



‘HS’ and AMP Life Ltd [2015] AICmr 81 (17 December 2015)

Determination and reasons for decision of
Acting Australian Information Commissioner, Timothy Pilgrim

Applicant:	‘HS’
Respondent:	AMP Life Limited
Determination date:	17 December 2015
Application number:	CP12/07340
Catchwords:	Privacy — Privacy Act — Collection of complainant’s personal information — National Privacy Principles (NPP) — NPP 1.5 – Collection of complainant’s tax file number (TFN) — Tax File Number (TFN) Guidelines 1992 — TFN Guideline 5 Privacy — Privacy Act — Security of personal information — NPP 4.1 — Disclosure of TFN — Tax File Number (TFN) Guidelines 1992— TFN Guideline 2 Storage, security and destruction of TFN information — Tax File Number (TFN) Guidelines 1992 — TFN Guideline 6 Compensation awarded — (CTH) <i>Privacy Act 1988</i> s 52

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Summary

1. AMP Life Limited (AMP) interfered with the complainant's (Mr X) privacy by collecting their personal financial information and disclosing the complainant's Tax File Number (TFN) to a third party, without their knowledge or authorisation. These actions constituted a breach of National Privacy Principles (NPP) 1.5 and 4.1 and Tax File Number (TFN) Guidelines 2, 5 and 6.
2. Within 14 days from the date of this determination, AMP shall:
 - apologise in writing to the complainant,
 - pay the complainant \$10,000 for the loss caused by the interference with the complainant's privacy.

Background

3. The following sequence of events is based on the information provided by the applicant and the respondent and as accepted by the Office of the Australian Information Commissioner (OAIC).
4. AMP provided income protection insurance to the complainant's wife (Mrs X). In August 2005, Mrs X made a claim for income protection benefits requiring AMP to assess her entitlement to receive benefits.
5. In December 2008, Mrs X completed an AMP form to provide authority for release of personal and medical information related to her claim. On the form, Mrs X added handwritten notes that the release was *'to do specifically with this claim only'* and *'unless in joint A/C – then you must seek permission of husband Re: Privacy act¹'*.
6. In May 2009, AMP instructed an external forensic accountant (the forensic accountant) to undertake a forensic accounting review of Mrs X's income in the context of benefit calculations for the claim lodged by Mrs X.
7. On 19 October 2009, AMP wrote to Mrs X regarding her claim and noted that:

in the interest of progressing this matter and your claim, AMP is prepared to waive the request for the individual income tax returns and assessments notices for Mr X at this time. AMP will agree to undertake a review of the requested information, excluding Mr X personal income tax information, to determine your potential benefit entitlements.
8. On 19 February 2010, the forensic accountant engaged by AMP attended the office of the accountant previously utilised by the complainant and his wife. During this visit, the forensic accountant obtained financial information regarding the complainant and his wife including the complainant's individual income taxation returns for 2004 to 2007².

¹ Completed authority dated 13 December 2008.

² In documentation provided to the OAIC AMP (letter to the OAIC of 20 May 2013) and the forensic accountant (forensic review report of 14 May 2012) noted that the complainant's financial information was obtained from the accountant. In a letter dated 31 January 2012, the accountant stated that he remembered meeting the forensic accountant but did not recall his name, that the 'statements made by the [forensic] accountant are incorrect', and that no files or ABN and partnership returns were provided. However, given

