

Premier and Cabinet Circular

PC 012 – INFORMATION PRIVACY PRINCIPLES (IPPS) INSTRUCTION



Effective from May 2020

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CABINET ADMINISTRATIVE INSTRUCTION 1/89, ALSO KNOWN AS THE INFORMATION PRIVACY PRINCIPLES (IPPS) INSTRUCTION, AND PREMIER AND CABINET CIRCULAR 12**Government of South Australia
Cabinet Administrative Instruction No.1 of 1989**

(Amended: 30 July 1992, 18 May 2009, 4 February 2013, 5 August 2013, 16 September 2013, 20 June 2016, 6 February 2017, 4 May 2020)

**PART 1
PRELIMINARY****Short Title**

1. This Instruction may be called the "Information Privacy Principles Instruction".

Commencement and Application

2. (1) This Instruction will come into effect on 1 July 2016.
(2) Subject to any contrary determination by Cabinet, this Instruction shall apply to "the public sector agencies" as that expression is defined in Section 3(1) of the *Public Sector Act 2009*.
(3) This Instruction shall not apply to an agency that appears in the attached schedule.

Interpretation

3. (1) In this Instruction-

"agency" means a public sector agency that falls within the scope of application of this Instruction pursuant to the provisions of Clause 2(2).

"the Committee" means the Privacy Committee of South Australia constituted by Proclamation.

"contracted service provider" means a third party that enters into a contract with an agency to provide goods or services required by an agency for its operations.

"contract for service" means that contract between the contracted service provider and the agency.

"Minister" means the Minister who is, for the time being, responsible for the Instruction.

"personal information" means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

"principal officer" means in relation to an agency:

- (a) the person holding, or performing duties of, the Office of Chief Executive Officer of the agency;

- (b) if the Commissioner for Public Employment declares an office to be the principal office in respect of the agency - the person holding, or performing the duties of, that office; or
- (c) in any other case - the person who constitutes that agency or, if the agency is constituted by two or more persons, the person who is entitled to preside at any meeting of the agency at which the person is present.

"the Principles" means the Information Privacy Principles established under Clause 4 of this Instruction.

"record-subject" means a person to whom personal information relates.

- (2) A reference to any legislation, regulation or statutory instrument in this Instruction shall be deemed to include any amendment, repeal or substitution thereof.
- (3) A reference to a person, including a body corporate, in this Instruction shall be deemed to include that person's successors.

PART II INFORMATION PRIVACY PRINCIPLES

Principles

- 4. The principal officer of each agency shall ensure that the following Principles are implemented, maintained and observed for and in respect of all personal information for which his or her agency is responsible.

Collection of Personal Information

- (1) Personal information should be not collected by unlawful or unfair means, nor should it be collected unnecessarily.
- (2) An agency that collects personal information should take reasonable steps to ensure that, before it collects it or, if that is not practicable, as soon as practicable after it collects it, the record-subject is told:
 - (a) the purpose for which the information is being collected (the "purpose of collection"), unless that purpose is obvious;
 - (b) if the collection of the information is authorised or required by or under law - that the collection of the information is so authorised or required; and
 - (c) in general terms, of its usual practices with respect to disclosure of personal information of the kind collected.
- (3) An agency should not collect personal information that is inaccurate or, having regard to the purpose of collection, is irrelevant, out of date, incomplete or excessively personal.

Storage of Personal Information

- (4) An agency should take such steps as are, in the circumstances, reasonable to ensure that personal information in its possession or under its control is securely stored and is not misused.

Access to Records of Personal Information

- (5) Where an agency has in its possession or under its control records of personal information, the record-subject should be entitled to have access to those records in accordance with the *Freedom of Information Act 1991*.

Correction of Personal Information

- (6) An agency that has in its possession or under its control records of personal information about another person should correct it so far as it is inaccurate or, having regard to the purpose of collection or to a purpose that is incidental to or connected with that purpose, incomplete, irrelevant, out of date, or where it would give a misleading impression in accordance with the *Freedom of Information Act 1991*.

