

Privacy & Right to Information

Privacy

What is privacy?

Privacy has sometimes been described as: -

- the right to be left alone.
- the right to exercise control over one's personal information.
- a set of conditions necessary to protect our individual dignity and autonomy.

There are different aspects to privacy and each has rights which attach to them.

- physical privacy
 - your right to prevent intrusions into your physical space including your body.
- informational privacy
 - your right to protect your personal information. Personal information is any information where you are reasonably identifiable such as your name, address, medical records, bank account details, where you work, your opinions and what you like.
- freedom from excessive surveillance
 - your right to go about your daily life without being excessively surveilled.

Privacy law

The invasion of privacy is unlawful under a wide variety of laws some of which govern the whole of Australia (known as Federal or Commonwealth (Cth) laws), and some of which just govern the state of NSW ((NSW) laws).

In NSW there are three main laws that set privacy standards for dealing with personal information and protect the informational privacy of individuals: -

1. ***Privacy Act 1988 (Cth)***
 - applies to Australian Government (Commonwealth), ACT & Norfolk Island government agencies
 - applies to some private sector organisations across Australia
 - is administered by the Office of the Australian Information Commissioner (OAIC)
2. ***Privacy and Personal Information Protection Act 1998 (NSW)*** ("PPIP Act")
 - applies to NSW state and local government agencies
 - is administered by the NSW Information & Privacy Commission (IPC)
3. ***The State Health Records and Information Privacy Act 2002 (NSW)*** ("HRIP Act")
 - applies to NSW state and local government agencies
 - applies to private sector persons and organisations in NSW
 - is administered by the NSW Information & Privacy Commission (IPC)

Which Act applies to my situation?

There are various other Acts that cover different aspects of physical privacy and freedom from excessive surveillance. In some cases there will be other laws, policies or standards that protect a person's privacy. Which one applies is very much determined after the breach is discovered and a complaint is made and will depend on the circumstances, eg a complaint about the disclosure of a person's criminal record will be assessed against compliance with the *Criminal Records Act*; a complaint about a supermarket bag search will be assessed against industry best practice guidelines.

When investigating complaints about the handling of personal information by organisations which are not obliged to comply with the PPIP Act or HRIP Act, data protection principles or the following general tests will determine whether or not a person's privacy has been breached.

These tests treat the following as breaches of privacy:

- the intrusion upon a person's seclusion or solitude, or private affairs
- public disclosure of embarrassing facts about a person
- publicity which places a person in a false light in the public eye
- appropriation of a person's name or likeness.

How to make a complaint about a breach of your privacy

Depending on the nature of your privacy complaint it will need to be made under the appropriate laws, policies or standards which govern it and lodged with the appropriate agency. As the area of privacy law is very complex we suggest that you visit the SUPRA legal service or contact one of the government privacy agencies mentioned below if you believe that your privacy has been breached.

Protecting your privacy

You probably don't realize how much information you give away about yourself everyday. Technology has made identity theft and related crime a big industry. The personal information of so many people is easily available online, and creating forged or fraudulent documents can now be done with comparative ease. Sometimes all it takes are some basic facts about you such as your name, address, date of birth, bank account and/or credit card numbers, or passwords for your identity to be stolen.

10 tips to protect your privacy

1. Ask why your information is needed, what they will do with it and who it will be disclosed to.
2. Think twice before posting personal information about yourself online.
3. Install anti-virus, anti-spy software and firewalls on your computer.
4. Regularly check all your bank statements for suspicious transactions.
5. Minimise the amount of personal information, documents and cards that you carry around at places where it is likely to get lost, eg the beach, clubs
6. Shred all documents with personal information on them.
7. Use the privacy settings on social networking sites.
8. Watch out for scams. Banks and credit providers will not contact you by email or phone asking for confirmation of your personal details. Do not reply to emails. If someone calls ask for their name and department and call them back through the call centre. Online or email promises of employment or other opportunities which require you to provide your personal details to the other party are often fronts for scams.
9. Read privacy policies. They may be boring but they can be informative.
10. Know your privacy rights.

Rights to Information

Whilst there is some cross over, the protection of your privacy is different to other related concepts such as confidentiality, secrecy and your rights to information.

Your rights to information are also governed by either federal law or state law depending on who holds the information that you want to access.

Federally, the *Freedom of Information Act 1982* (Cth) governs your right to information held by Commonwealth government agencies or their contracted service provision agencies. This Act is administered by the Office of the Australian Information Commissioner (OAIC).

Your NSW state rights to information are governed by the *Government Information (Public Access) Act 2009* (NSW) (GIPA). GIPA applies to all NSW government agencies and persons or

entities deemed to be an agency under the regulations. This includes the University. This Act is administered by the NSW Information & Privacy Commission (IPC).

How can I access my own personal information?

Under the GIPA Act the first step is to make an informal request for your information. In some circumstances you may need to make a formal access application to the agency concerned. You may apply for access under the PPIP Act (under Information Protection Principle 7) or for access to your health information under the HRIP Act.

How is my privacy protected under the GIPA Act?

Under the GIPA Act a record that would reveal an individual's personal information, would not generally be disclosed unless there are strong public interest considerations in favour of disclosure.

More Information

Federal (Australian) Privacy & Right to Information Laws - Office of the Australian Information Commissioner

<http://www.oaic.gov.au>

State (NSW) Privacy & Right to Information Laws – NSW Information & Privacy Commission (IPC) http://www.ipc.nsw.gov.au/privacy/ipc_index.html

The SUPRA legal service can assist you with legal advice about Privacy and Right to Information law.

Disclaimer:

This information is intended as a guide to the law as it applies to people who live in or are affected by the law as it applies in NSW. It does not constitute legal advice.

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