



From: Ashley Fry
Sent: Monday, 27 July 2015 12:09 PM
To: Morgan Andrews <morgan.andrews@sydney.edu.au>; Dennis Smith <dennis.smith@sydney.edu.au>
Cc: Dominic Stewart <dominic.stewart@sydney.edu.au>
Subject: Swipe Card Records Advice - Confidential & Privileged [OGC-REF.FID126179]

Subject to Legal Professional Privilege

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Please do not forward without the writer's express permission

Dear Morgan and Denis,

I am writing to provide advice in relation to the internal release of swipe card records.

Background

Campus swipe cards are issued to staff, students and affiliates of the University for numerous purposes. Relevantly, swipe cards allow specific individuals access to secure areas on campus. Over time, the swipe card system has been upgraded and personal information is being collected when the swipe card is used (e.g. name, time of entry and what door has been opened). Campus Security is responsible for collecting and storing these swipe card records.

From time to time, Campus Security receives requests to release swipe card records and in the past, OGC has provided advice in relation to specific matters. The purpose of this email is to provide general advice in relation to the legal implications in connection with swipe card records; suggestions on how Campus Security should deal with future internal requests to release swipe card records; and suggestions for some small changes which are required to address a gap in the University's current compliance with privacy legislation.

Workplace Surveillance Legislation

In our view, the *Workplace Surveillance Act 2005* (NSW) does not ordinarily apply in connection with the use of swipe cards.

This Act provides that surveillance of an employee must not commence without prior notice in writing to the employee (s. 10). Surveillance is defined as surveillance of an employee by tracking surveillance, computer surveillance and camera surveillance, and tracking surveillance means 'surveillance by means of an electronic device the primary purpose of which is to monitor or record geographical location or movement...' (s. 3).

The primary purpose of the swipe card device is not to monitor or record geographical location or movement of an employee. Therefore, the Act does not ordinarily apply in connection with the use of swipe cards.

That said, if the University wants to carry out surveillance of an employee by using swipe card records this may be possible and appropriate in certain circumstances, however advice from OGC should be sought in the first instance and prior to any surveillance being carried out.

Privacy Legislation

The *Privacy and Personal Information Protection Act 1998* (NSW) (**Privacy Act**) applies in relation to swipe card records because the information collected when a card is swiped amounts to personal information. Accordingly, the University needs to be compliant with the Privacy Act in terms of notification, collection, use and storage of such information.

Notification

Section 10 of the Privacy Act provides that when collecting personal information, the University must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual is made aware of the following:

- (a) the fact that the information is being collected,
- (b) the purposes for which the information is being collected,
- (c) the intended recipients of the information,
- (d) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,
- (e) the existence of any right of access to, and correction of, the information,
- (f) the name and address of the agency that is collecting the information and the agency that is to hold the information.

In respect of swipe card records, there is a risk that the University does not provide the requisite notice about the collection of personal information under s. 10.

In an effort to comply with s. 10, I **recommend** that the 'conditions of use' and privacy statement in respect of campus cards for students, staff and affiliates (which are detailed on the University's website) are updated. I will draft proposed amendments to the 'conditions of use' and privacy statement and ask Jodie Lowe, Manager, Campus Cards to approve these amendments.

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I do not think that it is reasonably practicable to include a sign at each swipe card device that notifies an individual that personal information will be collected. However, there may be some specific areas/ buildings that this might be appropriate. If you are aware of any such areas where you think this may be appropriate, please let me know.

Use

Section 8 of the Privacy Act provides that the University must not collect personal information unless it is collected for a lawful purpose that is directly related to a function or activity of the University, and the collection of the information is reasonably necessary for that purpose.

A purpose of collecting personal information in the form of swipe card records is to verify individuals' access to secure areas of the University. This is a lawful purpose which complies with s. 8.

Section 17 provides that personal information must not be used for a purpose other than that for which it was collected, excepted in certain circumstances.

As such, Campus Security may release swipe card records upon request from within the University if the reason for the swipe card records is to verify individuals' access to secure areas of the University subject to the matters outlined below.

Dealing with requests for swipe card records

We set out below some suggested guidelines to assist Campus Security in dealing with internal requests for swipe card records in a way that tries to balance the free flow of information against the University's obligations under the Privacy Act.

(a) Who can make a request?

Requests for swipe card records can be made by:

- a Head of School or Head of Administrative Unit; or
- a more senior person if appropriate.

(b) When to release swipe card records?

Swipe card records may be released if they have been requested for the purpose of verifying an individual's (or individuals) access to secure areas of the University in connection with:

- routine safety and security reviews;
- a specific security and/or emergency incident;
- an investigation involving a matter of concern provided that previous consultations have occurred with appropriate people (e.g. HR in respect of potential misconduct matters); and
- other matters, if appropriate in the circumstances.

(c) Conditions on release of swipe card records?

Conditions should be imposed if swipe card records are released. Set out below is some suggested wording to include in an email in this regard.

Please see attached swipe cards records as requested.

These records are provided on the following grounds:

- The information contained in the swipe card records includes personal information, and this information must be treated in accordance with the *Privacy and Personal Information Protection Act 1998* (NSW) (**Privacy Act**), and the University's *Privacy Management Plan* and *Privacy Policy 2013*.
- The records must only be used for the purpose requested, and disclosed to the requestor and University employees that the requestor approves on the basis that those individuals are required to be aware of the information.
- Where appropriate, you should consult with appropriate University employees including:
 - Campus Security Unit;
 - HR;
 - Safety Health and Wellbeing; and
 - Office of General Counsel.
- It is possible that future requests for swipe card records relating to [insert name, names or class of people] may be declined as the purpose for the request could potentially constitute surveillance under the *Workplace Surveillance Act 2005* (NSW). Surveillance of employees ordinarily requires prior notice before surveillance commences. Please contact me or HR if you have any specific questions or concerns in this regard.

(d) Who is to be provided with the swipe card records?

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Swipe card records may be released to:

- the requestor; and
- other University employees that the requestor has approved on the basis that those individuals are required to be aware of the information.

(e) Decisions not to release swipe card records

Set out below is some suggested wording to include in an email in the event Campus Security decides not to release swipe card records.

The University is bound by strict requirements under the *Privacy and Personal Information Protection Act 1998* (NSW).

The swipe card records requested contain personal information, and we can only release this type of information if the intended use of the information is consistent with a purpose for the University's collection of this information (i.e. to verify individuals' access to secure areas of the University).

Based on your request and the information provided, we are not satisfied that it would be appropriate to release the swipe card records requested.

After you have had an opportunity to review and consider this advice, I'd be more than happy to meet with you in person to discuss.

Kind regards,

ASHLEY FRY | Solicitor
Office of General Counsel
THE UNIVERSITY OF SYDNEY
Level 5, Margaret Telfer K07 | The University of Sydney | NSW | 2006
T +61 2 8627 0740 | F +61 2 9036 7982
E ashley.fry@sydney.edu.au | W <http://sydney.edu.au>
CRICOS 00026A

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