



Privacy Plan

On 1 July 2009 the *Information Privacy Act 2009 (IP Act)* commenced. The IP Act contains 11 Information Privacy Principles (**IPPs**) which apply to the Office of the Information Commissioner.

IPP 5 places an obligation on agencies to take steps to ensure that people are aware of the types of personal information held by an agency, why they are held, and how an individual can access their personal information.

To ensure the Office meets these obligations it will continue to produce a privacy plan. To that end, I am pleased to approve the privacy plan for 2009-2010 for the Office of the Information Commissioner. The privacy plan outlines how this Office will meet its obligations to manage personal information in accordance with the IP Act. It incorporates:

- The responsibilities of the Information Commissioner
- The role of Office of the Information Commissioner staff
- The procedure for lodging a privacy complaint, and how those complaints are managed
- The types of personal information held by this Office
- How individuals can access personal information held by this office
- Contracts, licensing and outsourcing agreements involving personal information entered into by the Office

Approved July 2009
Julie Kinross
Acting Information Commissioner



Introduction

The *Information Privacy Act 2009 (IP Act)* regulates how public sector agencies, Ministers and statutory bodies, such as the Office of the Information Commissioner (the Office), must manage personal information. It creates an obligation to comply with the privacy principles, which include the Information Privacy Principles (**IPPs**) or the National Privacy Principles (**NPPs**), the conditions under which personal information may be transferred outside of Australia and the rules regarding contracted service providers. Chapter 3 of the IP Act creates a right for individuals to access and amend their personal information

The eleven IPPs apply to the Office of the Information Commissioner and specify how personal information is to be collected, stored, secured, accessed, amended, used and disclosed. However, the responsibilities of the Information Commissioner under the *Right to Information Act 2009 (RTI Act)* and chapter 3 of the IP Act require the Information Commissioner to deal in a specific way with personal information when meeting these responsibilities.

The IP Act defines personal information as information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Personal information is not limited to information that is sensitive or confidential, although the degree of sensitivity or confidentiality may influence the way in which the IPPs are applied in particular circumstances. Many of the IPPs require that reasonable actions be taken, having regard to the specific circumstances and the nature of the information. As such, procedures may vary with the sensitivity of the information.

As part of the Information Commissioner's role the Office has produced extensive guidelines on the IP Act, which may be viewed on the Office's website:

<http://www.oic.qld.gov.au>

The IP Act may be found on the Office of the Queensland Parliamentary Counsel's Queensland Legislation website.

<http://www.legislation.qld.gov.au/OQPChome.htm>



The Office of the Information Commissioner

The Office was established under Part 5A of the *Freedom of Information Act 1992*, and is continued under section 123 of the *Right to Information Act 2009 (RTI Act)*. Chapter four of the RTI Act and the IP Act set out the Information Commissioner's powers and responsibilities.

External review functions

The functions of the Information Commissioner include the power to investigate and review decisions of agencies and Minister which are subject to external review under the RTI Act and chapter 3 of the IP Act, for example a decision:

- that an access or amendment application is outside the scope of the IP Act under section
- to disclose a document contrary to the views of a relevant third party under section
- refusing access to a document under section
- refusing amendment of a document under the IP Act
- deferring access to a document
- about whether an access charge is payable in relation to access to a document, including a decision not to waive charges
- a decision giving access to documents subject to the deletion of information.

Power to issue guidelines

The Information Commissioner has the power to issue guidelines about any matter which relates to the functions of the Information Commissioner under both the RTI Act and the IP Act.

Power to declare applicants vexatious

The Information Commissioner has the power under section 144 of the RTI Act and section 127 of the IP Act to declare an applicant vexatious. This may be done on the Information Commissioner's own initiative or in response to an application of one or more agencies.

Responsibilities under the IP Act

Part of the Information Commissioner's role under the IP Act is to lead the improvement of the administration of privacy in Queensland's public sector by:

- promoting the understanding of the privacy principles
- promoting compliance with the privacy principles
- providing best practice leadership and advice
- providing advice and assistance to relevant agencies and bound contracted service providers on the interpretation of the IP Act
- initiating general privacy education and training
- initiating targeted education and training programs dealing with specific aspects of privacy administration
- initiating education and training programs to promote greater awareness of the IP Act in the community and within the public sector environment
- commenting on any issues which relate to the administration of privacy in the public sector environment.

