

# **Privacy Act Requests**

## **Privacy Act 1993**

The Privacy Act was introduced to provide a comprehensive structure for the management of personal information and for the handling of requests for personal information including requests to correct information which may be incorrect. It applies to both public sector and private sector organisations.

The Privacy Act states that POLICE has a duty to ensure that all reasonable assistance is provided to any person who wishes to make a request for personal information (i.e. about themselves). It is important that POLICE staff are aware of, and comply with, the Privacy Act.

## **Personal information**

“Personal information” is information that Police holds about an identifiable individual. It includes information that is held by Police electronically (for example on NIA), on paper files, and may even extend to information that is known to Police staff but not recorded.

No matter where or how information is stored, if the information is about an identifiable individual, Police must comply with the rules in the Privacy Act 1993 in respect of that information.

Even if information does not name a person the person may still be identifiable, for example by describing a set of circumstances unique to that person.

## **Privacy requests**

Any request made to Police by or on behalf of a person for information about that person, is a Privacy Act request.

Police has a [Privacy Request Form](#) which members of the public can use to request information about themselves. However, requests may also be made a letter or email, or orally.

The Act does not specify how a request must be made. Police may ask a requester to make their request in writing, but cannot require them to do so. If an oral request is made to you, ensure that you record the date that the request was made, and the information that was requested.

The requester does not have to mention that the request is made under the Privacy Act 1993, or may even refer to legislation that does not apply or does not exist. It is your obligation to determine that the Privacy Act 1993 applies.

- Example: Mr Brown requests a copy of all information Police hold about him on the Police Wanganui Computer.

The Wanganui Computer no longer exists but Police does hold information about Mr Brown on NIA database. Police are required to consider all information held on NIA about Mr Brown.

All privacy requests must be logged. If the request is made at District, provide details of the request to your District Co-ordinator. If the request is made at PNHQ, send the request to the [Privacy Office](#).

### **Who can make a privacy request?**

The following persons are entitled to make a Privacy Act request:

- A New Zealand citizen (whether in NZ or not)
- A New Zealand permanent resident (whether in NZ or not)
- Any other person who is actually in New Zealand.

The Privacy Act 1993 does not apply to any other requesters. For example, it will not apply to an Australian citizen who is living in Australia but was once in New Zealand. If Police receive a request for information from an individual who is not in New Zealand, ask for further information to confirm whether the Privacy Act 1993 applies, before responding to the requester and either providing the information, or advising why the request is refused. Although the Privacy Act 1993 may not apply to the request, you may take the same considerations into account when deciding whether to disclose the information.

If you have any questions regarding a request from an ineligible person, please contact the [Privacy Office](#).

If the request is made on behalf of the individual the information is about, for example by a lawyer, an immigration consultant, or a Member of Parliament, before providing a response you must first be satisfied that the individual has authorised Police to provide their personal information to the requester. In most cases, a signed authorisation will be provided with the request. If you are concerned that the individual concerned has not authorised the disclosure of the information, you should contact the individual directly to confirm this.

## **Proof of identity**

Section 45 of the Privacy Act 1993 requires that before providing information to a requester, Police must take reasonable steps to satisfy itself of the requester's identity. The [Privacy Request Form](#) for requesting information from Police requires requesters to also provide proof of their identity by providing a copy of some form of identification. If you receive a written request that does not enclose a copy of identification, you may ask the requester to provide proof of their identification prior to processing their request or disclosing the information to him or her. The requester may provide a copy by post or fax. Alternatively, he or she may wish to collect their information from a Police Station and show you a copy of their photo identification at that time.

Section 45 of the Privacy Act 1993 also requires Police to adopt procedures to ensure that any response to a request for personal information is received only by the individual who made it. If the requester is unable to collect the information from the Station and show proof of identity when collecting it, it is best to courier the information to the requester's home address rather than sending the response by mail.

## **Duty to provide assistance**

Under section 38 Police has a duty to assist anyone who:

- wishes to make a request under the Privacy Act, and
- has not made a request in accordance with the Act, or
- has not made a request to the appropriate agency.

The right of access applies only to information which is "readily retrievable". Information is readily retrievable if Police can identify the information sought and know where it is stored or held.

If the person has not specified which part of Police would be likely to hold the information, it may make it difficult for you to know whether, for example, the requester is a former employee seeking his or her personal file, or a member of the public who has had an interaction with Police and requires the file which relates to that interaction. Rather than refusing the request, Police must assist the requester to better define the request.

A requester's reason for asking for the information, and the use to which you think it might be put, are irrelevant to the consideration to the request.

If it is difficult to understand what the person is requesting, or you are having difficulty locating information they are seeking, explain the situation to the requester, and ask them to provide further information to assist you to identify the information they are seeking.

