

Privacy and Information Management Framework

20 July 2021

Contents

- What this Framework covers3
- Persons to whom this Framework applies.....3
- Types of information held by the Office.....4
- Information obligations and exemptions6
- Requests - access or amendment of personal or health information 11
- Complaints - our compliance with information obligations..... 11
- GIPA Act applications..... 12
- Internal and external reviews 13
- Other information 14
- Questions about this Framework 15

What this Framework covers

This Framework outlines the types of information held by the Ombudsman’s Office (**Office**), and our obligations concerning the:

- A collection
- B storage
- C use, and
- D disclosure

of that information.

It also explains when individuals may request access to certain information we hold, and the processes for complaints, requests, and reviews relating to our obligations.

The Framework:

- incorporates the privacy management plan we are required to have under the *Privacy and Personal Information Protection Act 1998* (**PPIPA**) [s 33](#)
- outlines our non-disclosure obligations under the *Ombudsman Act 1974* (**OA**) and the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (**CS CRAMA**), and
- explains our obligations under the *Government Information (Public Access) Act 2009* (**GIPA Act**).

Information obligations that are not dealt with in this Framework are:

Our Public Interest Disclosures Act 1994 obligations – see our Internal Disclosure Policy
Our State Records Act 1998 obligations, which are contained in that legislation and regulated by NSW State Archives and Records .
Our intellectual property obligations under Copyright Act 1968 (Cth)
Our OA Part 6 inter-agency arrangements with other agencies – these are published on our website at www.ombo.nsw.gov.au .

Persons to whom this Framework applies

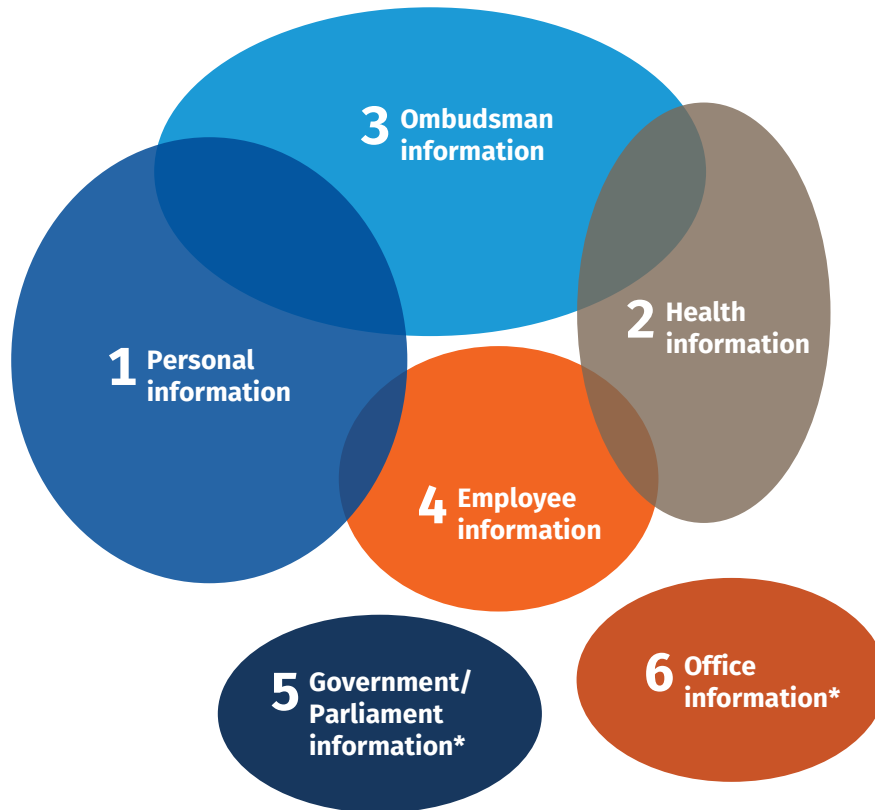
This Framework applies to all statutory officers and staff of the Office, including:

- ongoing and temporary employees, and employees seconded to the Office
- contract and agency staff working for or on behalf of the Office, and
- interns and volunteers

It also applies to independent contractors and consultants when their contract with our Office require compliance with the Framework.

