



Applying the legislation

GUIDELINE – *Information Privacy Act 2009*

Machinery of government changes and privacy

The *Information Privacy Act 2009* (Qld) (**IP Act**) contains privacy principles which set out how Queensland government agencies are to collect, manage, use and disclose personal information.

Personal information is defined very broadly in the IP Act, and it includes any information or opinion in any form, whether true or not, about an identifiable person.

Agency responsibilities

Government services are delivered by administrative units—more commonly, government departments—administered by a Minister.¹ These will be referred to as *agencies* in this guideline.

Agency responsibilities for specific services are set out in the Administrative Arrangements Orders.² Responsibilities can be re-allocated and new agencies created by the making of new Administrative Arrangements Orders. These changes are conveniently referred to as MOG (machinery-of-government) changes.³

MOG changes and the privacy principles

MOG changes often involve the transfer of entities and/or responsibilities from one agency to another; all records relevant to the responsibilities must also be transferred with the receiving agency becoming the new owner of the records. These records will invariably contain personal information. The agencies involved in these MOG changes must ensure that their actions comply with the privacy principles relating to the use and disclosure of personal information.

MOG changes can result in the creation of ‘orphan records’ where a previous government responsibility is abolished. Agencies may wish to contact the Queensland State Archives⁴ for guidance on dealing with this class of record.

¹ Under the Westminster system of government and enshrined in the *Constitution of Queensland 2001*

² Administrative Arrangements Orders are made by the Governor in Council and published in the Government Gazette

³ See the *Administrative Arrangements Order (No 3) 2012*

⁴ www.archives.qld.gov.au



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Use and disclosure

An agency uses information if it manipulates searches or otherwise deals with the information.⁵ Preparing records or other documents which contain personal information for transfer to another agency is a 'use' of the documents. Any use of personal information must comply with Information Privacy Principles 8, 9 and particularly, 10 (**IPP 10**).⁶

An agency discloses personal information if it stops having control over it when it gives it to someone who does not already know it. Transferring documents or other records containing personal information to another agency will constitute a disclosure in most situations. Disclosure must comply with Information Privacy Principle 11 (**IPP 11**).⁷

Authorised or required under a law

IPP 10 and IPP 11 allow personal information to be used and disclosed where it is authorised or required by a law. The Administrative Arrangements Orders are made under the authority of section 44 of the *Constitution of Queensland 2001* and constitute a law for the purposes of IPP 10 and 11.

This means that any actions necessary to give affect to the Administrative Arrangements Orders will be authorised by law, including activities which are necessary to prepare records for transfer and the transfer itself. Accordingly, these activities will not be a breach of IPPs 10 or 11.

If the transfer process is identified as an opportunity for housekeeping or data cleansing and this will involve the disposal of public records, agencies should be mindful of their obligations under the *Public Records Act 2002 (Qld)*. Contact the Queensland State Archives for more information and/or guidance in this area at www.archives.qld.gov.au.⁸

Once the new agency is in possession of the transferred records, it is obligated to deal with them in accordance with the relevant privacy principles in the IP Act. For more information on handling personal information under the IP Act, see [Chapter 2 Privacy principles](#).

For additional information and assistance please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or email enquiries@oic.qld.gov.au.

⁵ Section 23(3)(a) of the IP Act

⁶ National Privacy Principle 2 for health agencies

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⁸ For example -

<http://www.archives.qld.gov.au/Recordkeeping/GRKDownloads/Documents/MigratingDigitalRecords.pdf>



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This guide is introductory only, and deals with issues in a general way. It is not legal advice. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

If you have any comments or suggestions on the content of this document, please submit them to feedback@oic.qld.gov.au

Published 16 July 2012 and Last Updated 27 July 2012

Changes to legislation after the update date are not included in this document