



Application for Grant of Authorisation

(*Information Act*, s.81)

Applicant:	Power and Water Corporation
Subject:	Assistance to Australian Red Cross International Tracing Service
Date of Decision:	20 June 2005

Decision and Reasons for Decision

1. I have decided to grant an authorisation under s.81 of the *Information Act* to allow Power and Water Corporation (PowerWater) to depart from Information Privacy Principles 1 and 2 in order to assist the International Tracing Service conducted by the Australian Red Cross (the ARC). The scope of the grant, and the terms and conditions of the grant, are set out in the Authorisation that appears at the end of this document.

Introduction

2. The ARC runs an International Tracing Service, primarily aimed at re-establishing contact between family members (and others with close connections) who have been separated as a result of war, internal disturbance, natural or other disaster.
3. PowerWater proposes to assist the ARC by using information from its customer database to identify and contact individuals in the Northern Territory to inform them that someone based overseas who has lost contact with them wants to re-establish contact.
4. The ARC would provide PowerWater with the name and date of birth details of individuals with whom contact has been lost. PowerWater would then search for matches on its database. In the event of a match, a letter would be sent to the individual informing him or her that someone wants to re-establish contact, and inviting the individual to contact the ARC. The details of the proposed practice (including a draft letter to individuals) are set out in the application by PowerWater dated 29 December 2004.

5. Power Water estimates that it is likely to receive approximately 60 queries from the ARC each year, which are likely to result in 2 or 3 letters being sent to individuals.
6. PowerWater is bound by the Information Privacy Principles (the IPPs) in the *Information Act*, which control the way in which it collects and handles personal information. The proposed practice would involve collection of information about people who are being sought (name, date of birth) and use of personal information about people who match the search criteria (name, date of birth, address).
7. The Information Commissioner can grant a public sector organisation an authorisation to collect, use or disclose personal information in a way that would otherwise be contrary to IPPs 1, 2 and 10. PowerWater has applied for an authorisation. In making a decision about whether or not to grant an authorisation, the Commissioner takes into account the public interest and privacy interests.

Power to grant authorisation

8. Section 81 of the *Information Act* provides:

81. Grant of authorisation

(1) On the application of a public sector organisation, the Commissioner may authorise in writing the organisation to collect, use or disclose personal information in a manner that would otherwise contravene or be inconsistent with IPP 1 (Collection), IPP 2 (Use and disclosure) or IPP 10 (Sensitive information).

(2) The Commissioner may only grant an authorisation if, having regard to the purpose for collecting, using or disclosing the personal information, the Commissioner is satisfied that –

(a) the public interest in collecting, using or disclosing the information outweighs to a substantial degree the interference with the privacy of persons that might result from collecting, using or disclosing the information; and

(b) the benefit to persons of collecting, using or disclosing the information outweighs the interference with the privacy of those persons that might result from collecting, using or disclosing the information.

(3) An authorisation is subject to the terms and conditions (if any) specified in the authorisation.

9. The Commissioner must be satisfied that both s.81(2)(a) and s.81(2)(b) are met before the discretion to grant an authorisation arises.
10. Paragraph (a) requires analysis of the balance between the public interest and individual privacy interests. The public interest can include benefits to a class of individuals in an appropriate case. The public interest must outweigh the privacy interests to a substantial degree.

11. Paragraph (b) looks at the balance between the benefits to individuals and interference with individual privacy interests. It would appear that the use of the words “those persons” means that paragraph (b) requires identification of the class(es) of individuals whose privacy will be interfered with, and a comparison of the interference with their privacy on the one hand, and the benefits to them on the other.
12. Given that I have decided that paragraph (b) is satisfied even on that relatively narrow interpretation, I have not found it necessary to come to a final conclusion on the point. It is open to an organisation, in the future, to argue a broader interpretation.

