

Amendments to the Information Privacy Principles Instruction

Purpose

The purpose of this information sheet is to provide a short summary of recent amendments to the Information Privacy Principles Instruction.

South Australian Government agencies are required to comply with Premier & Cabinet Circular No 12; more commonly known as the [Information Privacy Principles \(IPPs\) Instruction](#). Contracted service providers are also required to comply with the IPPs when handling personal information while under contract to a government agency.

The IPPs exist to keep personal information safe from inappropriate collection, use or disclosure by State Government agencies.

On 4 February 2013 and 5 August 2013, the Government amended the IPPs in response to the Independent Education Inquiry to improve information sharing by Government agencies to promote child protection. On 16 September 2013, the Government approved an amendment to include the Independent Commissioner Against Corruption and the Office for Public Integrity as agencies to which the Instruction does not apply.

What has changed?

Changes were made to the use and disclosure provisions of the IPPs to assist in interagency delivery of government services and to ease restrictions on disclosure where necessary to promote the protection of children.

Disclosure for the Primary Purpose of Collection

Clause 4(10) of the IPPs was amended to allow for the disclosure of personal information for the primary purpose of collection. This means that if you collect information for a particular purpose you can disclose the information for that purpose.

Reasonably Expected Secondary Use or Disclosure

Clauses 4(8) and (10) were amended to include a new subclause (a) to permit an agency to use or disclose personal information for the primary purpose of collection and for a secondary purpose that is related to the primary purpose of collection, if the record-subject would reasonably expect the agency to use or disclose the information for that secondary purpose.

This is a two part test:

1. Would the record-subject reasonably expect their personal information to be used or disclosed for the secondary purpose?
2. Is the secondary purpose for use or disclosure related to the primary purpose of collection?

For a use or disclosure to be reasonably expected it is necessary to consider what an ordinary person, without expertise in the operations of government, would consider reasonable in the circumstances. This may also depend on the information the agency has given a person at the time it collected the information.

Some examples of where the secondary use of personal information is related to the primary purpose for which that information is obtained could include when:

- » An agency uses information obtained for the primary purpose of operating a program, then subsequently for the secondary purpose of monitoring, evaluating, auditing or managing that program.
- » An agency has collected personal information for the primary purpose of delivering a service that is subject to a fee discloses that personal information to a debt collector for the secondary purpose of recovering the fee on behalf of the agency.

Serious Threats to Life, Health or Safety

Clauses 4(8) and (10) have always permitted an agency to use or disclose information where reasonably necessary to prevent or lessen serious and imminent threats to life or health. Previously, use or disclosure of personal information in these circumstances could only be undertaken where such a threat was 'imminent'. Clauses 4(8) and (10) were amended to remove the necessity for a serious threat to be imminent. They were also amended to make clear that they include threats to the safety of a person as well as life or health. The amendments permit agencies to take steps early, where necessary, to prevent or lessen serious threats to the life, health or safety of a person rather than waiting until the threat has actually materialised in harm.

Investigating or Reporting Suspected Unlawful Activity

Clauses 4(8) and (10) were amended to include a new subclause (f) to permit agencies to use and disclose personal information when investigating or reporting unlawful activity that has been, is being, or may be engaged in. This will allow use or disclosure of personal information as a necessary part of the agency's investigation into unlawful activity or in reporting the agency's concerns to a relevant person or authority. Investigation of an unlawful activity could include the investigation of suspected theft, fraud or assault by an agency staff member or contractor.

A relevant person or authority could include a law enforcement agency responsible for investigating or prosecuting the suspected unlawful activity or an authority responsible for registration of a relevant profession. A relevant person could also be a parent in relation to suspected unlawful behaviour at a public school or similar public agency responsible for children, where there was a risk the parent's child could also have been harmed by the suspected unlawful activity.

Illegal Conduct or Serious Misconduct in Relation to a Person

Clauses 4(8) and (10) were amended to include a new subclause (g) to permit the use and disclosure of information about an individual that might reveal that the individual

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has engaged in, or may engage in, illegal conduct or serious misconduct in relation to a person. An agency can only use or disclose the information where they reasonably believe the use or disclosure is appropriate in the circumstances and the use or disclosure complies with guidelines to be issued by the Attorney-General. These Guidelines are still in development and IPP 4(10)(g) cannot be utilised until they have been issued.

The guidelines will assist an agency to determine when it is appropriate to use or disclose information under subclauses 4(8)(g) and (10)(g). They will also outline the practices required for the responsible disclosure of the personal information.

Where do I get more information?

This information sheet has been issued by State Records of South Australia. Further information about the IPPs is available at government.archives.sa.gov.au

Further information is also available from the Privacy Committee of South Australia. The Committee exists to:

- » advise on measures that should be taken to protect personal information
- » refer written complaints received about breaches of privacy to the relevant authority
- » consider agency requests for exemption from compliance with the IPPs.

The Committee is appointed by the Attorney-General.

Use of this information sheet

This information sheet is provided for general guidance to agency officers only and should not be constituted as legal advice. Agencies may need to seek formal legal advice on the application of the IPPs to their particular situation.

Need further assistance?

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