



Privacy complaint checklist

The *Privacy and Personal Information Protection Act 1998* (the PPIP Act) and the *Health Records and Information Privacy Act 2002* (the HRIP Act) provide that public sector agencies deal with complaints by way of Internal Review. This process is the same under both Acts although you will be assessing the alleged conduct against different standards (the IPPs and the HPPs).

A privacy complaint may come under:

- the PPIP Act, section 53, if it relates to personal information, and the Information Protection Principles (IPPs), or
- the HRIP Act, section 21, if it relates to health information and the Health Privacy Principles (HPPs).

This checklist is to be followed by the reviewing officer assigned to handle a written privacy complaint.

	STEPS TO FOLLOW:	DATE COMPLETED
1)	<p>Is the complaint about someone's personal information?</p> <p>(Personal information means <i>information or an opinion ... about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.</i> There are some exemptions to the definition, so if in doubt check s.4 of the PPIP Act.)</p> <p><input type="checkbox"/> Yes – We must treat their complaint as a request for an internal review under the PPIP Act. Go to Q.2</p> <p><input type="checkbox"/> No – The PPIP Act does not apply. Follow our normal complaint handling procedures. Refer the complaint to the relevant manager within the Library.</p>	
2)	<p>The Manager, Enterprise Information Services, must appoint one or more reviewing officers. (See the procedure 'Dealing with a privacy complaint' for the requirements.)</p> <p>Insert the reviewing officer's name here:</p>	
3)	<p>According to the applicant, when did the alleged conduct occur?</p> <p>(Conduct that can be complained about includes an <i>event, action, decision, or even inaction by the Library.</i> For example a decision to refuse a person access to their personal information, or the action of disclosing someone's personal information to another person, or the inaction of a failure to protect a person's personal information from being inappropriately accessed by someone else.)</p> <p>Insert the date here:</p>	
4)	<p>Is the complaint about conduct that occurred after 1 July 2000?</p> <p><input type="checkbox"/> Yes – Go to Q.5</p> <p><input type="checkbox"/> No – The PPIP Act does not apply. Follow the Library's normal complaint handling procedures.</p>	
5)	<p>Is the complaint about health information and conduct that occurred after 1 September 2004?</p> <p><input type="checkbox"/> Yes, exclusively about health information – We will need to assess the conduct as against the HPPs.</p> <p><input type="checkbox"/> Yes, but a mix of both health information and other kinds of personal information – We will need to assess the conduct as against the HPPs, <i>and</i> against the IPPs.</p> <p><input type="checkbox"/> No – We will need to assess the conduct as against the IPPs only.</p>	
6)	<p>Record here which privacy principles we'll need to look at (based on your answers to Q's 4 and 5?)</p>	

	<input type="checkbox"/> the IPPs only <input type="checkbox"/> the HPPs only <input type="checkbox"/> both the IPPs and the HPPs	
7)	According to the applicant, when did they first <i>become aware of</i> the alleged conduct?	
8)	When was this application / privacy complaint first lodged? (Applicants don't need to use our <i>Privacy complaint – request for internal review</i> form. The first date on which we first received a written complaint about the conduct will count as the date on which an application for internal review was lodged, so long as there was some indication that the applicant was identifying privacy or the handling of personal information as part of their complaint.)	
9)	Has more than six months lapsed between the date on which the applicant first became aware of the alleged conduct (see the date at Q.7), and the date when they first made a formal privacy complaint (see the date at Q.8)? <input type="checkbox"/> Yes – Go to Q.10 <input type="checkbox"/> No – Go to Q.11	
10)	If more than six months lapsed, this is a late application. We have absolute discretion as to whether or not to accept a late application. Will we accept this late application? <input type="checkbox"/> Yes – Go to Q.11 <input type="checkbox"/> No – Explain our reasons to the applicant, then follow our normal complaint handling procedures. Refer the complaint to the relevant manager within the Library.	
11)	When will 60 days elapse from the date at Q.8? (After this date the applicant may go to the NSW Civil and Administrative Tribunal without waiting for the results of this review.)	
12)	Tick all the following stages in the 'information life cycle' which the conduct may have affected: <input type="checkbox"/> collection of personal information <input type="checkbox"/> security or storage of personal information <input type="checkbox"/> refusal to let a person access or find out about their own personal information <input type="checkbox"/> accuracy or relevance of a person's personal information <input type="checkbox"/> use of a person's personal information <input type="checkbox"/> disclosure of a person's personal information <input type="checkbox"/> lack of anonymity in providing services <input type="checkbox"/> use of a unique personal identifier <input type="checkbox"/> other / it's not clear (Note: Check to see if the applicant has used our <i>Privacy complaint – request for internal review</i> form; they may have ticked which of these they believe apply to their complaint.)	
13)	Write to the applicant, stating: <input type="checkbox"/> your understanding of the conduct complained about <input type="checkbox"/> your understanding of which privacy principle/s might be at issue (see Q.12) <input type="checkbox"/> that we are conducting an internal review under the PPIP Act <input type="checkbox"/> the name, title, and contact details of the reviewing officer <input type="checkbox"/> how the reviewing officer is independent of the person/s responsible for the alleged	