Process

13. PowerWater approached my Office regarding the possible grant of an authorisation in 2004. My Office provided a copy of its draft guidelines on *Authorising Departure from the IPPs*, and entered into initial consultations. Following those consultations, PowerWater made a detailed application under s.81(2), dated 29 December 2004.
14. My Office then invited the following organisations to comment on the application:
 - NT Police Fire & Emergency Services
 - Department of Justice
 - NT Council of Social Services
 - Office of Multicultural Affairs
 - Multicultural Council of the NT.
15. Three responses were received, all of which supported the proposed practice.
16. I then prepared a draft decision in relation to the application, which I provided to PowerWater for comment. The draft decision included a number of proposed conditions on the grant of the authorisation. PowerWater raised no objections to the draft decision.

Nature of collection, use, disclosure

17. The scheme does not envisage the disclosure of any personal information to the ARC, even if a match is made. The ARC would only obtain personal information if an individual who has been located by PowerWater decides to contact the ARC.
18. The proposed practice would involve collection by PowerWater of the names of individuals who have been dislocated, whether or not they are listed on the PowerWater database. It would also involve use of database information by PowerWater (name, date of birth and address) to contact people who match the search criteria.
19. In addition, it is possible, although not likely, given the use of the date of birth to ensure a match, that the person contacted would not be the individual sought. If this were to occur by chance or by some administrative error, it would result in disclosure to the person contacted of personal information about the person sought.

20. Collection from the ARC of information for the purposes of the proposed practice is not something that people would ordinarily regard as being necessary for the performance of the functions or activities of PowerWater. Nor would individuals who use the services of PowerWater ordinarily expect their personal information, collected for the primary purpose of conducting its utility services, to be used in an effort to assist the ARC in this manner.
21. I have approached this decision on the basis that the proposed practice would, without authorisation, contravene or be inconsistent with IPP 1.1 and IPP 2.1.

Interference with Privacy

22. Consideration of the potential for interference with privacy is relevant to both limbs of s.81(2). I will discuss that issue before going on to discuss the other elements of s.81(2)(a) and (b).
23. When assessing interference with privacy, it is appropriate to consider the nature, likelihood and seriousness of potential negative impacts on the individual arising from the interference.
24. It is significant that, because of the nature of the service, many of the people who are contacted will have been through a great deal of trauma prior to establishing themselves in Australia. Some of them will have made every effort to put their past life behind them.
25. In some cases, simply sending a letter to the individual, even though it merely invites an approach to the ARC, could cause a level of distress by invoking memories of unpleasant or tragic past experiences. In a few cases, the person who is seeking to establish contact may themselves not be motivated by a desire to make positive contact but rather by malice.
26. In that regard, however, I note that inquiries to the ARC will be dealt with by trained ARC counsellors who are in a position to assist the individual if they choose to make contact. Further, the identity of the person seeking to establish contact will only be disclosed by the ARC counsellors.
27. Apart from the direct effect of receipt of a letter on the individual, there is potential for another member of the individual's family or household to open the mail for the individual, or to discover personal information about the individual by noticing the letter and asking about its contents. Again, this has the potential to cause distress to an individual who has sought to move on from an unpleasant or traumatic past.
28. As noted above, there is also potential for a person with the same name and date of birth to receive a letter, or for disclosure through some error in processing. However, given the small number of likely contacts, the chance of either arising must be small.

Public interest test

29. PowerWater made the following submission in relation to the public interest benefits of the proposed practice:

The nature of the public interest is broadly on humanitarian grounds. The International Tracing Service is governed by the Geneva Conventions to which Australia is a signatory and its aims can be grouped under four headings;

- i) collecting recording and forwarding information for the purpose of identifying prisoners of war or civilian interveners, the wounded sick or dead and others afforded protection;*
- ii) forwarding family news; regarding in particular the right of prisoners of war and interveners to send and receive letters and cards;*
- iii) tracing missing persons regarding in particular the right of families to know their relatives fate;*
- iv) family reunification; particular measure for the evacuation of children and the right of dispersed families to reunite and the transfer or repatriation of prisoners or other protected persons.*