Types of information held by the Office

Different obligations apply to different types of information. We use the categories set out below for the purposes of explaining our information obligations. Some of these categories overlap because some information will fall into more than one category.



** Government/Parliament information and Office information may, but usually won't, contain personal or health information. However, it may also need to be kept confidential*

1. **Personal information** This is information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. Exceptions to this definition include information that is contained in publicly available publications, and health information.¹
2. **Health information** This is personal information:
 - a) that is information or an opinion about an individual's physical or mental health or disability, their express wishes about the future provision of health services to them, or a health service that has or will be provided to them
 - b) collected to provide, or in providing, a health service to an individual, or
 - c) about an individual collected in connection with the donation, or intended donation, of an individual's body parts, organs or body substances.

Certain genetic information, and healthcare identifiers, are also 'health information'.²

¹ See [PIIPA s 4](#) for the full list of exceptions.

² [HRIPA s 6](#).

3. **Ombudsman information** This is information obtained or created when exercising complaint handling, investigative, monitoring or review functions under OA [Part 3](#), CS CRAMA, or *Royal Commissions Act 1923* Part 2 Div 1, and Child Death Review Team (**CDRT**) functions under CS CRAMA Part 5A. Much of this information will also be personal information or health information.
4. **Employee information** This is information about statutory officers and staff of the Office relating to their employment. Some of this information will also be personal and health information.
5. **Government/Parliament information** This is information from or about government agencies (other than Ombudsman information) or the NSW Parliament. It is usually not personal or health information, but there may be other obligations to keep it secret or confidential (for example, it may be Cabinet in Confidence).
6. **Office information** This is information about entities that the Office contracts with, such as IT software providers. It is usually not personal or health information, but may be protected by contractual confidentiality.

Information obligations and exemptions

Not every information obligation applies to every type of information we hold.

We are also exempt, as investigative agency, from a number of obligations that apply to other NSW Government agencies.³

Obligations imposed by PPIPA and HRIPA are also described as Information Protection Principles (**IPPs**) and Health Privacy Principles (**HPPs**), respectively. Both the relevant IPP/HPP number and legislative provision are provided in the footnotes for each obligation.

Collection

These obligations do not apply to ‘unsolicited’ information.⁴

1	Lawful We collect personal and health information lawfully, and only where reasonably necessary for purposes directly related to our functions. ⁵
2	Direct We collect health information directly from the person to whom it relates (unless it is unreasonable or impractical to do so) and in compliance with relevant guidelines. ⁶
3	<p>Open We take reasonable steps to inform persons about whom we collect health information of:</p> <ul style="list-style-type: none"> • why it is being collected, and the law under which it is being collected • the main consequences for them if the information is not provided • the persons to whom the information would usually be disclosed, and • how they can request access to the information. <p>If it is not practical to do this before or while collecting information, we do it as soon as practicable afterwards.⁷ If we collect the information from someone other than the person to whom it relates, we take reasonable steps to ensure that person is generally informed of these matters.⁸</p> <p>Exemptions⁹</p> <ul style="list-style-type: none"> • if providing this information might detrimentally affect or prevent the proper exercise of our complaint handling or investigative functions • if we are authorised or required not to comply with this obligation • if compliance would pose a serious threat to the life or health of any individual.
4	<p>Relevant When collecting personal and health information, we take reasonable steps to ensure:</p> <ul style="list-style-type: none"> • we do not collect more information than we need • what we collect is accurate and relevant to the purpose for which it is collected, and

³ See generally [PPIPA s 24](#).

