



Official Information and Privacy Acts

Learning objectives:

By the end of this unit you will be able to:

- be able to understand the relationship between the OIA & Privacy Act
- be aware of the Privacy Principles
- be able to action a request in accordance with the Acts
- be familiar with the withholding provisions of each Act

Relevance of learning to your role:

- Protecting the privacy of personal information is a requirement
- Understand how to respond to any OIA & Privacy Act requests
- Have an awareness of risk management when releasing information under these Acts

Behavioural competencies for success:

- Critical thinking - objective analysis and evaluation
- Analytical - Attention to detail
- Decisive - ability to make correct decisions
- Accountability

Introduction - Official Information Act

The Official Information Act 1982 came into force on 1 July 1983. The Privacy Act came into force on 1 July 1993.

This legislation was passed in response to concerns regarding the rapid advances in technology which provided information networks. Freedom of information and protection of privacy had also become a human rights issue. There have also been increasingly strong incentives to exploit personal information which has created a need for control of the information we hold.

Individuals expect that information about them is accurate and relevant, accessed by those with authority and not communicated beyond those who need to know. The right of individuals to access and correct personal data is a most important privacy safeguard.

Working for MSD means that you will be required to be familiar with both Acts in your work.

Historically the Official Information Act (OIA) dealt with all information held by public sector agencies including personal information. The Privacy Act (PA) now deals with personal information held by public sector agencies and agencies in the private sector. The Privacy Act gives individuals rights with respect to their own information and imposes obligations on MSD to ensure good handling of this information. The provisions relating to personal information that had been contained in the OIA have now been incorporated in the PA. The OIA now deals with requests for official information and information requested by someone who is not the subject of that information.

Description

A description of what the OIA is all about is contained in the 'Long Title' which explains that the Act is to:

- make official information more freely available
- provide for proper access by each person to official information relating to that person

- to protect official information to the extent consistent with the public interest and the preservation of personal privacy
- to establish procedures for the achievement of those purposes
- to repeal the Official Secrets Act 1951

[Section 5](#) of the OIA enshrines the principle of availability. This is that the information shall be made available unless there are good grounds for withholding.

Meaning of Official Information

The OIA defines the term "official information" which includes:

- any information held by a Ministry, or a Minister of the Crown in his or her official capacity, or an organisation
- any information held outside New Zealand by any branch or post of a Ministry, or any organisation

Before the introduction of the Privacy Act this definition also included a definition of personal information which was "any information about an identifiable person" as the Act dealt with both.

This has now been incorporated into the Privacy Act which governs personal information and is defined as "information about an identifiable individual." This is a very wide definition and includes any information that identifies a person.

Making a request under the OIA

[Section 12](#) of the OIA governs the making of requests for official information.

Any person being a New Zealand citizen, a permanent resident of New Zealand or a body corporate can make a request for official information.

Such a request can be stated as being urgent and the applicant must state the reasons for the urgency, otherwise a response must be made as soon as reasonably practicable but no later than 20 working days from the receipt of the request, to comply with the request or to provide reasons for declining it.

MSD has a duty to give reasonable assistance to applicants making official information requests.

The request need not be in writing and can be made verbally.

The requester may specify what form that they wish to receive the information in i.e., by inspection, providing copies of or summaries/paraphrasing.

When actioning a request files which contain information to be withheld from disclosure should be noted and the reasons for the withholding of that information should be specified. Reasons must be given to the requester as to why MSD is refusing to disclose the information and the requester must be told of his/her right to complain to the Ombudsman about that refusal.

The OIA gives protection to those who make information available in terms of the Act providing that they do so in good faith. No civil or criminal proceedings can be brought against that person.

Information that can be made available

Any official information including:

- documents
- publications setting out functions of public sector agencies
- any document or manual containing guidelines, rules, principles in respect of decision making by public sector agencies. This would include MSD's Manuals.
- finding of facts in respect of, and reasons for any decision and a reference to the information on which the findings were based

Information that can be withheld

Section 6 of the Official Information Act provides conclusive reasons for withholding official information if the making available of that 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
- to endanger the safety of any person

In addition to the above, there are other conclusive grounds contained with section 6 of the OIA.

Section 9 of the OIA provides other reasons for withholding official information.

