



PRIVACY PLAN

The *Information Privacy Act 2009 (IP Act)* commenced on 1 July 2009. The IP Act includes eleven 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.

The privacy plan for 2015-2016 for the Office of the Information Commissioner details how this Office meets its obligations to manage personal information in accordance with the IP Act generally and with the obligations of IPP 5 specifically. The plan sets out:

- 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 2015
Rachael Rangihaeata
Information Commissioner

Introduction

The *Information Privacy Act 2009 (IP Act)* regulates how Queensland Government departments, Ministers, local governments and public authorities - such as the Office of the Information Commissioner (the Office) - manage personal information. It creates an obligation to comply with the privacy principles, which include the Information Privacy Principles¹ (**IPPs**) the National Privacy Principles² (**NPPs**), the conditions under which personal information may be transferred outside of Australia³ and the rules regarding contracted service providers⁴. 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 we collect, store, secure, access, amend, use and disclose personal information. However, the responsibilities under the *Right to Information Act 2009 (RTI Act)* and the IP Act require the Information Commissioner to deal in specific ways with personal information. The RTI and IP Acts also place limitations on accessing information obtained or created by the Office in the course of fulfilling its statutory 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'. In short form – personal information is any information about an identifiable individual.

As part of the Information Commissioner's responsibilities the Office has produced extensive guidelines concerning the privacy principles which may be viewed on the Office's website:

www.oic.qld.gov.au

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

www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/InfoPrivA09.pdf

¹ Chapter 2, Part 1 and Schedule 3 of the IP Act.

² The NPPs apply only to Queensland Health. Chapter 2 Part 2 and Schedule 4 of the IP Act.

³ Section 33 of the IP Act.

⁴ Chapter 2, Part 4 of the IP Act.

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)*. Chapters 4 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 Act
- to disclose a document contrary to the views of a relevant third party
- refusing access to a document
- 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.

The Office will necessarily deal with personal information in the course of fulfilling these functions.

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 and the IP Acts.

Power to declare applicants vexatious

The Information Commissioner has the power under section 114 of the RTI Act and section 127 of the IP Act to declare an applicant vexatious.⁵ 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

⁵ Decisions declaring applicants vexatious can be viewed on the Office's web-site at <http://www.oic.qld.gov.au/decisions>.

- 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.

Privacy functions

The Information Commissioner has a number of functions specific to privacy, including:

- waiving or modifying an agency's obligation to comply privacy principles⁶
- dealing with privacy complaints⁷
- issuing compliance notices.⁸

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.⁹

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 IP Act.

⁶ Chapter 4, part 5 of the IP Act.

⁷ Chapter 5 of the IP Act.

⁸ Chapter 4, part 6 of the IP Act.

⁹ Compliance and audit reports can be viewed on the Office's web-site at <http://bit.ly/ULiD7B>

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 RTI and IP Acts 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.

Privacy complaints

If you believe that an Office employee has not dealt with your personal information in accordance with the IP Act, you may make a privacy complaint to the Office of the Information Commissioner. Complaints relating to information privacy will be managed under the Office Complaints Management Procedure. More information is available at:

www.oic.qld.gov.au/page-feedback/want-to-make-a-complaint-about-oic

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 which includes the provisions in Chapters 3 of the RTI and IP Acts.

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 Act¹⁰. Accordingly, there is no general capacity for an individual to apply under the RTI and IP Acts for access to documents in the control or possession of the Office, regardless if the subject matter of the documents directly concerns the individual. The only exception is for employees of the Office, who are permitted to make access applications in relation to their personal information.

¹⁰ Section 46 of the IP Act.

Types of personal information

The Office deals with the following categories of personal information.

Information collected during the external review process

This may include the names of applicants, agency employees and persons who may be consulted in the course of the review (**participants**) and the participants' residential addresses, contact details, submissions and evidence, and any other information required by the Information Commissioner to enable the review decision to be made.

To ensure the external review process is procedurally fair, it is often necessary to provide copies or extracts of one participant's' evidence and submissions to other review participants for the purposes of seeking a response. This may involve a disclosure of the participants' personal information. However, under section 108 of the RTI Act and section 121 of the IP Act, the provision must not include material that is:

- claimed to be exempt information under schedule 3 of the RTI Act
- information that is contrary to the public interest under schedule 4 of the RTI Act.

As part of the External Review process, agencies must provide documents and information to the Office. This is authorised or required under both the RTI and the IP Acts and, as such, the agencies' provision does not breach the privacy principles.

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 will include the complainant's name, residential address, personal details and information supporting the complaint. This may also include the personal information of individual officers in the agency that is the subject of 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 (**QCAT**) if requested by the complainant.

While there is a legislative requirement that the agency that is the subject of the privacy complaint be advised of the complaint¹¹, the Office will not automatically provide all the complainant's material to the respondent agency or vice versa. The Office must however comply with the principles of natural justice and procedural fairness and provide sufficient material to enable a full response.

¹¹ Section 165(3) of the IP Act.

The Information Commissioner or an Office employee cannot be compelled to produce a 'privacy document' or to disclose 'privacy information' in third party legal proceedings¹²; this will include privacy complaint proceedings in QCAT.

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 or section 131(1) of the RTI 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. As previously discussed, the only permissible formal access application to the Office is one made under the IP Act by employees seeking access to their personal information.

Web-site

The Office maintains an interactive web-site. As well as being a significant source for information and resources concerning the Office's operations and the RTI and IP Acts, individuals are also able to:

- Make a privacy complaint
- Ask the Office a question
- Apply for employment with the Office
- Post comments in relation to specific issues
- Contribute to blogs on privacy and right to information issues.

For specific areas of interest, the Office will deal with the personal information provided online in accordance with its legislative obligations.¹³ The Office collects limited information from visitors to the web-site and generally no personal information. The collected information is predominantly used for statistical purposes. For more detail on information collected through the Office's online services and its use, please refer to the Office's privacy policy:

<http://www.oic.qld.gov.au/site-information/privacy-policy>

Publication of external review decisions

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.

¹² Section 153 of the IP Act.

¹³ For example - the online privacy complaint form seeks the name and contact details of the complainant and sufficient details about the subject matter of the complaint to enable the Office to administer the complaint in accordance with Chapter 5 of the IP Act.

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. The decisions also provide the name of the decision maker and their position at the Office.

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 officers who maintain the Office's IT infrastructure is subject to a deed of confidentiality.

When the Office outsources its functions, it complies with its obligations under Chapter 2, Part 4 of the IP Act – contracted service providers.