The public benefits of the International Tracing Service include;

- i) the reunification of family members separated through conflict or other humanitarian disasters;*
- ii) the International Tracing Service is a worldwide humanitarian service which provides mutual benefits for Australian residents and citizens who reside in the Northern Territory throughout Australia, or citizens who are residing outside Australia;*
- iii) the International Tracing Service facilitates communication in areas of disaster where normal lines of communication may be disrupted providing humanitarian benefits and relief to Australian and Northern Territory residents who have family members in the relevant area. It also provides support and relief for members of the community who have faced the disaster. The International Tracing Service can provide relief to family members by establishing lines of communication through:*
 - a. exchanging family messages;*
 - b. making health and welfare enquiries;*
 - c. providing travel documents to people who have been displaced;
and*
 - d. providing certificates of captivity;*

- iv) *the Northern Territory is geographically close to areas such as East Timor that have suffered humanitarian disasters so it is likely that an effective International Tracing Service would be of benefit to members of the Northern Territory community;*
- v) *the Northern Territory has a cosmopolitan population, with a large and diverse ethnic community which would benefit from an effective International Tracing Service.*

30. I accept that there is a significant public interest in the work undertaken by the ARC. It would clearly be supported by the proposed practice. There is a public interest in giving to individuals who have been through the trauma of dislocation brought on by war or other events the chance to re-establish contact with family and close friends. Rebuilding such relationships is important on humanitarian grounds and can provide better support structures to assist individuals to cope with trauma and focus on their future within society.

Benefit to individuals

31. The potential benefits to individuals are largely encapsulated in the discussion of the public interest. PowerWater made the following submission:

The potential benefits that the International Tracing Service provides individuals are humanitarian benefits.

The potential benefits to Persons Being Sought, especially those that manage to re-establish contact with family members or close friends include;

- i) *joy of re-establishing contact with loved ones;*
- ii) *information about circumstances of their countries of origin or past countries or residence; and*
- iii) *comfort and relief of knowledge of the circumstances of loved ones.*

32. Some individuals may choose not to take advantage of the opportunity. They may feel that their future direction in life should not involve re-establishing contact. However, the proposed practice allows for an individual to decide whether to respond by contacting the ARC. As I understand it, the procedures adopted by the ARC allow significant choice for the individual, providing for situations that fall short of re-establishing contact. For example, an individual may simply wish to notify the enquirer that he or she is alive and well but does not wish to maintain contact.

Consideration

33. In the normal course of events, adoption of the proposal would mean that an individual would receive a letter from PowerWater. The individual would have the choice to either ignore the letter or to proceed further by contacting the ARC. Even at that stage, it is my understanding that the individual could merely make inquiries and obtain counselling from the ARC without necessarily having their identity or location disclosed to anyone.

34. As noted above, there is always the potential for unintended disclosure. In making an assessment of the interference with privacy, it is relevant to consider the likelihood and seriousness of potential adverse impacts. While by no means inconsequential, they do not approach the most serious end of the scale.
35. Considering s.81(2)(a), I am satisfied that there is significant public interest in assisting a scheme which gives individuals the opportunity to reunite with relatives and friends in these circumstances. I am satisfied that the public interest in collecting, using, and disclosing the information in accordance with the proposed practice outweighs to a substantial degree the interference with privacy that might result.
36. Considering s.81(2)(b), there is significant scope for benefit to individuals who will be contacted. Not all individuals may wish to take advantage of the opportunity but I believe a significant proportion would do so. I am satisfied that the benefit to those individuals outweighs the interference with their privacy that might result.
37. I am satisfied that I have discretion to grant an authorisation under s.81(2).