9. Mr X advises that the accountant had not been the accountant for himself and/or Mrs X individually or jointly since 2008 and that Mr X had not provided any consent or authority for the accountant to disclose his personal financial information and his business' financial information to AMP or the forensic accountant.
10. In a letter dated 4 May 2010, Mrs X advised AMP that *'I am constantly being asked for things to do with my husband and he is adamant that no one will be invading his privacy and you will only be getting things to do with [removed] business'*.
11. In August 2010, Mrs X made a complaint to the Financial Ombudsman Service (FOS) regarding AMP's administration of her claim.
12. During the course of the FOS investigation in 2011, Mrs X received documentation from FOS which contained a list of documents that FOS was relying on in relation to her claim. It appears that AMP provided a response to FOS on 14 January 2011 which included 693 attachments including information about Mr X's business and personal financial information including a number of personal tax returns.³ The list of documents included information about Mr X's personal and business accounts.
13. On 7 September 2011 and on 19 September 2011, the complainant wrote to AMP to ask where AMP obtained accounts related to his personal and business affairs.
14. In a letter dated 29 September 2011, AMP advised Mr X that information relating to his financial affairs was disclosed to AMP in or about February 2010 when 'AMP's external forensic accountant met with your previous accountant to discuss the above claim'.
15. In a letter dated 31 January 2012, Mr X's previous accountant advised Mr X that while he recalled meeting with the forensic accountant, he disputed the forensic accountant's reporting of the meeting and that information was disclosed or provided to the forensic accountant.
16. In May 2012, Mr X gained access to reports from the forensic accountant which noted the forensic accountant had access to Mr X's financial information including tax returns which is when Mr X identified that his privacy may have been breached.
17. On 30 November 2012, the complainant lodged a complaint under s 36 of the Privacy Act⁴ in relation to AMP's conduct.

Privacy complaint and investigation

18. Mr X alleges that AMP interfered with his privacy by:
 - collecting his personal information without his knowledge or authorisation, and
 - disclosing his personal information, including his TFN, to the FOS without his knowledge or authorisation.
19. Based on the information before me, and the fact that AMP had possession of the documents, I am satisfied that the forensic accountant collected financial information

the documents were in AMP's possession, I am satisfied it is likely the documents were obtained from Mr X's accountant in the manner described by the forensic accountant and AMP.

³ FOS document list attached to letter to Mrs X of 21 December 2011.

⁴ The Privacy Act as it was at 13 December 2011, prior to the reforms introduced on 12 March 2014.

of Mr X and that information was also provided to FOS. This complaint deals only with the personal information, that is individual tax returns and the TFN of Mr X, that was allegedly collected and disclosed by AMP.

20. The complainant is seeking a letter of apology, changes to AMP's procedures for the collection of personal information and financial compensation to redress the breach.
21. On 13 December 2013, the OAIC opened an investigation into the complainant's allegations under s 40(1) of the Privacy Act. As this matter relates to events that occurred prior to reforms to the Privacy Act that commenced on 12 March 2014, the complaint has been dealt with under the Privacy Act as it was at the time the acts and practices are alleged to have occurred.
22. As part of its investigation, written submissions and information were provided by both parties. The OAIC also obtained from FOS copies of documents provided to FOS by AMP. This included a number of Mr X's personal income tax returns which included Mr X's TFN in an unredacted format.
23. The parties endeavoured to resolve the matter through an extended conciliation process. The matter was not able to be resolved through conciliation and I decided to determine the matter under s 52 of the Privacy Act. Section 52 of the Privacy Act provides that, after investigating a complaint, I may make a determination:
 - dismissing the complaint (s 52(1)(a)); or
 - finding the complaint substantiated and declaring:
 - that the respondent has engaged in conduct constituting an interference with the privacy of an individual and should not repeat or continue such conduct (s 52(1)(b)(A)); and/or
 - the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant (s 52(1)(b)(ii)); and/or
 - the respondent is entitled to compensation for any loss or damage suffered by reason of the act or practice the subject of the complaint (s 52(1)(b)(iii)); and/or
 - it would be inappropriate for any further action to be taken in the matter (s 52(1)(b)(iv)).

Information taken into consideration

24. In making this determination, I considered the following material:
 - the Privacy Act as at the time of the collection and disclosure, with specific reference to NPP 1.5 (collection of personal information) and NPP 4.1 (security of personal information)
 - the *Tax File Number Guidelines 1992* (TFN Guidelines) issued under the Privacy Act, particularly Guidelines 2, 5 and 6 (disclosure, collection and storage, security and disposal of TFN information)⁵

⁵ On 4 March 2015, the TFN Guidelines were consequently replaced by the *Privacy (Tax File Number) Rule 2015*.

- *Guidelines to the National Privacy Principles*⁶
- information provided by the complainant, including his complaints and various submissions and supporting medical evidence, provided to the OAIC during the investigation process
- information provided by AMP, including submissions to the OAIC
- information obtained through FOS, and
- privacy determinations and case law relating to the Privacy Act.

