

Australian Privacy Principle 5: Notification of the collection of personal information

When an APP entity collects personal information it must take steps that are reasonable in the circumstances to notify, or make individuals about whom it is collecting information, aware of the purpose for which the personal information is being collected. An APP 5 notification is commonly called a privacy notice.

Note: A privacy notice is not the same as the privacy policy issued under APP 1. It has a different purpose and contains more specific information. A privacy notice is also not a way of seeking or implying consent.

Taking steps to provide a privacy notice

APP entities are required to take steps that are reasonable in the circumstances to notify the individual that their personal information is being or has been collected. The notice should be specific to the purpose of the collection.

Who needs to be given a privacy notice?

A privacy notice needs to be given to the person about whom the personal information relates. In many circumstances, this will be the person who is giving the information. In some cases, the personal information being collected will be about another person, or multiple people. Subject to the information below, all persons about whom personal information is collected must be given a privacy notice.

Example:

- A person makes a complaint about a colleague, stating that 'I believe the colleague's behaviour is unacceptable because she is not doing her work.' In this case, the personal information about two people is being collected: The person making the complaint (what she believes), and the colleague being complained about (her behaviour is unacceptable because she is not doing her work). Privacy notices should be given to both.

When should a privacy notice be issued?

A privacy notice needs to be provided in anticipation of, or in response to, the collection of personal information.

See the  [Important terms](#) page for a definition of collection.

In most circumstances, this should be prior to, or at the time of the collection. In some circumstances, where it is not practicable to provide a notice earlier, the privacy notice may be given after the personal information is collected.

Examples:

1. If a person is being invited to an interview, it would be reasonable to provide the notice to the person being interviewed at the time of issuing the invitation.
2. If a person is required to complete a form, the form should contain the privacy notice, or a reference to where the notice can be found.
3. A complaint has been submitted about the behaviour of another person, a privacy notice should be given to the person making the complaint and to the person about whom the complaint relates. When considering when to give the privacy notice to the person about whom the complaint relates, you should think about the affect this may have on the ability to investigate or inquire into the

complaint. It would be likely that the privacy notice would be given at the time that person is spoken to, or interviewed about the complaint.


In some circumstances, there will be no steps that could be taken that would be reasonable, such as:

- if notification would require collection of more information than would otherwise be necessary to collect;
- if the person is already aware that the information is being collected; or
- there is a legal obligation not to notify the person.

Taking steps that are reasonable in the circumstances also requires us to think about how the person is notified. Options may include: referring people by automated message at the start of a telephone call to the privacy notice, or providing a hyperlink on a form to the privacy notice, providing a paper copy of the privacy notice at the start of an interview. These are just a few options, each situation may be different.

What should be in a privacy notice?

A privacy notice must contain at least the following:

- a. the identity and contact details of the APP entity, which for us is Defence, even if the information is being collected by a specific part of Defence;
- b. the circumstances of the collection, such as if the information is being collected from the individual concerned or other people, and if the person would not be aware that the information has been collected, the fact that is has;
- c. if the collection of the personal information is required or authorised by or under an Australian law or a court/tribunal order-the fact that the collection is so required or authorised, including the name of the Australian law, or details of the court/tribunal order, that requires or authorises the collection;
- d. the primary purpose and any secondary purposes for which the APP entity collects the personal information, which is different to the use of the personal information;
- e. the main consequences (if any) for the individual if all or some of the personal information is not collected;
- f. any other APP entity, body or person, or the types of any other APP entities, bodies or persons, to which the APP entity usually discloses personal information of the kind collected by the entity; (see 'use and disclosure on the  [Important terms](#) page);
- g. that the APP privacy policy of the APP entity contains information about how the individual may access the personal information about the individual that is held by the entity and seek the correction of such information;
- h. that the APP privacy policy of the APP entity contains information about how the individual may complain about a breach of the Australian Privacy Principles;
- i. whether the APP entity is likely to disclose the personal information to overseas recipients, and if so, the countries in which such recipients are likely to be located if it is practicable to specify those countries in the notification or to otherwise make the individual aware of them.

It is also useful to include any potential secondary purposes for which the personal information may be used, such as:

- Determining suitability to hold or continue to hold a security clearance;
- Disciplinary action or the imposition of administrative sanctions for ADF members;
- Code of Conduct action for Defence APS employees;
- Career and personnel management.

How broad can a privacy notice be?


The Office of the Australian Information Commissioner advises:

'How broadly a purpose can be described will depend on the circumstances and should be determined on a case-by-case basis. In general, an APP entity's purpose for collecting, holding, using or disclosing personal information should be construed narrowly. This will assist individuals to understand and retain some control

over how their personal information is collected, used and disclosed. For example, describing the primary purpose of the collection of an individual's personal information as being 'for the functions of the entity' would generally be considered too broad, as it would not allow the individual to understand how their information will be used or disclosed. Rather, the specific activity for which particular personal information is collected should be identified as the primary purpose.'





Secondary purposes

A secondary purpose is any purpose, other than the primary purpose, for which the personal information may be used or disclosed. Potential secondary purposes for collection should be stated in the privacy notice.

It is important for secondary purposes for collection to be included in a privacy notice because they may create a 'reasonable expectation' that the personal information may be used or disclosed for the stated purpose in accordance with APP 6.2. If the reasonable expectation is established and the secondary purpose is related (APP 6.2(a)(ii)) or directly related (APP 6.2(a)(i) in the case of sensitive information) to the primary purpose for collection Defence may use or disclose the personal information for the secondary purpose. See:  [APP 6](#).

Preparing APP 5 notices

Information for people responsible for preparing privacy notices, on what information should be included in a privacy notice as well as guidelines for drafting privacy notices, are contained in the following documents:

-  [Privacy notice factsheet pdf](#)  [Privacy notice factsheet Word doc](#)
-  [APP5 privacy notice checklist pdf](#)  [APP5 privacy notice checklist Word doc](#)
-  [OAIC-APP-guidelines](#)

If you require more information on drafting a privacy notice, please contact the Defence Privacy inbox:

defence.privacy@defence.gov.au