Annex 6 – DIO privacy guidelines

Guidelines to Protect the Privacy of Australians

(Approved by Robert Hill, Minister for Defence, 2 December 2005)

Introduction

1. The purpose of these guidelines is to ensure that, in DIO's external communications, the privacy of Australians is preserved as far as is consistent with the proper performance of DIO's intelligence functions. These guidelines are intended to be broadly consistent with rules made under section 15 of the *Intelligence Services Act 2001* that apply to the Australian Secret Intelligence Service, the Defence Imagery and Geospatial Organisation and the Defence Signals Directorate, and the guidelines developed by the Office of National Assessments. Expressions used in these Guidelines are defined in appendix A.

2. The Minister for Defence approved these guidelines on 2 December 2005. The Inspector-General of Intelligence and Security (IGIS) and the Attorney-General were consulted in preparing these guidelines.

Communication

3. DIO may communicate intelligence information concerning an Australian person when:

   a. the information relates to activities in which the involvement of that Australian person is already public knowledge; or

   b. the information relates to activities in respect of which the Australian is a representative of the Commonwealth or of a State or Territory in the normal course of official duties; or

   c. the deletion of that part of the intelligence information concerning the Australian person would significantly diminish the utility of the information for the purpose of:

      (i.) maintaining Australia's national security;

      (ii.) maintaining Australia's economic well-being;

      (iii.) promoting Australia's foreign relations;

      (iv.) preventing or investigating the commission of a serious crime;

      (v.) responding to an apparent threat to the safety of a person;

      (vi.) responding to a serious risk to an Australian intelligence operation or operative; or

   d. the information relates to an Australian person who is acting for, or on behalf of, or is suspected of acting for, or on behalf of, a foreign power.

   In all such cases, DIO shall keep a record of the communication for inspection by the IGIS.

4. DIO shall establish arrangements to ensure that communication of such information is limited to those with a need to know in accordance with the Government's requirements.

Presumption of Nationality

5. Where it is not clear whether an individual is an Australian person or not, the following presumptions shall apply unless evidence to the contrary is obtained:
   a. a person within Australia shall be presumed to be an Australian person; and
   b. a person outside Australia shall be presumed to be a non-Australian person, subject to consideration of any evidence as to nationality that may be contained in the relevant communication or the general context in which the intelligence was obtained.

Retention

6. Intelligence information concerning Australian persons shall be retained by DIO in a manner applicable to retention of information having a security classification of not less than SECRET. Specifically, access to such information within DIO shall be permitted only when there is a need to know the information for the proper performance of DIO's functions.

Incorrect release of intelligence concerning an Australian person

7. If DIO identifies that it has unintentionally communicated intelligence information concerning an Australian person:
   a. contrary to these Guidelines; or
   b. because the presumption in paragraph 5 has been found to be incorrect;

   then DIO will, as soon as is practicable, contact the IGIS to advise him of the incident and measures taken to protect the privacy of the Australian person.

APPENDIX A

Definitions

Expressions used in this document are defined as follows:

Intelligence information means information generated for external communication by DIO for the proper performance of its intelligence functions, as set out in the DIO mandate.

An **Australian person** is:

a. an Australian citizen; or

b. a permanent resident.

A **Permanent resident** is:

a. a natural person:

(i.) who is not an Australian citizen;

(ii.) whose normal place of residence is situated in Australia;

(iii.) whose presence in Australia is not subject to any limitation as to time imposed by law; or

(iv.) who is not an unlawful non-citizen within the meaning of the *Migration Act 1958*; or

b. a body incorporated under a law in force in a State or Territory, other than a body corporate whose activities one or more of the following controls, or is in a position to control, whether directly or indirectly:

(i.) a foreign power;

(ii.) a natural person who is neither an Australian citizen nor a person covered by paragraph (a); or

(iii.) a group of natural persons, none of whom is an Australian citizen or a person covered by paragraph (a).

Foreign power means:

a. a foreign government;

b. an entity that is directed or controlled by a foreign government or governments; or

c. a foreign political organisation.

Serious crime means conduct that, if engaged in within, or in connection with, Australia, would constitute an offence against the law of the Commonwealth, a State or a Territory punishable by imprisonment for a period exceeding 12 months.