Legislative framework

25. The NPPs outlined the standards for organisations handling personal information at the time of these allegations.⁷
26. Under s 16A(2) of the Privacy Act, an organisation was prohibited from doing an act, or engaging in a practice, that breaches an NPP.
27. 'Organisation' under s 6C of the Privacy Act includes:
 - (a) an individual; or
 - (b) a body corporate; or
 - (c) a partnership; or
 - (d) any other unincorporated association; or
 - (e) a trust

that is not a small business operator, a registered political party, an agency, a State or Territory authority or a prescribed instrumentality of a State or Territory.

28. AMP is an 'organisation' within the meaning of s 6C(b).

Collection of personal information

Alleged breach of NPP 1.5

29. The complainant submits that he was not notified by AMP of its intention to collect his personal information, nor was he directly notified at the time or after the collection took place. The complainant submits that he was only made aware of the collection

⁶ *Guidelines to the National Privacy Principles* (2001). The Guidelines to the National Privacy Principles (NPP) were developed to help organisations to comply with the NPPs and to avoid interfering with an individual's privacy. The Guidelines indicate some factors the Commissioner may take into account when handling a complaint. The guidelines are advisory only and not legally binding. The Guidelines are available at <http://www.oaic.gov.au/privacy/privacy-resources/privacy-guides/guidelines-to-the-national-privacy-principles>.

⁷ The NPPs were contained in Schedule 3 of the Privacy Act. The Australian Privacy Principles replaced the National Privacy Principles (NPPs) and the Information Privacy Principles (IPPs) from 12 March 2014 (except for ACT Government agencies, who continue to be covered by the IPPs). These new APPs apply to both Australian Government agencies and organisations covered by the Privacy Act.

via documents provided by FOS in response to his wife's complaint about the administration of her income protection claim.

30. NPP 1.5 relates to the collection of personal information from a third party and provides that:

If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

31. NPP 1.3 provides:

At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of:

- a. the identity of the organisation and how to contact it; and
- b. the fact that he or she is able to gain access to the information; and
- c. the purposes for which the information is collected; and
- d. the organisations (or the types of organisations) to which the organisation usually discloses information of that kind; and
- e. any law that requires the particular information to be collected; and
- f. the main consequences (if any) for the individual if all or part of the information is not provided.

32. As I have noted in previous determinations,⁸ the term 'reasonable' and 'reasonably' are not defined in the Privacy Act. The Macquarie Dictionary relevantly defines these terms as 'agreeable to reason or sound judgement'. What is reasonable is a question of fact in each individual case.

33. The *Guidelines to the National Privacy Principles* issued by the then Office of the Federal Privacy Commissioner in September 2001 (the NPP Guidelines)⁹ refer to what are 'reasonable steps':

The steps an organisation would need to take to make an individual aware of the matters listed in NPP 1.3 when it is not collecting directly from them will depend on the circumstances. Deciding what are reasonable steps where an organisation collects personal information indirectly involves balancing factors of a similar kind to those outlined for NPP 1.4.¹⁰

34. The factors listed in the Guidelines in relation to NPP 1.4 include:

- whether it is possible to collect the information directly;

⁸ See for example 'EZ' and 'EY' [2015] AICmr 23 (27 March 2015) at [31].

⁹ These guidelines have been superseded by the APP *Guidelines to the National Privacy Principles*, page 35, Guidelines which apply from 12 March 2014.

¹⁰ *Guidelines to the National Privacy Principles*, page 29.

- whether a reasonable individual might expect information about them to be collected directly or indirectly;
- how sensitive the information is;
- the cost to an organisation of collecting directly rather than indirectly;
- the privacy consequences for the individual if the information is collected indirectly rather than directly; and
- what is accepted practice (by consumers and the industry).

Findings

35. AMP has acknowledged to the OAIC that it had not directly notified the complainant of the matters set out in NPP 1.3, either before, during or after the collection of his personal information from the complainant's previous accountant.

36. I also note that in a letter dated 19 October 2009 to Mrs X, AMP stated:

It is important to highlight however that AMP reserves the right to again request the personal income tax returns and notices of [the complainant] if the business and/or partnership records indicate a need for the information to assist in understanding the source and nature of income generated. Should this become necessary, you will be provided with clear reasons to demonstrate the need for the information.

