



Staff Policy No. 17

Privacy Policy

Aim

This Privacy Policy sets out how the Office of the Director of Public Prosecutions of the ACT (the Office) manages personal information when performing its functions and activities.

We will update this Privacy Policy when our information handling practices change. Updates will be publicised on our website.

Policy

PART A: Collection of personal information

The specific legal obligation of Office when collecting and handling your personal information are outlined in the *Information Privacy Act 2014* (ACT) and, in particular, in the Territory Privacy Principles found in Schedule 1 of the *Information Privacy Act 2014* (ACT). This statement is made in accordance with Territory Privacy Principle 1.3.

Function of the Office

The Office was established by the *Director of Public Prosecutions Act 1990* (ACT) to institute, conduct and supervise prosecutions and related proceedings. The Act provides that the Office be controlled by the Director, an independent statutory officer appointed by the Executive.

The Office collects, holds, uses and discloses personal information to carry out functions or activities under the *Director of Public Prosecutions Act 1990* (ACT) and a number of other pieces of legislation relating to justice, criminal law and regulatory laws.

The functions and activities of the Director are set out in the *Director of Public Prosecutions Act 1990* (ACT). The principal activities of the Director are:

- to institute and conduct prosecutions, both summary and indictable;

- to institute and respond to appeals;
- to restrain and confiscate assets used in, or derived from, the commission of criminal offences;
- to assist the coroner in inquests and inquiries; and
- to provide advice to the police and other investigative agencies.

The Director has some important statutory functions, including:

- to institute a prosecution on indictment where there has been no committal for trial (known as an *ex officio* indictment);
- to decline to proceed further in a prosecution and bring it to an end;
- to take over and conduct, or discontinue, prosecutions instituted by another person (other than the Attorney-General);
- to give to a person an undertaking that specified evidence will not be used against them, or that they will not be prosecuted for a specified offence or conduct; and
- to give directions or furnish guidelines to the chief police officer and other persons specified in the Act, including investigators and prosecutors.

Remaining anonymous

Wherever possible when dealing with the Office (for example, when calling on the phone to make an enquiry) you will have the option of remaining anonymous or using a pseudonym (ie. a made up name).

However, in some situations the Office will need you to provide your name or other details in order to provide services or assistance to you, including if we are authorised or required by law to deal with an identified individual. If in doubt, please discuss the issue with the person with whom you are dealing.

If it is impracticable or unlawful for us to deal with you without you providing identifying information, we will let you know why we need your personal information and what it will mean for you if the information is not collected.

Collection of your personal information

At all times, the Office tries to only collect personal information where that information is reasonably necessary for, or directly related to, one or more of our functions or activities.

Normally the Office will only collect sensitive information (such as sexual orientation or criminal record) with your consent or as required by law.

Sometimes however, we may collect personal information without your consent, such as when it is required or authorised by a law, or court or tribunal order, or is necessary to prevent a threat to the life, health or safety of one or more individuals, or to public health or safety.

The Office will not collect personal information about you if we do not need it.

How do we collect personal information

The Office will only collect information by lawful and fair means.

The main way the Office collects personal information about you is when it is provided to us in the course of performing our functions.

Your personal information may be collected in a variety of ways, including through paper or online forms, in correspondence to and from you as well as email, over the telephone and by fax.

The Office collects personal information when:

- We are required or authorised by law or a court or tribunal order to collect the information.
- You make submissions to us, and you consent to our collection of your personal information.
- You contact us to ask for information (but only if we need it).
- You ask for access to information that the Office holds about you or other information about the operation of our business.

We may also collect contact details and some other personal information if you are participating in a meeting or consultation with us.

Normally we collect information directly from you unless it is unreasonable or impracticable to do so. In certain circumstances, for example where it is required by law, we may also obtain information collected by other Australian, state and territory government bodies or other organisations. We may also receive information from a third party where this is necessary to fulfil our legislative responsibilities.