These include:

- the protection of the privacy of natural persons, including that of a deceased natural person
- the protection of information which is subject to an obligation of confidence or where the making available of the information would be likely to prejudice the supply of similar information and it is in the public interest that such information should continue to be supplied, or would be likely otherwise to damage the public interest
- to maintain the effective conduct of public affairs by protecting officers and employees from improper pressure or harassment and allowing the free and frank expressions of opinions between members of an organisation
- to maintain legal professional privilege (between solicitor and client)
- to prevent disclosure or use of official information for improper gain or improper advantage

The grounds contained within section 9 are subject to a “public interest” test. These grounds may apply in a given situation unless the public interest in disclosure outweighs the reasons for withholding. This requires a 2-stage test:

- **Does the withholding ground apply? AND**
- **Would the public interest outweigh the application of this withholding ground?**

Introduction - Privacy Act

The Privacy Act (“the Act”) came into force on 1 December 2020 (replacing the repealed Privacy Act 1993) and its main purpose is to promote and protect individual privacy. The Act makes some fundamental changes to the way in which MSD is required to deal with personal information. This includes the way that MSD collects, stores, uses and discloses personal information. Personal information is defined in the Act as “information about an identifiable individual”.

The Act applies to every person, in his or her individual capacity, as well as to the public and private sector organisations that (with rare exceptions) are all caught within the definition of “agency” as defined in

Section 7 of the Act. The Act has major implications for MSD especially with respect to the personal information collected and used in the investigation of clients.

Personal information may be collected only for a lawful purpose connected with the function and activity of the agency and only if necessary for that purpose. As a general rule, information must be collected directly from the person concerned, and the person told why the information is needed and what will happen to it. All individuals have the right to see the information collected about them and to seek correction if they consider that the information is wrong. If the information is believed to be correct the agency is not required to change it; however, the individual is entitled to have a copy of the request for correction and their version of events placed on the file so that it is accessed at the same time as the information deemed to be incorrect.

Section 22 of The Act establishes 13 Information Privacy Principles that set out the "rules" for collecting, storing using and disclosing personal information.

It also provides for the appointment of a Privacy Commissioner and empowers the Commissioner to investigate complaints of interference with privacy.

The Act enables Codes of Practice to be issued covering specific agencies. The codes can impose a higher or lower standard of duty than those set out in the Privacy Principles, for example, the Health Information Privacy Code.

Privacy Act Principles

The 13 principles contained in the Act governing the collection, storage, use and disclosure of personal information are as follows:

<p>Principle 1 - Purpose of collection of personal information</p>	<p>The collection of personal information must be necessary for the purpose for which it is collected, and that purpose must always be relevant to the function or activity of the agency.</p> <p>This principle was enacted to prevent the indiscriminate collection of personal data.</p>
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	<p>When collecting information the questions that you need to ask are:</p> <ul style="list-style-type: none"> (a) What is the function/activity of MSD? (b) Is the information being collected for the fulfillment of the function/activity of the agency? (c) Is the information being sought necessary for that function/activity? <p>If the answer to the two last questions is "no", it will be necessary to consider whether the collection of the information complies with this principle.</p>
<p>Principle 2 - Source of personal information</p>	<p>If an agency collects personal information, the information should be collected directly from the individual concerned unless one of the stated exceptions apply.</p>
<p>Principle 3 - Collection of information from subject</p>	<p>Where personal information is collected from the individual concerned reasonable steps must be taken by MSD to ensure that the individual is aware of, among other things, the purpose of the collection, what law authorises the collection, the intended recipients of the information and the individual's right to have access to and request correction of that information.</p> <p>Unless an exception applies, the obligation is to be clear about the reasons for collection personal information from an individual, what will happen to it and to explain their rights with respect to it. The general rule is that there should be "no surprises" for the individual concerned in the way that their personal information is handled by MSD.</p>
<p>Principle 4 - Manner of collection of personal information</p>	<p>Personal information shall not be collected by an agency unlawfully or unfairly and doesn't</p>

