

Privacy Frequently Asked Questions

Understanding key privacy terms

What is personal information?

Personal information is:

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.

Sometimes, whether information is 'personal information' depends on the context in which the information is presented. For example, a PMKeyS number would not be considered personal information if presented to a person on the street; however a PMKeyS number would be considered personal information if provided to another Defence member.

Examples of personal information include an individual's name, signature, address, telephone number, date of birth, medical records, bank account details, employment details and PMKeyS number and work email address.

What is 'Australian law'?

'Australian law' is broadly defined and includes:

- an Act of the Commonwealth, or of a State or Territory;
- regulations or any other instrument made under such an Act, such as Defence Instructions issued under the Defence Act;
- a Norfolk Island enactment; or
- a rule of common law or equity.

What is the difference between a 'use' and 'disclosure'?

The difference between use and disclosure is, in most cases, immaterial. However, generally speaking:

Use refers to any action taken within Defence involving personal information. This includes situations where Defence personnel look up personal information, modify personal information, or where personal information is passed to another Defence member or Defence APS employee or to another work area.

Disclosure refers to any situation where personal information held by Defence is passed to an individual external to Defence, or to another agency or organisation.

The underlying difference between a use and disclosure is whether Defence retains effective control over the information. If so, this would be a use. If Defence loses effective control over the information, it would be a disclosure.

Sometimes it is necessary to consider the capacity in which this information is being given to Defence personnel. If Defence personnel are being given information in the course of their duties this would be a use, however if they are being given the information in their personal capacity, it would be a disclosure. This issue often arises in relation to the handling of complaints and grievances.

Personal information and Commonwealth Records

Is personal information collected or received by Defence a Commonwealth record?

Yes, if the personal information is collected or created, sent or received in the course of performing your duties it is a Commonwealth Record.

Application of the Privacy Act

Who does the Privacy Act apply to?

The [Privacy Act 1988](#) (Privacy Act) applies APP entities, such as Defence, that collect, hold, use or disclose personal information.

'Defence', for privacy purposes, includes the Department of Defence, Navy, Army, And Air Force, and the ADF cadet organisations.

Does the Privacy Act apply to deceased individuals?

No, the [Privacy Act 1988](#) (Privacy Act) does not apply to deceased individuals. Information about deceased individuals should be treated with respect, in a manner similar to the requirements of the Privacy Act.

The Australian Privacy Principles

What are the Australian Privacy Principles?

The Australian Privacy Principles, often called the APPs, are principle based laws that regulate how personal information may be collected, held, used and disclosed by APP entities such as Defence.

The APPs are contained in Schedule 1 of the [Privacy Act 1988](#).

How do I find out more about the APPs?

The [Defence Privacy Knowledge Site](#) provides information on the APPs and their application in a Defence context.

The Office of the Australian Information Commissioner's (OAIC's) [web site](#) provides a range of privacy resources including the [OAIC APP Guidelines](#), which provide information on how to interpret the APPs.

What can I do if I think Defence has breached my privacy?

If you think Defence may have breached your privacy or have a concern about the handling of your personal information, you should discuss the matter with the Defence Privacy Office in the first instance by sending an email to: defence.privacy@defence.gov.au.


Defence Privacy Policy

What is the Defence privacy policy?

The [Defence Privacy Policy](#) is a document which gives readers a summary of how Defence collects and manages personal information. It promotes transparency in the handling of personal information. It also

contains advice about how to request access to, or correction of, personal information and how to raise concerns about the handling of personal information.

How do I find Defence's privacy policy?

The Defence Privacy Policy is available on the Defence web site at:  <http://www.defence.gov.au/complaintresolution/privacy.asp> or you can email the Defence Privacy Office at defence.privacy@defence.gov.au and request a copy.


Is there a difference between a privacy policy and a privacy notice?

Yes, a privacy policy provides general information about the collection of personal information and how it is handled. It promotes transparency in the handling of information.

In contrast, a privacy notice relates to specific collections of personal information and provides information about the purpose for the collection of personal information. A privacy notice should also refer the reader to the privacy policy.

Privacy notices

What is a privacy notice?

A privacy notice is a brief statement that tells you what Defence is going to do with the information being collected and who it is going to. It should also tell you things like whether the collection is required or authorised by an Australian law, if it is going to be given to anybody outside of Defence or overseas, the main consequences for you if the information is not collected and where to find the  [Defence Privacy Policy](#).

What if I don't agree with the privacy notice?

If you do not agree with the purpose for collection listed in a privacy notice you should contact the person collecting the information to discuss your concerns about the collection of the information.

In some circumstances, regardless of your disagreement with the privacy notice you may still be required to provide the information.

In some circumstances you may choose not to provide the information requested, however, this may affect Defence's ability to act on the information (for example in relation to an application for a benefit. This should be explained in the privacy notice.

Defence may still use information provided by you, in a way described by the privacy notice, even if you disagree with it.

Do I have to provide a privacy notice every time I collect personal information?

No, however Defence must take steps that are 'reasonable in the circumstances' to provide a privacy notice for every collection of personal information about an individual, even if the information is collected from another individual.

A privacy notice may not need to be provided every time the information is collected if:

- A privacy notice has already been given and the information is collected from the individual on a frequent and recurring basis.
- Notification may pose a serious threat to the life, health or safety of an individual or pose a threat to public health or safety.
- Notification may jeopardise the purpose of collection or the integrity of the personal information collected and there is a clear public interest in the purpose of the collection (for example, a law enforcement agency undertaking lawful covert surveillance).

