

PRIVACY COMPLAINTS AND BREACHES POLICY AND PROCEDURE



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Policy statement

The Office of the Land Access Ombudsman (LAO) is committed to the responsible handling of personal information that it collects, holds, uses and discloses in the discharge of its functions under the *Land Access Ombudsman Act 2017*, and to ensuring that it complies with the requirements of the *Information Privacy Act 2009* (IP Act) when dealing with personal information.

Privacy breaches may occur due to a technical problem, human error, inadequate policies and training, a misunderstanding of the law, or a deliberate act. Some of the more common privacy breaches happen when personal information is lost, stolen or mistakenly disclosed (for example, a USB flash drive is lost or an email is sent to an unintended recipient).

Individuals (including employees of the LAO) may make a complaint to the LAO if they consider that the LAO has failed, in handling the individual's personal information, to comply with the obligations contained in the IP Act. Employees may identify a suspected breach of privacy in the absence of a complaint.

The purpose of this policy and procedure is to outline how privacy complaints and suspected privacy breaches will be managed. It should be read in conjunction with;

- the requirements of the IP Act regarding the handling of personal information and the making of privacy complaints;
- the LAO's complaints management system and internal review policy; and
- the LAO's Information Privacy policy.

Scope

This policy and procedure applies to all permanent, temporary and casual employees, and consultants/contractors performing work for the LAO.

For all other complaints that are not related to a perceived or actual breach of privacy, refer to the relevant LAO complaint management policy and procedure.

This policy and procedure does not apply to applications to amend personal information under Chapter 3 of the IP Act. Any such requests should follow the process outlined in the LAO's Right to Information and Information Privacy policy and procedure.

Procedure

Who can receive a complaint?

A complaint (internal or external) may be received by any employee of the LAO in the course of everyday business. It may be received in person, online, by phone, email or post.

An employee receiving a complaint about a possible privacy breach must refer the complaint and all associated material to an RTI/IP Co-ordinator within 24 hours of receipt. In the absence of a RTI/IP Co-ordinator, the complaint must be referred to the Land Access Ombudsman.

If an inquiry is received by a person who wishes to forward a written privacy complaint to the LAO by post, they should be advised to make it attention to the RTI/IP Co-ordinator or send an email to corporate@lao.org.au.

What must the complaint contain?

A formal privacy complaint may be made verbally or in writing, although complainants should be encouraged to submit their complaint in writing.

If it is not possible for the complainant to lodge their complaint in writing, or they do not wish to do so, a record of complaint must be made by the employee who receives the verbal complaint.

The complaint must:

- include an address of the complainant to which notices may be forwarded;
- give particulars of the act or practice complained of; and
- be made within 12 months of the occurrence of the act or practice.

A complaint that is made more than 12 months after the occurrence of the act or practice complained of may not be able to be investigated, due to the difficulty in obtaining reliable evidence because of the length of time that has passed.

Refusal to deal with the complaint

The following are situations where the LAO may decline to deal with a complaint:

- the complaint does not concern the personal information of the complainant
- the complaint concerns the personal information of a child and the person making the complaint is not the parent or guardian of the child
- the complaint concerns the personal information of an individual and the person lodging the complaint is not an agent of the individual authorised to act on the individual's behalf
- 12 months have passed since the complainant first became aware of the act or practice that is the subject of the complaint.

Acknowledgement

The RTI/IP Co-ordinator will acknowledge receipt of the complaint within seven business days and will advise the complainant that an outcome is due within 45 days of receipt.

The RTI/IP Co-ordinator will create a file.

The RTI/IP Co-ordinator will create an entry in the Privacy complaints and breaches register.

Consider whether to notify

The Land Access Ombudsman and the RTI/IP Co-ordinator will consider whether it is appropriate to notify any affected individuals and/or the Information Commissioner about the alleged privacy breach.

At the direction of the LAO any privacy breach may be reported to the relevant Minister, Office of the Information Commissioner (OIC), Crime and Corruption Commission Qld (CCC) or Police.

Preliminary informal resolution

Where appropriate, an initial attempt will be made to resolve the complaint informally, such as by discussion with the employee complained about and their manager.

The RTI/IP Co-ordinator will undertake this process and, where appropriate, will advise the complainant of any proposed resolution outcome, such as offering an apology, or amending an LAO procedure.

If the complainant is satisfied with the outcome and any recommendations arising from the informal resolution process have been implemented, the matter can be finalised. An assessment will be made by the Land Access Ombudsman and RTI/IP Co-ordinator about whether written advice of the outcome should be sent to the complainant.

If the matter cannot be resolved informally, an assessment will be made by the Land Access Ombudsman and RTI/IP Co-ordinator about what, if any further action should be taken, including whether a formal investigation will be completed.