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	<p>unreasonably intrude on the individual's personal affairs.</p> <p>"Unlawful" means in breach of a statute or regulation. "Unfair" means could include misstating the purpose of collection or being overbearing or threatening.</p>
<p>Principle 5 - Storage and security of personal information</p>	<p>Reasonable safeguards may include keeping paper files and computer passwords secure. This is important in light of MSD's open plan environment especially where work spaces are interspersed with public areas.</p> <p>This Principle includes an implicit obligation to train staff so that they are clear about MSD's information handling policies and procedures.</p> <p>It requires MSD to consider any action that may impact on the information's security and to do everything within their power to prevent unauthorized use/disclosure of the information.</p> <p>Click link for further information - Privacy and security of information training - Doogle</p>
<p>Principle 6 - Access to personal information</p>	<p>This principle creates an "entitlement" to access personal information. This entitlement can be enforced in a court of law where the information is held by a public sector agency (Section 31(2) Privacy Act).</p> <p>Principle 6 is subject to the good reasons for refusing access to personal information contained in Part 4 of the Act. These reasons will be covered in more detail below when discussing how to deal with a request for information.</p> <p>Section 205 of the Act protects requesters and providers of personal information from legal liability arising from the provision of personal information in good faith pursuant to a request under Principle 6.</p>

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<p>Principle 7 - Correction of personal information</p>	<p>The effect of this section is that MSD is under no obligation to correct information it believes to be accurate, however must attach the individual's statement of correction.</p> <p>If MSD corrects any personal information at the request of an individual, it has an obligation to inform any other agency to which the information has been disclosed.</p>
<p>Principle 8 - Accuracy etc., of personal information to be checked before use or disclosure</p>	<p>Information about an individual must not be used or disclosed without taking reasonable steps to ensure that it is accurate and up-to-date, complete, relevant and not misleading.</p>
<p>Principle 9 - Agency not to keep personal information for longer than necessary</p>	<p>The Privacy Act does not provide specific time limits for which to keep information, it states that an agency must set their own retention periods based on the reasons for having the information in the first place.</p> <p>This principle is overridden by the Public Records Act 2005 which sets out MSD's obligations with respect to keeping information for specific periods of time. You should also be aware of MSD's national policy on the retention and destruction of documents.</p> <p>Click link for further information - File destruction - Doogle</p>
<p>Principle 10 - Limits on use of personal information</p>	<p>The general rule is that MSD cannot use personal information for another purpose unless it believes on reasonable grounds that one of the mentioned exceptions applies.</p> <p>In the event of a complaint to the Privacy Commissioner, the onus will be on MSD to prove that the exception relied upon was applicable in the circumstances.</p>
<p>Principle 11 - Limits on disclosure of personal information</p>	<p>"Disclosure" means release outside MSD. This principle provides that personal information should not be disclosed to those outside MSD,</p>

	<p>unless it believes on reasonable grounds that one of the mentioned exceptions applies.</p> <p>In the event of a complaint to the Privacy Commissioner, the onus will be on MSD to prove that the exception relied upon was applicable in the circumstances.</p>
<p>Principle 12- Disclosure of personal information outside of Aotearoa.</p>	<p>MSD may disclose personal information to a foreign person or entity applying principle 11, only where it can satisfy one of the mentioned reasons.</p>
<p>Principle 13 - Unique identifiers</p>	<p>A unique identifier is any identifier assigned to an individual for the purpose of uniquely identifying that individual, for example, a client's benefit customer number.</p> <p>This principle seeks to prevent agencies issuing identifiers that have been assigned by another organisation.</p> <p>This principle provides that no two unique identifiers can be the same, e.g. Inland Revenue cannot use the same number for a client as Work and Income has assigned to that client.</p>

Click link to read the full section – [Information privacy principles](#)

What is Information?

Neither the Official Information Act nor the Privacy Act defines the term "information". The Court of Appeal has stated that the ordinary dictionary meaning was intended which is, "that which informs, instructs, tells or makes aware."

Information includes, of course, documentation. Both Acts define "document" as including:

- any writing on any material
- any information on tape, computer etc., and any material generated from tape, computer etc., as a result
- any label or description
- any book, map, plan, graph or drawing

- any visual image such as film, negatives or photographs which can be reproduced

Documents are just one aspect of "information". In the High Court, information has been expressed as "not confined to the written word but embraces any knowledge however gained or held." Therefore, information could be anything which is stored in some way including unrecorded material in a person's memory.

Classification

Where a variety of information is held by a Government Ministry any request for release of that information may involve either or both Acts.

When dealing with requests, it is important to correctly classify each piece of information in order to find out which of the Acts apply to it.

Classification depends on:

1. Who holds the information?

Government Departments (the public sector) hold both official and personal information. The Official Information Act does not apply to the private sector, only to public sector agencies. MSD holds both official and personal information about its clients.

2. What is the information about?

Information about an identifiable person is personal information and is governed by the Privacy Act. Where the information is about a "corporate person" such as a company, society, trust, incorporate or corporate body, any request is to be dealt with under the Official Information Act.

