

Privacy Code of Practice: Office of the Director of Public Prosecutions

This Privacy Code of Practice was approved by the Attorney General on 28th June 2000 and Gazetted in Part 2 of the Government Gazette of 30 June 2000 at page 6020.

Office of the Director of Public Prosecutions (NSW)

Privacy Code of Practice

Introduction

This document is a Privacy Code of Practice made under Part 3 Division 1 of the Privacy and Personal Information Protection Act (the Act).

The Act establishes the Office of the Privacy Commissioner and gives the Commissioner a number of powers that were held in the past by the Privacy Committee. The Act also introduces a set of privacy standards for most of the NSW public sector. These standards regulate how the public sector agencies deal with personal information.

This Privacy Code of Practice is a statement of how the Office of the Director of Public Prosecutions (ODPP) proposes to depart from two of the Information Protection Principles in Part 2 of the Act. The Code applies to all officers of the ODPP. The Code was submitted to the Office of the Privacy Commissioner for approval.

The Code will apply to all personal information received by the ODPP from investigative agencies and law enforcement agencies (as defined in the Act) for the purpose of the ODPP providing legal advice to those agencies in relation to criminal matters.

The Code will affect the ability of a member of the public to ascertain:

- (a) whether the ODPP holds personal information;
- (b) whether the ODPP holds personal information relating to that person; and
- (c) if the ODPP holds personal information relating to that person: (i) the nature of that information; and
 - (ii) the main purposes for which the information is used; and
 - (iii) that person's entitlement to gain access to the information.

The Code will apply to all personal information received by the ODPP from investigative agencies and law enforcement agencies during the period commencing from the date of receipt of the information by the ODPP and concluding on:

- (i) the date of service of process instituting criminal proceedings or the date of laying of charges; or
- (ii) the date on which the investigative agency or law enforcement agency which provided the information to the ODPP formally advises the ODPP that information about the personal information can be disclosed.

The Code is necessary to ensure the ability of law enforcement agencies and investigative agencies to:

- (i) seek and obtain legal advice from the ODPP in confidence; and
- (ii) effectively pursue and complete investigations on the basis of confidential advice received from the ODPP.

If individuals were able to require the DPP to indicate whether or not the ODPP held personal information about themselves or other persons and the nature of that information, this would prejudice effective law enforcement.

This Code also applies to the formal disclosure by the ODPP of personal information to the Victims Compensation Tribunal pursuant to s.30(1) of the Victims Compensation Act 1996 (and its predecessor) for use by the Tribunal in determining whether or not to make an award of statutory compensation and the amount of such compensation.

The Director of Public Prosecutions is responsible for the implementation of this Code of Practice within the Office. After an order making the Code is published in the NSW Government Gazette, all ODPP officers must comply with the provisions of this Code. Failure to comply will be subject to established public sector disciplinary procedures. Prompt and rigorous action will be taken to review any allegation of conduct or process that breaches the provisions of the Code of Practice. Breaches of the Code can give rise to a right of review involving an investigation of that conduct.

Concerns regarding possible breaches of this Code should be addressed to the Director of Public Prosecutions in the first instance.

The ODPP will review the Code of Practice at regular intervals to ensure that it reflects the practice within the ODPP and the needs of the investigative agencies and law enforcement agencies from which the ODPP receives personal information.

Information Protection Principle 6: Information about personal information held by agencies.

The ODPP intends to depart from Information Protection Principle 6 to ensure that a law enforcement agency or an investigative agency (as defined in s.3 of the Act) which submits personal information to the ODPP for the purpose of obtaining legal advice, is not prejudiced in its law enforcement and/or investigative activities by disclosure of that personal information.

In relation to all personal information received by the ODPP from a law enforcement agency or investigative agency, during the period commencing on the date of receipt of the personal information and concluding on:

- (i) the date that a person is charged with a criminal offence or served with process initiating a criminal prosecution or proceeding; or
- (ii) the date on which the investigative agency or law enforcement agency formally advises the ODPP that the personal information can be disclosed;

the ODPP will not take any steps to enable a member of the public to ascertain:

(a) whether the ODPP holds personal information;

(b) whether the ODPP holds personal information relating to that person;

and

(c) if the ODPP holds personal information relating to that person: (i) the nature of that information;
and

ii (ii) the main purposes for which the information is used; and

iii (iii) that person's entitlement to gain access to the information.

Information Protection Principle 10: Limits on disclosure of personal information.

The ODPP intends to depart from this information protection principle by the provision of personal information to the Victims Compensation Tribunal pursuant to s.30(1) of the Victims Compensation Act 1996 and its predecessor.

Section 30 of the Victims Compensation Act provides that, in determining whether or not to make an award of statutory compensation and in determining the amount of compensation to award, the compensation assessor must have regard, inter alia, to: 'whether that victim has failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed, and such other matters as the compensation assessor considers relevant'.

Upon receipt of a formal request from the Victims Compensation Tribunal, the ODPP will formally disclose to the Victims Compensation Tribunal for use in determining whether or not to make an award of statutory compensation and in determining the amount of compensation to award, such information as the ODPP considers relevant to the issues to which the compensation assessor is required to give consideration under Section 30 of the Victims Compensation Act .