



Special rules for some information and organisations - Privacy

Information Act Guideline

Publicly available information

The Privacy scheme doesn't apply to:

- archives that are publicly available; or
- materials in collections of libraries, art galleries and museums that are on public display or publicly available for reference or study purposes (s.12).

Information Privacy Principles 2 and 4-10 don't apply to information in publications generally available to the public (s.68). But IPP 1 (Collection) and IPP 3 (Data Quality) do apply.

Information on a public register must be kept in compliance with the IPPs to the extent that it is reasonably practicable to do so given the requirements imposed by or under an Act for keeping the register and making it available for public inspection (s.68).

Old information (pre-July 2003)

The Privacy scheme applies to all personal information collected after 1 July 2003.

It also applies to personal information collected before that time if the organisation handles the information at any time after that time (s.14).

Courts and tribunals

The *Information Act* does not apply to:

- a court in relation to its judicial functions;
- a tribunal in relation to its decision-making functions;
- a coroner in relation to an inquest or inquiry;
- a magistrate or justice in relation to a preliminary examination (s.5(5)).

The IPPs don't apply in relation to a proceeding or other matter before a court or tribunal (s.69).

Health and Safety

An organisation will not breach IPP 2 by using or disclosing personal information if it reasonably believes that the use or disclosure is necessary to lessen or prevent—

- a serious and imminent threat to the individual's or another individual's life, health or safety; or
- a serious threat to public health or public safety (IPP2.1(d)).

Law enforcement agencies

A law enforcement agency is not required to comply with an IPP if the agency believes on reasonable grounds that non-compliance is necessary for the purposes of one or more of its or another law enforcement agency's functions (s.70).

Section 70 sets out a non-exclusive list of law enforcement functions, which extends to executing orders or decisions of a court or tribunal, locating missing persons, providing services in emergencies and community policing.

The definition of "law enforcement agency" is broad. It includes police forces of various jurisdictions and the Australian Crime Commission. It also includes organisations that perform a law enforcement function as one of a number of functions. For example, a municipal council has numerous functions, many of which do not involve law enforcement. So long as it performs some law enforcement function it will be a law enforcement agency for the purposes of the Act.

However, the context of s.70 makes it clear that the exception only excuses non-compliance in relation to the performance of law enforcement functions — not unrelated functions of the organisation.

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Use for, or disclosure to, a law enforcement agency

An organisation (whether or not it is a law enforcement agency) will not breach IPP 2 by using or disclosing information if it reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of a law enforcement agency:

- (i) preventing, detecting, investigating, prosecuting or punishing an offence or a breach of a prescribed law;
- (ii) enforcing a law relating to the confiscation of proceeds of crime;
- (iii) protecting public revenue;
- (iv) preventing, detecting, investigating or remedying seriously improper conduct or prescribed conduct;
- (v) preparing for or conducting proceedings before a court or tribunal or implementing the orders of a court or tribunal (IPP 2.1(g)).

If an organisation uses or discloses personal information under IPP 2.1(g), it must make a written note of the use or disclosure.

An organisation will not breach IPP 2 by disclosing information to ASIO or ASIS in accordance with a certificate under IPP 2.1(h) or (i).

Nothing in IPP 2 requires an organisation to disclose personal information to a law enforcement agency. It does not override any existing legal obligation not to disclose information.

However, it is not intended to deter public sector organisations from lawfully co-operating with law enforcement agencies in the performance of their functions.

The exception relates to IPP 2 only. Organisations must still comply with other IPPs. In particular, IPP 9, dealing with transfers of personal information outside the Territory must be complied with.

Unlawful activity

An organisation will not breach IPP 2 by using or disclosing personal information if it has reason to suspect that unlawful activity has been, is being or may be engaged in and uses or discloses the information -

- as a necessary part of its investigation of the matter; or
- in reporting its concerns to relevant persons or authorities (IPP 2.1(e)).

Statistics and Research

An organisation will not breach IPP 2 by using or disclosing personal information -

- in connection with a function or activity of the organisation;
- that involves compiling statistics or conducting research;
- unless the statistic or research is published in a form that identifies a person (s.71).

The exception covers IPP 2. Organisations must still comply with other IPPs.

Authorised variation from IPPs

An organisation can apply to the Information Commissioner to authorise collection, use or disclosure that would otherwise be in breach of IPP 1, 2 or 10. For more, see *Authorising departure from the IPPs*.

An organisation can apply to establish a Code of Practice that may supplement, vary, or act in place of, the IPPs.

1800 005 610 — infocomm.nt.gov.au — infocomm@nt.gov.au

This guideline is produced by the Information Commissioner to promote awareness and understanding about the *Information Act*. It is **not a substitute for the Act**. You should read the relevant provisions of the Act to see how it applies in any particular case. Any views expressed in this guideline about how the Act works are **preliminary** only. In every case, the Commissioner is open to argument by a member of the public or a public sector organisation that a different view should be taken.