⁴ [PPIPA s 4\(5\)](#); [HRIPA s 10](#). ‘Unsolicited information’ is information we receive but which we have not asked anyone to provide.

⁵ [PPIPA s 8](#); [HRIPA sch 1 cl 1](#). IPP 1 and HPP 1.

⁶ The Privacy Commissioner may issue guidelines: [HRIPA sch 1 cl 3](#). HPP3.

⁷ [HRIPA sch 1 cl 4\(1\)](#). HPP 4.

⁸ [HRIPA sch 1 cl 4\(2\)](#).

⁹ [HRIPA sch 1 cl 4\(4\)\(a\)-\(c\), \(f\)](#).

	<ul style="list-style-type: none"> • we do not unreasonably intrude into the personal affairs of the relevant person.¹⁰ <p>Exemptions¹¹ This does not apply to personal information if other legislation permits or requires non-compliance.</p>
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Storage, access and alteration

5	<p>Security We store and dispose of personal and health information securely, and protect it against loss and unauthorised access, use, modification or disclosure.¹²</p> <p>Exemptions¹³ This obligation does not apply to health information if other law authorises or requires us not to comply with it.</p>
6	<p>Transparency We are transparent about the personal and health information we store, why it is used, and the rights of people to whom it relates to access and amend it.¹⁴</p> <p>Exemptions¹⁵ This obligation does not apply:</p> <ul style="list-style-type: none"> • if other law authorises or requires us not to comply with it, or • for personal information, if transparency might detrimentally affect or prevent our exercise of complaint handling or investigative functions.
7	<p>Access Individuals are allowed to access personal and health information about themselves without unreasonable delay or expense.¹⁶</p> <p>Exemptions¹⁷ These obligations do not apply:</p> <ul style="list-style-type: none"> • if other law authorises or requires us not to comply with them, or • for personal information, if compliance might detrimentally affect or prevent our exercise of complaint handling or investigative functions
8	<p>Alteration Individuals to whom personal and health information relates are allowed to update, correct, delete or amend the information where necessary and, where reasonably practicable, to have recipients of that information advised of those updates, corrections or other changes.¹⁸</p> <p>Exemptions¹⁹ These obligations do not apply:</p> <ul style="list-style-type: none"> • if other law authorises or requires us not to comply with them, or • for personal information, if compliance might detrimentally affect or prevent our exercise of complaint handling or investigative functions

Use

9	<p>Accurate We do not use personal or health information without taking reasonable steps to ensure it is relevant, accurate, complete and not misleading.²⁰</p>
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¹⁰ [PPIPA s 11](#); [HRIPA sch 1 cl 2](#). IPP 4 and HPP 2.

¹¹ [PPIPA s 25](#).

¹² [PPIPA s 12](#); [HRIPA sch 1 cl 5](#). IPP 5 and HPP 5.

¹³ [HRIPA sch 1 cl 5\(2\)](#).

¹⁴ [PPIPA s 13](#); [HRIPA sch 1 cl 6](#). IPP 6 and HPP 6.

¹⁵ [PPIPA s 25](#); [HRIPA sch 1 cl 6\(2\)](#); [PPIPA s 24\(1\)](#).

¹⁶ [PPIPA s 14](#); [HRIPA sch 1 cl 7](#). IPP 7 and HPP 7.

¹⁷ [PPIPA s 25](#); [HRIPA sch 1 cl 7\(2\)](#); [PPIPA s 24\(1\)](#).

¹⁸ [PPIPA s 15](#); [HRIPA sch 1 cl 8](#). IPP 8 and HPP 8.

¹⁹ [PPIPA s 25](#); [HRIPA sch 1 cl 8\(4\)](#); [PPIPA s 24\(1\)](#).

²⁰ [PPIPA s 16](#); [HRIPA sch 1 cl 9](#). IPP 9 and HPP 9.

