

CASE NOTE FREQUENTLY ASKED QUESTIONS

Q. How many case notes should an Accountability Agent publish?

A. Those responsible for a CBPR program may find it useful to set targets for how many case notes should be published and make those targets public. In the initial years of a scheme's operation a greater number of case notes may be warranted so as to assist advisers and to provide reassurance to regulators and others. In later years, when there is a greater body of case notes available, fewer new notes may be needed. A scheme handling very few complaints will need to report a greater proportion of its complaints than a large scheme which can be more selective. As a general guide, a scheme handling more than 200 complaints a year might aim to publish about 8-10% of that number in case notes in the early years dropping later to, perhaps, 3-5 %.

Q. Which resolved complaints should be selected for case notes?

A. Those responsible for a CBPR program may find it useful to adopt standards to be applied in selecting case suitable for reporting. For instance, to ensure that the more serious cases are identified for reporting, criteria might refer to such indicators of systemic impact such as size of monetary settlements or awards. There is a need to report cases including significant or novel interpretations. There is also a value in reporting some typical cases which raise no novel legal issues but which illustrate the operation of the CBPR program in action.

Q. Why are case notes typically reported in anonymous form?

A. Case notes seek to illustrate the operation of the CBPR scheme, to educate about matters of interpretation and to ensure those handling complaints remain accountable. These objectives do not necessarily require the respondent to be named. The major objective of the complaints system is to resolve consumer disputes. Subject to the requirements of any particular scheme, this is often facilitated by confidential conciliation or mediation between the parties which does not require, and may even be hampered by, naming respondents publicly.

Q. Might it be useful to name respondents sometimes?

A. Sometimes it will be appropriate to name the respondent to a complaint. Indeed, some CBPR programs might have this as their usual practice. Even programs that do not usually name respondents may need to do so sometimes, for instance where the respondent has publicly announced that the program is handling the complaint or that fact has otherwise become a matter of public notoriety. Occasionally, naming a respondent is an intentional part of the complaint outcome (e.g. if the respondent is refusing to cooperate with the investigation or accept the outcome). It will be good practice for Accountability Agents to adopt transparent policies on their practices for naming respondents.

Q. How much detail should appear in the case notes?

A. When publishing case notes in anonymous form, care needs to be taken in publishing details which might inadvertently identify the parties. Anonymity is usually easily achieved through generalizing factual details. The level of useful detail in a particular case note will depend upon why it has been chosen for reporting. For example, complaints selected for a case note to illustrate a novel matter of legal interpretation will need the legal reasoning to be set out in full detail. By contrast, a case-note illustrating a fairly routine interpretation in an interesting factual-setting will obviously pay more attention to the facts. In the early phases of a scheme, relatively simple case notes are acceptable to ensure that advisers understand basic concepts but these should be followed by more detailed notes as familiarity with basic concepts is established.

Q. How should Accountability Agents disseminate case notes?

A. Active steps should be taken to make case notes easily available. Useful approaches may include to:

- maintain a distribution list to which copies of case notes are emailed
- release case notes individually or in batches during the year with accompanying media statements
- prepare summaries and use these in newsletters to highlight the release of new case notes
- post case notes on the Accountability Agent's website with good indexing and retrieval tools
- distribute electronic copies through RSS feeds
- integrate case notes into other educative initiatives such as training packages
- co-operate in re-publication by legal publishers.

Q. How can Accountability Agents assist in making case notes readily available throughout the Asia Pacific?

A. The cross-border nature of a CBPR program means that case notes will be useful to consumers, businesses, regulators and advisers in a variety of economies and not just in the Accountability Agent's home economy. Extra efforts should be taken to make their case notes widely available. These extra efforts will also contribute to consistency in interpretation across the region. Two key steps that Accountability Agents can take to make their case notes accessible throughout the Asia Pacific include:

- to facilitate the efforts of those who wish to re-publish their case notes
- to provide their case notes, in electronic form, to a recognised international consolidated point of access.

Q. How can Accountability Agents facilitate the efforts of those who wish to republish their case notes?

A. Third party publishers can enable case notes to be made more widely available to the public, specialist bodies, advisers, researchers and regulators. Accountability Agents may facilitate re-publication by giving a general license for re-publication of case notes with

proper acknowledgement. The general license should be included with the usual copyright statement posted on an Accountability Agent's website.

Q. Is there a place where all case notes could be deposited and accessed?

A. There is considerable value in having consolidated point of access for case notes from a variety of privacy enforcement authorities and accountability agents. The World Legal Information Institute's International Privacy Law Library available at www.worldlii.org/int/special/privacy provides a specialist facility for hosting privacy case notes and has for many years published case notes from privacy enforcement authorities in various Asia Pacific economies. The consolidated access point brings a variety of benefits including the ability to search seamlessly across a range of case note series from within the region. Accountability Agents are encouraged to make arrangements with WorldLII for the supply of case notes and their republication.

Q. Is there any further published guidance on releasing case notes?

A. The following resources discuss issues in releasing case notes and provide examples:

- International Privacy Law Library available at www.worldlii.org/int/special/privacy - which includes many examples of privacy case note series
- Graham Greenleaf, 'Reforming Reporting of Privacy Cases: A Proposal for Improving Accountability for Asia-Pacific Privacy Commissioners', 2004 available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=512782
- Asia-Pacific Privacy Authorities Statement of Common Administrative Practice on Case Note Citation, November 2005, available at www.privacy.gov.au/international/appa/statement.pdf
- Asia-Pacific Privacy Authorities Statement of Common Administrative Practice on Case Note Dissemination, November 2006, available at www.privacy.gov.au/international/appa/statement2.pdf
- OECD Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy, 2007, clause 20, available at www.oecd.org/dataoecd/43/28/38770483.pdf