- The impracticability of notification, including the time and cost, outweighs the privacy benefit of notification (for example, where Defence collects personal information about the individual's next of kin for emergency contact purposes).

More information is contained in the [OAIC's APP Guidelines](#), Chapter 5, paragraph 5.7.

I think Defence may have collected my personal information without providing me with a privacy notice, what can I do?

If you think Defence may have collected your personal information without providing you with a privacy notice, you should ask the area of Defence that collected your information why you were not provided with a privacy notice or email the Defence Privacy Office at defence.privacy@defence.gov.au.

Consent

Does consent always have to be expressed?

No. As an alternative, consent to collect, use or disclose personal information may be implied by your actions. For example, if you are asked to voluntarily provide next-of-kin information for a particular purpose, and provide the information, your action indicates your consent to collect your next-of-kin information for that purpose.

Can implied consent be relied on in relation to the handling of an individual's sensitive information?

Yes, depending on the circumstances. Defence should generally seek express consent from an individual before handling sensitive information about them, given the greater impact this could have if the information was subject to a data breach.

Some sensitive information, such as health information, held by a health practitioner, may also be subject to obligations of confidence and express consent should be sought in these cases.

What is an opt-out mechanism?

An opt-out mechanism is where your agreement or consent to a particular action is assumed unless you do something, usually prescribed, to indicate that you do not agree or consent.

Can Defence rely on an 'opt-out' mechanism to infer an individual's consent?

Yes, but opt-out mechanisms should only be used in limited circumstances as the individual's intention in failing to opt-out may be ambiguous.

More information is contained in the [OAIC's APP Guidelines](#), Chapter B, paragraph B.40.

Can Defence make a single request for consent that covers multiple issues?

Putting several requests for consent into one form, known as bundling, is not encouraged because it has the potential to undermine the informed and voluntary nature of the consent.

Bundling consent should not occur without first considering whether:

- it is practicable and reasonable to give the individual the opportunity to refuse consent to one or more proposed collections, uses and/or disclosures
- the individual will be sufficiently informed about each of the proposed collections, uses and/or disclosures
- the individual will be advised of the consequences (if any) of failing to consent to one or more of the proposed collections, uses and/or disclosures.

More information is contained in the [OAIC's APP Guidelines](#), Chapter B, paragraphs B.45-6.

Can people under the age of 18 give consent for the collection, use or disclosure of their personal information?

Yes, in most cases; however this should be determined on a case-by-case basis. As a general rule, a young person aged 15 or over has capacity to give consent, unless there is something to suggest otherwise. In circumstances where the young person does not have sufficient understanding and maturity to understand what is being proposed, it may be appropriate for a parent or guardian to consent on behalf of a young person.

Access to and correction of personal information

When is a request to access or correct personal information a request under the Privacy Act?

A request to access or correct personal information under the [Privacy Act 1988](#) (Privacy Act) can be in any form and does not have to refer to the Privacy Act. Unless the request refers to the [Freedom of Information Act 1982](#), it can be presumed that the request has been made under the Privacy Act.

What do I do if I receive a request for access to personal information from the person about whom the information relates?

Where possible, access to personal information should be provided promptly. For example, if the individual requests access to their leave records.

Further consideration will be necessary for more complex requests, such as records that may include personal information about other people, or that would not otherwise be released under the [Freedom of Information Act 1982](#).

If you are not responsible for the information, you may need to forward the request to the appropriate area.

Defence is required to respond to requests for personal information within 30 days from the day after the request is received and written reasons must be given if some of the information requested is not provided. Detailed information on what to do when you receive a request for access to personal information is available on the CR ' [Privacy Toolbox](#) ' on the DRN.

What do I do if I receive a request for correction of personal information from the person about whom the information relates?

All requests for correction of personal information have to be considered and responded to within 30 days from the day after the request is received.

Correction of personal information may be made if the information is inaccurate, out-of-date, incomplete, irrelevant or misleading, having regard to the purpose for which it was collected. Before doing so, the requirements of the [Archives Act 1983](#) need to be considered. For example, Commonwealth records more than 15 years old cannot be amended, or destroyed without approval of the National Archives, or unless the amendment or destruction is required or authorised by or under Australian law.

If a request for correction is refused, reasons must be provided.

Detailed information on what to do when you receive a request for correction of personal information is available on the CR ' [Privacy Toolbox](#) ' on the DRN.

Can personal information be amended, de-identified or destroyed under the Privacy Act?

Yes, but if the personal information is contained in a Commonwealth record, making an amendment to, de-identifying or destroying, personal information must be done in accordance with the requirements of the [Archives Act 1983](#).

Advice about the alteration or destruction of Commonwealth records can be found in [RECMAN](#) or from the [Directorate of Records Management and Access](#).

Can I request access to, or correction of, personal information Defence holds about me?

Yes, you have a right to access or to make a correction to personal information Defence holds about you, subject to a number of exemptions.

How do I make a request for access to, or correction of, personal information about me held by Defence?

Information about getting access to your service records can be found at: www.defence.gov.au/records.

If your circumstances are not covered by the information provided on that page, and you know which part of Defence holds your personal information, contact that area in the first instance. Otherwise, send an email to the Defence Privacy Office at: defence.privacy@defence.gov.au.

Can I request access to, or correction of, personal information about another person?

You can request access to, or correction of, the personal information of another person, however Defence may not give you access to, or correct, the information requested unless you have authority to act on behalf of that person, such as a completed Power of Attorney document.