

Subject: Privacy complaint [REDACTED]

From: Early Resolution <early.resolution@oaic.gov.au>

Date: 20/09/2021, 10:19 AM

To: [REDACTED]

Privacy complaint about the Australian Bureau of Statistics

[REDACTED]

I refer to your privacy complaint about the Australian Bureau of Statistics (ABS), made under s 36 of the *Privacy Act 1988* (Cth) (the Privacy Act).

I acknowledge this situation is concerning for you. However, the OAIC has considered your complaint about the ABS and formed the view that there has not been an interference with your privacy. The reasons for this view are explained below. You now have an opportunity to comment before I make a final decision.

Your complaint

You allege the ABS has interfered with your privacy by improperly collecting your sensitive health information in the 2021 Census.

Since participation in the census is compulsory and there is no option for answering the question about your health; you claim the ABS's collection of your sensitive personal health information is without voluntary consent.

The law

The Australian Privacy Principles (APPs) in the Privacy Act regulate the collection, use, disclosure and security of personal information held by Australian government agencies and certain private sector organisations.

The APP relevant to your complaint is [APP 3 – Collection of solicited personal information](#)

Our view

Based on the available information, it is my view that the ABS has not interfered with your privacy as defined by the Privacy Act.

The *Census and Statistics Act 1905* governs the taking and administration of the Census, including the statistical information that is to be collected.

The *Australian Bureau of Statistics Act 1975* (ABS Act 1975) established the ABS as an independent statutory authority and defines its functions. The ABS was set up for the purpose of gathering information from the community about a range of aspects of Australian life. It therefore conducts a national Census of Population and Housing every 5 years. As stated in the collection notice on the [ABS website](#):

The Census is conducted under the authority of the Census and Statistics Act 1905. It is compulsory.

We collect personal information from the Census form and for processes that help us run the Census. The authority for these activities comes from the ABS Act 1975 and the Census and Statistics Act 1905.

APP 3.1 permits the ABS to collect personal information that is reasonably necessary for, or directly related to, its business functions or activities.

The ABS website also states the new questions on health conditions for the 2021 Census, were approved by the Australian Parliament, through the tabling of Regulations, about the topics to be included in the Census (*Census and Statistics Amendment (Statistical Information) Regulations 2020*). ABS advises they are the first significant changes to the information collected in the Census since 2006. The changes allow the Census to collect data on long-term health conditions, such as arthritis and diabetes, to inform health policy and planning for community services. Through the Census, the ABS advises:

it is seeking to collect high level information on long-term health conditions. This includes arthritis, asthma, cancer, dementia, diabetes, heart disease, kidney disease, lung conditions, stroke and mental health conditions. Information on long-term health conditions will inform preventive health programs and funding for local services.

APP 3.4 permits an APP entity to collect an individual's sensitive information, including health information, without the individual's consent if one of the conditions at APP 3.4 have been met. In this instance, APP 3.4(a) relevantly permits the collection of sensitive personal information without the individual's consent if the collection is required or authorised by law.

Accordingly, the ABS's collection of your health information in the 2021 Census is not an interference with privacy as defined in the Act.

Next steps

Section 41(1)(a) of the Privacy Act gives the Commissioner the discretion not to investigate a complaint if she is satisfied that the act or practice complained about is not an interference with privacy, as defined in the Privacy Act.

On the available information, it appears that ABS has not interfered with your privacy as defined by the Privacy Act. I therefore intend to decline to investigate your complaint under s 41(1)(a).

Before I decide, I invite you to provide a response to this email, should you wish to do so. If I do not hear from you by **5 October 2021**, the OAIC will make a decision based on the available information and close your complaint.

If you would like to discuss your complaint, I may be reached on (02) 9284 9778 (Mon-Thurs) or email early.resolution@oaic.gov.au.

Yours sincerely



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Dispute Resolution Branch

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