1 0	<p>Limited We do not use personal or health information for purposes unrelated to those for which we collected it.²¹</p> <p>Exemptions²² This obligation does not apply:</p> <ul style="list-style-type: none"> • if the person the information is about consents to us doing this • if it is reasonably necessary for us to exercise our complaint handling and investigative functions • if other law authorises or requires us not to comply with it, or • if we are disclosing information to another public sector agency under the Premier’s administration, for the purposes of informing the Premier about a matter.
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Disclosure

Set out below are the circumstances in which we are:

- required, or
- permitted

to disclose different types of information (other than disclosures involved in the making of reports as part of our statutory functions). Information is only ‘disclosed’ when it is given to someone who did not previously have the information.²³

Where only certain Ombudsman officers have authority to make these disclosures, those officers are identified in the ‘Who may authorise disclosure’ column.

	Circumstances where we must disclose information	Who may disclose
11	We <i>must</i> disclose any information we become aware of to the Independent Commission Against Corruption if it amounts to a matter we suspect, on reasonable grounds, concerns or may concern corrupt conduct. ²⁴	Deputy Ombudsman Legal Counsel
12	We <i>must</i> disclose to the NSW Police Force (NSWPF) or other appropriate authority any information if we know or believe a serious indictable offence or child abuse offence has been committed and the information may be of material assistance in securing the offender’s apprehension, prosecution or conviction. ²⁵	Deputy Ombudsman Legal Counsel
13	We <i>must</i> make open access information publicly available on our website unless there is an overriding public interest against its disclosure. ²⁶	
14	We must comply with the GIPA Act when responding to valid access applications made under that Act (see GIPA Act applications below).	
	Circumstances where we may disclose information	Who may disclose

²¹ [PIIPA s 17](#); [HRIPA sch 1 cl 10](#). IPP 10 and HPP 10.

²² [PIIPA s 24\(2\)](#); [HRIPA sch 1 cl 10\(3\)](#); [PIIPA s 25](#); [HRIPA sch 1 cl 10\(2\)](#); [PIIPA s 28\(3\)](#); [HRIPA sch 1 cl 10\(4\)](#).

²³ *R v Ritson* [2010] NSWDC 160 at [51]; *Foster v Federal Commissioner of Taxation* (1951) 82 CLR 606 at [614]-[615].

²⁴ [Independent Commission Against Corruption Act 1988 s 11](#).

²⁵ [Crimes Act 1900 ss 316, 316A](#).

²⁶ [GIPA Act s 6](#). ‘Open access information’ is defined in [Part 3](#) of the GIPA Act.

15	We <i>may</i> disclose Ombudsman information obtained from a public authority with the consent of the head of the authority or responsible Minister. ²⁷	Deputy Ombudsman Legal Counsel Clerk 11/12, 9/10
16	We <i>may</i> disclose Ombudsman information obtained from an individual if the individual consents. ²⁸	Deputy Ombudsman Legal Counsel Clerk 11/12, 9/10
17	We <i>may</i> disclose Ombudsman information to a specific person if we believe, on reasonable grounds (a) there's a risk of harm to anyone (including self-harm), and (b) disclosure to the specified person is necessary to prevent or lessen the likelihood of that harm. ²⁹	Deputy Ombudsman Legal Counsel Clerk 11/12, 9/10
18	We <i>may</i> disclose to the NSWPF, Department of Communities and Justice (DCJ) or another appropriate public authority Ombudsman information relating to the safety, welfare or well-being of a child, young person or class of children or young persons. ³⁰	Deputy Ombudsman Legal Counsel Clerk 11/12, 9/10
19	We <i>may</i> disclose to a prescribed body any information relating to the safety/welfare/well-being of a child, young person or class of children or young persons and it is reasonably believed disclosure would assist the body to (a) make any decision, assessment or plan, initiate or conduct any investigation, or provide any service relating to their safety/welfare/well-being, or (b) manage any risk to them in their capacity as an employer or designated agency. ³¹	Deputy Ombudsman Legal Counsel Clerk 11/12
20	Individual members of the Office <i>may</i> disclose Ombudsman information to a registered medical practitioner or registered psychologist providing them with care, treatment or counselling. ³²	Relevant statutory officer or staff member
21	We <i>may</i> disclose Ombudsman information obtained in discharging functions under any Act to the Director of Public Prosecutions or ICAC, but only if the information otherwise be disclosed under the Ombudsman Act and only if the DPP or ICAC would not be prevented from obtaining the information under any other legislation. ³³	Deputy Ombudsman Legal Counsel
22	We <i>may</i> disclose to a public authority Ombudsman information obtained in discharging functions under the Ombudsman Act with respect to a complaint against or relating to that public authority. ³⁴	Deputy Ombudsman
23	We may disclose to any public authority Ombudsman information obtained in discharging functions under the Ombudsman Act with respect to a complaint against or	Deputy Ombudsman

