

Privacy Act requests

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Contents

Policy	3
1. Purpose.....	3
2. Legislative Reference	3
3. What is personal information?.....	3
4. What is health information?.....	3
5. Eligibility to request personal information.....	4
6. Handling simple requests for personal information	4
7. Registering a request.....	5
8. Timeframes for response	5
9. Transferring the request to another agency	6
10. Extending the timeframe	6
11. Requests for urgency.....	7
12. Grounds for refusing a request	7
13. Imposing conditions instead of refusing access.....	9
14. Neither confirming nor denying existence or non-existence of information	9
15. Withholding or redacting information	9
16. Charging	9
17. How information will be released	10
18. Communicating the decision.....	10
19. Complaints about Veterans' Affairs response	11
Glossary	13

Policy

1. Purpose

- 1.1 This Policy provides guidance on the receiving, refusing or releasing clients' personal information and making complaints under the Privacy Act.
- 1.2 See separate Policy on:
 - *Privacy – managing personal information* for guidance on the collection, storage, correction, use, access to and disclosure of clients' personal information under the Privacy Act 2020.
- 1.3 The Privacy Act 2020 applies to all personal information held by Veterans' Affairs regardless of where the client or their authorised representative resides. There is no citizenship or permanent residency requirement for the individual concerned in order to make requests under the Privacy Act.

Section 4 of the Privacy Act 2020.

2. Legislative Reference

- 2.1 Relevant legislative references are:
 - sections 4, 7, 22, 39-41, 43-57, 66-67, 69, 72 subpart 2 of Part 5 of the Privacy Act 2020
 - Health Information Privacy Code 2020.

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 Births, Deaths, Marriages and Relationships Registration Act 1995, or any former Act (as defined by the Births, Deaths, Marriages, and Relationships Registration Act 1995).

Section 7 of the Privacy Act 2020.

4. What is health information?

- 4.1 Information held by Veterans' Affairs is also subject to the Health Information Privacy Code 2020 and its associated Information Privacy Rules which are in many respects similar to the Privacy Act's Information Privacy Principles. Staff should familiarise themselves with this Code which can be found on the Privacy Commissioner's website.
- 4.2 "Health information" means information about:
 - the health of an identifiable individual, including their medical history
 - disabilities that the individual has

- health services or disability services provided to that individual
- donation of any of that individual's bodily parts or substances
- information collected before the provision of any health or disability service to that individual.

4.3 NOTE: the definition of what is health information is very broad so that it will cover virtually all health information about an individual.

5. Eligibility to request personal information

5.1 Only the person who the information is about (called the "individual concerned" under the Privacy Act) 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*). 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.

5.2 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*).

5.3 It may be possible to check eligibility by replying to the requestor at the same time the request is acknowledged, explaining the eligibility requirements, and providing the name and contact details of a staff member the requestor can contact privately in order to provide assurance of eligibility.

Sections 7, 22, 39, 40, and 57 of the Privacy Act 2020.

6. Handling simple requests for personal information

6.1 A Privacy Act request can be made orally (i.e. by telephone or voicemail) or in writing (by letter or email) to Veterans' Affairs.

6.2 If a request for personal information is a simple request made by a client or their authorised representative the request may be handled by the client's Case Manager or by the Enquiry Line without transferral to the Policy Team for action. More substantial requests should be handled as outlined in subsequent sections of this Policy.

6.3 A simple request is defined as a request where:

- only a small number of documents is required
- the request can be actioned immediately, because no redaction is needed, and there are unlikely to be grounds for refusal of the request.

- 6.4 The request and response should be recorded in VSS in the contact record folder with comments marked PRIVACY REQUEST [date][document/s names] within one **working day** of being received.
- 6.5 The person handling the request must check that there is nothing that needs redacting, such as third party information, or aspects of a medical report that a health practitioner has indicated should not be handed over to the client. Addresses of requestors must be double-checked against responses for any errors.
- 6.6 Staff need to be familiar with the grounds for refusing a request and for withholding information or making redactions as set out in this Policy. If it appears information should be withheld the request is to be transferred to the Policy Team.
- 6.7 Draft responses to simple requests must be checked by the Case Manager's/Enquiry Line's Team Leader or a peer before sending by mail or email.

7. Registering a request

- 7.1 It is important that a Privacy Act request is registered immediately. Registration of substantial requests (as opposed to "simple" requests as outlined in the section above) is to occur no later than one **working day** after a request is received. Staff who receive Privacy Act requests need to inform the Policy Team by emailing Veterans Policy, heading up the email clearly "PRIVACY REQUEST". The request will be registered and completed by the Policy Team. If the requestor sends a follow-up message this must also be registered immediately, through the same process.
- 7.2 Any advice required relating to privacy policy and legislation should be sought from the Policy Team. Privacy incidents or breaches are to be reported to the Veterans' Affairs Privacy Officer.

