

# Information Act 2002

## Privacy Complaints

May 2020

If you think an organisation has mishandled your personal information, you can make a complaint.

### Who can I complain about?

Northern Territory public sector organisations. This means all Northern Territory Government Departments, local councils, and bodies created under Northern Territory laws. For example, Charles Darwin University or the Power Water Corporation are bodies created under Northern Territory laws.

### Who can't I complain about?

- private individuals (unless they were acting as employees or representatives of a Northern Territory public sector organisation);
- private businesses (although businesses with an annual turnover of over \$3 million are governed by federal privacy laws);
- community associations.

### How do I make a complaint?

#### **STEP 1: Raise your concerns with the organisation that has mishandled your information.**

This is not required to be done in any particular way, however, we recommend you do this in writing so that you later have evidence that you did this and when you did it. We also suggest that you tell the organisation that you are making a complaint 'about a breach of privacy under the *Information Act 2002*' or words to that effect, so they are clear about the kind of complaint you are making.



#### **STEP 2: Give the organisation a reasonable time to respond.**

In most cases, a month would be a reasonable time. However, if the situation was particularly urgent (for example, if you learned the organisation was displaying your credit card detail on its website) you could reasonably expect an immediate response.



#### **STEP 3: If you are unhappy with the response, or receive no response, write to the Information Commissioner about your concerns.**

You can only make a complaint to the Commissioner if you have followed steps 1 and 2 and it must be in writing. You can email it to [infocomm@nt.gov.au](mailto:infocomm@nt.gov.au) or post it to GPO Box 1344 Darwin NT 0801.

### Why make a complaint?

Complaints can lead to:

- the organisation changing its practices;
- the organisation taking steps to better protect your information;
- the organisation correcting information it holds about you;
- an apology;
- a chance to have a face-to-face conversation with the organisation about your concerns; and
- compensation (up to \$60 000 per matter).

# Privacy Complaints

## What can I complain about?

The privacy principles are a list of rules that Northern Territory government organisation must follow when handling information about you. You can complain when they breach these rules.

Organisations may be breaching the privacy principles if:

*They gather information about you in the wrong way:*

- ✘ they collect information about you that they don't need to perform their role;
- ✘ they are unnecessarily sneaky or devious in collecting information about you;
- ✘ they don't tell you why they're collecting the information, how it will be used, or how to contact them further.

*They use or share information about you in the wrong way:*

- ✘ All information collected has to be collected for a reason. It should then only be used for that reason and not for other reasons. However, there are some exceptions to this rule. For example, they can use your information for other purposes:
  - if you consent,
  - if they are authorised to use it for another purpose by law,
  - to prevent criminal or seriously improper conduct, or
  - to protect public health and safety.

*They don't take enough care with your information:*

- ✘ they don't take reasonable steps to keep your information safe and secure;
- ✘ they send your information outside the Northern Territory to a place without similar privacy laws;
- ✘ they do not take reasonable care to keep your information accurate and up to date;
- ✘ they refuse to correct inaccuracies that you bring to their attention.

*They're not upfront with you about the information they hold:*

- ✘ they refuse to tell you what information they hold about you;
- ✘ they can't tell you their policies for handling personal information generally.

However, note there can be health and safety reasons or law enforcement reasons why you will not be given access to certain information. If the information about you also mentions other people, there may be privacy issues with showing you the parts about other people.

*Other things:*

- ✘ they shouldn't store your information under your Medicare number, or tax file number, or other such special individual number (because doing so creates a handy collection of information that could be stolen and put you at risk of identity theft);
- ✘ they should give you the option to speak to them anonymously (if that's a reasonable possibility).

## Does making a complaint cost anything?

No. There are no fees and charges associated with raising a matter with an organisation or with making a complaint to the Commissioner.

The process does not require you to have a lawyer, however if you choose to pay for one you should expect to pay the legal costs yourself. If your complaint ends up going to Hearing, each party bears its own costs except in exceptional circumstances.

## Are there any time limits?

Yes, you should make the complaint to the Information Commissioner within 12 months of *the time you became aware* that your personal information was being mishandled. If you don't make the complaint within 12 months, the Information Commissioner may reject it on this basis.

## What happens after I make a complaint?

- We will let you know we have received your complaint.
- We will let you know whether your complaint has been accepted or rejected.
- If the complaint is accepted, we will investigate your allegations. We may ask you to provide further information to support your case. We will inform the organisation of your allegations and give them a chance to respond.
- If we decide there is sufficient evidence to substantiate your case, we will conduct a mediation to try to resolve the matter.
- If mediation is unsuccessful, you can ask the Commissioner to refer the matter to the Northern Territory Civil and Administrative Tribunal. The Tribunal is able to conduct a hearing to determine whether your complaint can be proven and, if so, what orders should be made.



This guideline is not a substitute for reading the *Information Act 2002*. The views expressed are preliminary, and the Information Commissioner is open to alternative arguments by a member of the public or a public sector organisation. This guideline does not provide legal advice.

**1800 005 610**

**[www.infocomm.nt.gov.au](http://www.infocomm.nt.gov.au)**

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