

Complaints about a breach of privacy

1. Purpose and scope

This document sets out the procedure to follow when a privacy complaint is received.

The Library is subject to the *Privacy and Personal Information Protection Act 1998* (PIIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act) which contains Privacy Principles that the Library must abide by when it collects, stores, uses and discloses personal information.

A person aggrieved by the conduct of the Library is entitled, under the PIIP Act and/or HRIP Act, to seek an 'internal review' if they believe the Library has breached its privacy obligations.

2. Context

An 'internal review' is a formal process to investigate a privacy complaint relating to conduct that involves personal information or health information and is processed in accordance with the PIIP Act and/or the HRIP Act.

A person who feels that the State Library has breached their privacy can apply for an 'internal review' of the conduct under section 53 of the PIIP Act or section 21 of the HRIP Act.

'Internal review' requests should be lodged within 6 months of when the complainant became aware of the conduct in question. The Library reserves the right to accept or reject any application past that time frame (under section 53(3) of the PIIP Act).

Although not required by law, complainants are encouraged to use the Library's 'Privacy complaint – request for internal review' form.

3. Procedure

3.1 How to identify a privacy complaint

It is important for the Library to know whether or not an 'internal review' has been sought by a complainant, as a valid internal review request will trigger appeal rights, allowing the complainant to take their complaint against the Library to the NSW Civil and Administrative Tribunal.

There is the possibility that under the law, any written complaint could be considered a valid request for 'internal review', where there is some privacy element to the complaint.

To be a valid 'internal review' application, a privacy complaint must:

- be in writing, and
- be addressed to the State Library, and
- provide a return address (in Australia) for the complainant, and

- be made within 6 months of the complainant first becoming aware of the conduct, unless the Library gives the complainant an extension of time.

3.2 When a complaint is received

Where a person is making an initial inquiry about how to make a privacy complaint, the staff member should send them a copy of the factsheet 'Got a question or complaint about your privacy?' available on the external website and Intranet.

Where it is obvious that a person is seeking an internal review of their (written) privacy complaint, the Library will, within **3 working days**, send the (written) complaint to the Privacy Contact Officer (PCO) for actioning.

When in doubt, this procedure is to be followed:

- (i) where complaints are made verbally the Library's normal complaint-handling procedures are followed:
 - a. in relation to complaints from staff, follow the Grievance Handling and Dispute Policy and Procedures
 - b. in relation to complaints from all other persons, the relevant manager is to assess the complaint for the possibility that the handling of personal or health information is part of the complaint.
- (ii) where the handling of personal or health information is or might be part of the complaint, it should be referred by the relevant manager to the PCO
- (iii) the PCO will explain to the complainant the options or seek clarification as necessary; send the complainant a copy of the brochure 'Got a question or complaint about your privacy?', and a 'Privacy Complaint – request for internal review' form
- (iv) the PCO may arrange special assistance for people with disabilities and those who require the assistance of an interpreter
- (v) where a complaint has multiple issues (not just privacy issues) the PCO may consider allowing the complainant the option of first following the normal complaint-handling procedures, while keeping the 'door open' to a later internal review in relation to the privacy issues if the complainant remains dissatisfied at the end of the first process; this would be done by way of an undertaking to allow a late internal review application, up to 28 days after the completion of the first process
- (vi) the PCO documents any discussions and any decision made by the complainant as to which procedure is to be followed
- (vii) where the complainant does not wish to seek an internal review, the PCO will refer the matter back to the relevant manager for action.

3.3 How an internal review is conducted

The internal review process has four stages:

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| Stage 1: | Preliminary steps |
| Stage 2: | Investigation (fact finding) |
| Stage 3: | Analysis of conduct against the privacy principles |
| Stage 4: | Recommendations and action |

While typically the PCO would conduct the entire internal review, in some cases different stages will be handled by different people.

Therefore, upon receipt of a privacy complaint, the Manager, Enterprise Information Services, will determine who will conduct each stage of the internal review. The Manager, Enterprise Information Services will appoint one or more reviewing officers (ROs) for each internal review.