37. There is no information before me to suggest that the factors listed at paragraph 34 or any other factors were considered by AMP in deciding not to advise Mr X of its intention to collect the information directly from Mr X. In my view, it appears clear that if such factors had been considered the decision may have been made that it was reasonable and practicable to collect this information directly from Mr X.

38. AMP did not take any steps to advise the complainant that the collection was going to take place or actually took place as required under NPP 1.3. Based on the information before me AMP did not take reasonable steps to notify the complainant of the matters listed in NPP 1.3, thereby breaching NPP 1.5

Alleged breach of TFN Guideline 5

39. The complainant specifically raised the issue of his TFN being collected. In light of my findings in relation to NPP 1.5, and the confirmation that the FOS was in fact provided the complainant's TFN, I have also considered whether AMP breached the *Tax File Number Guidelines 1992* (TFN Guidelines).

40. The complainant alleges that his TFN was collected on or around 19 February 2010. At the time of the allegations raised in the complaint, TFN Guidelines 1992 were in place.¹¹

41. The key purposes of the TFN Guidelines are to regulate the use and disclosure of individuals' TFNs to circumstances limited by specific legislative authority; and to prevent TFNs from being used for unintended purposes, including as a national

¹¹ These Guidelines commenced on 3 March 2004 and ceased operation on 21 December 2011.

identification system. Specific legislative authority for the use and disclosure of TFNs is limited to taxation, assistance agency or superannuation law.

42. TFN Guideline 5 covers the collection of TFN information and in particular provides:
- 5.1 Tax file number information shall only be requested or collected from individuals by tax file number recipients as authorised by taxation, assistance agency or superannuation law.
 - 5.2 Tax file number recipients shall take such steps as are reasonable in the circumstances to ensure:
 - (a) that the individual is informed:
 - (i) of the legal basis for collection;
 - (ii) that declining to quote a tax file number is not an offence; and
 - (iii) of the consequences of not quoting a tax file number.
 - (b) that the manner of collection does not intrude to an unreasonable extent upon the affairs of the individual; and
 - (c) that only information which is necessary and relevant in relation to whichever of taxation, assistance agency or superannuation laws applies to the tax file number recipient.
43. In considering whether AMP breached TFN Guideline 5, I must identify:
- whether AMP is a TFN recipient and the ‘taxation law, personal assistance law or superannuation law’ which authorises the TFN recipient to request or collect the complainant’s TFN
 - whether AMP took reasonable steps to inform the complainant as required under Guideline 5.2(a).
 - whether AMP took reasonable steps to ensure that the manner of collection did not unreasonably intrude on the complainant’s affairs under Guideline 5.2(b)
 - whether AMP took reasonable steps to ensure that only information which is necessary and relevant in relation to whichever of taxation, assistance agency or superannuation laws applies to the tax file number recipient.

Whether AMP is a TFN recipient under the relevant law

44. TFN Guideline 9.7 provides that ‘Tax file number recipient’ has the same meaning as ‘file number recipient’, which is defined in s 11 of the Privacy Act and shall include:
- (a) the Commissioner of Taxation
 - (b) an assistance agency as defined in 9.5,
 - (c) an approved recipient as defined in 9.2,
 - (d) an authorised recipient as defined in 9.3,
 - (e) the trustee of a superannuation fund as defined in 9.11.

45. I have specifically considered whether AMP is an ‘authorised recipient’:
- An ‘authorised recipient’ means a tax file number recipient other than the Commissioner of Taxation or assistance agencies who has been authorised by taxation, assistance agency or superannuation law to receive tax file numbers.
46. In determining whether AMP is an ‘authorised recipient’, I must consider whether AMP is authorised by taxation, assistance agency or superannuation law to receive TFNs. Guideline 9.10 provides that ‘superannuation law’ for the purposes of the TFN Guidelines means ‘(a) an Act for which the Insurance and Superannuation Commissioner has general administration’. I note that the practice as it was at the time of collection was that the responsibility for TFNs and superannuation lies with the Australian Prudential Regulation Authority (‘APRA’).
47. AMP is a registered life insurance company regulated by the APRA.¹² Life insurance companies are authorised to receive tax file number information under Division 2 of Part 5 of the *First Home Saver Accounts Act 2008* (FHSA Act) for the future operation of the FHSA Act and any other Superannuation Acts as defined in section 18 of the FHSA Act. On the information before me, I am satisfied that AMP is an ‘authorised recipient’ as envisaged under TFN Guideline 9.3.