3. Who wants access to the information?

There is a right of access to personal information by the individual concerned subject to the provisions of the Privacy Act allowing it to be withheld. These provisions will be discussed in more detail below.

The "individual concerned" is the individual to whom the information relates. Under the Privacy Act, only the individual concerned (or

someone acting with their authority) has the right of access to personal information held about them.

Where the information is personal but about someone other than the requester and is held by MSD then release would have to be considered under the Official Information Act.

Information about an individual held by MSD will be a combination of official and personal information but which legislation governs the release, or not, depends on who is requesting it. As a general rule, if it is requested by the individual concerned or a person acting with their authority, disclosure is to be determined under the Privacy Act. If it is by someone else, disclosure is to be determined under the Official Information Act.

Receiving a Request

The request does not need to be in writing and can be made orally. Officers must ensure that they give reasonable assistance to a person making a request.

Requests can only be made by:

- a New Zealand citizen
- a permanent resident in New Zealand
- a person who is in New Zealand

Requests can be made through a properly authorised agent pursuant to [Section 57](#) of the Privacy Act. Where a person is acting on behalf of another, care should be taken to check the authorisation which generally should be in writing. Where a Member of Parliament or a solicitor advises that they are acting for the requester, usually no written authority is needed. Under this section you also need to be satisfied of the identity of the individual making the request and that any information intended for that individual is received by them or their agent only.

A decision on the request must be made as soon as reasonably practicable but not later than within 20 working days and communicated to the requester.

A request can be refused if the information is not readily retrievable or the information does not exist or cannot be found. There is an

expectation that a reasonable effort is made to locate or retrieve the information.

If the information is not held by MSD but by another agency or it is more closely connected with the functions of another agency, then the request must be transferred to that agency no later than 10 working days after receiving the request. You must inform the requester of the transfer.

Withholding Provisions

When actioning a request, you need to be aware of the withholding provisions provided in Part 4 of the Privacy Act. Information requested can be withheld if there are good reasons for doing so. The good reasons include:

Section 51: Release would be likely to:

- prejudice national security or defense
- prejudice international communication in confidence
- prejudice maintenance of law
- endanger the safety of any individual

Section 52: Withholding is necessary to:

- protect trade secrets
- protect commercial position of the supplier of the information

Section 53: Withholding on the grounds of:

- the disclosure of the information would involve an unwarranted disclosure of the affairs of another individual or deceased individual
- protection of evaluative material supplied on a confidential basis (evaluative material is narrowly defined as covering, for example, job interviews and insurance material)
- protection of the physical or mental health of requester or rehabilitation or safe custody of requester
- protection of interests of person under 16 years
- legal professional privilege
- request being frivolous or vexatious or the information requested is trivial

- confidentiality by conditions placed upon material held in a library, museum or archive

If MSD seeks to withhold information from the individual making a request under Principle 6, the reasons for doing so must be conveyed to them.

The individual concerned can have MSD's decision to withhold information, reviewed by the Privacy Commissioner. In this event, MSD will be required to show that the reason for withholding is valid.

[Section 56](#) of the Act governs the way that the information can be supplied including inspection, copies, transcripts, extracts or orally. The information should normally be provided in the form preferred by the requester.

MSD is not allowed to charge for providing personal information, unlike the supply of information under the Official Information Act.

Impact on Social Security Act

Schedule 6, clauses 2-5 of the Social Security Act 2018

[Section 24](#) (1)(a) of the Privacy Act provides that nothing in Principle 6 (access to personal information) or Principle 11 (limits on disclosure) detract from any provision that is contained in any enactment that authorises or requires personal information to be made available. In other words, if another Act authorises or requires personal information to be made available, the Privacy Act does not apply.

This section allows us to continue to use Schedule 6, clauses 1 and 2 of the Social Security Act to obtain personal information from any other person but MSD's Code of Conduct **must** be used when using Schedule 6, [clause 2](#). It sets out the rules where MSD is requesting information about any person relating to benefits or debts owed to the Crown.

Schedule 6, clause 1 of the Social Security Act 2018

The duty imposed by [clause 1](#) that a person must answer all questions the person is asked by MSD would fall within Section 7 of the Privacy Act.

Resources

If you do run into difficulty when dealing with any aspect of the Official Information Act or Privacy Act, assistance can be obtained from:

- Fraud Intervention Services Manager
- Legal Services

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