We also collect personal information from publically available sources where that is reasonably necessary for, or directly related to our functions.

The Office has CCTV and all cameras are constantly operating, and all images are automatically recorded and saved. The CCTV system is managed in accordance with the *Information Privacy Act 2014 (ACT)* and the Office CCTV Policy.

Types of information we collect and hold

The Office endeavours to collect the minimum amount of personal information that is required to perform its functions. The personal information we collect and hold will vary depending on what we require to perform our functions and responsibilities. It may include:

- Information about your identity (e.g. date of birth, country of birth, passport details, visa details and drivers licence).
- Your name, address and contact details (e.g. phone, email and fax).
- Information about your personal circumstances and associations (e.g. age, gender, marital status and occupation).

- Information about your financial affairs (e.g. payment details, bank account details, and information about business and financial interests).
- Information about your employment (e.g. applications for employment, work history, referee comments and remuneration).
- Information about assistance provided to you under our assistance arrangements.

Sensitive information is handled with additional protections under the *Information Privacy Act 2014* (ACT). The Office will not normally collect sensitive information about you without your consent, unless this is required by law or another exception applies.

The Office holds sensitive information about the criminal records of its employees, as a standard ACT Public Service requirement.

It also holds the following sensitive personal information where it is relevant to a function or power:

- criminal record
- biometric information
- racial or ethnic origin
- religious beliefs.

The Office does not generally collect or hold other types of sensitive information such as:

- philosophical beliefs
- political opinions
- membership of a political association
- membership of a professional or trade association
- membership of a trade union
- religious beliefs
- sexual orientation and practices
- genetic information.

Notice of collection

When the Office needs to collect personal information from you, we will take all reasonable steps to notify you about¹-

- Who we are and how you can contact us.
- The circumstances in which we may or have collected personal information.
- The laws that requires us to collect this information (if any).
- How you may be affected if we cannot collect the information we need.

¹ Note, an exemption applies to forms and court documents managed by the ACT Courts and Tribunals

- The details of any agencies or entities which we normally share personal information with, including whether those recipients are overseas, and which countries those recipients are located in.
- The existence of this Privacy Policy explaining how we handle your information, how you can access or request changes to your personal information, and how we deal with complaints about our information handling.
- How you can access the Office's Privacy Policy.

PART B: Use or disclosure of personal information

The Office uses and discloses personal information to allow the Office to perform its functions effectively.

Referring information to another ACT government office or agency

The Office will share information with other ACT agencies in situations where you would reasonably expect us to use the information for that purpose. Common situations in which the Office will disclose information are:

- **Correspondent personal information** - if you write to us with a question, inquiry or request for assistance and we are not able to answer it fully or provide assistance we would disclose your name, contact details and the nature of your question, inquiry or request for assistance to the ACT agency that is best placed to assist you.
- **Cross agency programs** – if we participate or if you participate in a program that is administered or involves more than one ACT, Commonwealth or state government agency we may disclose your name, contacts, and details of your participation in the program with these other stakeholder agencies.
- **Complaints information** - if you complain about an Office decision or action the personal information we might share could include your contact details, use of appeal or review mechanisms, complaint and/or customer reference numbers with any other agency, how the action complained about has affected you, and any outcome you would like to obtain. This information may be disclosed to the ACT Ombudsman to enable the Ombudsman to independently investigate the complaint.
- **Personnel records** - Personnel files are kept to maintain records about all aspects of employment including recruitment, employment history, payroll, leave, equal employment opportunity data, workplace relations, security clearances, performance, workplace health and safety, rehabilitation and compensation. These records are kept in relation to all permanent, contracted and temporary staff members/employees. Personal information is disclosed on a 'need to know' basis to Shared Services for the purposes of administering our payroll, and to travel providers under the 'whole of government' travel arrangements.
- **FOI Records** - The purpose of these records is to record all requests for information made to the Office under *the Freedom of Information Act 1989* (ACT). Personal information on these records may relate to the person who has made the FOI request, Office staff, staff of other agencies, and any other person whose personal

information is contained in the record to which FOI access has been sought. Depending on the information contained in the records, these may be released to relevant ACT agencies.

