



Biosecurity - Collection, use and disclosure of information

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Management of the biosecurity risk

The purpose of this procedure is to identify the roles and responsibilities of staff that are responsible for the collection, use and disclosure of information under the *Biosecurity Act 2015* (the Act).

Scope

This procedure applies to NSW Department of Primary Industries (DPI), an office within Regional NSW, Local Land Services (LLS) and Local Control Authorities (LCA) and other agencies who are responsible for administering the Act and persons who:

- are accredited as a biosecurity certifier, or
- are appointed as an authorised officer, or
- are appointed as a biosecurity auditor, or
- have a delegated authority under the Act.

This procedure should be read in conjunction with any relevant policy and procedure that is in place for the management of a biosecurity risk.

Biosecurity legislation summary

The Act includes in section 387 provisions regarding the collection, use and disclosure of information, including personal and health information. The provisions include authority for the Secretary, an authorised officer, a local control authority and any other person engaged in the administration of the Act:

- to collect and use information (including personal and health information), for the purpose of exercising their biosecurity risk functions.
- to disclose information, (including personal and health information) about a person, without the consent of the person to a public sector agency, or any other person, but only if the disclosure is **reasonably necessary** for exercising a biosecurity risk function.
- to request information (including personal and health information) from a public sector agency about a person that the public sector agency holds, without the consent of the person, but only if the disclosure is **reasonably necessary** for exercising a biosecurity risk function.

- an exemption from [section 9](#) of the *Privacy and Personal Information Protection Act 1998* (**PPIP Act**) if compliance would detrimentally affect, or prevent, the exercise of their biosecurity risk functions. Section 9 of the PPIP Act requires a public sector agency to collect personal information directly from the individual to whom the information relates, unless the individual has given consent for the collection of information from someone else or in the case of information relating to a person who is under the age of 16 years—the information has been provided by a parent or guardian of the person

In section 387:

- *biosecurity risk function* means a function under this Act relating to the prevention, elimination, minimisation or management of biosecurity risks.
- health information has the same meaning as it has in the Health Records and Information Privacy Act 2002.
- *personal information* has the same meaning as it has in the PPIP Act.
- *public sector agency* has the same meaning as it has in the PPIP Act.

In the collection, use and disclosure of personal information, a public sector agency must comply with the PPIP Act, unless a specific exception or exemption applies. However, if the information is not personal information for the purpose of the *PPIP Act*, there is no statutory restriction under the *PPIP Act* on how the relevant information is used or disclosed.

Section 4(1) of the *PPIP Act* defines personal information as:

“information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion”.

Examples of personal information includes fingerprints, retina prints, body samples, genetic characteristics, almost any characteristic of a human (such as hair, eye colour, height, ethnicity), and information that relates to land and land use and is about how an individual uses his or her property and the activities pursued on the property. The definition of personal information should not be confined to information about a person’s personal affairs but considered a broad and unrestricted definition. If in doubt about whether information is personal information for the purpose of the *PPIP Act*, the prudent and best approach is to treat the information as if it is.

For reference, Section 4(3) of the *PPIP Act* and clause 5 of the PPIP Regulation set out a list of matters which are not considered personal information.

Work health and safety

The *Work Health and Safety Act 2011* places an obligation on agencies to provide a safe and healthy workplace. Safe Work Method Statements that support activities included in this procedure must be used in identifying, assessing and controlling risks.

All agencies are to work together to create a safe and supportive work environment when undertaking any activities for this procedure.

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Collection, use and disclosure of information procedure

1. Roles and responsibilities

Agency staff engaged in the administration of the Act including the Secretary and any other person who is accredited or appointed or has a delegation under the Act, must ensure that:

- the collection and use of information, including personal information and health information, is limited to functions related to the prevention, elimination, minimisation and management of biosecurity risks (a biosecurity risk function)
- the Secretary (or a delegate) is informed of the decision to disclose information (including personal information and health information) about a person without the consent of the person
- policies and procedures developed by NSW DPI will determine when it is reasonably necessary for disclosing information about a person without the consent of a person. In the absence of this guidance, authorised officers should consult with relevant technical and compliance staff, or where possible they should consult with their manager before disclosing information about a person without the consent of the person
- authorised officers are trained in the use of their powers for the collection, use and disclosure of information
- communication between agencies and within the agency so all relevant staff are informed of matters regarding the collection, use and disclosure of information
- a request to a public sector agency for information about a person, requires the following departmental approval:
 - NSW DPI, Director level or higher
 - LLS, General Manager level, and
 - LCA, General Manager level.
- records are maintained of the collection, use and disclosure of information
- when disclosing information about a person (including personal information and health information) it is either:
 - with the consent of the person, or

- it is to a public sector agency, or
- to any other person and the disclosure is reasonably necessary for the purpose of exercising a biosecurity risk function
- authorised officer's must inform managers of any disclosure of information about a person without the consent of the person
- all staff are to collect, use and disclose information consistent with their level of authorisation, current role description and they are to demonstrate they are being fair and reasonable at all times.