Decision-making functions

The Information Commissioner has a number of decision-making functions, including:

- waiving or modifying the privacy principles under chapter 4, part 5 of the IP Act
- dealing with privacy complaints under chapter 5 of the IP Act
- issuing compliance notices under chapter 4, part 6 of the IP Act



Performance monitoring functions

As part of the Information Commissioner's lead role in improving public sector privacy administration, the Information Commissioner has the power to conduct compliance audits to assess the compliance of agencies and bound contracted service providers with the privacy principles.

The Information Commissioner also has the power to conduct reviews into personal information handling practices, including technologies, programs, policies and procedures, to:

- identify privacy related issues of a systemic nature generally, or
- identify particular grounds for the issue of compliance notices

and, if considered appropriate, to report to the Speaker of Parliament on the findings of any review.

The Right to Information Commissioner and the Privacy Commissioner

The RTI Act creates the position of the Right to Information Commissioner to be a deputy to the Information Commissioner, with particular responsibility for matters relating to the Information Commissioner's functions under the RTI Act.

The IP Act creates the position of the Privacy Commissioner to be a deputy to the Information Commissioner, with particular responsibility for matter relating to the Information Commissioner's functions under the RTI Act.

The Manager, Corporate and Executive Services

The Manager, Corporate and Executive Services, is the Privacy Contact Officer for the Office. This position is responsible for monitoring, managing, and maintaining ongoing compliance with the IP Act, and the implementation of the privacy plan. In addition, this position ensures that staff understand their responsibilities under the privacy plan and the IP Act, and provides ongoing policy advice and guidance to the Information Commissioner and all employees.

Advice or information on personal information privacy in the Office of the Information Commissioner may be obtained by contacting the Manager, Corporate and Executive Services:

The Manager, Corporate and Executive Services
Office of the Information Commissioner
PO Box 10143
Adelaide St
Brisbane QLD 4000

Employees

Employees are responsible for managing personal information in compliance with the IP Act and the privacy plan. There are strict security procedures in place for the management of information held in the Office, and all employees are required to sign a deed of confidentiality before gaining access to any information. Employees are given access only to information which is relevant to their duties.



Complaints

If you believe that your personal information has not been handled in accordance with the IP Act, you may make a complaint to the Office of the Information Commissioner. Complaints relating to information privacy will be managed under the Office Complaints Process (see Appendix A).

Access to personal information

IPP 6(1) places an obligation on agencies which control documents containing personal information to give the individual the personal information is about a copy of the document if they request access to it. However, this obligation is subject to the limitation in IPP 6(2), which allows an agency to refuse access if it was permitted to refuse under an access law of the state.

Both the RTI Act and the IP Act provide that the Information Commissioner is not subject to the access rights in those Acts, nor to the amendment rights in the IP Act. The only exception is for staff of the Office, who are permitted to make access applications in relation to their personal information.

Types of personal information

Information collected during the external review process

This may include the names of participants, residential addresses, submissions and evidence, and any other information required by the Information Commissioner to enable a decision to be made.

This information is collected under section 100 of the RTI Act and section 113 of the IP Act.

To ensure the external review process is procedurally fair, it is often necessary to provide copies or extracts of review participants' evidence and submissions to other review participants to enable them to respond. This may involve a disclosure of the participants' personal information, but, under section 108 of the RTI Act and section 121 of the IP Act, it must not include information that is claimed to be exempt information under schedule three of the RTI Act or information that is contrary to the public interest under schedule four of the RTI Act.

As part of the External Review process, agencies must provide documents and information to the Office. This is provided for under both the RTI and the IP Acts and, as such, it is not a breach of the privacy principles to do so.