	<p>conduct</p> <ul style="list-style-type: none"> <input type="checkbox"/> the estimated completion date for the review process <input type="checkbox"/> that if our review is not complete by the date at Q.11, they can go to the NSW Civil and Administrative Tribunal for an external review of the alleged conduct <input type="checkbox"/> that a copy of this letter will be provided to the NSW Privacy Commissioner for their oversight role 	
14)	Send a copy of your letter (from Q.13) to the NSW Privacy Commissioner, GPO Box 7011, SYDNEY NSW 2001; or email ipcinfo@ipc.nsw.gov.au . Include a copy of the original application.	
15)	<p>Diarise critical dates for this review process, including:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the date on which the applicant can appeal to the NSW Civil and Administrative Tribunal if our review report is late (the date at Q.11), and <input type="checkbox"/> the date 4 weeks from now, when you should send a progress report to the applicant and the Privacy Commissioner (see Q.17 below) 	
INVESTIGATION (FACT-FINDING)		
16)	<p>Conduct the fact-finding aspect of the review first. You need to determine whether or not the alleged conduct occurred, and if it did, exactly what happened.</p> <p>If this investigation stage will require particular forensic skills not possessed by the reviewing officer, you may need to consider either (i) involving a second reviewing officer for this stage in the process, and/or (ii) seeking the assistance of an external investigative specialist. (For example if the conduct complained of involves an alleged ‘hacking’ into a database, specialist forensic computer skills may be required.) The Manager, Enterprise Information Services will determine whether one or both of these measures is required.</p> <p>At the conclusion of this stage, write a report outlining whether or not there was sufficient evidence to establish that the alleged conduct occurred.</p> <p>Was there sufficient evidence to establish that the alleged conduct occurred?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Yes – Go to Q.17 <input type="checkbox"/> No – Go to Q.19 	
17)	<p>Four weeks after sending the letter at Q.13, send a progress report to the applicant, and the Privacy Commissioner. Include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> an estimated completion date for the review process <input type="checkbox"/> an explanation of any reasons for delay <input type="checkbox"/> a reminder that if the review is not complete by the date at Q.11, the applicant can go to the NSW Civil and Administrative Tribunal for an external review of the alleged conduct 	
ANALYSE CONDUCT AS AGAINST THE PRIVACY PRINCIPLES		
18)	<p>Once you are satisfied as to what conduct occurred, you need to analyse whether or not that conduct complied with the relevant privacy principles.</p> <p>See Q.12 for the starting point, for the most likely privacy principles that will need to be reviewed. However you should actually look at all the privacy principles along the ‘information life cycle’, as they can be inter-related. For example a complaint about disclosure might also raise issues about data security, or what notification was given at the time of collection.</p> <p>Check the answer written at Q.6 (above) to see which <i>set</i> of privacy principles you need to consider: the IPPs, HPPs, or both.</p> <p>In many cases, the IPPs and HPPs use the same wording and have the same or similar exemptions. Use our <i>Guide to our privacy obligations</i> as a starting point, but always check the exact wording of the principles and any exemptions before concluding your analysis. Case law from the NSW Civil and Administrative Tribunal can provide some assistance in interpreting and applying the law.</p>	