2. Defining use and disclosure

2.1 Use

The term 'use' is not defined under the Act, which means it is given its ordinary meaning. To 'use' information ordinarily means that it is necessary to do more with the information than to access and view it. In the context of this procedure, to use information means to apply it towards a specific purpose.

2.2 Disclosure

The term 'disclosure' is also not defined under the Act., In ordinary usage, disclosure of information refers to the action of making the information available and known to other people or agencies that have no prior knowledge of it.

3. Collecting, using and disclosing information

Under Section 387 (1), the Act provides that the Secretary, authorised officer, local control authority or any other person engaged in the administration of the Act may collect and use the information (including personal information and health information) for the purpose of exercising their biosecurity function.

3.1 Collecting information

When collecting information directly from a person, authorised officers and any other person engaged in the administration of the Act must ensure that they issue a collection statement, consistent with section 387 of the Act and section 10 of PPIP Act. Collection statements should also specify the personal information to be disclosed and enable the person to provide consent for the use and disclosure of the information for the purpose of exercising a biosecurity risk function.

Information collected under the Act can be captured as notes, in a physical form or certificate and via electronic means such as a digital record or form. This information must always be kept secure and must be readily available in an accessible form when required by the Secretary, an authorised officer, a local control authority and any other person engaged in the administration of this Act.

3.2 Using and disclosing information

Information collected under the Act must be used for the purpose of exercising a biosecurity function. Section 387 (5) defines a biosecurity function as a function under the Act that relates to the prevention, elimination, minimisation or management of biosecurity risks.

Under Section 387 (2) the Act provides that the Secretary, an authorised officer, a local control authority and any other person engaged in the administration of this Act may, for the purpose of exercising a biosecurity risk function, disclose information (including personal information and health information) about a person, without the consent of the person to:

- a public sector agency, or
- to any other person if it is reasonably necessary for the purpose of exercising a biosecurity risk function.

Under Section 387(3), a public sector agency may disclose information to the Secretary, an authorised officer, a local control authority and any other person engaged in the administration of this Act without consent if they request the information and certify in writing that the information:

- is required for the purpose of exercising a biosecurity risk function, and
- the provision of the information is reasonably necessary for the purpose of exercising that biosecurity risk function.

3.3 Using and disclosing personal information

While personal information can be used and disclosed under section 387 of the Act for the purpose of exercising a biosecurity risk function, the use and disclosure of personal information must also comply with the requirements of the PPIP Act. For the purposes of the PPIP Act, the Department of Regional NSW is a public sector agency.

Personal information under the PPIP Act can include:

- Name and address,
- Retina prints,
- Body samples,
- Genetic characteristics,
- Almost any characteristic of a human including hair or eye colour, height, ethnicity, baldness, all shades of skin colour, or
- Information that relates to land and land use and how an individual uses his or her property and the activities pursued on the property

Under Section 17 of the PPIP Act, a public sector agency that holds personal information can use the information collected under the Act for another purpose if:

- the individual to whom the information relates has consented to the use of the information for that other purpose, or
- the other purpose for which the information is used is directly related to the purpose for which the information was collected, or
- the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person

Section 18 of the PPIP Act places limits on the disclosure of personal information unless:

- there is no reason to believe the person would object, or
- the person concerned is reasonably likely to have been aware or has been made aware, that the information is usually disclosed, or
- the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to life or health of the individual concerned or another person.

When using personal information, all appropriate measures must be taken to de-identify personal information to maximise the privacy protection of an individual. If the information can be de-identified, the information is no longer considered as personal information and does not require compliance to the PPIP Act.

4. 'Reasonably necessary'

Section 387 (2)(b) of the Act provides that the Secretary, an authorised officer, a local control authority and any other person engaged in the administration of the Act may disclose information

about a person (including personal information and health information), without the consent of the person:

*'to any other person, but only if the disclosure is **reasonably necessary** for the purpose of exercising a biosecurity risk function'.*

Determining if the disclosure is 'reasonably necessary' should include consideration of:

- the significance of the risk,
- the urgency of the situation, and
- what options are available for the prevention, elimination, minimisation or management of a biosecurity risk.

