

Australian Government
Office of the Australian Information Commissioner
Your Reference CP21/02253:AS

Investigations Office
Dispute Resolution Branch

Dear [REDACTED]

Privacy Compliant about Australia Post

I am in receipt of your letter dated 19th July 2023 (your Letter).

I note your conclusions under s41(1)(a) that my complaint is not an interference with my privacy; and under s41(1)(da) that an investigation of the act or practice is not warranted having regard to all of the circumstances. Dealing with your findings in turn.

A S41(1)(a) of the Privacy Act – there was no interference with my privacy

Your Letter makes it clear that you reach this conclusion based upon the facts in your Letter including:

1. “The staff stepped away to call the Area Manager for advice. The staff unintentionally held onto your documents.”

This finding of fact is contrary to the video evidence of the interaction between me and the Australia Post member of staff. This video evidence clearly shows that the Australia Post member of staff intentionally held onto my documents and refused to return them when requested to do so. I would invite you to properly consider the evidence that I assume has been made available to you.

I note that Australia Post in its letter dated 27 September 2021 submitted that

2. “Due to anxiety in engaging with you, the staff member was “cognitively unaware’ that she had retained your documents until a review of the CCTV footage that captured the incident.”

Again, a review of the video footage would demonstrate that this statement is false. The Australia Post member of staff was well aware of what she was doing and refused to return my documents to me when requested to do so on a number of occasions. It is worth noting that 6 members of my family had documents confiscated in this incident. This fact must have been obvious to the Australia Post member of staff given the nature and number of documents that were confiscated. The video footage does not support any finding of “anxiety” quite the contrary the staff member was obviously angry with me for not wearing a mask and her actions in breaching my privacy were motivated by her desire to see me ‘punished’ for what she regarded as a breach of the law. Contrary to the allegations made against me, I was at all times polite. Knowing my rights and insisting upon them should not be labelled as aggressive to justify behaviour that breached by privacy.

Your Letter goes onto also state:

3. “It is unclear at what point the staff came to realise that she was holding onto your documents. Notwithstanding, I consider that these documents did not come to the staff’s possession because she asked these from you.”

Again, such a statement is contrary to the video footage of the incident. To state that documents did not come into the staff's possession because she asked these from you, is contrary to common sense and contrary to the ordinary meaning of words.

In relation to the breach of APP 3, I note your finding that the Australia Post did not **collect** my personal information. I note your finding that "Australia Post did not incorporate the documents within its records, such as in its physical or electronic databases." I note that you refer to the highest test of "collect" under the Privacy Act. In fact, s6 of the Privacy Act states

"collects" : an entity collects personal information only if the entity collects the personal information for inclusion in a record or generally available publication.

"record" includes a document or an electronic or other device.

Clearly incorporating the documents within its records is broader than including it within its physical archives or electronic databases. I am aware of no evidence provided by Australia Post that sheds any light on whether my sensitive medical information was incorporated into a 'record' meaning a document such as an incident report or any submissions to your office as part of any disciplinary process or as part of any report or documentation that was provided to the Police. I suggest that this issue should be one of the issues to be investigated as part of an investigation by your office under s40 of the Privacy Act. Again, you have appeared to reach conclusions without the necessary evidence available to support such conclusions.

Further as you are aware, on 6 January 2023, I have made a FOI request seeking access to all documents, emails, phone recordings in my name, relating to case [REDACTED] and OAIC case no [REDACTED]. This request was refused under section 47E(d) of the FOI Act. I suggest a proper good faith investigation under s40 of the Privacy Act would determine whether in fact a 'record' was produced in relation to this matter.

In relation to your finding that APP 6 Use or disclosure has not been breached because Australia Post did not 'hold' my personal information because it did not 'collect' my personal information. Clearly where the conclusion that Australia Post did not collect my personal information has not been investigated, it is inappropriate for a finding that my personal information was not held by Australia Post which again is contrary to the video footage of the incident. In fact, such a finding is contrary to your Letter where you state "Other than providing the documents to NSW Police upon its request, it did not relinquish control of your personal information that it 'holds' that may have resulted in there being an ongoing impact on you." Stating 'holds' in quotations does not somehow mean that the documents were not held by Australia Post, they were clearly **held** in breach of APP 6.

In Summary:

1. You appear to have conducted an 'informal investigation' at the same time as refusing to conduct a formal investigation and you have made findings of 'fact' that are contrary to the video evidence.
2. You have made statements in your Letter which are contradictory and contrary to the ordinary meaning of the words used.
3. You have made conclusions of 'fact' without any evidence to support such conclusions.
4. Your Letter does not appear to be a good faith assessment of this matter pursuant to your statutory obligations under the Privacy Act.

B s41(1)(da) of the Privacy Act - an investigation is not warranted

In relation to the above section of the Act, Your Letter states:

- “The amount of time Australia Post had possession of your documents was limited, as the documents were no longer in their possession approximately an hour after the incident when your daughter attended the Coffs Harbour Post Office to collect them.”
- “The reason Australia Post did not consider whether they had the lawful and reasonable responsibility to destroy your documents in their possession was because they were not aware of the documentation they held until NSW Police attended and reviewed the CCTV footage of the incident.”
- “It was reasonable in the circumstances to entrust your documents to the NSW Police Officers in attendance, to ensure their return to you.”

These findings of fact are contradictory. In relation to the amount of time the Post Office held my documents, how can it be the position that Australia Post was not aware of the documentation they held until the NSW Police attended and reviewed the CCTV footage of the incident. Why should review of the CCTV footage by the NSW Police lead the Australia Post member of staff to suddenly become aware of the documents she had collected? Further, you do not explain why it was reasonable to call the Police and then entrust my documents to the NSW Police Officers in circumstances where the Australia Post member of staff was apparently unaware of the nature of the documents.

You also note in your Letter that I have not raised any personal circumstances that suggest to you that I may experience vulnerabilities that would pose increased risk to me. I have been informed that details of the loss I have suffered, as a result of the actions of Australia Post, are to be submitted as part my evidence pursuant to a formal investigation by your office. I will present such information as part of any such investigation. I do not wish to present this evidence prior to any investigation as I am not currently confident that this information will be treated with the seriousness and confidentiality it deserves. I note that s52(1AB) of the Privacy Act states that loss or damage includes injury to the feelings and humiliation suffered by the complainant. Given the circumstances of this breach which occurred in a very public manner in my local Australia Post office a few minutes from my house, the nature of the loss suffered is obvious.

I further note your finding that Australia Post “did not attempt to exploit your vulnerable circumstances (if any) by wilfully disregarding your right to privacy”. In fact the video evidence will again demonstrate that there was wilful intention on the part of the Australia Post member of staff to harass, intimidate and discriminate against me by breaching my privacy because I was not wearing a mask when I had a legitimate medical exemption allowing me not to do so.

In fact, this matter lends itself to an investigation for the following reasons:

1. The facts of this matter are recorded in video footage, therefore there is little or no prospect of any significant dispute about the facts.
2. The facts are straight forward and will not require any extensive investment of time by your office, in addition to time that I assume has already been spent.
3. The actions of Australia Post in breaching my privacy were driven by a wilful disregard for my privacy and as ‘punishment’ for the fact that I was not wearing a mask when I had a legitimate medical exemption from so doing.
4. I wish to put forward evidence of the loss and damage I have suffered as a result of the actions of Australia Post which evidence will be submitted at the appropriate time. Suffice

to say I was humiliated and shamed in public by the actions of the Australia Post member of staff.

I request that you review your decision not to investigate the breach of my privacy and thereafter agree to conduct an investigation in good faith under s40 of the Privacy Act.

Regards

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