Who investigates the complaint?

Where it is decided that a formal investigation of the complaint is appropriate, the Land Access Ombudsman and RTI/IP Co-ordinator will discuss and decide on who should complete the investigation.

Formal privacy complaints may be investigated by:

- a RTI/IP Co-ordinator
- the Land Access Ombudsman
- a third party approved by the Land Access Ombudsman (including an external investigator where appropriate).

How is the investigation conducted?

The investigator must:

- if a complaint has been made about a specific employee, advise the employee complained about that a complaint has been made and that an investigation will be undertaken (unless advising them could prejudice the investigation)
- gather information relevant to the complaint, including interviewing employees or third parties who may have information relevant to the investigation
- keep the complainant advised about the progress of the matter
- prepare a report about the investigation, including conclusions and any recommendations for remedial action
- finalise the investigation within 45 days of receipt of the complaint, advising the relevant parties to the investigation of the investigation outcome, including any remedies that are considered appropriate to resolve the complaint.

Complaints will be investigated without prejudice to any other remedies a complainant may have. Procedural fairness will be provided to all parties during the conduct of the investigation.

The privacy of the parties to the complaint will be protected to the extent possible without impeding the conduct of the investigation, and having regard to the need to accord procedural fairness.

Anonymous complaints may be investigated where considered appropriate, but it will not be possible to advise the complainant about the outcome of the investigation.

Vexatious complaints

If a complaint is considered vexatious, the investigator may, in consultation with the Land Access Ombudsman, decide to limit or cease correspondence with the complainant. This decision will be communicated to the complainant in writing.

A complaint is vexatious if it is frivolous and has been brought maliciously. “Vexatious” indicates that there is an element of bad faith in the complaint. A complaint may be considered vexatious if it was made for the purpose other than addressing the subject matter of the complaint.

Possible outcomes

If the investigator is satisfied that the alleged breach occurred, investigative or informal resolution outcomes may include one or more of the following:

- an apology to the complainant
- a change to work responsibilities, and/or work practices, and/or LAO policies and procedures
- an explanation of how and why the problem occurred and what steps the LAO is taking to prevent it from happening again
- a promise not to repeat the action remedying the breach
- offering practical assistance to deal with the consequences of the breach.

If the alleged breach is not proven, the parties to the investigation must still be advised about the outcome of the investigation.

The RTI/IP Co-ordinator will enter the outcome in the Privacy complaints and breaches register.

The Land Access Ombudsman will consider whether the Information Commissioner should be notified about the outcome.

Further action

If the complainant is not satisfied with the outcome of the LAO’s investigation (or informal resolution process), they may complain to the Information Commissioner.

A complainant may not refer a privacy complaint to the Information Commissioner unless they have first made a complaint to the LAO in accordance with the process outlined above, and are dissatisfied with the outcome, or they have not received a response from the LAO within the 45 business day time limit.

The Information Commissioner will make an assessment about whether the complaint could be resolved through mediation. If so, in accordance with Section 171 of the IP Act, the Information Commissioner must take all reasonable steps to mediate the complaint.

QCAT

If a complaint is referred to the Information Commissioner and it does not appear it can be resolved through mediation or it is referred for mediation but the mediation is not successful, the complainant may ask the Information Commissioner to refer the matter to the Queensland Civil and Administrative Tribunal (QCAT).

If QCAT is satisfied that the complaint has been substantiated, it may make an order that:

- the respondent agency not repeat or continue a particular act or practice
- the respondent agency apologise to the complainant
- the respondent agency make stated amendments to documents it holds
- the respondent agency take certain action to compensate the complainant for loss or damage suffered
- the complainant is entitled to an amount up to \$100,000 to compensate them for loss or damage suffered, including injured feelings or humiliation
- the complainant be reimbursed for their reasonable expenses in connection with making the complaint.

Further information

For further assistance or information on any matter contained in the LAO's Information Privacy policy, contact our Right to Information & Information Co-ordinator on 1800 717 550.

The Office of the Information Commissioner has produced detailed guidelines on the operation of the IP Act, including Privacy breach management and notification and Tips for resolving privacy complaints which are available from the [Office of the Information Commissioner](#).

Legislation

- *Information Privacy Act 2009*
- *Information Privacy Regulation 2009*

Review

This policy and procedure will be updated if and when our information handling practices change, and otherwise will be reviewed within two years of the approval date.

Approval



Jane Pires
Land Access Ombudsman

Date: 14/4/2021

Version history

VERSION	DATE	ACTION	DESCRIPTION / COMMENTS
1.0	8/11/19		First release
1.1	23/03/2021	Amended OLAO to LAO	Internal Review

Keywords

Information privacy, privacy, personal information, privacy complaint