



FACT SHEET: PRIVACY NOTICE

Australian Privacy Principle 5: Requirement to use privacy notices

Overview

This fact sheet has been prepared to promote compliance with Australian Privacy Principle 5 which came into force on 12 March 14.

The purpose of this fact sheet is to explain:

- why Defence uses privacy notices when it collects personal information,
- the key elements that comprise an effective privacy notice under the Australian Privacy Principles (APPs), and
- good practice tips for developing privacy notices.

Relevant Legislation

[Privacy Act 1988](#) (the Act)

See: Schedule 1 of the Act – Australian Privacy Principles.

What is a privacy notice?

A privacy notice under APP 5 is the means by which Defence ensures an individual, from or about whom it is collecting personal information, is generally aware of:

- whether the collection is required or authorised under law, and if so the appropriate reference;
- the purpose for which the personal information is being sought (called the 'primary purpose' of collection) and the consequences of not providing the information;
- to whom Defence would normally disclose the personal information (where the information is provided to a person or entity outside of Defence);
- details of how to apply for access to or correction of personal information, and how to make a complaint about Defence's handling of personal information, by reference to the Defence privacy policy; and
- whether Defence is likely to disclose the information to an overseas recipient, and if so, the country in which any recipient of the information is located.

APP 5 applies to the collection of personal information.



A privacy notice is not a request for consent to use personal information in a particular way. It is a method of informing a person, or putting them on notice, as to how their personal information may be used. Where a person signs a privacy notice is an acknowledgement that it has been provided, not consent to use the information in the manner described.

Why do we need a privacy notice?

APP 5 obliges Defence to provide a privacy notice when collecting personal information from an individual or as soon as practicable thereafter.

Note: If a notice is not provided, it may complicate Defence's ability to use or disclose personal information for legitimate business purposes. Without a privacy notice, only prescribed exemptions can be relied on for the use or disclosure of the personal information.

Where should privacy notices be found?

A privacy notice should appear in a prominent position on all Defence paper forms and on-line forms used for collecting personal information from individuals. They should not be hard to find or printed in smaller type that is difficult to read.

If there is no space on a form, and the privacy notice needs to be comprehensive, enclose it with the form as a separate leaflet.

When an individual is requested to provide personal information through other means, such as a formal correspondence, an APP 5 notice should be drafted into the correspondence.

Is there a set format and content for a privacy notice?

There is no set format. However to comply with APP 5, a privacy notice should address the minimum requirements.

- Advise that the personal information is being collected by Defence and provide relevant contact details for the area of Defence collecting the information.
- The circumstances in which we collect personal information, if that personal information has been collected from a third party, or if the person about whom the personal information relates is likely to be unaware it has been collected.
- Whether the collection is required or authorised under law. A reference to the applicable Commonwealth legislation (for example the *Work Health and Safety Act 2011*) is to be included, if relevant.
- If the collection is not authorised or required under the law, it is advisable to ensure the purpose statement clearly informs the individual why the information is reasonably necessary for, or directly related to Defence's functions or activities, eg to assess eligibility for an allowance under a referenced Defence policy.
- Describe the purpose for which the personal information is being collected. In determining the full purpose of the collection of the personal information, consideration should be given to secondary uses of that information. It is, however, insufficient to make a general statement.

- The main consequences if all or some of the personal information requested is not provided.
- Details of how to access the Defence Privacy Policy for the purpose of obtaining access to, or correction of, the personal information or for making a complaint about the collection and handling of the personal information.
- The privacy notice should contain the URL for the Defence Privacy Policy on the Defence internet (The Defence Privacy Policy is currently available on the Defence internet at the following link: <http://www.defence.gov.au/ComplaintResolution/privacy.asp>). Also the contact details for the Defence Privacy Office (email: defence.privacy@defence.gov.au) so an individual can obtain a copy of the Defence Privacy Policy should they not have access to the internet.
- Whether the information is likely to be disclosed to an overseas recipient and if so in what country the recipient is likely to be located.

It is not suitable to use the same privacy notice for all collections of information directly from a person. The content of the privacy notice needs to be tailored to the circumstances of each collection. It is anticipated that there will be a number of privacy notices that will need to be drafted for use across Defence. For example, in some circumstances it would be appropriate that an individual sign the notice. In other circumstances, it would be appropriate that the notice be included as part of correspondence.

What other matters should Defence consider when collecting personal information?

What is the purpose for collecting the information?

Is there a policy reason for providing a narrow, or more restrictive, privacy notice?

Is the information being collected required for the purpose it is being collected? Consultation on the use of personal information may be necessary to promote the strategic collection of information.

Is the information likely to be used for purposes other than the purpose for which it was originally collected?

Is the request for personal information intruding unreasonably into an individual's personal affairs? Are the questions necessary and relevant?

Unless there is a legislative requirement to identify or provide the information requested, the privacy notice should clearly state that it is optional for individuals to provide it.

How does a privacy notice impact the use or disclosure of an individual's personal information?

Personal information can only be used for the purpose for which it was collected, unless one of the exceptions in APP 6 applies. Accordingly, a privacy notice that describes a narrow or limiting purpose for collecting personal information limits the use of that information. A use of personal information that is inconsistent with the purpose described in the privacy notice may result in an interference with the personal information if an exception provided in APP 6 does not apply.

Use or disclosure of the information for a purpose **other than** that for which it was collected, is regulated by APP 6. These principles require the use or disclosure to meet specified public interest exceptions.

What if an individual supplies their information, but later objects to Defence using or disclosing it in the manner notified in the privacy notice?

A privacy notice does not seek the consent to use the personal information from the person about whom the personal information relates. The privacy notice seeks to inform the person the purpose for collecting the information, how Defence will use it and to whom it will disclose the information.

Accordingly, an objection to Defence using the personal information in a manner consistent with the privacy notice does not prevent Defence from using the personal information in a manner that is consistent with that notice.

Should privacy notices be reviewed?

Privacy notices should be reviewed on a regular basis to ensure the actual purpose for collecting the information and the use of the information is consistent with the notice. The privacy notice should reflect current practices.

As a matter of course, whenever a form containing a privacy notice is reviewed, the relevant policy sponsor should review the privacy notice to ensure that it provides an accurate explanation of the purpose for collecting the personal information and complies with APP 5.

Further guidance and advice

Defence Privacy Office

Directorate of Complaints and Resolution
defence.privacy@defence.gov.au

Complaints and Resolution: privacy website

<http://intranet.defence.gov.au/people/sites/ComplaintResolution/comweb.asp?page=51002>