

'Privacy, Freedom of Information and Cultural Institutions'

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Presentation for Indigenous Collections
workshop, Monday 19 June 2006

Outline

Information privacy laws

- Information Privacy Act 2000 (Vic) and Privacy Act 1988 (Cth)

Freedom of Information

- FOI Act 1982 (Vic) and FOI Act 1982 (Cth)

Public records legislation

- Public Records Act 1973 (Vic) and Archives Act 1983 (Cth)

Information privacy v security and confidentiality

- Privacy is concerned with an individual's ability to exercise control over his/her information.
- Security is just one dimension.
- Confidentiality is a legal duty arising from the circumstances in which information is obtained.

Privacy legislation

- The Victorian Information Privacy Act regulates the Victorian public sector via a set of IPPs
- The Cth Privacy Act regulates:
 - The Cth public sector via a set of IPPS
 - The private sector Australia –wide via a set of NPPs.

Material excluded

- Generally available publications (but not info compiled from them)
- Records held by libraries, art galleries and museums for reference, study or exhibition.
- Records available under public records laws.

Material which may be subject to privacy laws

- Documents held for purposes other than reference etc (eg patron information and, in case of public sector bodies, employee information).
- Materials in restricted collections (especially in the case of the Cth Privacy Act).

What is personal information?

- It covers any information (or opinion) in respect of a person whose identity is apparent or can reasonably to be ascertained.
- It covers information in records, photos and other images.
- It is confined to natural living persons.

Method of regulation

- Each of the Acts operates by imposing a set of fair information practices which regulate the collection, storage, use and disclosure of personal information.
- Failure to comply with these amounts to an actionable interference with personal privacy which can be the subject of a complaint to the relevant Privacy Commissioner.

The privacy principles

- Require uses/ disclosures consistent with the purposes for which information is collected.
- Require reasonable security measures and making available information about private information collected/held and the procedures for accessing it.

Access and amendment rights

- The privacy principles also confer rights of access to and amendment of an applicant's records.
- In the case of public bodies these are enforced via the FOI Acts.

Scope of FOI laws

- Apply to Cth and Vic government agencies and prescribed bodies.
- Confer universal rights of access to documents, including photos, films, computer resources etc.
- Those rights are subject to exceptions and exemptions.

Materials excluded

- Library materials used for reference purposes
- Documents open to public access via public records laws etc
- Documents (other than an applicant's personal records) created before 5/7/78 (Vic) or 1/12/77 (Cth)

Exemptions

- Access is subject to a number of exemptions, including ones which protect personal privacy and information imparted in confidence.
- Personal information is exempt if its disclosure would be 'unreasonable'.

Procedures relating to exempt material

- Where feasible, agencies are required to consult with persons whose personal information is contained in a document.
- If a document is exempt there is no legal obligation to disclose it.
- It is possible to grant access to copies with exempt material deleted.

Amendment of personal records

- Applicants can apply for amendment of personal records which are incorrect or misleading.
- If the application is rejected the applicant may require an annotation to be added to the record.
- An agency may also add its own further annotation.

Review

- Refusals of requests for access and amendment and decisions regarding charges are subject to review.
- The Acts provide for internal review, external review by the VCAT or Cth AAT and complaints to the relevant Ombudsman.

Access under the Archives Act

- The Archives Act contains a statutory right of access to documents which are more than 30 years old and not exempt.
- It contains exemptions for material which is subject to confidentiality and for personal information (including information about dead persons).

Access under the Public Records Act

- The Public Records Act contains an access regime for records which are more than 25 years old.
- There is provision for the making of declarations to protect personal information and confidential information.

Questions

