

Electronic monitoring factsheet – Information for accommodation support providers and support staff

The Office of the Public Advocate is established under the *Guardianship and Administration Act 2000 (Qld)*.

Our role is to undertake statutory systems advocacy on behalf of Queenslanders living with impaired decision-making capacity.

We are committed to promoting and protecting their rights, interests and opportunities.

Our work includes promoting substantive debate and influencing policy change, from an evidence-based platform.

This factsheet contains information on electronic monitoring for providers of supported accommodation and their support staff.

Information for people with a disability, and their families and carers, can be found in the related factsheet *Electronic monitoring factsheet – Individuals, families and carers*.

What is electronic monitoring?

Electronic monitoring is the process of capturing, or arranging to potentially capture, information about a person using an electronic device.

There are many ways that this information can be captured but the most common is through the use of audio or visual electronic devices. These devices include video cameras, still cameras and audio monitors such as baby monitors or intercoms.

This factsheet contains information about electronic monitoring when it is used to collect audio or visual information about a person, regardless of whether recordings are kept or not.

How is electronic monitoring used?

Electronic monitoring is most often used at supported accommodation sites to improve the support that is provided to residents. In doing so, support staff may use electronic monitoring to assist them to monitor and/or manage residents' health issues, to help prevent accidents, or to assist with the management of challenging behaviours.

Electronic monitoring captures the 'personal information' of residents, and also often captures the 'personal information' of their families and carers.

What is personal information?

Personal information is information or an opinion about an individual whose identity is apparent, or can reasonably be determined, from the information or opinion.

Information is still personal information even if the information is not stored or recorded, or even if it is untrue (*Information Privacy Act 2009*, section 12).

Personal information can include the individual's image, their voice, their location or information about their online activities.

What are the obligations for organisations and staff when using electronic monitoring?

Every organisation that uses electronic monitoring should have a policy to govern its use. The policy must comply with legislative requirements and should conform to best practice standards. Support staff at sites that use electronic monitoring should be familiar with their organisation's policy and its implementation.

If you want advice on meeting your obligations under the *Information Privacy Act 2009*, you can contact the Office of the Information Commissioner. You may also like to contact the Government department that funds your organisation.

Understand the rights of residents

The right to privacy is a recognised human right. This right protects people from arbitrary or unlawful invasions of their privacy (United Nations' *Universal Declaration of Human Rights*, Article 12).

Residents of supported accommodation sites have the same human right to privacy as anyone else. Importantly, this right exists regardless of a person's place of residence or living arrangements.

This means that providers of supported accommodation must not interfere with the privacy of residents by using electronic monitoring unless it is reasonable in the circumstances and relates to a lawful purpose directly associated with a function or activity of the organisation. Some key considerations are set out below.

Follow the privacy principles

If the use of electronic monitoring captures a resident's personal information, then your organisation may be obliged to adhere to the privacy principles.

The privacy principles are contained in two separate pieces of legislation. The legislation relevant to your organisation will usually be determined by your funding arrangements.

The privacy principles in the *Information Privacy Act 2009* (Qld) apply to:

- Queensland Government agencies; and
- Organisations funded by the Queensland government that are 'bound' by a funding agreement with the Queensland government.

The privacy principles in the *Privacy Act 1988* (Cth) apply to:

- Commonwealth government agencies;
- Organisations funded by the Commonwealth government that are 'bound' by a funding agreement with the Commonwealth; and
- Private organisations with an annual turnover of more than \$3 million.

These laws contain principles that regulate the handling of personal information by most government agencies and funded organisations.

These principles are generally consistent across the two Acts and describe:

- How personal information should be collected;
- Storage and security obligations;
- The obligation of an organisation to tell an individual about the information it may hold about them;
- The right of an individual to access and request amendment of their personal information;
- How an organisation may use personal information; and
- The limits on when personal information may be disclosed to third parties.

Assess the need for electronic monitoring

The privacy principles allow an organisation to use electronic monitoring only where, when and to the extent that it is necessary and relevant to collect information for a lawful purpose that is directly related to a function or activity of the organisation. For example, improving the resident's care or safety, or staff safety.

This means that, before using electronic monitoring, a site must first assess the need for electronic monitoring for each resident who will be subject to it. This requires organisations to objectively establish:

- The risks or difficulties that the resident currently experiences;
- The causes of the risks or difficulties (whether they are behaviours of the individual, behaviours of others, or properties of the environment);
- The way in which the use of electronic monitoring will address or reduce the risks or difficulties;

- The extent to which the use of electronic monitoring will impact on the resident's privacy (a monitor in a bathroom may be more invasive than one used in a common room);
- The way in which a resident's support and wellbeing will be improved by the use of electronic monitoring;
- That no less invasive option is available to address or reduce the risks or difficulties experienced by the resident; and
- If no less invasive option is available, how electronic monitoring will be utilised in the least invasive/intrusive way.

Undertaking an assessment, both before using electronic monitoring and when reviewing its use, reduces the risk that the collection of personal information is an unreasonable intrusion into the personal affairs of the resident.

Provide a collection notice

The privacy principles require an organisation to take all reasonable steps to make an individual generally aware of certain information when collecting personal information from them. This includes the resident being monitored but also any person whose personal information may be incidentally collected during the monitoring of a resident, for example, staff, visitors and other residents.