Whether AMP took reasonable steps to inform the complainant under TFN Guideline 5.2(a)

48. As noted above at [35], AMP did not appear to take any steps to inform the applicant that a collection had, was about to or would take place. There is no information before me to suggest that AMP took any steps, or ‘reasonable steps’, to advise the complainant or even the complainant’s accountant of:
- the relevant law that authorised the AMP forensic accountant or AMP to request or collect the TFN
 - the purpose(s) for which the TFN was requested or collected
 - that declining to quote a TFN is not an offence, or
 - the consequences of declining to quote a TFN.
49. In response to the OAIC’s queries relating to the collection of the complainant’s TFN, AMP submitted:

The complainant’s financial documentation was provided by his accountant [name omitted] on 19 February 2010, to an external service provider engaged by AMP. It is AMP’s practice to request that any financial documentation provided has the tax file number redacted/blacked out, and any documents received by AMP and held on AMP’s files has this information blacked out.

AMP requests financial information for the purpose of assessing a claimant’s entitlements to benefits under the relevant insurance/superannuation policy and law, but does not collect tax file numbers for its records and hence these details are blacked out.

¹² See ‘Registered Life Insurance Companies’ at <http://www.apra.gov.au/lifs/Pages/registered-life-insurers.aspx>.

... Unfortunately, we are unable to confirm whether the tax file number had been blacked out in the taxation documents which were provided to FOS.

50. There is no information before me to suggest that when collecting the complainant's income tax returns, AMP advised the forensic accountant or requested the complainant's accountant to 'redact' or 'black out' the complainant's TFN. The fact that AMP provided the documents in an un-redacted form to FOS suggests that the issues associated with the collection and provision of TFN's was not a consideration for AMP at the time of these events.

Whether AMP took reasonable steps to ensure that the manner of collection did not unreasonably intrude on the complainant's affairs under Guideline 5.2(b)

51. As noted at [5], Mrs X added handwritten notes on the AMP authority form that the release was 'to do specifically with this claim only' and 'unless in joint A/C – then you must seek permission of husband Re: Privacy act'¹³. As noted at [9], Mr X advises that the accountant had not been the accountant for himself and/or Mrs X individually or jointly since 2008 and that Mr X had not provided any consent or authority for the accountant to disclose personal information related to his financial affairs to AMP or the forensic accountant.
52. In my view, reasonable steps in these circumstances would have been to contact Mr X directly to advise that the collection was going to take place and to seek Mr X's authority for that collection, consistent with AMP's letter of 19 October 2009 to Mrs X advising it would advise Mr X if it required any of his personal information. Having regard to the applicant's submissions and the information before me, AMP did not take reasonable steps to ensure that the manner of collection did not unreasonably intrude on Mr X's affairs.

Whether AMP took reasonable steps to ensure that only information which is necessary and relevant in relation to whichever of taxation, assistance agency or superannuation laws applies to the tax file number recipient

53. I have acknowledged at [46] that AMP is an authorised TFN recipient for the purpose of collection of TFNs under superannuation law, however, in my view, the information collected, that is Mr X's TFN information is not 'necessary' or 'relevant'.
54. While the term 'necessary' is also not defined under the Privacy Act, I considered its meaning in 'DO' and Department of Veterans' Affairs [2014] AICmr 124 in the context of the Information Privacy Principles (IPPs) which apply to agencies:

The word 'necessary' is also not defined in the Privacy Act. The Macquarie Dictionary, 3rd edition, relevantly defines 'necessary' as 'indispensable' or 'requisite'. The Plain English Guidelines note that an agency must reasonably believe that it is necessary to take this action, that is to use or disclose an individual's personal information, to prevent the threat or lessen the threat to a noticeable extent. Using or disclosing personal information, even to prevent or lessen a serious threat to health or life, may significantly disadvantage the person the information is about. If this is the case, an

¹³ Completed authority dated 13 December 2008.

agency should seriously consider if there are any effective alternatives available that do not have this consequence.¹⁴

55. Similarly, the term 'relevant' is not defined in the Privacy Act. The Macquarie Dictionary defines 'relevant' as 'bearing upon or connected with the matter in hand'; 'to the purpose'; pertinent.
56. The purpose of the collection was for the assessment of Mr X's wife's income protection claim. In my view, the collection of Mr X's TFN information was not necessary or relevant to the purpose of collection under the FHSA Act.