## **Transferring a request to another department or agency**

The decision whether to transfer a request (or part of it) to another agency must be based on one of the reasons below and within ten working days of receiving the request.

Section 39 of the Privacy Act provides that requests may be transferred where the information is either:

- Not held by Police, but is believed to be held by another agency; or
- Believed by the person dealing with the request to be more closely connected with the functions of another agency.

Police should *always* transfer the request when we do not hold the information requested but believe it may be held by another agency.

However, the fact that Police physically holds the information requested doesn't make the information Police's to disclose. If the information was provided to Police by another agency, for example to assist with a Police investigation, then you should transfer the request back to that agency.

Similarly, if the request is for information that is accessed by Police but owned by another agency (such as conviction records which are owned by the Ministry of Justice, or driver licence information which is owned by New Zealand Transport Agency) the request must to be transferred to the other agency.

You must advise the original agency that the request has been transferred to them and provide a copy of the requesters request.

As well as advising the other agency that you are transferring the request to them, section 39 of the Privacy Act 1993 requires that when you transfer a request, you must also notify the requester that their request has been transferred.

- Example 1: Police receives a request from an individual for a copy of a family violence file. On the file is information provided to Police by the Family Court relating to an application by one of the parties for a Protection Order. Police provides a copy of the Family Court information from the file to the Family Court, along with a copy of the request, and transfers that aspect of the request to the Family Court to respond to. Police considers the remainder of the information on the file for disclosure to the requester.
- Example 2: Police receives a request from an individual for all information provided to Police by Child, Youth and Family about them during the course of an investigation. Police collates all the information that falls within the scope of the request, then provides a copy of that information to Child, Youth and Family, and transfers the request to Child, Youth and Family to respond to.

- Example 3: Police receives a request from an individual for a copy of their criminal conviction history. Police has access to the information, but the information belongs to the Ministry of Justice. Police therefore transfers the request to the Ministry of Justice to process.

## **Time frames for responding**

The Privacy Act contains requirements about how soon any request has to be answered.

The statutory obligation is to provide the requested information, if that's possible, or to communicate your decision on the request "as soon as reasonably practicable" but within 20 working days. That means getting on with processing the request.

If you are going to need more time and have to [extend the timeframe](#), the Act provides 20 working days to notify the requester of the extension of time, the new timeframe, and his or her right to complain about the extension..

If you receive a request that is transferred from another agency or a Minister you have a maximum of 20 working days (from when Police receives the request on transfer) to communicate your decision on the request.

## **Urgent requests**

If the requester indicates the request is urgent, you are entitled to ask for supporting reasons. Those reasons need to be assessed on a case by case basis in determining and whether the request for urgency is reasonable in the circumstances. What is reasonable must take account of both the practicalities for us and the needs of the requester.

If we can't meet the urgent timetable expected by the requester, we should explain why. Alternatively consider separating the request into parts if some parts can be provided earlier. [i.e. explain that the request can be separated to try and at least provide something within the urgent timetable.]

## **How to count time**

Time limits are expressed in "working days" – any day that is not a Saturday, a Sunday, a public holiday, or a day between 25 December and 15 January inclusive. Also note that regional Anniversary Day holidays are not excluded from "working day", so they must still be counted.

To count working days available, day 1 is the first working day after the day on which the request is received.

So, if a request is received on a Monday, the last and 20th working day available to send out the response is the 4th Monday after that (unless a public holiday or the Christmas holiday period adds some time to the deadline).

If a request has been made orally, then later confirmed in writing, you must count the working days from the date of the oral request, not from the receipt of the written confirmation.

## **Notifying an extension**

If you are unable to communicate a decision on the request within 20 working days, Police is able to notify an extension of time, under section 41 of the Privacy Act. Extensions are permitted where:

- The request is for a large quantity of information or necessitates a search through a large quantity of information, and meeting the original time limit would unreasonably interfere with the operations of Police
- Consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within twenty working days

It is important that the further period of time that Police requests is realistic and reasonable.

Should Police need to notify an extension, formal notification needs to be made within the 20 working days limit, and include the following:

- Period of extension
  - Reasons for extension
  - Advice that the requestor has the right to make a complaint about the extension to the Office of the Privacy Commissioner.
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- Example: An individual with a large number of convictions and a history of family violence incidents asks Police for a copy of all of the information Police holds about him. The files are held across three different Districts, and some of the prosecution files are very large. Police writes to the individual and notifies an extension of a further 30 working days. The letter explains that some of the files are located in different Districts, and that as large quantities of information are involved an extension is required. Advice is included regarding the right to complain to the Office of the Privacy Commissioner.

## **Collating the information**

You must always start by assembling all the information that is sought by the requester (unless you are intending to refuse on the grounds that the information is "not readily retrievable").

