

Our reference: [REDACTED]

Our classification: [REDACTED]

By email: [REDACTED]

Privacy complaint about Australian Bureau of Statistics

[REDACTED]

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

On 20 September 2021, I wrote to you advising the Office of the Australian Information Commissioner's (OAIC) view of the complaint was that ABS had not interfered with your privacy as defined in the Privacy Act.

At that time, I offered you the opportunity to provide additional information. Thank you for the additional information you provided on 5 October 2021. However, it has not changed the OAIC's view of the matter.

I am therefore closing this matter on the basis there has not been an interference with your privacy. I will confirm the reasons for this below and respond to your feedback and concerns.

Your privacy 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.

Other matters

I note the following in relation to your feedback:

APP 1 in the Privacy Act requires APP entities to take reasonable steps to implement practices, procedures and systems that will ensure compliance with the APPs and enable them to deal with enquiries or complaints about privacy compliance. In this way, the APPs require 'privacy by design', an approach whereby privacy compliance is designed into projects dealing with personal information right from the start, rather than being bolted on afterwards.

Conducting privacy impact assessments (PIA's), is a systematic assessment that identifies the impact that a project might have on the privacy of individuals, and sets out recommendations for managing, minimising, or eliminating that impact, helps entities to ensure privacy compliance and identify better practice.

The [Privacy \(Australian Government Agencies – Governance\) APP Code 2017](#) (the Code) requires Australian Government agencies subject to the *Privacy Act 1988* (Privacy Act) to conduct a PIA for all 'high privacy risk projects'. A project may be

a high privacy risk project if the agency reasonably considers that the project involves new or changed ways of handling personal information that are likely to have a significant impact on the privacy of individuals.

The ABS accordingly commissioned two independent PIAs looking at the way the 2021 Census will be run and followed recommendations from two inquiries into the 2016 Census, to undertake an independent PIA a year out from the 2021 Census.

The ABS was also informed on changes to Census topics by the public consultation process, stakeholder engagement, testing and research of international practices and provided a recommendation to Government on the topics to be included in and removed from the 2021 Census.

Following Government decision, the subsequent tabling in the Australian Parliament of the Census and Statistics Amendment (Statistical Information) Regulations 2020 (the Regulations) finalised the process that determined the information that will be collected in the 2021 Census.

Decision

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.

Therefore, for the reasons set out above and in my previous correspondence of 20 September 2021, I have decided under s 41(1)(a) of the Privacy Act to close this complaint on the grounds that ABS has not interfered with your privacy as defined in the Privacy Act.

The file is now closed.

Thank you for bringing this matter to the attention of the Commissioner.

Yours sincerely



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Your review rights

Applying for a judicial review

You may apply to the Federal Court of Australia or the Federal Circuit Court for a review of our decision not to investigate or not to investigate further your complaint, if you think our decision is not legally correct under the *Privacy Act 1988* (Privacy Act).

You must apply to the court within 28 calendar days of us sending you our decision or determination. If we posted it to you, the 28 calendar days starts from the date we

posted the decision to you.

The court won't review the merits of your complaint, but they may refer the matter back to us to reconsider — if they find our decision or determination was wrong in law or we didn't exercise our powers properly.

For more information about a judicial review, visit the Federal Court of Australia's website: <https://www.fedcourt.gov.au/>

Lodging a complaint with the Commonwealth Ombudsman

You may lodge a complaint with the Commonwealth Ombudsman if you think we've treated you unfairly, because the Commonwealth Ombudsman can investigate the administrative actions of an Australian Government agency.

If the Commonwealth Ombudsman finds your complaint is justified, they can recommend we reconsider or change our actions or decision or take any other action they think is appropriate.

For more information about making a complaint, visit the Commonwealth Ombudsman's website: <http://www.ombudsman.gov.au/>

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