Use of Personal Information

- (7) Personal information should not be used except for a purpose to which it is relevant.
- (8) Personal information should not be used by an agency for a purpose that is not the purpose of collection or a purpose incidental to or connected with that purpose (the secondary purpose) unless:
 - (a) the record-subject would reasonably expect the agency to use the information for the secondary purpose and the secondary purpose is related to the primary purpose of collection;
 - (b) the record-subject has expressly or impliedly consented to the use;
 - (c) the agency using the information believes on reasonable grounds that the use is necessary to prevent or lessen a serious threat to the life, health or safety of the record-subject or of some other person;
 - (d) the use is required by or under law;
 - (e) the use for that other purpose is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty or for the protection of the public revenue or for the protection of the interests of the government, statutory authority or statutory office-holder as an employer;
 - (f) the agency has reason to suspect that unlawful activity has been, is being or may be engaged in, and discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
 - (g) the agency reasonably believes that the use relates to information about an individual that suggests that the individual has engaged or

may engage in illegal conduct or serious misconduct in relation to a person; and

- (i) the agency reasonably believes that the use is appropriate in the circumstances; and
 - (ii) the use complies with any guidelines issued by the Minister for the purposes of this clause.
- (9) An agency that uses personal information should take reasonable steps to ensure that, having regard to the purpose for which the information is being used, the information is accurate, complete and up to date.

Disclosure of Personal Information

- (10) An agency should not disclose personal information about some other person to a third person for a purpose that is not the purpose of collection (the secondary purpose) unless:
- (a) the record-subject would reasonably expect the agency to disclose the information for the secondary purpose and the secondary purpose is related to the primary purpose of collection;
 - (b) the record-subject has expressly or impliedly consented to the disclosure;
 - (c) the person disclosing the information believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious threat to the life, health or safety of the record-subject or of some other person;
 - (d) the disclosure is required or authorised by or under law;
 - (e) the disclosure is reasonably necessary for the enforcement of the criminal law, or of a law imposing a pecuniary penalty or for the protection of the public revenue or for the protection of the interests of the government, statutory authority or statutory office-holder as an employer;
 - (f) the agency has reason to suspect that unlawful activity has been, is being or may be engaged in, and discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
 - (g) the agency reasonably believes that the disclosure relates to information about an individual that suggests that the individual has engaged or may engage in illegal conduct or serious misconduct in relation to a person; and
 - (i) the agency reasonably believes that the disclosure is appropriate in the circumstances; and
 - (ii) the disclosure complies with any guidelines issued by the Minister for the purposes of this clause.

Acts and Practices of Agency and Contracted Service Provider

5. For the purposes of this Instruction-
- (a) an act done or practice engaged in by, or personal information disclosed to, a person employed by, or in the service of, an agency in the performance of the duties of the person's employment shall be deemed to have been done or engaged in by, or disclosed to, the agency;
 - (b) an act done or practice engaged in by, or personal information disclosed to, a person on behalf of, or for the purposes of the activities of, an unincorporated body, being a board, council, committee, subcommittee or other body established by, or in accordance with, an enactment for the purpose of assisting, or performing functions in connection with, an agency, shall be deemed to have been done or engaged in by, or disclosed to, the agency.
 - (c) subject to clause 5(A), an act done or a practice engaged in by, or personal information disclosed to, a person employed by, or in the service of, a person or organisation providing services to an agency under a contract for services for the purpose of or in the course of performance of that contract shall be deemed to have been done or engaged in by, or disclosed to, the agency.
- 5(A) A contract for service, which will necessitate the disclosure of personal information to a contracted service provider, must include conditions to ensure that these Principles are complied with as if the Contracted Service Provider were part of the agency and must include provisions that enable audit and verification of compliance with these obligations.

Agencies to comply with Principles

6. An agency shall not do an act or engage in a practice that is in breach of or is a contravention of the Principles.

Collecting of Personal Information

7. For the purposes of the Principles, personal information shall be taken to be collected by an agency from a person if the person provides that information to the agency in response to a request by the agency for that information or for a kind of information in which that information is included.

PART III COMPLIANCE WITH PRINCIPLES

8. The Committee may at any time on its own initiative appoint a person (whether or not that person is a public employee) or the Commissioner for Public Employment to investigate or assist in the investigation of the nature and extent of compliance of an agency with the Principles and to furnish a report to the Committee accordingly.