Disclosure to the media

The Office will only provide the media with your personal information with your consent, where such information is already publically available, or where a specific exception under the law applies (see below for further information on exceptions). Contact between the Office and the media is guided by Staff Policy No 11 Media Protocol.

Disclosure of sensitive information

The Office will only disclose your sensitive information for the purposes for which you gave it to us or for directly related purposes you would reasonably expect or if you agree.

Exceptions

The Office will not use your personal information for a secondary purpose or share your personal information with private sector organisations or anyone else without your consent, unless an exception applies.

Exceptions are available under a number of circumstances including when –

- The use or sharing of information is legally required or authorised by a law, or court or tribunal order.
- The collection is reasonably necessary for a law enforcement related activities, such as the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of the law, intelligence gathering, surveillance, conduct of protective or custodial services. Information collected by emergency services personnel for instance may be supplied to ACT Policing where this is required as part of an investigation into a possible breach of the law.
- The information is requested by a Royal Commission.
- We reasonably believe that collection is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.
- We have reason to suspect unlawful activity, or misconduct of a serious nature, that relates to our functions and we reasonably believe that collection of the information is necessary in order for us to take appropriate action.
- We reasonably believe that the collection is reasonably necessary to help locate a person who has been reported as missing.

If the Office has this information, it is allowed to provide your biometric information (such as your fingerprints or photograph) or your biometric templates (digital representations of your distinct characteristics) to an enforcement body (like the Australian Federal Police or the Department of Immigration) if we comply with any guidelines made by the Information Privacy Commissioner.

The Office may also disclose personal information to Commonwealth intelligence agencies where that disclosure is authorised by the head of the intelligence agency and the agency certifies that the collection of the personal information from the Office is necessary for its functions.

Sharing information with service providers

The Office will contract service providers to support it in carrying out specific activities and functions. In some circumstances it may be necessary for the Office to share personal information with these service providers to enable them to perform their functions efficiently and effectively.

In these situations, we protect personal information by only entering into contracts with services providers who agree to comply with Territory requirements for the protection of personal information.

Disclosure of personal information overseas

In some circumstances, the Office may need to share or store information with overseas recipients.

If disclosure of personal information overseas is necessary, we will take reasonable steps before disclosing the information to ensure that the recipient treats the personal information with a similar standard of care as is required by the *Information Privacy Act 2014* (ACT).

In some cases, the information will already be sufficiently protected under the law governing the overseas recipient and you can access mechanisms to enforce these protections. If it is practical and reasonable to do so, we will obtain your consent to overseas disclosure. However, there may be situations where we are unable to do so (for example, where we share information as part of a law enforcement activity). In this situation, the Office will take all reasonable steps to ensure the overseas recipient complies with the requirements of the *Information Privacy Act 2014* (ACT).

The Office will ensure this policy is updated to reflect any new arrangements it may enter into resulting in the regular sharing of personal information with an overseas recipient.

Quality of personal information

The Office is required to take reasonable steps to ensure that the personal information we collect is accurate, up to date and complete.

To ensure that the personal information we collect is accurate, up-to-date and complete we record information in a consistent format; and where necessary, confirm the accuracy of information we collect from a third party or a public source.

Personal information we use or disclose must be relevant for the purpose for which we use or disclose it.

Storage and security of personal information

The Office is required to take reasonable steps to ensure that personal information it holds is safe and secure. Every effort is taken to protect your personal information from misuse, interference or loss from unauthorised access, use, modification or disclosure in accordance with the *Information Privacy Act 2014* (ACT).

The *Territory Records Act 2022* (ACT) establishes frameworks for the management of your personal information if it is held within the files or data systems of the Office. The Office will

also handle your personal information in accordance with any requirements set out by the legislation under which it was collected and in accordance with Office policies.