8. Timeframes for response

- 8.1 The legal timeframe for responding to Privacy Act requests is "as soon as is 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, how the information will be made available and, for what charge (N.B. as a public sector agency, Veterans' Affairs cannot charge – see further below)
 - provide notice of the decision on the request to the requestor
 - let the requestor know if Veterans' Affairs does not hold the information requested; or does not hold it in a readily retrievable way; or refuses access to some or all of the information; or neither confirms nor denies it holds the information.

Sections 44 and 45 of the Privacy Act 2020.

- 8.2 Requests that are received at a Veterans' Affairs email address 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.
- 8.3 The counting of working days stops during the Christmas period commencing on 25 December in one year and ending with 15 January in the next year.

Section 7 of the Privacy Act 2020.

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 requestor of the transfer must also be done within the same timeframe. Transferring the request is done when the information is not held by Veterans' Affairs but staff believe that it is held by another agency, or staff believe the request is more closely connected with another agency.
- 9.2 Transfer should not be done if Veterans' Affairs has reason to believe the requestor does not want it done. In this case staff should, within the 10 working days timeframe after the request was received, inform the requestor that the information is held by, or is more closely connected with, another agency and provide the name of the agency to which the request could be transferred.

Section 43 of the Privacy Act 2020.

10. Extending the timeframe

- 10.1 Where the privacy request is made or transferred to another agency, the agency may extend the 10 working days time limit for transfer, or the 20 working 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 response to the request cannot reasonably be made within the original time limit; or
 - processing the request is so complex that a response to the request cannot reasonably be made within the original time limit.
- 10.2 The extension comes into effect by providing notice of the extension to the requestor within 20 working days after the day on which the request is received.
- 10.3 As a matter of policy, wherever possible extensions to the 10 working day transfer timeframe should be made before the 10 working day timeframe expires.
- 10.4 The notice must:
- specify the period of the extension

- give reasons for the extension
- state that the requestor has the right, to make a complaint to the Privacy Commissioner about the extension, and
- contain other information as necessary.

Section 48 of the Privacy Act 2020.

11. Requests for urgency

- 11.1 If the requestor asks that their request be treated as urgent, they must give their reasons why the request should be treated as urgent. Staff should consider any request for urgency, and assess whether it would be reasonable to give the request higher priority.

Section 41 of the Privacy Act 2020.

- 11.2 The legal obligations remain the same (20 working days requirement, and communicating the decision without undue delay), but such requestors should be provided with an indicative timeframe for a response. A conversation with the requestor will provide any 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 requestors for refusing requests (or some parts of the request). The grounds for refusing are that giving the information to the individual would:

- endanger the life, health or safety of any individual or of public health or public safety generally
- create a significant likelihood of serious harassment of an individual
- likely be harmful to the individual's physical or mental health (based on discussions with their medical practitioner)
- not be in the person's 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 or have been detained in custody)
- include disclosure of information about another person who is the victim of an offence or alleged offence, and would be caused significant distress, loss of dignity or injury to feelings by the disclosure

Section 49 of the Privacy Act 2020.

- involves information identifying the person who supplied it, and is "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 or both be kept confidential. Confidential evaluative or opinion material covers:

- a job reference from a referee to a prospective employer for purposes of appointment to employment
- information for promotion or continuance of employment or promotion
- information for removal from employment or office
- information for the awarding of contracts, awards, scholarships or honours or other benefits or their modification or cancellation
- information for deciding whether to insure or renew or cancel insurance of an individual or property.

Section 50 of the Privacy Act 2020.

- prejudice (including 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
- 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

Section 51 of the Privacy Act 2020.

- disclose a trade secret or be likely to unreasonably prejudice the commercial position of the person who supplied the information or is the subject of the information (unless public interest outweighs these concerns)

Section 52 of the Privacy Act 2020.

- the information requested does not exist or, despite reasonable efforts to locate it, cannot be found
- involve the unwarranted disclosure of information about someone else (alive or deceased)
- prejudice the maintenance of the law by a public sector agency including undermining the enforcement of the law (including the prevention, investigation, and detection of offences, and the right to a fair trial)
- breach legal professional privilege (i.e. the information was communicated between a lawyer and client for the purposes of obtaining legal advice or obtained for actual or prospective 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 made by a defendant or a defendant's agent and is for information that could be sought by the defendant under the Criminal Disclosure Act 2008, or is for information that could be sought by the defendant under that Act and that has already been disclosed to, or withheld from, the defendant under that Act
- the request is frivolous or vexatious, or the information requested is trivial.

13. Imposing conditions instead of refusing access

- 13.1 Veterans' Affairs may decide that instead of refusing access to any personal information, it will grant access, but it will impose conditions relating to the requestor's use of the information, or the requestor's disclosure of information to any other person. Getting legal advice is often useful if conditions are being contemplated.