The Act does not define 'reasonably necessary' however, the following provides guidance:

'Reasonably necessary' falls towards the higher end of a continuum that might be seen as having 'of some relevance' at one end and 'essential' at the other end"; and

For a finding of reasonable necessity, it must be found that:

- the proposal must be reasonable in comparison with possible alternatives; and
- the proposal must be substantially preferable to the alternatives.

Before disclosing personal information, the discloser should ask questions such as:

- a) is the proposed disclosure reasonable in comparison with alternatives?;
- b) is the proposed disclosure substantially preferable to the alternatives?;
- c) is the proposed disclosure, when considered on a spectrum, closer to 'essential' than to 'somewhat relevant'?

Examples of when it may be reasonably necessary to disclose information without consent could include:

- the identity of a property that is a potential source of a disease infection such as a plant nursery where a disease outbreak has been identified (to persons who have purchased or received disease hosts and carriers from the infected nursery)
- the identity of a livestock producing property contaminated with an organo-chlorine pesticide (to livestock buyers/processors)
- a potential threat to public health and safety e.g. zoonotic disease outbreak (to neighbours).

In situations where a person has not consented to disclose information related to that person, the Secretary, an authorised officer and any person engaged in the administration of the Act must believe the disclosure is **reasonably necessary** for the purpose of exercising a biosecurity risk function.

Evidence is required to support a decision that a non-consensual disclosure of information is reasonably necessary. Supporting evidence may include:

- a risk analysis showing that other methods of risk mitigation are likely to be ineffective
- an assessment showing the lack of viable alternatives and/or the urgency of the situation, or
- other documentation that suggests the disclosure is reasonably necessary in all the circumstances.

For example, where a zoonotic disease such as anthrax has been identified in proximity to a neighbour's dwelling, supporting evidence for a non-consensual disclosure of personal information might include an assessment that the biosecurity risk is significant and that effective mitigation requires urgent preventative action to be taken. The authorised officer and any person

engaged in the administration of the Act should have to consult with relevant technical staff and their Manager to determine the level of risk, before disclosing the information.

There may be situations when an authorised officer reasonably believes or suspects a biosecurity emergency is occurring or is imminent that may justify an authorised officer for example, forming an opinion that it is reasonably necessary to inform other persons of the location of an imminent threat, without the consent of person whose property is the subject of the emergency. Again, the circumstances must be well documented and the authorised officer should consult with their Manager before disclosing information if possible.

5. Exemptions under the PPIP Act

Section 25(b) of the PPIP Act provides that non-compliance with the PPIP Act, including sections 9 and 18, may be permitted under another law. This means that section 387(2) of the Act will authorise non-compliance with section 18 of the PPIP Act so long as the disclosure is reasonably necessary for the purpose of exercising a function under the Act relating to the prevention, elimination, minimisation or management of biosecurity risks.

In regards to the collection and possible disclosure of personal information, the Secretary, an authorised officer or any person engaged in the administration of the Act must consider whether section 25 exempts them from compliance with section 18 of the PPIP Act. If not, then compliance with section 18 of the PPIP Act will be required.

To ensure compliance with section 18 of the PPIP Act when collecting information, the person concerned must be made aware, in accordance with section 10 of PPIP Act, that the information being collected is usually disclosed to another person or body. This would include disclosure to LLS and LCAs as these agencies are considered separate for the purposes of PPIP Act and, possibly other authorised officers as they might be considered separate entities in some circumstances.

Section 23 of the PPIP Act exempts law enforcement agencies from complying with section 18 of PPIP Act if the disclosure is made in connection with proceedings for an offence or for law enforcement purposes, ascertaining the whereabouts of a missing person, is authorised or required by a subpoena or search warrant, or is reasonably necessary for the protection of public revenue and to investigate an offence on reasonable grounds that the offence has been committed.

Exemptions are also available to investigative agencies under section 24 of the PPIP Act which does not require compliance with section 18 of the PPIP Act if it might detrimentally affect complaint handling or other investigative functions.

Section 27A of the PPIP Act states that a public sector agency is not required to comply with the information protection principles on the collection, use and disclosure of personal information if the agency is providing information to another public sector agency or is being provided with the information from another public sector agency, and the collection, use and disclosure of information is reasonably necessary to allow any agencies to deal with or respond to correspondence from a minister or member of Parliament, enable inquiries to be referred to between agencies concerned or enables the auditing accounts or performance of a public sector agency or group of agencies.

