



## Requests for access to personal information: Guide for decision makers

### Application of Australian Privacy Principle 12

1. Australian Privacy Principle 12 (APP 12) (Schedule 1 to the [Privacy Act 1988](#) (Privacy Act)) came into force on 12 March 2014 and provides individuals with a right to access personal information Defence holds about them, subject to a number of exemptions. Defence is required to apply APP 12 when responding to requests for personal information.

**Example:** An ADF member requesting access to information about them held by the Military Personnel Administration Centre.

**Note:** Processing of requests for access to types of information, other than personal information, remains the same.

### What does APP 12 require?

2. APP 12 provides individuals with a right to request access to personal information about them that is held by Defence, subject to a number of exemptions.
3. Defence must respond to a request for access within 30 days and provide reasons if the personal information requested is not provided. These requirements are discussed further below.
4. APP 12 does not apply to non-personal information, or personal information about other people. These can be dealt with on an administrative basis, but similar considerations may apply.

### What is personal information?

5. The Privacy Act defines 'personal information' as:

*information or an opinion about an identified individual, or an individual who is reasonably identifiable:*

- a. whether the information or opinion is true or not; and
- b. whether the information or opinion is recorded in a material form or not.

6. This includes information from which an individual can be 'reasonably identified' using other sources, even if the individual is not named. For example, a PMKeyS number alone could be considered personal information in the Defence context because any Defence staff member who has access to PMKeyS could reasonably identify the staff member to whom the PMKeyS number is attached.

**Note:** The [Important terms](#) page on the Privacy Knowledge Site contains more information on important privacy terms.

### What does a request under APP 12 look like?

7. To fall within the scope of APP 12, the request, or part of the request, must relate to the personal information about the individual making the request.

**Example:** An individual applying for a copy of their performance assessment report.



8. There is no prescribed format for making a request, and a request does not have to state that it is a request under APP 12. A request can be made orally; however you are able to ask a person to put their request in writing.

9. Defence has a number of preferred mechanisms through which an individual can request specific types of information Defence holds about them, but the failure to make a request in accordance with those mechanisms does not affect its validity.

**See:** [Defence internet site: Service and Personnel Records](#).

### Who is responsible for making a decision on a request?

10. A request to release personal information that falls within the scope of APP 12 is not a decision under the FOI Act and thus does not require an FOI accredited decision maker to make the decision.

11. If providing access to personal information is a core function of the area responsible the decision should be made in accordance with local operating procedures.

**Example:** Defence Archives releasing the records of former ADF members.

12. In other circumstances, the person to make the decision will depend on the nature of the information and the circumstances in which the information is to be accessed.

**Example:** A Defence member requests a copy of their performance assessment report from two years ago through their chain of command. The chain of command forwards the request to the relevant career management agency that will make the decision.

13. For more complex matters that are voluminous, include joint personal information, or would be unlikely to be provided under the FOI Act if an application were made, decisions to provide access to personal information should be made by an O5/EL1 or higher in the area that has responsibility for the information.

**Example:** A Defence member has requested a copy of a fact finding report which includes witness statements and legal advice, it may be appropriate to seek advice from an FOI authorised decision maker.

14. If the area that received the request on behalf of Defence does not hold or is not responsible for the information, the request should be forwarded on the same day to the relevant area to action.

### How long does Defence have to respond to a request?

15. Defence must respond to a request to access personal information within 30 days. The 30 day period commences the day after Defence receives the request even if the request has been made to a part of Defence that does not hold the information, or the request has been made orally.

16. This means Defence must do one of the following within 30 days:

- a. provide access to the personal information that is requested;
- b. notify the individual of its refusal to give access.

17. If it is impracticable to respond to the individual within 30 days, decision makers must contact the individual within the 30 days to explain the delay and provide an expected timeframe for finalising the request.

**Example:** There is a justifiable need to clarify the scope of an individual's request, or to locate, source the documents from multiple locations and assemble the requested information, or to seek advice from other parts of Defence, or there are a large number of documents to be considered.

## Before providing access to personal information

18. Depending on the circumstances, it may be necessary to take additional steps to verify the identity of the individual making the request to access their personal information. The individual may need to produce documents to enable Defence to positively verify their identity.

**Example:** Defence ID card.

19. In some cases, a request may be made by a legal representative of an individual, such as a power of attorney or legal practitioner. In these circumstances, evidence of the authority to act should be requested and retained, such as a completed power of attorney document.

## What information can an individual have access to?

20. When a request for access to personal information is made, it often includes a request for other information or personal information about another person. APP 12 only applies to personal information about the individual making the request. However this does not mean the other information cannot be released.

## Releasing the personal information about other individuals

21. Before personal information about another individual is released, that individual's right to privacy must be considered and the personal information of others may only be disclosed to the individual making the request in circumstances that are consistent with APP 6.

**See:** Privacy Knowledge site: [APP 6](#).

**Example:** Frank requests a copy of a report from a fact finding exercise relating to an incident he was involved in. The report contains information about Frank and other individuals who were separately involved in the incident. The personal information about Frank should be released, unless an exemption under the FOI Act could be relied on, but the information about the other individuals would generally be removed as it is not personal information about Frank.