Findings

57. Based on the information before me, AMP breached TFN Guideline 5.2.

Security of personal information

Alleged breach of NPP 4.1

58. NPP 4.1 provides:

An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.

59. The Guidelines to the National Privacy Principles state that '[i]n general terms an organisation discloses personal information when it releases information to others outside the organisation'.¹⁵
60. Mr X alleges that AMP disclosed his income tax returns, including his TFN and other personal information to FOS without his consent. Implicitly, Mr X alleges that AMP failed to take reasonable steps to protect his personal information from improper disclosure. I note at [22] that documentation compelled from FOS under s 44 of the Privacy Act confirmed that the Mr X's TFN information was not redacted or blacked out from the information provided to FOS by AMP.
61. In relation to 'reasonable steps', the NPP Guidelines provide:

What are reasonable steps to secure personal information will depend on the organisation's particular circumstances. Some relevant factors include:

- The sensitivity of the personal information the organisation holds
- The harm that is likely to result to people if there is a breach of security
- How the organisation stores, processes, and transmits the personal information (for example, paper-based or electronic records), and
- The size of the organisation (the larger the organisation, the greater the level of security likely to be needed).¹⁶

¹⁴ *Guidelines to the National Privacy Principles*, page 23.

¹⁵ *Guidelines to the National Privacy Principles*, page 23.

Findings

62. I have considered the parties' submissions, particularly AMP's response to the OAIC's queries regarding the complainant's TFN set out at [49]. In particular, I have had regard to AMP's statement that its *practice* is 'to request that any financial documentation provided has the tax file number redacted/blacked out, and any documents received by AMP and held on AMP's files has this information blacked out' and its submission that it is 'unable to confirm whether the tax file number had been blacked out in the taxation documents which were provided to FOS'. I consider that, at a minimum, 'reasonable steps' to secure information' would be for AMP to take proactive steps to ensure its information handling practices are understood and implemented.
63. In this case, there is no information before me that suggests that AMP, upon requesting Mr X's financial information, requested that his tax file number be redacted/blacked out. Nor is there any information before me to suggest that the documents as held by AMP had this information blacked out. On this basis, it appears to me that AMP did not have processes in place to ensure that what it says is its own practice was followed, and indeed, those practices weren't followed in this case. This indicates that AMP did not take reasonable steps to secure the sensitive information it had collected.
64. I am particularly concerned about AMP's assertion that it was 'unable to confirm whether the tax file number had been blacked out in the taxation documents which were provided to FOS'. In my view, it would have been reasonable for AMP to retain a copy of the documents as provided to FOS, or a note indicating what documents were provided to FOS, and to be able to advise the OAIC of whether the TFN information was redacted. As noted above, AMP did not retain a copy or a note of the documents as provided to FOS, nor did it make enquiries or request a copy of the documents to confirm whether Mr X's TFN information has been removed.
65. Based on the information before me, AMP breached NPP 4.1.

Disclosure of TFN information

Alleged breach of TFN Guideline 2.2

66. In making a finding under NPP 4.1, and given the nature of the personal information disclosed, I have considered the application of TFN Guideline 2.2.¹⁷
67. TFN Guideline 2.2 provides that TFN information 'is not to be used or disclosed to obtain any information about an individual for any purpose not authorised by taxation, assistance agency or superannuation law'.
68. As noted at [12], it appears that AMP provided a response to FOS regarding Mrs X's complaint about the administration of her claim, which included information about Mr X's business and personal financial information.¹⁸

¹⁶ *Guidelines to the National Privacy Principles*, pages 44 and 45.

¹⁷ The revised TFN Guidelines 1992 commenced on 21 December 2010 and ceased on 21 December 2011.

Findings

69. In light of my findings under TFN Guideline 5.2 and NPP 4.1, I am satisfied that Mr X's TFN information was not lawfully used or disclosed for the purpose of FOS investigating Mrs X's complaint about AMP's administration of her income protection claim.
70. Based on the information before me, AMP breached TFN Guideline 2.2.