An RO must be:

<input type="checkbox"/> employed	the officer is an employee of the Library
<input type="checkbox"/> expert	the officer has the skills necessary to carry out the relevant stage/s of the process
<input type="checkbox"/> impartial	the officer was not involved in the conduct to be reviewed, and has no previous direct or indirect knowledge of the matter
<input type="checkbox"/> independent	the officer does not work in the same section as the person whose conduct is to be reviewed, and does not report to any person whose conduct is to be reviewed
<input type="checkbox"/> authorised	the officer has sufficient authority or delegation to make recommendations for action

Circumstances in which to appoint more than one reviewing officer

The typical or 'default' position is that the PCO will conduct the entire internal review.

However reasons to consider appointing an alternative reviewing officer, or to share the process between the PCO and other officers, include:

- if the PCO was involved in the conduct to be reviewed
- if the person whose conduct is to be reviewed is in a particular position of influence over the PCO, by reason of their position or seniority
- if the investigation (fact-finding) stage will require particular forensic skills not possessed by the PCO (for example if the conduct complained of involves an alleged 'hacking' into a computer database, specialist investigative skills may be required)
- to share workload or deal with absences of the PCO.

It may also be necessary or appropriate to seek external specialist advice to inform decisions or findings at stages 2 or 3 of the internal review process, such as specialist investigative or legal / analytical advice. However such advice cannot substitute for the review process itself, which must, by law, be conducted by an employee of the Library.

The Manager, Enterprise Information Services will determine whether any external specialist advice is required to assist the PCO or RO.

If there is more than one reviewing officer

Where there is to be more than one reviewing officer conducting an internal review, a 'lead reviewing officer' (LRO) must be nominated by the Manager, Enterprise Information Services.

The LRO will typically be the PCO or the Manager, Enterprise Information Services, unless both people present a conflict of interest.

The LRO is to act as a supervisor to the other reviewing officer/s, and is responsible for ensuring the review process follows correct procedure. The LRO may also be responsible for conducting one or more stages of the process themselves.

Where the conduct to be reviewed implicates senior or executive management

Where the conduct complained of relates to an action or decision of the NSW State Librarian and Chief Executive, then a Director or Mitchell Librarian will handle the internal review.

Where the conduct complained of relates to an action or decision of any of the Directors or the Mitchell Librarian, then the NSW State Librarian and Chief Executive will handle the review.

The Manager, Enterprise Information Services, will determine who will conduct each stage of the internal review.

3.4 Instructions for the officer conducting the internal review

The reviewing officer/s must follow the Library's Privacy complaint checklist, which is available from the external website and the Intranet.

The review is to be completed as soon as possible. If the review is not completed within **60 days** of the lodgement of the application, the complainant may take their complaint to the NSW Civil and Administrative Tribunal.

Once complete, the Library must notify the complainant of the outcome of the review within **14 days** of its determination.

The Privacy Commissioner must be notified of each request for an internal review, briefed on progress and notified of the outcome of the review.

3.5 After the internal review

If the complainant is not satisfied with the internal review, or the internal review has not been completed within 60 days of their request, he or she may appeal to the NSW Civil and Administrative Tribunal. The Tribunal hears the matter afresh. That is, the Tribunal does not review how the Library conducted its 'internal review'. It is only interested in the original conduct that was complained about.

The Tribunal may order the Library to provide a remedy including an apology, a change in practice, or that the Library compensates the person for any damages suffered, up to \$40,000.

4. Essential supporting documents

- [Privacy Management Plan](#)
- [Privacy and Personal Information Protection Act 1998](#) (PIIP Act)
- [Health Records and Information Privacy Act 2002](#) (HRIP Act)
- [Privacy complaint – request for internal review - form](#)
- [Got a question or complaint about your privacy? – fact sheet](#)
- [Privacy complaint checklist](#)

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26 July 2005

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4 June 2013 & 26 May 2014