## Releasing joint personal information

22. Sometimes, personal information may be about more than one individual. This is known as joint information. Defence is required to provide access to the personal information it holds about the individual on request, even if some of it is joint information, unless a ground to refuse access applies. Consideration should be given to whether releasing the other person's personal information would have an unreasonable impact on the privacy of the other individuals, which is covered by section 47F of the FOI Act.

**Example:** An individual requests a copy of a form they completed and submitted to Defence. The form contains details about their parents. It would **not** be necessary to remove the information about their parents.

**Example:** An individual requests a copy of a report of a fact finding exercise into a complaint they made. The individual has a right to access information only about them, but it may be necessary to remove information (including joint information) provided by and about other individuals involved that has an unreasonable impact on their privacy. It would not be necessary to remove the information about the other individuals that was originally provided by the individual who made the request

## Releasing non-personal information

23. Individuals have no right of access under the Privacy Act to information that is not personal information about them. However, when non-personal information forms a part of a request, decision makers should consider whether the information would otherwise be disclosed to the individual if the request were made under the FOI Act. Any release of non-personal information would be made on another statutory basis or discretionary administrative basis.

## Refusing access

24. If access to personal information about the individual making the request is refused, either in full or in part, written reasons for the decision must be provided. The reasons must state the basis for the refusal (such as the particular reason under the FOI Act) and how the decision maker came to the conclusion that access should be refused. The individual making the request must also be advised that they can seek review of the decision through the Defence Privacy Office.

### Grounds for refusing access

25. Requests for access to personal information about the individual making the request may be refused, in full or part (that is, with redactions), in any of the following circumstances:

- a. if Defence is required or authorised to refuse access by or under the FOI Act.
- b. if Defence is required or authorised to refuse access by or under any other law of the Commonwealth that provides for access by persons to documents.

26. The grounds on which a request for access can be refused under the FOI Act, are contained in Part IV of the FOI Act, and fall into two categories:

#### Exempt documents

- Documents affecting national security, defence or international relations (s 33)
- Cabinet documents (s 34)
- Documents affecting enforcement of law and protection of public safety (s 37)
- Documents to which secrecy provisions of enactments apply (s 38)
- Documents subject to legal professional privilege (s 42)
- Documents containing material obtained in confidence (s 45)
- Parliamentary Budget Office documents (s 45A)
- Documents disclosure of which would be contempt of Parliament or contempt of court (s 46)
- Documents disclosing trade secrets or commercially valuable information (s 47)
- Electoral rolls and related documents (s 47A)

#### Conditionally exempt documents

- Commonwealth-State relations (s 47B)
- Deliberative processes (s 47C)
- Financial or property interests of the Commonwealth
- Documents that relate to certain operations of agencies, including documents that:
  - prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
  - prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
  - have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
  - have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
- Personal privacy (s 47F)
- Business (other than documents to which s 47 applies) (s 47G)
- Research (s 47H)
- The economy (s 47J)

**See:** For more information on exempt documents, Part 5 of the [Freedom of Information Guidelines](#).

**See:** For more information on conditionally exempt documents, Part 6 of the [Freedom of Information Guidelines](#).

27. Access may also be refused if providing access would:
- a. substantially and unreasonably divert an agency's resources from its other operations (s 24AA), or
  - b. require an agency to disclose the existence or non-existence of a document, where that would otherwise be exempt information (s 25).
28. Some of the exemptions under the FOI Act require consultation to be undertaken before they can be relied on. This is however not required for decisions under APP 12.

### How to provide access to personal information

29. Defence must provide an individual with access to personal information about them in the manner requested by the individual if it is reasonable and practicable to do so. Factors that may influence this decision include the size and nature of the information requested (including sensitivity and security issues relating to the information), the circumstances in which it is requested, the resources available to Defence and the individual making the request.

30. If it is not reasonable and practicable to provide the individual with the information in the manner requested, Defence must take reasonable steps to give access in a way that accommodates both the needs of Defence and the individual. This will be actioned as required by the relevant areas and may require consultation with the individual.

31. Options for providing access to personal information include:

- a. hard copy;
- b. soft copy sent by email;
- c. soft copy provided in a CD-Rom, or other removable media, and posted;
- d. allowing the individual to view the information without providing a copy and if appropriate, allowing notes to be taken;
- e. through a third party, such as a medical practitioner;
- f. giving a summary of the requested personal information to the individual.

32. Regardless of the means by which access is provided, it must be acceptable to both Defence and the individual who made the request.

### Access charges

33. No fee is payable by the person making the request for either submitting the request or to cover the costs of giving access.

### Further advice

34. For further advice regarding a request for access to personal information contact the Defence Privacy Office:

**Email:** [defence.privacy@defence.gov.au](mailto:defence.privacy@defence.gov.au)

35. The Complaints and Resolution [Privacy Knowledge Site](#) on the DRN contains information on the APPs and their application in a Defence context.

36. Parts 5 and 6 of the Office of the Australian Information Commissioner's [FOI Guidelines](#) contain advice on the exemptions that apply to the release of information under the FOI Act.

37. Chapter 12 of the Office of the Australian Information Commissioner's [APP Guidelines](#) contains detailed advice on how to interpret APP 12.