Storage, security and destruction of TFN information

Alleged breach of TFN Guideline 6.2

71. In light of my findings in relation to NPPs 1.5 and 4.1 and, TFN Guidelines 2.2 and 5 and AMP's submissions, I have also considered the application of TFN Guideline 6.1, which predominantly relates to the storage, security and destruction of TFN information. More specifically, TFN Guideline 6.1 provides:

Tax file number recipients shall ensure:

(a) that tax file number information is protected, by such security safeguards as it is reasonable in the circumstances to take, to prevent loss, unauthorised access, use, modification or disclosure, and other misuse; and

(b) that access to records that contain tax file number information is restricted, where practicable, to persons undertaking duties related to responsibilities arising under taxation, assistance agency or superannuation law which necessitate the use of tax file numbers.

72. I note AMP's submissions above at [49]. In AMP saying that its practice is to request that TFNs are redacted, AMP appears to be of the view that the complainant's TFN was not required to be retained, nor was it necessary for a purpose under the relevant law. If so, then AMP was required to take reasonable steps to securely destroy or permanently de-identify TFN information.
73. As noted at [22], as part of its investigation, the OAIC also obtained from FOS copies of documents provided to FOS by AMP. This included a number of Mr X's personal income tax returns including Mr X's TFN . As noted at [22]I note that the TFN was not redacted.

Findings

74. In light of my findings under TFN Guidelines 2.2 and 5 and NPP 4.1, I am satisfied that AMP did not take reasonable steps to securely destroy or permanently de-identify Mr X's TFN information.
75. Based on the information before me, AMP breached TFN Guideline 6.2.

Damages

76. I have the discretion under s 52(1)(b)(iii) of the Privacy Act to award compensation for 'any loss or damage suffered by reason of' the interference with privacy. Under

¹⁸ FOS document list attached to letter to Mrs X of 21 December 2011.

section 52(1A), loss or damage can include 'injury to the complainant's feelings or humiliation suffered by the complainant'.

77. The principles for awarding compensation in such matters have been canvassed by the Administrative Appeals Tribunal (AAT) in *Rummery and Federal Privacy Commissioner*:¹⁹
- (a) where a complaint is substantiated and loss or damage is suffered, the legislation contemplates some form of redress in the ordinary course
 - (b) awards should be restrained but not minimal
 - (c) in measuring compensation the principles of damages applied in tort law will assist, although the ultimate guide is the words of the statute
 - (d) in an appropriate case, aggravated damages may be awarded
 - (e) compensation should be assessed having regard to the complainant's reaction (including injury to feelings, distress and humiliation) and not to the perceived reaction of the majority of the community or of a reasonable person in similar circumstances
 - (f) once loss is established, there must be good reason not to award compensation for that loss.

Economic loss

78. In relation to economic-loss, the complainant submitted:

My income has decreased with having to deal with AMP. Firstly to stop them obtaining my information when dealing with my wife's policy. Secondly dealing with AMP after finding they had breached my privacy.

I would like to also make the point with regards to my time and effort in dealing with AMP. Also the information being relayed backwards and forwards with accountants, solicitors, family and friends in obtaining advice and information. This is also been at a huge cost to me.

79. The complainant also provided copies of his business' profit/loss statements for the years 2008-2013 which the complainant submits demonstrates how this event detrimentally impacted on his income.
80. I acknowledge that the complainant could have spent considerable time and effort in pursuing his complaint. However, having considered the information available, to the extent that the complainant has provided information on loss, it is difficult to draw a direct link between the complainant's business affairs and AMP's conduct. I am consequently of the view that, on the information before me, there is no basis for awarding compensation for the alleged economic loss.

¹⁹ [2004] AATA 1221 [32] (*Rummery*).

Non-economic loss

81. The complainant provided documentation regarding the effects of these events on his physical and mental health including increased blood pressure and stress levels and problems sleeping which the complainant attributes to 'concerns about the unnecessary exposure and distribution of my [sic] financial situation'.
82. The complainant provided supporting documentation from a medical practitioner which states that the applicant :
 - developed anxiety and depression and with typical symptoms of post traumatic syndrome since being in financial and accounting troubles with AMP
 - suffered from paranoia, loss of trust and confidence
 - due to the depression, he developed low immunity with poor appetite and he developed shingles which was the reason for sever (sic) pain with post herpetic neuropathy and
 - developed hypertension with recurrent physical pain as neck pain and recurrent headache.

