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Privacy Code of Practice: Law enforcement and investigative agency access to personal information contained in public registers

# Privacy Code of Practice: Law enforcement and investigative agency access to personal information contained in public registers

This Code was made on 30 June 2000 originally for six months to allow for a review of its scope. Its operation has been extended by the Attorney General, most recently in December 2001, to 1 May 2002.

Local Councils should apply this code to requests for access to public registers by law enforcement agencies. Requests for access to other Council Records should be processed in accordance with relevant exemptions in Part 2 Division 3 of the Privacy and Personal Information Protection Act.

**Privacy Code of Practice**

**Law enforcement and investigative agency access to personal information contained in public registers**

**1. Objective of code**

1.1 This code of practice is intended to ensure that the public register provisions in Part 6 of the Privacy and Personal Information Protection Act:
(a) enable nominated law enforcement and investigative agencies to access personal information contained in those registers for the purposes of fulfilling their law enforcement or investigative functions; and
(b) ensure that holders of public registers do not disclose to members of the public the fact that access to that personal information has been provided, if so requested by an authorised officer of the law enforcement or investigative agency.

**2. Relevant provisions of the *Privacy and Personal Information Protection Act 1998* (the Act)**

2.1 Part 6 of the Act (sections 57-59) regulates the content and maintenance of, and access to, public registers.

2.2 Section 3 of the Act defines a public register as 'a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee)'.

2.3 Section 57(1) of the Act prevents public sector agencies responsible for keeping public registers from disclosing any personal information kept in a register unless the agency is satisfied that it is to be used for a purpose relating to the purpose of the register or the Act under which the register is kept (public registers and relevant enabling legislation are not established for law enforcement and investigative purposes).

2.4 Section 57(2) of the Act enables such agencies to require any person who inspects personal information contained in a public register to give particulars, in the form of a statutory declaration, as to the intended use of any information obtained through inspection.

2.5 Section 58 of the Act provides for the circumstances in which public sector agencies must suppress personal information contained on a public register, at the request of a person the subject of that information.

2.6 Division 3 of Part 2 of the Act provides a number of exemptions to the Information Protection Principles contained in Division 1 of Part 2 of the Act. A number of those exemptions enable law enforcement and investigative agencies to appropriately access and use personal information. These exemptions do not apply to the public register provisions of Part 6 of the Act.

2.7 Section 30(1) of the Act provides that a privacy code of practice may modify the application of Part 6 to any public sector agency.

**3. Requirement that law enforcement and investigative agencies be able to confidentially access personal information contained in public registers**

3.1 It is recognised that access to personal information held on public registers is often essential for nominated law enforcement and investigative agencies to effectively exercise their law enforcement and investigative functions.

3.2 Such law enforcement and investigative functions include, but are not limited to, locating missing persons, persons who are under investigation, persons who are required to give evidence in proceedings (including hearings before a nominated law enforcement or investigative agency), locating the proceeds of crime, locating property in which persons suspected of engaging in criminal activity have an interest, and other investigations leading to or assisting a relevant law enforcement agency confiscate property or proceeds of crime. Public register information is often necessary to ensure that search warrants, listening device warrants, controlled operations authorities and other court processes are properly issued.

3.3 The effectiveness of law enforcement and investigate agency operations and the safety of members of the public may be severely jeopardised if nominated law enforcement and investigative agencies are not able to access personal information contained in public registers.

3.4 Law enforcement and investigative agencies should not be required to provide public sector agencies that maintain public registers with details of the purposes for which register information is sought, it being sufficient to state that access is required to assist them in effectively fulfilling their law enforcement and investigative functions. The provision of more detailed information could seriously compromise the privacy of individuals, as it could indicate a person has a criminal record or is suspected of involvement in crime, and could also undermine the integrity of investigations.

3.5 It is also essential that a law enforcement and investigative agency is able to request that bodies maintaining public registers do not inform persons that information about them on the register has been accessed by that agency. There are clear public interest matters that should be considered by public sector agencies in releasing information about law enforcement and investigative agency access to registers, such as the potential for the release to compromise investigations, public safety or the safety of law enforcement or investigative officers. The public interest rationale for non-disclosure should be provided with any request to limit the release of this information. Public sector agencies should consider any request in determining whether to release such information under the *Freedom of Information Act 1989* or other relevant legislation.

## 4. Definitions

4.1 Unless otherwise specified, the definitions in the *Privacy and Personal Information Protection Act 1998* apply in this code.

4.2 '*Access'* to personal information in this code includes access by inspection, by request to the public sector agency responsible for keeping a public register that personal information be provided, and access by any other means.

4.3 '*Authorised officer'* in this code refers to an officer of a nominated law enforcement or investigative agency who has been authorised by the CEO of that agency to access public registers in the course of his or her employment.

4.4 '*Nominated law enforcement or investigative agency'* in this code refers to:
(a) the Independent Commission Against Corruption;
(b) the Police Integrity Commission;
(c) the NSW Police Service, or the police force or another State or Territory;
(d) the Australian Federal Police;
(e) the NSW Crime Commission; and
(f) the National Crime Authority.

## 5. Modification of Part 6 of the Act

*Section 57*

5.1 Subject to paragraphs 5.2-4 of this code an authorised officer of a nominated law enforcement or investigative agency has the same access to personal information on a public register, for the purpose of assisting the nominated agency to exercise its law enforcement or investigative functions, as he or she would have if the provisions of section 57(1) of the Act did not apply.

5.2 The application of section 57(2) of the Act is modified to enable the public sector agency, if it deems appropriate, to require an authorised officer who seeks access to the public register to provide:
(a) information confirming his or her identity as an authorised officer;
(b) confirmation by the authorised officer, or by another appropriate officer, that the personal information is being accessed to assist a nominated law enforcement or investigative agency to exercise its law enforcement or investigative functions.

5.3 The public sector agency may record the details of any access by an authorised officer.

5.4 An authorised officer, or a nominated law enforcement or investigative agency, may request that, until further notice, the public sector agency withhold from the subject of the personal information, on specified public interest grounds, details of any such access.

*Section 58*

5.5 An authorised officer of a nominated law enforcement or investigative agency has the same access to personal information that has been removed from the register, not placed on the register, or has been otherwise suppressed in accordance with section 58, where that personal information is still held by the public sector agency, as he or she would have if section 58 of the Act did not apply.

5.6 This access is subject to the conditions outlined at 5.2-4 above.

*Section 59*

5.7 The code does not modify section 59.