Scope and terms of grant

38. It is important in making a grant to ensure that there is in place a scheme that meets the objects of the proposal while minimising interference with individual privacy. To that end, s.81(3) provides for the imposition of terms and conditions.
39. The application dated 29 December 2004 sets out many elements of a process aimed at protecting privacy. For the most part, I consider it appropriate to grant an authorisation that approves action in a manner that substantially complies with the procedures set out in the application. However, there are some issues that I believe require further consideration.
40. PowerWater submitted that there should be no limitation on the duration of the grant. I have noted above the potential for negative impacts on individuals. In those circumstances, I consider it appropriate to impose a limit on the duration of the grant and to require review at reasonable intervals.
41. Given the small number of likely instances of use, I propose to set a 5 year period for the grant. However, in allowing that extended period, I consider it appropriate to reserve a right to the Commissioner to revoke the grant on notice to PowerWater should events show that the potential for interference with privacy is greater than anticipated. I also believe that it is appropriate to impose a reporting requirement after 2 years, and again shortly before the end of the 5 year period.
42. I also believe that it is appropriate for PowerWater to record the names of people who have been contacted and details of any complaints about the proposed practice. This would include complaints made directly to PowerWater, and any complaints made to the ARC about which PowerWater is informed. This will provide useful information for review and will allow PowerWater to ensure that there is no unnecessary repetition of contact with particular individuals.

43. One other public sector organisation has approached my office in relation to a grant of authorisation for the same purpose. It is possible that additional organisations may wish to assist the ARC in a similar manner. These claims may have equal merit to the proposal of PowerWater. However, it would add to the potential for impact on privacy if individuals who matched on a number of databases were then inundated with letters from different organisations.
44. I have therefore made provision for organisations that are granted like authorisations to co-operate to reduce the potential for interference with privacy.
45. For example, one organisation might be identified as 'first cab off the rank'. It could be provided with a full list by the ARC. It could identify matches, contact those matches and delete their names and personal details from the list. The edited list could then be passed on to the next organisation which would adopt a similar process, and so on. This would ensure that people who are matched on a government database are contacted once, and once only.
46. Having considered the issues discussed above, I have decided to grant an authorisation in the terms that follow.

Grant of Authorisation – No. 1 of 2005

I grant an authorisation under s.81 of the *Information Act* in the following terms:

Organisation	Power and Water Corporation
Authorisation	<ol style="list-style-type: none"> 1. To collect, use and disclose personal information for the purposes of assisting the Australian Red Cross International Tracing Service, subject to the terms and conditions set out below and otherwise in a manner that substantially complies with the application dated 29 December 2004 (the “authorised practice”). 2. To disclose personal information collected for the purpose of the authorised practice to organisations with a similar grant of authorisation, for the purpose of reduction of interference with the privacy of individuals.
Terms and conditions	<ol style="list-style-type: none"> 1. PowerWater will maintain a register that will record: <ul style="list-style-type: none"> • the names and dates of birth of individuals who have been contacted under the authorised practice; • details of any complaints made by, or on behalf of, individuals who have been contacted. 2. PowerWater will not attempt to contact any individual under the authorised practice more often than once in a 3 year period. 3. PowerWater will not attempt to contact any person who objects to further contact. 4. PowerWater will, prior to 30 June 2007, make a report to the Information Commissioner on the effectiveness and impact of the authorised practice. The report will include numbers of contacts, details of any positive outcomes, of any complaints made, and of any adverse effects on individuals. 5. PowerWater will, prior to 30 June 2010, make a report to the Information Commissioner on the effectiveness and impact of the authorised practice. The report will include numbers of contacts, details of any positive outcomes, of any complaints made, and of any adverse effects on individuals.
Length of authorisation	Until 30 June 2010, or earlier termination by the Information Commissioner.
Date	20 June 2005

NOTE: This authorisation only extends to departures from IPPs 1 and 2 as stated above. The organisation remains bound by the IPPs in all other respects. The authorisation does not allow departure from any other restrictions or requirements that bind the organisation.

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Peter Shoyer
Information Commissioner
Northern Territory