

# Direction on Processing of Personal Information by Public Sector Agencies in relation to their Investigative Functions

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As Privacy Commissioner appointed under Part 4, Division 1 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (the PPIP Act), I Elizabeth Coombs, hereby direct pursuant to section 41 of the PPIP Act that:

## Overview

1. This is a direction made under section 41(1) of the PPIP Act. It should be read in conjunction with that Act.

## Interpretation

2. In this Direction:
  - "**public sector agency**" has the same meaning as in section 3 of the PPIP Act;
  - "**investigation**" of a matter includes any examination of or any preliminary or other inquiry into the matter. This includes matters where it is decided to take no further action on the information and matters which arise by way of complaint or otherwise;
  - "**investigative functions**" of an agency refer to those functions that are directly related to a lawful investigation and that are necessary for the conduct of that lawful investigation;
  - "**lawful investigation**" means an investigation carried out by an agency under specific legislative authority or where the power to conduct the investigation is necessarily implied or reasonably contemplated under an Act or other law. It covers only those investigations which may lead to the agency taking or instituting formal action in relation to the behaviour under investigation. Such formal action may include, but is not limited to, prosecution, warning, cautioning, the administration of a penalty or the removal of a benefit or approval;

## Application

3. This Direction is to apply to each public sector agency (referred to as the 'relevant agency' agency in this Direction).
4. This Direction applies to the collection, storage, use and disclosure of personal information for the purpose of the exercise by a relevant agency of its investigative functions.

## Public Interest

5. There is a public interest in processing personal information by each relevant agency in relation to their investigative functions and dealings with complaints. I am satisfied that the public interest in making this Direction is greater than the public interest requiring each relevant agency to comply with the Information Protection Principles referred to in the provisions set out below.

## Provisions

6. A relevant agency need not comply with sections 9, 10, 13, 14, 15, 17, 18, or 19(1) of the PPIP Act if non-compliance is reasonably necessary for the proper exercise of any of the agency's investigative functions or its conduct of any lawful investigations.
- 6A. A relevant agency need not comply with sections 18 or 19(1) of the PPIP Act if non-compliance is reasonably necessary to assist another relevant agency exercising investigative functions or conducting a lawful investigation.
- 6AA. A relevant agency need not comply with sections 9, 10, 13, 14, 15, 17, 18, or 19 (1) of the PPIP Act if non-compliance is reasonably necessary for the relevant agency to conduct an investigation for a public sector agency (the client agency) and:
- (i) the investigating agency or the client agency has specific legislative authority to carry out the investigation; or
  - (ii) the power of the investigating agency or the client agency to conduct the investigation is necessarily implied or reasonably contemplated under an Act or other law; and
- the investigation may lead to the client agency taking or instituting formal action in relation to the behaviour under investigation.
- 6AAA. In addition to the provisions of this Direction, a relevant agency need not comply with section 18 of the PPIP Act if the relevant agency is disclosing information to a complainant that is reasonably necessary for the purpose of:
- (i) reporting to the complainant on the progress of an investigation into a complaint made by that person, or
  - (ii) in providing the complainant with advice as to the outcome of the complaint and any action taken as a result of the complaint.

## Health Information

7. This Direction does not apply to 'health information', as defined in section 6 of the *Health Records and Information Privacy Act 2002 (NSW)*.

## Previous Directions

8. This Direction replaces previous Directions on this matter.

## Duration

9. This Direction has effect from **1 July 2015** to **31 December 2015**, or until legislative amendments are made to incorporate this Direction, whichever is earlier.

Signed by me on **19 June 2015**

Elizabeth Coombs  
**Privacy Commissioner**