

# Privacy Act requests

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# Policy

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## 1. Purpose

- 1.1 The purpose of this document is to provide guidance on handling Privacy Act requests by individuals, or their representatives, for their personal information held by Veterans' Affairs.

## 2. Legislative Reference

- 2.1 Privacy Act 1993, sections 2, 6 (principles 6 and 7), 27 – 29, 32, 35, 36, 39, 40, 42 – 45, 66 – 68, 72, 72A, 72B, 72C, and 77.
- 2.2 This policy draws from the guidance provided by the Office of the Privacy Commissioner on "*Privacy Act & codes. Access to personal information (principle six)*" at <https://www.privacy.org.nz/the-privacy-act-and-codes/privacy-principles/access>.

## 3. What is personal information?

- 3.1 "Personal information" means information about an identifiable individual; and includes information relating to a death that is maintained by the Registrar-General pursuant to the Birth, Deaths, Marriages and Relationships Registration Act 1995, or any former Act (as defined by the Births, Deaths, Marriages, and Relationships Registration Act 1995).

*Privacy Act 1993, s. 2.*

## 4. Eligibility to request personal information

- 4.1 Only the person who the information is about can ask for access to (and correction of) their personal information, either directly or through their appointed representative (see separate policies on *Representatives of Veterans and Other Claimants* and *Persons with Legal Authority to Act for a veteran or other claimant*). The Privacy Act calls this person "the individual concerned". Staff should ensure that where the request is made by an agent or representative of the individual concerned, the agent or representative has the written authority of that individual to obtain the information or is otherwise properly authorised by that individual to obtain the information.

*Privacy Act 1993, ss. 2 and 45.*

- 4.2 When a person is seeking personal information about another person for whom they are not acting as a representative or agent, they must request that information under the Official Information Act 1982 (see separate policy on *Official Information Act requests*).
- 4.3 It may be possible to check eligibility by replying to the requester at the same time the request is acknowledged, explaining the eligibility requirements, and

providing the name and contact details of a staff member (the Privacy Advisor) the requester can contact privately in order to provide assurance of eligibility.

## 5. Access to the personal information

5.1 The individual whose personal information is held by an agency has the right to:

- get confirmation from the agency about whether or not it holds the information; and
- have access to that information.

5.2 If given access the individual should be told also of their right to ask for the information to be corrected under Principle 7 of the Privacy Act.

*Privacy Act 1993, s.6, Principle 6.*

## 6. Correcting Personal Information

6.1 See separate policy entitled *Privacy Policy* regarding the right of the individual whose personal information is held by the agency to correct that information.

## 7. Registering a request

7.1 It is important that a Privacy Act request is registered immediately. Case Managers and other staff who receive Privacy Act requests should inform the Policy Team VANZPOL@nzdf.mil.nz, heading up the email clearly “PRIVACY REQUEST”. The Policy Advisor will register the request and track its progress. If the requester sends a follow-up message this must also be registered immediately, through the same process.

7.2 Any advice required relating to privacy issue should be sought from the Policy Advisor.

## 8. Timeframes for response

8.1 The legal timeframe for responding to Privacy Act requests is “as soon as reasonably practicable”, and no later than 20 **working days** after the request is received. Within that time the agency must:

- decide whether the request is to be granted and, if it is to be granted, in what manner and, for what charge (N.B. as a public sector agency, Veterans’ Affairs cannot charge – see section 13); and
- give or post to the individual who made the request notice of the decision on the request.

*Privacy Act 1993, s. 40(1) & (2).*

- 8.2 Requests that are received at a Veterans' Affairs email address such as VANZPOL or on the Veterans' Affairs website will be taken as being received at the time when they enter the information system, **not** when they come to staff attention. This is regardless of whether the email, Voicemail or post was received outside business hours.

## 9. Transferring the request to another agency

- 9.1 Transfers of requests to another agency must be done no later than 10 working days after the day on which the request is received. Informing the requester of the transfer must also be done within the same timeframe. Transferring the request is done when the information is not held by the agency, but staff dealing with the request believe that it is held by another agency, or staff believe the request is more closely connected with another agency.

*Privacy Act 1993, s. 39*

## 10. Extending the timeframe

- 10.1 Where the privacy request is made or transferred to another agency, the agency may extend the 10 days time limit for transfer, or the 20 days time limit for decision and notice of decision, if:

- the request is for a large quantity of information or necessitates a search through a large quantity of information, and meeting the original time limit would unreasonably interfere with the operations of the agency; or
- consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.

- 10.2 The extension comes into effect by giving or posting notice of the extension to the requester within 20 days after the day on which the request is received.