Section 54 of the Privacy Act 2020.

14. Neither confirming nor denying existence or non-existence of information

- 14.1 Veterans' Affairs can give notice to the requestor that it neither confirms nor denies the existence or non-existence of information, if it thinks that disclosing the existence or non-existence of information would:

- harm the life, health or safety of an individual or public health or public safety generally
- prejudice the maintenance of law by a public sector agency including undermining the enforcement of the law
- prejudice New Zealand's security or defence or international relations
- disclose a trade secret
- unreasonably prejudice the commercial position of the person who supplied the information or who is subject of the information.

Section 47 of the Privacy Act 2020.

15. Withholding or redacting information

- 15.1 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 there is good reason for withholding some information under sections 49 to 53 of the Privacy Act. If this is done, the agency must give the requestor the reason for withholding the redacted information, and the statutory grounds under the Act, if the requestor asks for them, but not if giving those grounds would prejudice the interests protected by sections 49, 50(1), 51, 52 and 53 of the Privacy Act and (in the case of section 52) there is no countervailing public interest.

Section 55 of the Privacy Act 2020.

16. Charging

- 16.1 Public sector agencies may not, normally, charge for giving people access to their personal information, or correcting 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.

Sections 66 and 67 of the Privacy Act 2020.

17. How information will be released

17.1 If the decision is to grant the request for personal information, the information can be made available by any of the following means:

- giving the requestor a reasonable opportunity to inspect the document
- providing the requester with a hard copy or electronic copy of the document
- making arrangements for the requestor to hear or view a recorded version of the document or article, or visual images
- giving the requestor a written transcript (if words in the document have been codified or written in shorthand or recorded)
- giving an excerpt or summary of a document's contents
- providing oral information about a document's contents.

17.2 However, the information should be released in the way preferred by the requestor unless to do so would:

- impair efficient administration
- be contrary to any legal duty of the agency in respect of the document
- prejudice the interests protected by sections 49, 50(1), 51, 52 and 53 of the Privacy Act (in the case of section 52 if there is no countervailing public interest).

17.3 The requestor 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 49, 50(1), 51, 52 and 53 of the Privacy Act and, in the case of section 52 there is no countervailing public interest.

Section 56 of the Privacy Act 2020.

17.4 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 for release memory sticks, CD ROM, DVD ROMs or floppy discs.

18. Communicating the decision

Notice of decision to refuse

18.1 If the decision is to refuse the request, reasons must be given for that decision, and if the requestor asks, the statutory grounds under the Act, unless there are section 49, 50(1), 51, 52 and 53 interests to be protected and, in the case of section 52, there is no countervailing public interest.

18.2 The requestor should also be advised of their right to complain to the Privacy Commissioner under section 70 of the Privacy Act and seek an investigation

and review of the refusal (see below about other situations where the client has the right to make a complaint to the Privacy Commissioner).

Section 46(2)(b) of the Privacy Act 2020.

Things that must be checked before releasing the information

18.3 Before releasing the information, Veterans' Affairs must:

- check it is satisfied of the identity of the requestor
- not give access if the request is made under threat of mental or physical harm
- ensure that any information intended for the individual concerned is only received by them or by their authorised representative.

Section 57 of the Privacy Act 2020.

Releasing the information

18.4 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, the information may be provided at a later stage and after the notice of the decision. 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 and the statutory grounds under the Act for refusal of that part of the request.

19. Complaints about Veterans' Affairs response

19.1 The requestor 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. 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 47 of neither confirming nor denying the existence of information in order to protect the interests set out in sections 49, 51 and 53
- decisions to extend the timeframe (for collating large quantities of information or for consultations)
- refusal to correct personal information.

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

19.3 Similarly, undue delay in making information available or correcting personal information in response to the privacy request will be considered a refusal of a request.

Section 69(4) and (5) of the Privacy Act 2020.

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

Section 72 of the Privacy Act 2020.

19.5 Reasons for why the Privacy Commissioner may decide not to take action on a complaint are set out in section 74 of the Privacy Act.

19.6 Among the several actions the Privacy Commissioner may take are exploring the possibility of a settlement of the complaint without investigating the complaint, referring the complaint to the Director of Human Rights Proceedings without an investigation, or without completing an investigation, or referring the complaint to the Chief Ombudsman, the Health and Disability Commissioner, the Inspector-General of Intelligence or Security, the Independent Police Conduct Authority or to an overseas privacy enforcement authority if he or she considers that the complaint relates more properly within one of these jurisdictions.

Part 5 subpart 2 of the Privacy Act 2020.

Glossary

working day [section 7 of the Privacy Act 2020]

Means any day of the week other than–

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