Information contained in agency or ministerial documents

These are supplied to the Office under section 100 of the RTI Act and section 113 of the IP Act as part of the external review process. This information remains the property of the agency or minister that provided it, and is returned once the review process is complete.

Information collected as part of the privacy complaints management process under chapter 5 of the IP Act

This may include the complainant's name, residential address, personal details and information supporting the complaint. This information will only be used in carrying out the Information Commissioner's functions to assess the complaint, mediate it if appropriate or refer it to the Queensland Civil and Administrative Tribunal if requested by the complainant.



Personal information may also be collected:

- as part of providing advice and guidance through the Office's enquiry service
- during the process of issuing a compliance notice under section 158 of the IP Act or assessing whether one should be issued
- conducting a review under section 135(1) of the IP Act
- as part of the Office's general support functions under both the RTI Act and the IP Act.

Staff information

This is collected and held under the *Public Service Act 2008 (Qld)* and the *Public Service Regulation 2008 (Qld)*, and is used to administer the staffing, financial, and human resources processes of the Office.

Public Registers

Section 110(6) of the RTI Act and section 123(6) of the IP Act require the Information Commissioner to publish decisions made on external review applications. These decisions are published on the website.

These decisions may contain the personal information of applicants for external review, third parties consulted under section 37 of the RTI Act or section 56 of the IP Act, initial and internal review decision makers and officers who created or dealt with documents within the scope of an application.

Contracts, licensing and outsourcing arrangements

The Office's information technology (IT) services, financial and administrative services, and human resources management services are provided by Parliamentary Services under an Operating Level Agreement (OLA). The OLA contains privacy and confidentiality provisions, and the Parliamentary Services officer who maintains the Office's IT infrastructure is subject to a deed of confidentiality.



Appendix A – Complaints Management Process

Complaints

We take any complaint about our services seriously. Feedback and complaints are an opportunity for us to improve the way we carry out our work.

You can give us feedback at any time by phoning your review officer or emailing administration@oic.qld.gov.au. At the end of an external review process, applicants are asked to give us feedback in a survey we send out. If however you want to make a complaint, information is provided here about what you can do.

Complaint? – What you can do.

Step 1-- Try to resolve issues informally

To enable us to deal with any complaints promptly, raise your issue with your review officer by phone. If you are unhappy with the response from your case officer, ask to speak to the Assistant Commissioner supervising your application. The Assistant Commissioner responsible for your application knows your file and is best able to help. If they are not available when you call, they will contact you by phone or in writing as soon as possible to try to promptly resolve your issue.

You are encouraged to resolve your complaint informally but, if after contacting both your case officer and the Assistant Commissioner you remain dissatisfied, you may make a formal complaint.

Step 2-- Make a formal Complaint

Formal complaints must be in writing and addressed to:

The Manager, Corporate and Executive Services
Office of the Information Commissioner
PO Box 10143
Adelaide St
Brisbane QLD 4000

Or emailed to: administration@oic.qld.gov.au.

What happens then?

- You will receive acknowledge of your correspondence within 14 days
- The Manager, Corporate and Executive Services, in assessing a complaint may determine the content of the complaint or enquiry requires an investigation. If this occurs, the matter is referred to the First Assistant Information Commissioner
- The First Assistant Information Commissioner will conduct an independent assessment of the content of the complaint and will undertake to resolve the matter and provide a written response and outcome within 28 days
- if after receiving a response to your formal complaint you are still dissatisfied you may request a final review from the Information Commissioner.



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If you believe there has been official misconduct

The Crime and Misconduct Commission has primary responsibility for dealing with complaints about official misconduct. Official misconduct is conduct that could, if proved, be a criminal offence or a disciplinary breach that leads to dismissal.

If you think there may have been official misconduct, write to the CMC at:

Crime and Misconduct Commission
GPO Box 3123
Brisbane Qld 4001

Or email mailbox@cmc.qld.gov.au

Effective Date

July 2009

Legislative Provisions

- *Information Privacy Act 2009*
- OPSC Directive 13/06 Complaint Management Systems
- *Public Service Act 1996*
- *Public Sector Ethics Act 1994*
- *Right to Information Act 2009*