- 10.3 As a matter of policy, wherever possible extensions to the 10 day transfer timeframe should be made before the 10 day timeframe expires.

- 10.4 The notice must:

- specify the period of extension;
- give reasons for the extension;
- state that the requester has the right, under section 67 of the Act, to make a complaint to the Commissioner about the extension; and
- contain other information as necessary.

*Privacy Act 1993, s. 41.*

## 11. Requests for urgency

11.1 If the requester asks that their request be treated as urgent, they must give their reasons why the request should be treated as urgent.

*Privacy Act 1993, s.37.*

11.2 Staff should consider any request for urgency, and assess whether it would be reasonable to give the request higher priority. The legal obligations remain the same (20 days rule, and communicating the decision without undue delay), but such requesters should be provided with an indicative timeframe for response. A conversation with the requester will provide clarification of the reasons for urgency and may help make decisions about what information may be released sooner rather than later.

## 12. Grounds for refusing a request

12.1 Reasons must be given to requesters for refusing requests. The grounds for refusing include that giving the information to the individual would:

- pose a risk to New Zealand's security or defence or the international relations of the Government of New Zealand;
- prejudice the entrusting of information to the government of New Zealand on a basis of confidence by the government of any other country or an agency of such a government, or by an international organisation;
- undermine the enforcement of the law (including the prevention, investigation, and detection of offences, and the right to a fair trial);
- endanger the safety of any individual;
- prejudice the security or defence of the Cook Islands, Niue, Tokelau or the Ross Dependency;
- prejudice relations between the Governments of New Zealand and the Cook Islands or Niue;
- prejudice the international relations of the Governments of the Cook Islands or Niue;

*Privacy Act 1993, s.27.*

- disclose a trade secret or prejudice the commercial position of the person who supplied the information (unless public interest outweighs these concerns);

*Privacy Act 1993, s.28.*

- involve the unjustified disclosure of information about someone else (alive or deceased);

- involve information identifying the person who supplied it, or “evaluative or opinion material”, which would breach an express or implied promise which was made to the person who supplied the information and which was to the effect that the information or the person who supplied it would both be held in confidence (e.g. a job reference from a referee to a prospective employer, information for continuance of employment or promotion, or removal from employment or office, or for the awarding of contracts, awards, scholarships or honours or other benefits or their modification or cancellation, or for deciding whether to insure or renew or cancel insurance of an individual or property);
- be harmful to the individual’s physical or mental health (based on discussions with their medical practitioner);
- not be in the person’s individual interests (if the person is under 16 years of age);
- be likely to prejudice the safe custody or the rehabilitation of the individual if they have been convicted of an offence or are detained in custody;
- breach legal professional privilege (i.e. the information was communicated between a lawyer and client or obtained for court proceedings);
- breach a condition subject to which the material was placed such as a library or archive;
- constitute contempt of Court or of the House of Representatives;
- the request is frivolous or vexatious, or the information requested is trivial.

*Privacy Act 1993, s.29.*

12.2 Other grounds for refusal include the information requested is:

- not readily retrievable; or
- does not exist or cannot be found; or
- is not held by the agency and the person dealing with the request has no grounds for believing that the information is either held by another agency or connected more closely with the functions or activities of another agency.

*Privacy Act 1993, s.29.*

12.3 In the case of requests for information that relate to sections 27 and 28, the agency can, if it thinks that disclosing the existence or non-existence of such information would harm the interests protected in those sections, give notice to the requester that it neither confirms nor denies the existence or non-existence of that information.

## **13. Charging**

- 13.1 Public sector agencies may not, normally, charge for giving people access to their personal information, unless they have permission to do so from the Privacy Commissioner. The Privacy Commissioner will usually only allow this if satisfied that the organisation will be commercially disadvantaged in comparison with a private-sector competitor if it has to provide the information for free.
- 13.2 The Privacy Commissioner may also authorise the imposition of a charge if the individual seeking access to the information is residing outside New Zealand; and is not a New Zealand citizen or a permanent resident of New Zealand.

