

Fact Sheet – Privacy

Right to Information and Privacy Unit

Transfer of personal information out of Australia

When can personal information be transferred out of Australia?

As with other Queensland Government agencies, the department is required to comply with section 33 of the *Information Privacy Act 2009* (IP Act) when transferring personal information out of Australia. Any transfer of personal information must comply with these rules or the transfer will be a breach of the department's obligation to comply with the privacy principles. Business units should therefore be aware of their obligations under section 33 of the IP Act.

Transfer is not defined in the IP Act, but in accordance with the plain meaning of transfer, personal information will be transferred out of Australia when the information travels from Australia to another country.

Disclosure of personal information

The department and its business units are required to comply with all the privacy principles. This means that the obligation to comply with section 33 is additional to the obligation to comply with the 11 information privacy principles (IPPs) in the IP Act.

For example, a disclosure of personal information to an entity in another country must comply with both IPP 11 and section 33. IPP 11 sets out when an agency can disclose personal information to an entity. Where the transfer constitutes a disclosure, the agency may disclose only if permitted by one of the exceptions contained in IPP 11, and the disclosure complies with the obligation in IPP 11 to take all reasonable steps to ensure the recipient will not use or disclose the personal information for a purpose other than that for which the information was provided to the department.

What is personal information?

Personal information is an opinion or information about a person, whether true or false, that identifies or could identify the person. Personal information may include:

- name
- date and place of birth

- race or ethnicity
- religion
- financial details
- medical information.

Sometimes personal information can reveal a person's identity even if their name is not mentioned.

Examples of when the department might be transferring personal information

Example 1

A business unit uses an online survey to assess the community's level of satisfaction with its provision of services. The online survey is conducted using a Web survey tool. Most of these web survey tools are offered by companies located outside Australia and the information collected is transferred to and stored on servers located in the country in which the company operates. If the unit uses one of these overseas-based web survey tools to collect personal information, then the department may be transferring the personal information out of Australia.

Example 2

The department receives a request for information from an applicant who is overseas. The department's response includes personal information. In this instance, the department is transferring personal information out of Australia and must take steps to ensure compliance with section 33 of the IP Act.

What are the rules of transferring personal information under section 33 of the IP Act?

Generally, personal information may be transferred overseas in four circumstances:

1. The individual agrees to the transfer.

Do you have the agreement of the individual the information is about? The agreement must be fully informed, voluntary and current. The affected individual should also be informed of any privacy risks that could result from the transfer.

2. The transfer is authorised or required under a law.

Can you identify legislation which requires or authorises the transfer? You should make a record noting the Act and section on which you are relying, to be retained with the original departmental record containing the personal information being transferred.

3. The transfer is necessary to lessen or prevent a serious threat to the life, health, safety or welfare of any individual, or to public health, safety or welfare.

Consider whether the personal information is transferred to an entity with the capacity or authority to intervene to reduce the threat and this can not occur without the personal information. This will apply only in emergency or extraordinary situations where time is of the essence.

4. If two or more of these criteria apply:

- **The recipient of the personal information is subject to equivalent privacy obligations.**

Consider whether the recipient is subject to a law, industry scheme, privacy code or a contract which contains sufficient privacy clauses to protect the personal information.

- **Transfer is necessary to perform a function**

Consider whether the transfer is actually necessary for the performance of a function of the department and whether the function relates to the individual. For example, an investigation into an allegation made against an individual who has allegedly breached an Act administered by the department.

- **Transfer is for the individual's benefit**

Consider whether the transfer is for the benefit of the actual individual who is the subject of the personal information.

The transfer may occur without the agreement of the individual where:

- it is not practicable to seek their agreement and
- the individual would be likely to agree if they were asked.

- **Reasonable steps have been taken to ensure the personal information is protected**

Consider whether you have taken reasonable steps to ensure that the information being transferred will not be handled contrary to the privacy principles. What is reasonable will depend on the circumstances and the nature of the personal information.

Assistance with transfer of information

For further information about the department's obligations under the IP Act when transferring personal information outside Australia, contact the Right to Information and Privacy Unit on 3239 3439.

Acknowledgement

This fact sheet is based upon the privacy guideline *Transfer of personal information out of Australia* published by the Office of the Information Commissioner (Queensland).