Our IT systems employ protections to guard against unauthorised access. Paper based files are stored securely and access to Office premises is controlled.

As part of our general practice, personal information is only made available to staff who have a need to access it in order to perform their role.

Information will be securely destroyed once it is no longer required for business purposes in accordance with the requirements of the *Territory Records Act 2002* (ACT) and the approved Record Disposal Schedules as listed in the Staff Policy 13 Records, Information and Data Management Program.

PART C: Accessing your personal information

In accordance with the *Information Privacy Act 2014* (ACT) Territory Privacy Principle 12 you have the right to ask for access to personal information that the Office holds about you.

If you contact us to request access to your personal information, we must provide you with access to information in the way you request, if it is reasonable and practical to do so. The Office may refuse you access to the document if an exception in Territory Privacy Principle 12.2 applies or if it is not reasonable or practicable to give you access in the way you request, we must take reasonable steps to give access in a way that meets both our needs and your needs.

The Office must respond to your request in writing within 30 days. If we refuse your request, we must tell you why we are unable to provide you with access to that information.

We will not charge you any fees for making the request or providing you with access, unless a fee has been specifically determined for the information in question (i.e. births, deaths and marriages information).

You also have the right under the *Freedom of Information Act 2016* (ACT) to request access to documents that we might hold.

Correcting your personal information

Under the *Information Privacy Act 2014* (ACT) Territory Privacy Principle 13 you may also request that we correct any of your personal information that we might hold, if you believe it is incomplete, incorrect, out of date or misleading.

If you ask the Office to correct your personal information, we must take reasonable steps to correct the information if we are satisfied that it is incorrect, inaccurate, incomplete, irrelevant, out of date or misleading.

If we agree to correct information and that information has previously been shared with another agency, you may request that we notify the other agency of the possible need for them to correct that information.

There may be reasons why we refuse to correct that information, for example, if we are required or authorised by law not to correct the information. If we refuse to correct the

information, we must give you written notice of why we have refused to correct your information and how you may complain about our decision, within 30 days. If we refuse to correct your personal information, you can ask us to attach or link a statement that you believe the information is incorrect to the information.

We will not charge you any fees for making the request for correction, correcting the information or attaching a statement to the personal information.

Part D: Complaints

Complaints about the Office's handling of your personal information should be made in writing to the contact details below. We are also able to assist you to lodge your complaint if required.

Please contact us if you would like to request a hard copy of this policy.

We will consider your complaint to work out how we can resolve your issue satisfactorily. We will endeavour to acknowledge receipt of your complaint within five working days and respond to the complaint within 30 days.

If you are not satisfied with our response, you may ask for a review by a more senior officer or you can make a formal privacy complaint to the Information Privacy Commissioner under section 35 of the *Information Privacy Act 2014* (ACT).

The Information Privacy Commissioner is an independent body that will assess your complaint and can make a determination that our actions are an interference with your privacy. Note, some of the functions of the Information Privacy Commissioner for the ACT are currently being performed by the Australian Information Commissioner, including the handling of complaints against ACT public sector agencies. If your complaint is upheld by the Commissioner, you may be able to seek a remedy in the Magistrates Court. The Commissioner can be contacted on 1300 363 992 or via the website at www.oaic.gov.au.

Part E: Availability of the policy

We will publish this policy on our website. If you request a copy of this policy in a particular form we will take reasonable steps to comply with that request. You can contact us by:

Email: feedbackactdpp@act.gov.au

Telephone: 02 6207 5399

Post: Office of the Director of Public Prosecutions
GPO Box 595
CANBERRA ACT 2601

Accessibility

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Legislation/Related Policies

- *Information Privacy Act 2014 (ACT)*
- *Territory Records Act 2022 (ACT)*
- *Freedom of Information Act 2016 (ACT)*
- Staff Policy No 8 Use of the CCTV
- Staff Policy No 11 Media Policy
- Staff Policy 13 Records, Information and Data Management Program

Shane Drumgold SC

2 September 2022