

Data sovereignty

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Data sovereignty

- regulatory access (right to information, privacy)
 - litigation disclosure
 - subpoenas & identity disclosure
 - civil search orders
 - agency and police search warrants
 - international issues
-

Regulatory access

- RTI: general right to access government documents
 - defined process and possible cost to access
 - exceptions: particular agencies, privilege, where disclosure would breach confidence
- Privacy: general right for individuals to access & correct information about themselves
 - can impose “non-excessive” charge for access
 - exceptions: risk to safety, privilege, negotiations, misconduct

Litigation disclosure

- general duty to disclose relevant documents in litigation
- can be a significant exercise
- “document” includes “any disc, tape, or other article or any material from which sounds, images, writings or messages are capable of being ... reproduced”
- exceptions: privilege
(*not exceptions*: confidentiality, sensitivity, privacy)

Subpoenas

- subpoena (= “under penalty”)
 - for production of documents
 - to attend and give evidence
- court issues at request of a party to proceedings
- exceptions (subpoenas for production)
 - if oppressive (overbroad/non-specific, “fishing,” costs not paid)
 - privilege

Identity discovery

- someone has information to identify unknown defendant
 - eg, vehicle owner from registration: Dept of Transport
 - eg, customer from IP address: ISP
- by subpoena (Qld) or application under special court rule
 - must have (civil) legal claim
 - must show subpoena recipient has relevant information
 - must be highly specific (eg, dates and times)
 - large organisations (eg, ISPs) have special groups to manage

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: [REDACTED]

Applicant: [REDACTED]

and

First Respondent: **Telstra Corporation Ltd**
ACN 051 775 556

and

Second Respondent: **Vodafone Hutchison Australia Pty Ltd**
ACN 096 304 620

18 MAR 2013

SUBPOENA FOR PRODUCTION

To: The Proper Officer
Telstra Corporation Ltd
Level 41, 242 Exhibition Street, Melbourne Vic 3000

THE COURT ORDERS that you attend and produce this subpoena and the documents and things described in the schedule:

- (a) before the Magistrates Court of Queensland;
- (b) at 363 George Street, Brisbane Qld 4001;
- (c) ~~on~~ *within 10 Business Days of this subpoena being served on you.* and until you are excused from further attending.

SCHEDULE

Documents sufficient to identify the name and address of the internet service account holder associated with the following IP addresses at the stated dates and times.

Date and time	IP address
Sunday 27 January 2013 at 01:20:22 PST	[REDACTED]
Tuesday 29 January 2013 at 04:06:10 PST	[REDACTED]
Thursday 31 January 2013 at 02:41:09 PST	[REDACTED]
Saturday 2 February 2013 at 18:21:12 PST	[REDACTED]
Tuesday 5 February 2013 at 02:07:21 PST	[REDACTED]

TAKE NOTICE:

- (1) failure to comply with this subpoena without lawful excuse is contempt of court and may result in your arrest.
- (2) you need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of complying with the subpoena is paid, or tendered to you, not later than a reasonable time before the day on which you would be required to attend the Court.
- (3) you have the right to apply to the court to have the subpoena set aside on any sufficient grounds including-
 - want of relevance; or
 - privilege; or
 - oppressiveness, including oppressiveness because substantial expenses may not be reimbursed; or
 - non-compliance with the Uniform Civil Procedures Rules.
- (4) if you are not a party to these proceedings, instead of attending the court you or your agent may produce the documents and things described in the schedule to the Registry of the Court from which the subpoena was issued, not later than the day before the day on which you are required to attend.
- (5) if you are not a party to the proceeding and you incur substantial loss or expense in complying with this subpoena, you may apply to the Court for an order that the party who requested the issue of the subpoena pay to you an amount in addition to conduct money to compensate you for the loss or expense, including legal costs, incurred in responding properly to the subpoena.

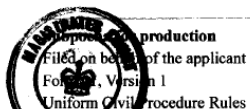
ISSUED WITH THE AUTHORITY OF THE MAGISTRATES COURT OF QUEENSLAND:

Signed:

Dated:



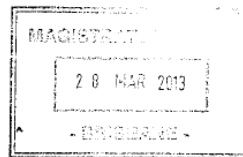
Issued at the request of Mark Sefton of Brightline Lawyers, the applicant's solicitor.