	<p>If this investigation stage will require particular legal or analytical skills not possessed by the reviewing officer, you may need to consider either (i) involving a second reviewing officer for this stage in the process, and/or (ii) seeking the assistance of an external specialist. The Manager, Enterprise Information Services will determine whether one or both of these measures is required.</p> <p>At the conclusion of this stage, write a report outlining:</p> <ul style="list-style-type: none"> <input type="checkbox"/> whether the conduct complied with the relevant privacy principle/s (i.e. the relevant IPPs, and/or HPPs) and <input type="checkbox"/> if the conduct did not comply with the relevant privacy principle/s, whether the non-compliance was authorised by an exemption 	
RECOMMENDATIONS AND ACTION		
19)	<p>Write up the review's findings about the facts, the law, and your interpretation of the law.</p> <p>Set out your preliminary determination about:</p> <ul style="list-style-type: none"> <input type="checkbox"/> whether or not there was sufficient evidence to establish that the alleged conduct occurred <input type="checkbox"/> which of the privacy principles you examined and why <input type="checkbox"/> whether the conduct complied with the relevant privacy principle/s <input type="checkbox"/> if the conduct did not comply with the relevant privacy principle/s, whether the non-compliance was authorised by an exemption <input type="checkbox"/> a recommended action for the Library by way of response or remedy 	
20)	<p>Before completing the review, check whether the Privacy Commissioner wishes to make a submission. Provide a draft copy of your preliminary determination to the Privacy Commissioner for comment.</p>	
21)	<p>Finalise your determination of the internal review, by making one of the following findings:</p> <ul style="list-style-type: none"> <input type="checkbox"/> there was insufficient evidence to suggest alleged conduct occurred <input type="checkbox"/> the alleged conduct occurred but complied with the relevant privacy principle/s <input type="checkbox"/> the alleged conduct occurred, did not comply with the relevant privacy principle/s, but the non-compliance was authorised by an exemption <input type="checkbox"/> the alleged conduct occurred, did not comply with the relevant privacy principle/s, and the non-compliance was not authorised ("a breach") 	
22)	<p>Did the Library breach one or more privacy principles without authorisation?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Yes – Go to Q.24 <input type="checkbox"/> No – Go to Q.23 	
23)	<p>Even though the Library did not breach any privacy principles, have you identified any need for improvement in policies, procedures, communication with our clients, etc?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Yes – Go to Q.24 <input type="checkbox"/> No – Go to Q.25 	
24)	<p>Consider what might be appropriate recommendations for action as a result of this review. In doing so, consider what might match the expectations of the applicant (see what they wrote at Q.vi on the <i>Privacy complaint – request for internal review</i> form), as well as how to minimise risks of similar complaints for the Library.</p> <p>What recommendations do you make for action as a result of this review? (<i>You can have more than one.</i>)</p> <ul style="list-style-type: none"> <input type="checkbox"/> apology to applicant <input type="checkbox"/> rectification to applicant (e.g. access to, or amendment of, their personal information) <input type="checkbox"/> expenses or compensatory damages paid to applicant 	

	<input type="checkbox"/> other remedy to applicant <input type="checkbox"/> change in (or review of) policies, practices or systems <input type="checkbox"/> training (or further training) for staff <input type="checkbox"/> other action <input type="checkbox"/> no action	
25)	<p>Provide your report, with both its findings (as per Q.21), and your recommendations (as per Q.24), to the NSW State Librarian and Chief Executive. (If the NSW State Librarian and Chief Executive is unavailable or has a conflict of interest, this role will be undertaken by one of the Directors or the Mitchell Librarian instead.)</p> <p>The NSW State Librarian and Chief Executive (or Director/Mitchell Librarian) will determine whether or not to accept the report and its recommendations for action. Once this is settled, go to Q.26</p>	
26)	<p>Notify the applicant and the Privacy Commissioner in writing:</p> <input type="checkbox"/> that you have completed the internal review <input type="checkbox"/> what the review's findings are <input type="checkbox"/> what the reasons for the findings are <input type="checkbox"/> a plain language explanation of the law behind your findings, but also including extracts of any sections of the law relied on <input type="checkbox"/> what action the Library is going to take as a result <input type="checkbox"/> that the applicant has the right to apply to the NSW Civil and Administrative Tribunal (within 28 days of the date of this letter) for a review of the conduct complained about <input type="checkbox"/> the contact details for the Tribunal	
27)	The review is now complete	