Reporting Procedures Pursuant to this Instruction

9. Each principal officer shall furnish to the Committee such information as the Committee requires and shall comply with any requirements determined by the Committee concerning the furnishings of that information including:
- (a) the action taken to ensure that the Principles are implemented, maintained and observed in the agency for which he or she is responsible;
 - (b) the name and designation of each officer with authority to ensure that the Principles are so implemented, maintained and observed;
 - (c) the result of any investigation and report, under Clause 8, in relation to the agency for which he or she is responsible and, where applicable, any remedial action taken or proposed to be taken in consequence.

Agencies Acting Singly or in Combination

10. This Instruction and the Principles shall apply to the collection, storage, access to records, correction, use and disclosure in respect of personal information whether that personal information is contained in a record in the sole possession or under the sole control of an agency or is contained in a record in the joint or under the joint control of any number of agencies.

SCHEDULE: CLAUSE 2 (3) AGENCIES TO WHICH THIS INSTRUCTION DOES NOT APPLY

Independent Commissioner Against Corruption

Compulsory Third Party Regulator

Office for Public Integrity

South Australian Asset Management Corporation

Return to Work South Australia

Judicial Conduct Commissioner

Document Control

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For more information

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Attachment 1 - Proclamation of the Privacy Committee of SA

South Australia

Privacy Committee of South Australia

1—Establishment and procedures of Privacy Committee of South Australia

- (1) My Government will establish a committee to be known as the Privacy Committee of South Australia.
- (2) The Committee will consist of six members appointed by the Minister as follows:
 - (a) three will be chosen by the Minister, and of these one must be a person who is not a public sector employee (within the meaning of the Public Sector Management Act 1995 as amended or substituted from time to time) and one must be a person with expertise in information and records management;
 - (b) one will be appointed on the nomination of the Attorney-General;
 - (c) one will be appointed on the nomination of the Minister responsible for the administration of the Health Care Act 2008 (as amended or substituted from time to time); and
 - (d) one will be appointed on the nomination of the Commissioner for Public Employment (and, for the purposes of this paragraph, the reference to the Commissioner will, if the title of the Commissioner is altered, be read as a reference to the Commissioner under his or her new title).
- (2aa) At least 2 members of the Committee must be women and at least 2 must be men.
- (2a) One of the persons appointed under subclause (2)(a) will be appointed (on the nomination of the Minister) to be the presiding member.
- (3) A member will be appointed for a term not exceeding four years.
- (3a) Where a member is appointed for a term of less than four years, the Minister may, with the consent of the member, extend the term of the appointment for a period ending on or before the fourth anniversary of the day on which the appointment took effect.
- (4) The office of a member becomes vacant if the member—
 - (a) dies;
 - (b) completes a term of office and is not reappointed;
 - (c) resigns by written notice to the Minister; or
 - (d) is removed from office by the Governor on the ground of—
 - (i) mental or physical incapacity to carry out official duties satisfactorily;
 - (ii) neglect of duty;
 - (iii) disclosure of information by the member contrary to clause 3(2); or

(iv) misconduct.

- (5) Subject to the following, the Committee may determine its own procedures:
- (a) a meeting of the Committee will be chaired by the presiding member or, in his or her absence, by a member chosen by those present;
 - (b) subject to paragraph (c), the Committee may act notwithstanding vacancies in its membership;
 - (c) four members constitute a quorum for a meeting of the Committee;
 - (d) a decision in which a majority of the members present at a meeting concur is a decision of the Committee but if the members are equally divided the person presiding at the meeting will have a casting vote;
 - (e) a member who is unable to attend a meeting of the Committee may, with the approval of the presiding member, be represented for voting and all other purposes at the meeting by his or her nominee;
 - (g) the Committee must keep minutes of its proceedings.
- (6) In performing its functions the Committee may consult any person and may establish subcommittees of at least two of its members to assist and advise it.