Brightline Lawyers
7A Boomerang Street, Lutwyche Qld 4030
Phone: 07 3160 9249
Fax: 07 3337 9724

26 March 2013

The Registrar
Magistrate's Court of Queensland
363 George Street
Brisbane Qld 4000



Dear Sir/Madam

In the matter of: ~~XXXXXX XXXXXX~~ – and – ~~XXXXXXXXXXXXXXXXXXXX~~

Number: M ~~XXXXXX~~

I refer to the subpoena for production of records in the above matter addressed to ~~XXXXXX XXXXXX~~ a copy of which is enclosed. I respond accordingly as follows:

Examination of ~~XXXXXX~~ records has shown that IP address ~~XXXXXX XXXXXX~~ was allocated to username ~~XXXXXXXXXXXXXXXXXXXX~~ at 18:57:04 hours AEST on 4 January 2013 until 22:38:31 hours AEST on 28 January 2013.

Examination of ~~XXXXXX~~ records has shown that IP address ~~XXXXXX XXXXXX~~ was allocated to username ~~XXXXXXXXXXXXXXXXXXXX~~ at 17:44:31 hours AEST on 29 January 2013 and the session was still open when the search was conducted on 22 March 2013.

Examination of ~~XXXXXX~~ records has shown that username ~~XXXXXXXXXXXXXXXXXXXX~~ is billed to an account for the provision of internet and data service held in the name of ~~XXXXXX XXXXXX~~

Yours faithfully,

Gary Griffin
~~XXXXXX~~
~~XXXXXX XXXXXX~~
~~XXXXXX XXXXXX~~
~~XXXXXX XXXXXX~~

If you receive a subpoena / discovery notice

- numbered, stamped by court?
 - addressed to an individual?
 - specific?
 - reasonable costs covered?
 - reasonable time allowed? (particularly if interstate)
 - manage for time
-

Civil search orders (“anton piller” orders)

- court order allowing search of private premises
- usually IP matters with risk of destruction of evidence
- executed daytime only, business days only
- usually permits taking forensic copies of data
- usually requires subject to provide assistance
 - eg, electrical power, system access, passwords

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: S123/13

Plaintiff: Patrick Sefton
7A Boomerang Street, Lutwyche Qld 4030

and

Defendant: A B Defendant
123 Made Up Street, Brisbane Qld 4000

PENAL NOTICE

TO: A B Defendant
123 Made Up Street, Brisbane Qld 4000

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THE ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

TO: A B Defendant
123 Made Up Street, Brisbane Qld 4000

This is a 'search order' made against you on 18 April 2013 by Justice Name at a hearing without notice to you after the Court was given the undertakings set out in Schedule B to this order and after the Court read the affidavits listed in Schedule C to this order.

THE COURT ORDERS:

INTRODUCTION

1. (a) the application for this order is made returnable immediately.

If you are subject to a civil search order

- can hold to read material, obtain legal advice (2 hrs)
- can apply to set aside
 - eg, if court has not been given a complete picture
- can preserve privilege
- individuals entitled to separate self-incriminating material
- can observe search (but not interfere)

Agency and police warrants

- police warrants
 - notice to produce, search
 - access to storage device, assistance (eg, passwords)
- other enforcement agencies have search powers
 - ACCC, ACC, ASIC, APRA, ATO, Customs & Immigration, intelligence & security agencies
 - can obtain forensic copies of systems, or seize (as last resort)
 - can require assistance (as police)

What if you're the subject of a warrant

- can't usually hold to seek advice
- can preserve privilege
- watch what you say
 - admissions, good-cop/bad-cop
 - all activity and discussions probably recorded
- can observe search
- can be arrested immediately, if problem material found

International issues

- most police forces can obtain material under warrant (sometimes without warrant)
- jurisdiction extends to in-jurisdiction entities operating internationally
 - eg, Google, Amazon, Microsoft operating in Australia/elsewhere are subject to US police and agency warrant powers
- Australia recently signed “Cybercrime” treaty: mutual legal assistance

Practical responses to enforcement requests

- in writing?
- signed by authorised official?
- issued under an appropriate law?
- overbroad? – negotiate with issuing agency
- notify affected persons (unless prohibited)

Thank you

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