Placing a written 'collection notice' in relevant places – such as beside electronic monitoring equipment, at entries to the site, or on a staff noticeboard – is one step that can be used to make an individual generally aware of why their personal information is being collected, any legal authority for the collection and details of any third parties to whom the organisation routinely discloses the personal information.

If using such a notice, organisations should ensure that it is presented in a format that can be understood both by residents and by anyone else accessing the site.

Talk to the resident

Before using electronic monitoring, a site must take all reasonable steps to ensure that a resident is informed about the site's intention to use electronic monitoring.

Best practice requires staff to talk to the resident who will be monitored and explain what electronic monitoring is and why the site wishes to monitor them. The person providing this explanation must be honest about the use of electronic monitoring and the reason why it is being used.

Obtain the resident's consent

It is best practice to obtain the resident's consent to the use of electronic monitoring. This means that no one should be surprised about its use, including those individuals who may be subject to incidental or unintentional monitoring.

Staff should seek consent from the resident if they have the capacity to understand and agree with the proposed monitoring, that is, if they have the capacity to make decisions about such matters. The process of obtaining consent must include a full explanation of the purpose and extent of the electronic monitoring as well as the resident's human and legal rights.

If the resident has a formal or informal decision-maker for a relevant matter, the decision-maker should provide consent.

Whether or not a formal decision-maker needs to be involved should be determined by the context and intended purpose of the electronic monitoring. For example, if electronic monitoring is being used to monitor a health condition such as epilepsy and the resident has a decision-maker appointed for health matters, then the decision-maker should be approached for consent.

Decision-makers that are appointed for matters of accommodation for a resident (for example, with whom the individual lives, their

day-to-day issues and access to services) should always be approached when seeking consent for electronic monitoring.

Protect personal information

Organisations that use electronic monitoring should have a policy for the live monitoring, and the storage and retrieval of any recordings that might be made to protect it from misuse, loss, unauthorised access, modification or disclosure. Clear rules should be established about access to any such recordings. These policies and procedures should be used whenever a site uses electronic monitoring.

Live monitoring

If the electronic monitoring does not record or store the personal information, then the organisation need only consider who can hear or see the live recording. Only those people who need to see or hear the recording should be able to do so. The recording must not be available for other residents, guests, visitors or staff not involved in the care of the resident to see or hear.

Stored recordings

If the electronic monitoring records or stores personal information, then the site must consider how they will store and secure the records. Recordings should be kept securely and access to them limited. The organisation should also maintain accurate records of what recordings have been made and kept and when they are scheduled for destruction.

Use and disclosure

The privacy principles set out when an organisation may use or disclose personal information. Recordings may only be used for the purpose for which they were collected, unless one of the exemptions in the *Information Privacy Act 2009* permits otherwise.

The circumstances in which an organisation is permitted to disclose a person's personal information are also regulated by the privacy principles and include where the disclosure is authorised or required by law, and where the person to whom the information relates has agreed to the disclosure.

Regularly review electronic monitoring arrangements

Organisations should have a written process explaining the way in which the use of electronic monitoring for a resident will be reviewed. The review periods should be as frequent as required by the circumstances of the resident or purposes for which the electronic monitoring is in place, and should ideally be undertaken at least once every twelve months.

The review process should revisit the needs assessment for the resident being monitored and re-determine if electronic monitoring is required and whether it is still the best option for the resident given the current situation. It should also re-establish consent and re-inform the resident (and any decision-maker/s involved in the decision) of the purpose of the electronic monitoring and their rights.

Handling complaints

Every resident of a supported accommodation site has the right to make a complaint about how their personal information is collected, used and handled. This includes the right to make a complaint about the use of electronic monitoring.

Complaints concerning personal information and the use of electronic monitoring should be treated the same as any other complaint received by an organisation.

Special attention should be given to ensuring that the complaints process is accessible to people with disability, provides the complainant with natural justice and reassures the complainant that they will not

be subject to reprisals for having made a complaint.

If your organisation is unable to resolve a complaint about its handling of personal information to the complainant's satisfaction, then you should refer the complainant to the relevant government body.

For state-funded services (which includes most accommodation support services for people with disability), you should refer the complainant to the Office of the Information Commissioner (Qld). The Office can be contacted by:

Phone: 1800 OIC QLD (1800 642 753) or 07 3234 7373

Email: enquiries@oic.qld.gov.au

Mail: PO Box 10143, Adelaide Street, Brisbane, Queensland, 4000

For federally-funded services (which includes most residential aged care facilities and nursing homes) you should refer the complainant to the Office of the Australian Information Commissioner. The Office can be contacted by:

Online: <http://www.oaic.gov.au/privacy/making-a-privacy-complaint/>

Phone: 1300 363 992

Email: enquiries@oaic.gov.au

Mail: GPO Box 5218, Sydney, NSW, 2001

For further information on best practice in handling complaints, please consult the resources made available by the Queensland Ombudsman (www.ombudsman.qld.gov.au/).

Further resources

Office of the Public Advocate – *Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland*

http://www.justice.qld.gov.au/_data/assets/pdf_file/0007/258361/emi-report.pdf

Queensland Office of the Information Commissioner website:

<http://www.oic.qld.gov.au/>

Office of the Australian Information Commissioner website:

<http://www.oaic.gov.au/>

Queensland Ombudsman:

www.ombudsman.qld.gov.au/

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