It is acceptable for an individual to request a copy of "all information about me".

Often NIA will be a good starting place to determine what information Police hold and what files exist.

Sometimes the information requested will be all in one place, and easily located. Sometimes it will be necessary to look further for the requested information.

- Example 1: Police receives a request from an individual regarding an investigation into allegations made against them. The information is held all in one file, which Police then considers for disclosure to the requester.
- Example 2: Police receives a request from an individual for all information about him or her. A search on NIA suggests that there are files held in three different districts, as well as complaint files held at PNHQ. The NIA information and hard copy files must all be considered for disclosure to the requester.

If having searched thoroughly and made all reasonable enquiries (including confirmation from the requester of the subject matter of his or her interaction with Police) the information still cannot be found, the request can be refused under section 29(2)(b) on the basis that the information does not exist or cannot be found.

## **Decision on the Request**

The important thing to remember at this stage is that you are assessing information, not documents. Documents contain information, but each part of a document may have to be treated differently, and so must be assessed on a case by case basis.

So, for example, a single document might contain information needing to be protected for privacy reasons, for maintenance of the law reasons to protect an informant, or legal advice that must not be released to maintain legal professional privilege. However, the information in other parts of the document may not attract those same protections or any other relevant protections so should be released.

Police should approach all Privacy Act Requests from the presumption that the individual is entitled to know what information we hold about them unless there is a good reason to withhold it. In other words, you should not embark on the assessment from the point of view of looking to withhold.

Decisions about withholding information can only be made with reference to the reasons listed in sections 27 and 29 of the Act.

Each part or element of the information must be assessed in its own right.

If information is going to be disclosed to an individual, Police must determine how the information will be disclosed. The Privacy Act states that the information must be provided in the form it was requested unless to do so

would impair efficient administration, or would prejudice the interests protected by section 27 or 29.

## **Withholding grounds**

Sections 27 and 29 of the Act set out the reasons for refusing a privacy request. A request cannot be refused for any other reason.

Individuals must be told if Police are withholding any of the information they have requested.

The two sections Police commonly rely on to withhold information are section 27(1)(c) and section 29(1)(a) of the Privacy Act.

### **Section 27(1)(c)**

This section permits Police to refuse a request and withhold information if the disclosure of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.

- Example 1: Police is investigating an individual for alleged sexual offending. While the investigation is continuing, the alleged offender requests a copy of the information about him on the investigation file. Police refuses the request as the disclosure of the information would be likely to prejudice the maintenance of the law and in particular the detection and investigation of the alleged offences.
- Example 2: Police has charged an individual with assault. Before the matter is heard by the court, the victim requests information about their assault. Police refuses the request as the disclosure of the information would be likely to prejudice the maintenance of the law, and in particular the right to a fair trial.
- Example 3: Police receive information from an informant, and an alleged offender is subsequently charged. The alleged offender then requests from Police the name of the informant and the information the informant provided. Police refuses the request as the disclosure of the information would be likely to prejudice the maintenance of the law,
- Example 4: Police receives a request from an individual for all information held on NIA about them. There are a number of alerts about the individual, and if the individual was aware of the alerts, he would be likely to alter their offending or the way in which he interacts with Police. Police therefore has good reasons to withhold the alerts as the disclosure of the alerts would be likely to prejudice the maintenance of the law, and in particular Police's ability to prevent, detect and investigate offences.
- Example 5: An individual requests a copy of a statement or complaint their neighbour has made about them. If Police disclosed the statement, the neighbour would be unlikely to provide information or make complaints



to Police in future. Police therefore refuses the request as the disclosure of the information would be likely to prejudice the maintenance of the law, and in particular Police's ability to prevent, detect and investigate offences.

- Example 6: An individual who was investigated, but not charged with, offending requests a copy of the investigation file. Some of the information on the file details Police investigative techniques, and if the individual became aware of those techniques he or she may alter his or her offending techniques in future in order to avoid the offending being detected by Police. Police therefore withholds the information regarding investigative techniques as the disclosure of the information would be likely to likely to prejudice the maintenance of the law, and in particular Police's ability to prevent, detect and investigate offences.

### **Section 29(1)(a)**

Section 29(1)(a) provides good reasons for withholding information about a third party from a requester. Section 29(1)(a) states that Police may refuse to disclose any information if the disclosure of the information would involve the unwarranted disclosure of the affairs of another individual or of a deceased individual.