6. Requesting information from a public sector agency

Section 387(3) of the Act states that a public sector agency may disclose to the Secretary (or delegate), authorised officer, a local control authority and any other person engaged in the administration of the Act, any information that the agency holds (including personal information and health information), without the consent of the person, if requested in writing.

A request to a public sector agency for information about a person, requires the following departmental approval:

- NSW DPI, Director level or higher

- LLS, General Manager level, and
- LCA, General Manager level.

The request must also certify that the information:

- a) is required for the purpose of exercising a **biosecurity risk function**, and
- b) the provision of the information is **reasonably necessary** for the purpose of exercising that biosecurity risk function.

Requests to a public sector agency for information should identify:

- the type of information (including personal information and health information) requested
- the purpose i.e., the prevention, elimination, eradication or management of a biosecurity risk, and
- why or how the information will aid the exercise of the biosecurity function.

Staff should use the approved form “Requesting information from a public sector agency”.

7. Requesting information from individuals or private sector entities

The Secretary, authorised officer, a local control authority or any other person engaged in the administration of the Act, may request personal information from individuals or private sector entities for the purpose of exercising a biosecurity function.

While private sector agencies are subject to Commonwealth privacy legislation the NSW DPI, LLS and LCA do not have power to compel private sector agency to provide information under the Act as there is no legal recourse if private sector agencies do not comply with a request for personal information.

However, as NSW DPI Biosecurity and Food Safety is an investigative agency with law enforcement function under the Act, they may compel private sector agencies to assist with *compliance* related activities.

A request to a private sector agency for information about a person, requires the following departmental approval:

- a) NSW DPI, Director level or higher
- b) LLS, General Manager level, and
- c) LCA, General Manager level.

The request must also certify that the information:

1. is required for the purpose of exercising a **biosecurity risk function**, in which it relates to the prevention, elimination, minimisation and management of biosecurity risks,

Requests to a private sector agency for information should identify:

- the type of information (including personal information and health information) requested
- the purpose i.e., the prevention, elimination, eradication or management of a biosecurity risk, and
- why or how the information will aid the exercise of the biosecurity function.
- Staff should use the approved form “Requesting information from a private sector agency”.

8. Section 9, *Privacy and Personal Information Protection Act 1998 (PIIP Act)*

Section 387(4) of the Act states that the Secretary (or delegate), authorised officer, a local control authority and any other person engaged in the administration of the Act, is not required to comply

with section 9 of the PPIP Act if compliance would detrimentally affect, or prevent, the exercise of their biosecurity risk function. Section 9 states:

'A public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless:

- (a) the individual has authorised collection of the information from someone else, or
- (b) in the case of information relating to a person who is under the age of 16 years—the information has been provided by a parent or guardian of the person.'

This means that the Secretary (or delegate), an authorised officer, a local control authority and any other person engaged in the administration of the Act, should initially look at collecting the information from the person to whom the information relates. If it is identified that any action to obtain the information from a person may be detrimental to the actions to prevent, eliminate, minimise or manage a biosecurity risk, then section 9 does not apply and the information can be obtained from another person or 3rd party. For example:

- if the land owner/occupier is not complying with a request for information from an authorised officer, the details of the ownership of the land can be obtained from a 'Land and Property Information' search.

9. Record keeping

The Secretary, an authorised officer and any person engaged in the administration of the Act must maintain records as follows.

Responsible Authority (Secretary):

- information collected and information storage systems
- information disclosed (without consent)
- information requested from a public sector agency, and
- authorised officers and any person engaged in the administration of the Act, their training, roles and responsibilities in regards to the collection, use and disclosure of information.

Authorised officer:

- information collected
- information disclosed (without consent)
- authorisation, training roles and responsibilities in regards to the collection, use and disclosure of information, and.
- Collection Statements.

10. Definitions and acronyms

LCA	Local Council Authority
LLS	Local Land Services
DPI	NSW Department of Primary Industries

11. Documentation

Policy – Biosecurity Collection, use and disclosure of information
Policy - Records Management (IND-I-177)
Policy - Information Security (IND-I-197)
Policy - Classified Information (IND-I-196)
Policy - Government Information (Public Access) (IND-I-178)
Collection Statement

12. Records

Not applicable.

13. Revision History

Version	Date issued	Notes	By
1	01/07/2017	New procedure developed in response to the <i>Biosecurity Act 2015</i> .	Group Director, Policy, Legislation, Performance and Consultation
2	27/05/2021	Amended procedure to incorporate updated legal advice.	Manager, Policy

14. Contact

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