

# Australian Privacy Principle 6: Use or disclosure of personal information

APP 6 applies to the use and disclosure of personal information held by APP entity.

(The terms 'use' and 'disclosure' are explained on the '[Important terms](#)' page.) If an APP entity holds personal information about an individual that was collected for a particular purpose, the APP entity can, as a general principle, only use or disclose it for that purpose (this is referred to as the 'primary purpose'). There are exceptions to the principle that would allow an APP entity to use the information for a secondary purpose.

## What is the primary purpose?

The primary purpose is the purpose for which the information was collected at the time of the collection. This can usually be found in the privacy notice provided prior to, at the time of, or as soon as reasonably practicable after, the collection of the information. In some cases however, a privacy notice may not have been provided or may never have existed. In these circumstances, the primary purpose for the collection of that personal information will be narrowly construed, limiting the purpose of collection to the specific function or activity for which the information was collected at the time.

## When can we use or disclose personal information?

Personal information can be used or disclosed where the use or disclosure is consistent with the primary purpose for which the personal information was collected.

If the personal information is to be used for the secondary purpose, that is a purpose other than the primary purpose, you need to look for an exception that would apply to the circumstances. In some cases, more than one exception may apply.

## What are the exceptions?

Personal information can be used for a secondary purpose if:

- a. the individual has consented to their personal information being used for a secondary purpose;
- b. the individual would **reasonably expect** (see below) the APP entity to use or disclose the information for the secondary purpose and the secondary purpose is:
  - i. if the information is sensitive information-directly related to the primary purpose; or
  - ii. if the information is not sensitive information-related to the primary purpose; or
- c. the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or
- d. a permitted general situation ( [view as pdf](#) or [view as word doc](#) ) exists in relation to the use or disclosure of the information by the APP entity; or
- e. the APP entity reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body.

## Reasonable expectation and secondary purposes

In accordance with APP 6.2, the creation of a 'reasonable expectation' that an individual's personal information may be used or disclosed for a secondary purpose allows Defence to use or disclose the information for the secondary purpose, without having to obtain the individual's consent, so long as the use or disclosure is related to the primary purpose for collection (APP 6.2(a)(ii)), or directly related to the primary purpose for collection (APP 6.2(a)(i)) in the case of sensitive information.

A reasonable expectation would be created if the use or disclosure for a secondary purpose is included in an APP 5 privacy notice. A reasonable expectation may also be created at the time of collection depending on what was said and done.

However, subsequent actions by Defence may vary or remove any reasonable expectations created by a privacy notice or in any other manner.

### **Example**

Defence collected personal information from a Defence employee for a primary.

The employee was provided with a privacy notice before the collection of their personal information. This created a reasonable expectation that the personal information provided may be used or disclosed for that secondary purpose which was related to the primary purpose.

At a later date, the individual was asked by Defence if he consented to the use/disclosure of the personal information for the secondary purpose. The individual expressly denied consent for the personal information to be used and disclosed for the secondary purpose. This action varied the reasonable expectation created in the privacy notice.

Defence subsequently disclosed a copy of the individual's personal information in accordance with the privacy notice but contrary his wishes.

The Privacy Commissioner found that Defence had interfered with the individual's privacy and awarded him \$5000 compensation. See: [CP and Defence](#).

## **Uses and disclosures for enforcement related activities**

Personal information may be used or disclosed if there is a reasonable belief that the use or disclosure is reasonably necessary for an enforcement activity. The enforcement activity may be undertaken by an enforcement body or on their behalf. To establish a reasonable belief the person responding to a request by an enforcement body will need to make enquiries to satisfy themselves that the use/disclosure is reasonably necessary for the enforcement activity.

### **Examples:**

- A letter on enforcement body letter head stating currently undertaken investigations.
- A phone enquiry - may need to ask if the request relates to an enforcement activity (eg. question the police officer about the reasons for the request and ascertain if the request is authorised by a warrant or other legislation).

In all circumstances Defence will only be able to provide what is reasonably necessary for the enforcement activity, as providing additional information may result in a breach.

### **Recording uses and disclosures for enforcement related activities**

If personal information has been or is going to be used or disclosed for a law enforcement activity, a note must be made of the use or disclosure, including the date, details of the information used or disclosed, the enforcement body conducting the enforcement related activity, or other entity and how it came to the reasonable belief that the use or disclosure is reasonable necessary for the enforcement related activity.

### **Biometric information**

The disclosure (not use) of biometric information is more strictly regulated. Biometric information may be disclosed by Defence to a law enforcement body (such as the AFP) if the disclosure is in accordance with the

guidelines made by the [Office of the Australian Information Commissioner](#) for the disclosure of biometric information.

## **Additional requirements for use and disclosure**

APP 10 also requires entities to take steps to ensure that the use or disclosure of the personal information is relevant, accurate, up-to-date and complete (see [APP 10](#) for more information).