*Privacy Act, ss. 35 and 36.*

## **14. How information will be released**

- 14.1 If the decision is to grant the request for personal information, the information can be made available by:
- giving the requester a reasonable opportunity to inspect the document; or
  - providing the requester with a copy of the document; or
  - making arrangements for the requester to hear or view a recorded version of the document or article, or visual images; or
  - giving the requester a written transcript (if words in the document have been codified or written in shorthand or recorded); or
  - giving an excerpt or summary of a document's contents; or
  - providing oral information about a document's contents.
- 14.2 However, the information should be released in the way preferred by the requester unless to do so would:
- impair efficient administration; or
  - be contrary to any legal duty of the agency in respect of the document; or
  - prejudice the interests protected by sections 27, 28, or 29 of the Privacy Act (in the case of section 28 if there is no countervailing public interest) (see paragraph 12.1 above).
- 14.3 The requester must be given the reasons and grounds for not providing the information in the way they prefer, unless the grounds themselves would



prejudice the interests protected in sections 27, 28 and 29 of the Privacy Act and, in the case of section 28 there is no countervailing public interest.

*Privacy Act 1993, s. 42.*

- 14.4 It should be noted, however, that due to Defence requirements, Veterans' Affairs can only provide the information in paper form or via email in PDF form. Veterans' Affairs is not permitted to use memory sticks, CD ROM, DVD ROMs or floppy discs.
- 14.5 An agency may decide to withhold some information from a document containing the personal information requested and provide a copy of the document with necessary redactions or alterations. If this is done, the agency must give the requester the reason for withholding the redacted information, and the grounds, if the requester asks for them, but not if giving those grounds would prejudice the interests protected by sections 27, 28, or 29 of the Privacy Act and (in the case of section 28) there is no countervailing public interest.

*Privacy Act 1993, s. 43*

## **15. Communicating the decision**

### **Notice of decision to refuse**

- 15.1 If the decision is to refuse the request, reasons must be given for that decision, and if the requester asks, the grounds, unless there are section 27, 28 or 29 interests to be protected and, in the case of section 28, there is no countervailing public interest.
- 15.2 The requester should also be advised of their right to complain to the Privacy Commissioner and seek an investigation and review of the refusal under section 67 of the Privacy Act.

*Privacy Act 1993, s. 44.*

### **Releasing the information**

- 15.3 Usually when a decision is made to grant the request for information, whether in full or in part, the information is provided at the same time as the decision. However, if, for example, the request is for a large amount of information, it may be provided at a later stage. The notice of decision must clearly indicate that the information will be provided later. If some of the information is to be withheld, the notice should also advise this and state the reasons for refusal of that part of the request.

## **16. Complaints about Veterans' Affairs response**

- 16.1 The requester has the right to lodge a complaint with the Privacy Commissioner (or with an Ombudsman who will forward it to the Privacy Commissioner) about any action that appears to be an interference with their privacy (see [www.privacy.org.nz/your-rights/how-to-complain](http://www.privacy.org.nz/your-rights/how-to-complain)). This might include:

- a refusal to make information available in response to their request for personal information;
- decisions about in what manner the request is to be granted (e.g. transferring to another agency, the way the information is released, withholding some information), or for what charge;
- conditions the agency decides to put on the use, communication, or publication of information made available pursuant to the request;
- notice under section 32 of neither confirming nor denying the existence of information in order to protect the interests set out in sections 27 and 28 (see paragraph 12.3);
- decisions to extend the timeframe for collating large quantities of information or for consultations; or
- refusal to correct personal information.

16.2 If Veterans' Affairs has sought an extension to the 20 days timeframe to make a decision whether or not to release the information, and does not deliver it by the due date under the extension, this will be considered as a refusal to grant the request for information.

16.3 Similarly, undue delay in making information available in response to the privacy request will be deemed a refusal to make the information available.

*Privacy Act 1993, ss. 66 and 67.*

16.4 The complaint can be made orally or in writing. If made orally it should be put in writing as soon as practicable. The Privacy Commissioner can help the requester to put the complaint in writing.

*Privacy Act 1993, s. 68.*

16.5 Reasons for why the Privacy Commissioner may decide not to take action on a complaint are set out in section 71 of the Privacy Act 1993. If the complaint is not settled during investigation, the Privacy Commissioner will form a provisional opinion on how the law applies to the complaint. This will be sent to both sides, giving both sides an opportunity to comment. Once the Commissioner has taken those comments into account, and if the complaint is not settled or withdrawn, the Commissioner will come to a final opinion.

*Privacy Act 1993, s. 77.*

16.6 The Privacy Commissioner may decide to refer a complaint to the Director of Human Rights Proceedings, or to the Chief Ombudsman, the Health and Disability Commissioner, the Inspector-General of Intelligence or Security, or to an overseas privacy enforcement authority if he or she considers that the complaint relates more properly within one of these jurisdictions.

*Privacy Act, ss. 72, 72A, 72B, 72C.*

## Glossary

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**working day** means: [section 2 of the Privacy Act 1993].

any day of the week other than:

- (a) Saturday and Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.