

**Aotearoa Inc.**

**Privacy Procedure**

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| Effective Date: | Author: |
| Version: 1.0 | Supersedes: - |

This procedure is a **summary** of the 12 Privacy Principles issued by the office of the Privacy Commissioner. Further information can be found in the Privacy Act 1993 or refer to the 12 Privacy Principles at <https://www.privacy.org.nz/the-privacy-act-and-codes/privacy-principles/>

**Points of interest**

1. When the act refers to an ‘Agency’ under the Privacy Act, an agency is **any individual, organisation or business, whether in the public sector or the private sector**
2. The word ‘information’ is not defined in the Privacy Act. The High Court has said that it is not confined to the written word, but embraces any knowledge however obtained or held and in some circumstances can extend to **information held in the mind** of an individual.
3. The Privacy Act states that every agency **must** appoint a Privacy Officer. The Privacy Officer is responsible for:

i) Ensuring that the agency complies with the Act

ii) Dealing with requests made to the agency for access to or correction of

personal information

iii) Working with the Privacy Commissioner’s Office when it investigates

complaints

1. **Privacy Principle 1**
   1. Personal information shall not be collected by any agency unless:
      1. The information is collected for a lawful purpose connected with a function or activity of the agency**: and**
      2. The collection of the information is necessary for that purpose.
         1. The agency must show that it is **reasonably necessary** to collect it. Collecting the information must support the agency’s business in a clearly defined way.
      3. If the agency is given information it hasn’t asked for, the agency hasn’t ‘collected’ it. However, if it holds on to the information, the agency will be responsible for managing that information properly.
2. **Privacy Principle 2**
   1. Where an agency collects personal information, the agency shall collect the information **directly from the individual concerned.**
      1. See Principle 2 for exclusions to this clause.
3. **Privacy Principle 3**
   1. When collecting information for the first time from the individual concerned, before the information is collected or if not practicable, as soon as practicable afterward, the agency must ensure the individual is aware of:
      1. The fact the information is being collected
      2. The purpose for which the information is being collected
      3. The intended recipients of the information
      4. The name and address of the agency that is collecting the information
      5. The name and address of the agency that will be holding the information
      6. If relevant, any particular law/s which require or authorise the collection of the information: and if relevant to a law/s, whether or not the supply of the information is voluntary or mandatory
      7. The consequences (if any) for that individual if all or any part of the requested information is not provided
      8. The rights to access to, and correction of, personal information provided by the privacy principles
   2. If the same information is being collected as on a recent previous occasion, the principles of 3 a. do not apply
   3. See the Privacy Act or Privacy Principle 3 for exclusions to the requirements for 3 a.
4. **Privacy Principle 4**
   1. When an agency collects information about a person, it must do it in a way that is fair and legal and must not intrude on the personal affairs of the individual to any unreasonable extent.
      1. ‘Unreasonably Intrusive’ would depend on the circumstances
      2. Threatening or coercive behaviour is likely to be considered unfair
      3. Misleading behaviour is likely to be considered unfair
5. **Privacy Principle 5**
   1. An agency that holds personal information must ensure that the information is protected from loss, access, use, modification, disclosure and other misuse, even of it is necessary for the information to be given to another person in connection with the provision of the service being provided

**6. Privacy Principle 6**

a) An information privacy request may be made only by an individual

* + 1. It is the duty of every agency to give reasonable assistance to an individual who wishes to make an information privacy request
    2. The agency to which an information privacy request is made must respond as soon as possible and not later than 20 days after the day on which the request is received
       1. See the Privacy Act or Privacy Principle 6 for circumstances which enable an extension on this time frame
  1. Where an agency holds personal information in such a way that it can be retrieved, the individual concerned shall be entitled to access to that information and also request correction of the information if it is considered incorrect.
     1. See the Principle 6 for information regarding when exclusions may apply. In short, if it may:
        1. Endanger the safety of any individual
        2. Prejudice the maintenance of the law
        3. Prejudice the entrusting of information to the NZ Government
        4. Prejudice the security or defence of NZ, Cook Island, Nieu, Tokelau or the Ross Dependency, the relationships between these countries or prejudice the international relationships of these Governments.
        5. Involve unwarranted disclosure of the affairs of another individual
        6. Breach an express or implied promise
        7. Be likely to prejudice the mental or physical health of the individual
        8. Be contrary to the individual’s interest (if aged under 16)
        9. Prejudice the safe custody or rehabilitation of that individual (in the event of being convicted of an offence and/or detainment)
        10. Breach professional privilege
        11. Constitute contempt of Court of the House of Representatives

Or if:

* + - 1. The information is not readily retrievable
      2. The request is frivolous or vexatious
  1. The agency may neither confirm or deny the existence or non-existence of the information in relation to any of 7 b. if it is satisfied the interest in 7 b. would be prejudiced by the disclosure

**7. Privacy Principle 7**

a) Where an agency holds personal information, the individual concerned shall

be entitled to request correction of that information.

b) In an instance where a correction is sought but not made, a statement of the

correction requested must be attached to the information.

**8. Privacy Principle 8**

a) The agency that holds personal information must take such steps (if any) as is

reasonable in relation to the circumstances to ensure that the information is

accurate, up to date, complete, relevant and not misleading

**9. Privacy Principle 9**

a) An agency that holds personal information shall not keep that information for

longer than is required for the purposes for which the information may

lawfully be used.

**10. Privacy Principle 10**

a) An agency that holds personal information that was obtained in connection

with one purpose must not use the information for any other purpose.

* + 1. See the Privacy Act 1993 or Privacy Principle 10 for exceptions to this clause

**11. Privacy Principle 11**

a) The agency that holds personal information must not disclose the information

to a person, body or agency unless the agency believes, on reasonable

grounds any of the following:

* + 1. That the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to this purpose
    2. That the disclosure is authorised by the individual concerned
    3. That non-compliance is necessary:
       1. To avoid prejudice to the maintenance of the law
       2. For the enforcement of a law imposing a pecuniary penalty
       3. For the protection of the public revenue
       4. For the conduct of proceedings before any court or tribunal
       5. To prevent or lessen a serious threat to public health or public safety or the life or health of the individual or another individual
       6. For a security or intelligence agency to perform its functions
       7. To facilitate the sale or other disposition of a business as a going concern
    4. That non-compliance is acceptable:
       1. If the information is to be used in a form in which the individual concerned is not identified and is to be used for statistical research purposes
       2. If the disclosure of the information is in accordance with an authority granted under section 54 of the Privacy Act 1993.

NB: Privacy Principle 11 contains a link to a guide on releasing personal information to

Police and law enforcement agencies.

**12. Privacy Principle 12**

a. An agency shall not assign a unique identifier to an individual unless the

assignment of that identifier is necessary to enable the agency to carry out any

one of more of its functions efficiently

b. An agency shall not assign to an individual a unique identifier that, to the

agency’s knowledge, has been assigned to that individual by another agency

c. An agency that assigns unique identifiers to individuals shall take all reasonable

steps to ensure that unique identifiers are assigned only to individuals whose

identity is clearly established.