

1 Title: Access to employee records - disclosing third-party personal information**2 Purpose:**

To assist decision-makers to exercise their responsibilities for protecting and releasing third-party personal information contained in employee records.

It does so by specifying the limitations for the disclosure of third-party personal information in the release of employee records to public service employees seeking access under section 14 of the *Public Service Regulation 2008*.

This directive is to be read in conjunction with the *Information Privacy Act 2009*, the *Right to Information Act 2009* and provisions relating to employee records in the *Public Service Regulation 2008*.

3 Application:

This directive applies to:

- chief executives in possession of an employee record as provided for under sections 11 and 13 of the *Public Service Regulation 2008*,
- public service employees as defined under section 9 of the *Public Service Act 2008*, and
- public service departments and public service offices.

4 Legislative Provisions:

Public Service Act 2008 – sections 25(1)(d), 25(1)(e), 25(2)(a), 46(1)(a), 46(1)(d), 53;
Public Service Regulation 2008 – section 14.

5 Effective date: 15 March 2010**6 Definitions:**

For the purpose of this directive the following definitions apply:

“Agency”

- a department, or public service office as defined in sections 7 and 21 of the *Public Service Act 2008*.

“Chief executive”

- a chief executive or head of a public service office as defined in sections 10 and 21 respectively of the *Public Service Act 2008*.

“Employee record”

- is defined in section 10 of the *Public Service Regulation 2008*.

“Personal information”

- is defined in section 12 of the *Information Privacy Act 2009*.

“Routine personal work information”

- information that is solely related to the routine day to day work duties and responsibilities, performance and conduct of a public service employee. This includes information such as, but not limited to:
 - a) a work email address
 - b) a work phone number
 - c) information that has been nominated and/or generated by the employee (eg next of kin)
 - d) the fact of authorship of a work document (eg where the person’s name is listed as the author of a report or letter)
 - e) a salary classification (eg that someone is an A06 project officer in the administration area of a given department)
 - f) a work responsibility (eg that the employee is the contact if a member of the public has a complaint or a query, or that an employee has responsibility for specific work allocations)
 - g) incidental appearances of a person’s name in work documents (eg their signature as an officer of a department; a mention of an officer as a member of a project team in documents produced by the project; a mention of an officer as having responsibility for a team or project, or holding a given position; a mention of an officer on a performance or salary increment report or form)
 - h) information about qualifications held.

“Third-party”

- a person, other than the employee, who is the subject of the employee record.

7 Provisions:

7.1. Chief executives are responsible for ensuring the maintenance of proper standards in the creation, keeping and management of employee records in accordance with section 98 of the *Public Service Act 2008*.

7.2. Chief executives are responsible for ensuring that employees are informed of administrative schemes through which employees may access their employee records.

7.3. In determining whether to grant access to employee records containing the personal information of a third-party under sections 7.5 and 7.6, agencies are to apply a pro-disclosure bias while having regard to the limitations and restrictions outlined under 7.4, 7.5 and 7.6.

7.4. Access to an employee record containing the personal information of a third-party must be refused where it is information that is either:

- a) not classified as an employee record (refer to subsection 10(2) of the *Public Service Regulation 2008*), or
- b) protected from disclosure by a law¹.

7.5. The release of the personal information of a third-party contained on an employee record may be granted under the following circumstances:

- a) the third-party is reasonably likely to have been aware, or to have been made aware that it is the agency's usual practice to disclose that type of personal information to the employee seeking access, or
- b) the third-party has expressly agreed to the disclosure, or
- c) the chief executive is satisfied on reasonable grounds that the disclosure is necessary to lessen or prevent a serious threat to the life, health, safety or welfare of an individual, or
- d) the disclosure is authorised or required under a law, or
- e) the personal information is considered to be routine personal work information.

7.6. In deciding whether to release employee records containing the personal information of a third-party, chief executives are to determine whether the release of that information would be appropriate, giving consideration to whether the disclosure:

- a) could reasonably be expected to prejudice the protection of the third-party's right to privacy, or
- b) could cause any harm as a result of the disclosure, or
- c) would be in breach of a law, or
- d) would likely be withheld from release if it was subject to an access application under either the *Right to Information Act 2009* or the *Information Privacy Act 2009*.

7.7. In disclosing the personal information of a third-party under sections 7.5 or 7.6, the agency is to make a note of the disclosure on the employee record.

¹ Examples of laws protecting the disclosure of information include a document relating to suspected official misconduct under the *Crime and Misconduct Act 2007* or its investigation, or legislation governing public interest disclosures.