Considerations

83. In my view, the submissions and supporting documentation provided by the complainant, particularly those at [81]demonstrates that the complainant suffered non-economic loss because of AMP's conduct. In my view, an award of compensation is appropriate.
84. In deciding the appropriate amount of compensation, I have had particular regard to the AAT's decision in *Rummery* which I have discussed at length in previous decisions.²⁰ I have also considered previous determinations where compensation was awarded.²¹
85. I am satisfied that AMP's unlawful disclosure had a significant impact on the complainant. In deciding the appropriate amount of compensation to award in this matter, I have also placed weight on:
 - the sensitive nature of the personal information, that is financial information, that was collected and disclosed
 - that it was collected and disclosed, without notice from AMP, although it had assured Mr X's wife in October 2009 it would not pursue the collection of that information without providing that notice

²⁰ See for example 'EZ' and 'EY' [2015] AICmr 23 (27 March 2015); 'EQ' and Great Barrier Reef Marine Park Authority [2015] AICmr 11 (2 February 2015); 'DK' and Telstra Corporation Limited [2014] AICmr 118 (30 October 2014); and 'CP' and Department of Defence [2014] AICmr 88 (2 September 2014).

²¹ A list of all privacy determinations is available at '<http://www.oaic.gov.au/privacy/applying-privacy-law/list-of-privacy-determinations/>' .

- that after the collection, it did not notify Mr X, despite being aware from correspondence with Mr X's wife on a number of occasions that he was concerned to protect his privacy
- the collection of the TFN, which was not necessary to the investigation being conducted by AMP, and as well as constituting a breach of the NPPs, constitutes a breach of the TFN guidelines and may potentially be found to be an offence under the TAA
- the responsibility of AMP to have a sound understanding of privacy obligations under the Privacy Act, given the nature of personal information that it collects and uses on a daily basis and its position as a leading insurance and financial institution
- the responsibility of AMP to ensure that anyone engaged to undertake work on its behalf, in this case the forensic accountant, must have an understanding of their obligations under the Privacy Act, and the TFN Guidelines
- that Mr X's personal information was then disclosed to FOS and the TFN continued to be un-redacted.

Findings

86. The complainant suffered injury to his feelings and distress because of the interference with his privacy by AMP's conduct.
87. Taking all the circumstances into account, I have decided that compensation in the amount of \$10,000 is appropriate.
88. AMP has confirmed that since the matter occurred, AMP's internal processes have been updated. On this basis, I will therefore only request that a copy of its procedures in relation to the use of external agents, including forensic accountants, be provided to the OAIC for further confirmation.

Determination

89. I declare in accordance with s 52(1)(b)(i)(B) of the Privacy Act that the complainant's complaint is substantiated and that AMP breached NPPs 1.5 and 4.1 and TFN Guidelines 2.2, 5.1 and 6.1.
90. I declare in accordance with s 52(1)(b)(ii) of the Privacy Act that, within 21 days from the date of this determination, AMP shall:
 - apologise in writing to the complainant, and
 - pay the complainant \$10,000 for the loss caused by the interference with the complainant's privacy.

Timothy Pilgrim
Acting Australian Information Commissioner
17 December 2015

Review rights

A party may apply under s 96 of the *Privacy Act 1988* to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm a privacy determination. An application to the AAT must be made within 28 days after the day on which the person is given the privacy determination (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.

A party may also apply under s 5 of the *Administrative Decisions (Judicial Review) Act 1977* to have the determination reviewed by the Federal Court of Australia or the Federal Circuit Court. The Court will not review the merits of the determination, but may refer the matter back to the OAIC for further consideration if it finds the Information Commissioner's decision was wrong in law or the Information Commissioner's powers were not exercised properly. An application to the Court must be lodged within 28 days of the date of the determination. An application fee may be payable when lodging an application to the Court. Further information is available on the Court's website (<http://www.federalcourt.gov.au/>) or by contacting your nearest District Registry.