digital Life.'" Below this is a section titled "Was My Information Shared?" which states: "Based on our investigation, you don't appear to have logged into 'This Is Your Digital Life' with Facebook before we removed it from our platform in 2015. However, a friend of yours did log in. As a result, the following information was likely shared with 'This Is Your Digital Life':" followed by a bulleted list: "• Your public profile, Page likes, birthday and current city".

## Attachment B



Australian Government

Office of the Australian Information Commissioner

# Privacy Complaint Form

The Office of the Australian Information Commissioner (the OAIC) can investigate complaints from individuals about Australian Government and Norfolk Island agencies, and private sector organisations covered by the Privacy Act 1988 (Cth). We are also responsible for handling privacy complaints about ACT Government agencies. The OAIC does not investigate privacy complaints about State and Northern Territory Government agencies or local councils. For information about who you can complain to for those entities, please see our website at [www.oaic.gov.au/privacy/other-privacy-jurisdictions/state-and-territory-privacy-law](http://www.oaic.gov.au/privacy/other-privacy-jurisdictions/state-and-territory-privacy-law).

If you are unsure about whether you can complain to the OAIC please use the 'complaint checker' on our website at <http://www.privacy.gov.au/complaints/who/complaintchecker> or contact our enquiries line on 1300 363 992.

The OAIC can also investigate complaints under privacy codes, as well as the spent convictions scheme, tax file number data matching, health identifiers, anti-money laundering and personal property securities law.

A complaint under any of these laws must be submitted in writing, either via this form, an email, by fax or in a letter. If you have trouble completing this form, please send an email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au) or ring our enquiries line on 1300 363 992.

### Your personal information

If you have any questions about the personal information we collect and how we will handle your information, please contact the OAIC or see our privacy policy available on our website.

### Use and disclosure of your information

We will use the information you have provided to assess your complaint, conduct the investigation and conciliate. If the OAIC makes inquiries into or investigates your complaint, we will usually disclose the information you give us, including a copy of your complaint, to the entity you have complained about (the respondent). We may also disclose your information to others who have information relevant to your complaint, if necessary. If we think we may need to disclose your information to an overseas entity to handle your complaint, we will discuss this with you first.

In case of a challenge to a decision by the OAIC, we may need to disclose some information to a review body, for example a court or tribunal.

### Collection of your information

We may need to collect further information from you in order to investigate your complaint. If you do not provide this information to the OAIC, it may affect how we handle your complaint. In some circumstances, it may mean we decide not to investigate your complaint further.

We will usually collect information about you from the respondent. We may also collect information about you from others if they have information relevant to your complaint.

### Accessing your information

If you would like to access to the information about you that the OAIC holds, please contact the enquiries line. More information is available on the Access our information page on our website.

Before the OAIC can investigate your complaint you must first have complained to the agency or organisation and given it an opportunity to resolve your complaint. This will generally involve writing to the agency or organisation and giving it 30 days to respond.

Please send the completed form to us by:

Post	Email	Fax
Director of Privacy Case Management GPO Box 5218 Sydney NSW 2001	<a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>	+61 2 9284 9666

## About You – the Complainant

Name: **Mr Edward Poljak**

Preferred contact method (you must provide at least one contact method)

Email     Phone     Post     Mobile phone     Other

Phone (daytime) .....

Mobile.....

Email **s 47F**

Postal Address .....

..... Postcode .....

Other contact details (eg. Fax or international address).....

## Previous Dealings

If you have lodged a complaint or enquiry with the OAIC before please provide your previous reference number (eg C00001 or E11/00001)

.....

## Representative

Do you have someone that you would like to represent you in your complaint?

Yes     No

If yes:

What is your representative's relationship with you? (eg. lawyer) : **Solicitor**

Representative name: **s 47F**

Preferred contact method (you must provide at least one contact method)

Email     Phone     Post     Mobile phone     Other

Phone (daytime) s 47F

Mobile s 47F

Email s 47F

Postal Address: **Johnson Winter & Slattery, level 24, 20 Bond Street, Sydney NSW 2000**

Other contact details (eg. Fax or international address).....  
.....

### Have you complained to the Respondent?

I have complained to the agency or organisation about my privacy issue and given them 30 days to respond.

Yes     No

It is only in exceptional circumstances that the OAIC will investigate complaints where you have not complained to the respondent. If no, please explain why it is not appropriate for you to complain to the respondent. The OAIC may still decline to investigate your complaint until you have complained to the respondent

**Please see paragraphs 14 to 16 of the letter from Johnson Winter & Slattery to the Acting Privacy Commissioner dated 26 April 2018.**

### The Respondent - who you are complaining about

I am complaining about

Name of Respondent organisation / agency: **Facebook, Inc and Facebook Australia Pty Ltd**

**Facebook, Inc  
1601 Willow Road  
Menlo Park, California 94025  
UNITED STATES OF AMERICA**

**Facebook Australia Pty Ltd  
Leve 18, 77 King Street  
Sydney NSW 2000  
AUSTRALIA**

### Have you taken this complaint to another dispute resolution body?

Yes     No

The OAIC may not investigate a complaint if another dispute resolution body is already dealing with it. Please give details of your complaint and attach copies of relevant documents.



Name of the dispute resolution body you complained to .....

Date of your complaint ...../...../.....

Is it dealing with your complaint?

Yes

No

Please provide a brief description of your complaint to the other dispute resolution body and explain why it is or is not dealing with your complaint.

**Not applicable**

## **Your Complaint**

Please describe how you think your privacy has been interfered with.

It will assist us if you can explain:

- What happened
- When it happened (including dates)
- What personal information of yours was affected
- Who did it (include names of individuals involved if known)
- How and when you found out about it.

The clearer your explanation is the more easily we will be able to assist you. Please feel free to attach additional information.

**Please see paragraphs 6 to 13 of the letter from Johnson Winter & Slattery to the Acting Privacy Commissioner dated 26 April 2018.**

## **Resolution**

What action would you like the Respondent to take to resolve your complaint?

The OAIC generally tries to resolve complaints through conciliation between you and the respondent. Please note that the OAIC is unable to impose financial penalties.

**Please see paragraphs 17 to 18 of the letter from Johnson Winter & Slattery to the Acting Privacy Commissioner dated 26 April 2018.**

## **Supporting information**

You may attach relevant information that supports the complaint. For **all** complaints, please attach any correspondence with the respondent about the privacy complaint.

### **For complaints about credit information files**

If your complaint is about an incorrect credit information file please attach a copy of your complete credit file. We will be unlikely to progress the complaint without it.

If you do not have a copy of your complete credit file we will need to obtain a copy on your behalf.

Do you give permission for OAIC staff to obtain a copy of your credit information file from either Veda Advantage Information Services and Solutions, Dun & Bradstreet or the Tasmanian Collection Service?

Yes

No

**Please sign and date this form**

Signature: ..... Date 26/04/2018

**s 47F** [REDACTED], solicitor for Mr Edward Poljak)

JOHNSON WINTER & SLATTERY  
LAWYERS

GPO BOX 9831 IN YOUR CAPITAL CITY

BY HAND

Ms Angelene Falk  
Acting Privacy Commissioner  
Office of the Australian  
Information Commissioner  
Level 3, 175 Pitt Street  
SYDNEY NSW 2001

*Noted 27.4.2018  
Please provide to  
Aimee Grierson  
cc: staff*

15-2 20/4/18 FINEVTE