2—Functions of the Committee

The Committee will have the following functions:

- (a) to advise the Minister as to the need for, or desirability of, legislation or administrative action to protect individual privacy and for that purpose to keep itself informed as to developments in relation to the protection of individual privacy in other jurisdictions;
- (b) to make recommendations to the Government or to any person or body as to the measures that should be taken by the Government or that person or body to improve its protection of individual privacy;
- (c) to make publicly available information as to methods of protecting individual privacy and measures that can be taken to improve existing protection;
- (d) to keep itself informed as to the extent to which the Administrative Scheme of Information Privacy Principles are being implemented;
- (g) to refer written complaints concerning violations of individual privacy received by it (other than complaints from employees of the Crown, or agencies or instrumentalities of the Crown, in relation to their employment) to the appropriate authority;
- (h) such other functions as are determined by the Minister.

3—Prohibition against disclosure of information

- (2) A member of the Committee must not disclose any information acquired by the member by virtue of his or her membership of the Committee except—
- (a) in the course of performing duties and functions as a member of the Committee; or
 - (b) as required or authorized by law.

4—Exemptions

- (1) The Committee may exempt a person or body from one or more of the Information Privacy Principles on such conditions as the Committee thinks fit.

4A—Annual report

- (1) The Committee must, on or before 30 September in each year, prepare and present to the Minister a report on its activities during the preceding financial year.
- (2) The report must include details of any exemptions granted under clause 4 during the year to which the report relates.
- (3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

5—Interpretation

In this proclamation, unless the contrary intention appears—

Information Privacy Principles means the principles set out in Part II of Cabinet Administrative Instruction No. 1 of 1989 entitled "Information Privacy Principles Instruction";

Minister means the Minister who is, for the time being, responsible for the Committee.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal proclamation and variations

New entries appear in bold.

	Reference	Commencement
—	Gazette 6.7.1989 p6	6.7.1989
—	Gazette 30.7.1992 p720	30.7.1992
—	Gazette 25.5.2000 p2628	25.5.2000
—	Gazette 17.5.2001 p1772	17.5.2001
—	Gazette 11.6.2009 p2728	11.6.2009: cl 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
cl 1		
cl 1(2)	substituted by 30.7.1992 p720 cl 1	30.7.1992
	substituted by 25.5.2000 p2628 para (a)	25.5.2000
	varied by 17.5.2001 p1772 paras (a), (b)	17.5.2001
	varied by 11.6.2009 p2728 cl 4(1)—(3)	11.6.2009
cl 1(2aa)	inserted by 11.6.2009 p2728 cl 4(4)	11.6.2009
cl 1(2a)	inserted by 30.7.1992 p720 cl 1	30.7.1992
	substituted by 25.5.2000 p2628 para (a)	25.5.2000
cl 1(3)	varied by 30.7.1992 p720 cl 2	30.7.1992
cl 1(3a)	inserted by 17.5.2001 p1772 para (c)	17.5.2001
cl 1(4)	varied by 11.6.2009 p2728 cl 4(5)	11.6.2009
cl 1(5)	varied by 30.7.1992 p720 cl 3	30.7.1992
	varied by 25.5.2000 p2628 para (b)	25.5.2000
	varied by 11.6.2009 p2728 cl 4(6)	11.6.2009
	(f) deleted by 11.6.2009 p2728 cl 4(7)	11.6.2009
cl 2	varied by 30.7.1992 p720 cl 4, 5	30.7.1992
	(e) and (f) deleted by 30.7.1992 p720 cl 6	30.7.1992
cl 3		
cl 3(1)	substituted by 30.7.1992 p720 cl 7	30.7.1992
	varied by 25.5.2000 p2628 para (c)	25.5.2000
	deleted by 11.6.2009 p2728 cl 5	11.6.2009
cl 4	inserted by 30.7.1992 p720 cl 8	30.7.1992

cl 4(2)	deleted by 11.6.2009 p2728 cl 6	11.6.2009
cl 4A	inserted by 11.6.2009 p2728 cl 7	11.6.2009
cl 5 heading	inserted by 11.6.2009 p2728 cl 8	11.6.2009
cl 5	inserted by 30.7.1992 p720 cl 8	30.7.1992
public employee	deleted by 25.5.2000 p2628 para (d)	25.5.2000