Often Police will hold information that is 'mixed' information, in that it is about more than one person. If the disclosure of the third party's information would be unwarranted, Police may withhold that information. You should consider

- The nature and sensitivity of the information
- The nature of the relationship between the requester and the other person
- The likely reaction of the other person to the disclosure
- The other person's views about giving access

- Example 1: Police receives a request from an individual for all information held on NIA about them. The information includes a noting about information provided by a third party, and includes the third party's name and contact information. The information about the third party is withheld from the requester as disclosure of the information would involve the unwarranted disclosure of the affairs of the other individual.

- Example 2: An individual requests from Police any complaints made about him or her by a next-door neighbour. Police may refuse the request if the disclosure of the information would involve the unwarranted disclosure of the next-door neighbour's affairs.

- Example 3: An individual is involved in a traffic crash which is witnessed by a third party who calls 111. The individual requests a copy of the 111 call about him or her. Police provide the requester with a copy of the part of the call that relates to him or her but withholds the information about the

witness as the disclosure would involve the unwarranted disclosure of the witness's affairs.

There are also a number of other reasons Police may withhold information for under the Privacy Act 1993.

### **Section 29(1)(i) - Contempt of Court**

Care must be taken not to release information that is the subject of a [suppression order](#). The suppression order also applies to the victim of offending and prevents Police from releasing any information that is the subject of the suppression order even to the individuals concerned.

The requester should be told to make an application to the relevant Court asking for the suppression order to be varied to permit the disclosure of information.

- Example: Police receives a request for information that was evidence in a proceeding, where the evidence was suppressed. Police refuses the request on that basis.

### **Section 29(2)(b) - Information Does not Exist or Cannot be Found**

- Example: Police receives a request for a copy of a 111 call about an incident, but no call was made to Police regarding the incident. Police refuses the request as the information does not exist.
- Example: Police receives a request for a file that cannot be located. After reasonable attempts to locate the file, Police refuse the request on the basis that it cannot be found, and advise the requester what steps were taken to find it.

### **27(1)(d) - The release would be likely to endanger the safety of an individual**

- Example: An offender seeks details of a witness who has given information to Police about the offender's involvement in drug dealing. Police are aware that the offender has threatened the witness with violence in the past, and believes that the threat will be carried out if the information is disclosed. Police has good reasons to refuse the request.

**Note:** The threshold for this withholding ground is very high. If you are intending to withhold information pursuant to this section, please contact the Police Privacy Office. It is necessary to have some information that supports the threat to the physical safety of the individual.

**Section 29(1)(c) - Police is satisfied, after consulting with the applicant's medical practitioner, that the disclosure would be likely to prejudice the requester's physical or mental health**

- Example: Police receives a request from an individual who appears to have severe mental health issues for a copy of all information Police holds about him or her. Police contacts the individual's GP who advises that the disclosure of the information would adversely affect the individual's mental health. Police therefore refuses the request.

**Section 29(1)(e): The disclosure of information to a prisoner would be likely to prejudice the safe custody or the rehabilitation of that individual**

- Example: a high profile prisoner, currently serving a life sentence, requests all information Police hold about him or her. The Prison psychologist advises Police that providing the material to the prisoner would be detrimental to his or her rehabilitation. Police therefore refuses the request.

**Section 29(1)(f) - Legal Professional Privilege**

- Example: An individual requests a copy of legal opinion that was prepared by Legal Services regarding whether their actions amounted to an offence. The request is refused to protect legal professional privilege.

**Contrary to another Enactment**

If another piece of legislation requires Police to disclose information, or prohibits Police from disclosing information, that legislation trumps the Privacy Act 1993.

- Example: Police receives a request from an offender for a copy of a victim impact statement. The Victims' Rights Act 2002 states that no person may give an offender a victim impact statement to keep, and that no offender may have access to a victim impact statement relating to the offender under the Privacy Act 1993. Therefore, the request must be refused pursuant to the Victims' Rights Act 2002.

**Providing a response**

Use the [template letters](#) as the starting point for your response to a privacy request.

The letter conveying the decision must inform the requester of the right to seek review by the Privacy Commissioner if we are refusing to release personal information to an individual, extending the time to respond, or giving access to the information in a form other than that requested.

## **Peer Review**

Before sending a response to a requester, you must ensure that your response and the information you propose to release has been peer reviewed.

## **Housekeeping**

- Always record the date the request was received by Police as the twenty working days starts from the day after the request was received by Police not you personally.
- Make up a file for the request.
- Keep a working copy of the information considered for release.
- Keep a copy of what was provided to the requester including a copy of your letter, and any other letters sent to the requester.

## **Office of the Privacy Commissioner**

Complaints about the handling of requests under the Privacy Act are handled by the Office of the Privacy Commissioner.

The contact address is:

Office of the Privacy Commissioner  
P O Box 10 094  
The Terrace  
Wellington 6143

The Privacy team at PNHQ Legal Services manages Police's liaison with the Office of the Privacy Commissioner.