²⁷ [OA s 34\(1\)\(a\)](#).

²⁸ OA s 34(1)(b).

²⁹ OA s 34(1)(b2).

³⁰ OA s 34(1)(b1).

³¹ [Children and Young Persons \(Care and Protection\) Act 1998 Chapter 16A](#).

³² [OA s 34\(1\)\(c2\)](#).

³³ [OA s 31AB](#).

³⁴ [OA s 31AC\(1\)](#).

	relating to any other public authority if we are satisfied the information is relevant to the functions, policies, procedures or practices of the first public authority, and the information does not include any personal information or health information. ³⁵	
24	<p>We <i>may</i> disclose Ombudsman information relating to our CS CRAMA Part 6 functions to:</p> <ul style="list-style-type: none"> • the Children’s Guardian, Advocate for Children and Young People, CDRT, public authority or service provider if we consider it appropriate and the proposed recipient has a relevant interest in the material³⁶ • to another public sector agency if we consider it appropriate to facilitate research undertaken to help prevent or reduce the likelihood of reviewable deaths in NSW.³⁷ 	Deputy Ombudsman Legal Counsel Clerk 11/12
25	<p>We <i>may</i> disclose Ombudsman information obtained in connection with CDRT functions under CS CRAMA Part 5A.³⁸</p> <ul style="list-style-type: none"> • in connection with research undertaken to help prevent or reduce the likelihood of deaths of children in NSW • to the Commissioner of Police in connection with a possible criminal offence • to the Secretary of the DCJ, if reporting that a child or class of children may be at risk • to the State Coroner if the material may relate to a death that is within the jurisdiction of the coroner, whether or not it has been the subject of an inquest • to the Domestic Violence Death Review Team in connection with its functions • concerning the death of a child that is relevant to the exercise of any Ombudsman function. 	CDRT Convenor Deputy Ombudsman

³⁵ OA s 31AC(2).

³⁶ [CS CRAMA s 39\(1\)](#).

³⁷ CS CRAMA s 39(2), (3). However, the information can only be provided to an entity that is not a public sector agency if it agrees to deal with the information in accordance with PPIPA ss 12, 17, 18 and 19 as if they were a public sector agency.

³⁸ [CS CRAMA s 34L\(1\)](#).

Requests - access or amendment of personal or health information

PPIPA and HRIPA permit individuals to access and amend their own personal or health information in certain circumstances: see 7 and 8 above. However, because we are an investigative agency, there are circumstances where we are not required, or are not permitted, to provide access or make amendments.

How to request access or an amendment

Anyone wanting to access or amend their own **personal or health information**, or that of someone on whose behalf they are authorised to act, should communicate with the Office contact they have been dealing with or email legal@ombo.nsw.gov.au.

Where the request is oral, it will need to be put in writing so we are clear about what is sought. We will also require some form of identification and/or authorisation to ensure the individual making the request has authority to do so.

We will advise, as soon as reasonably practical, whether access or amendment is permitted. If the person who made the request thinks we are taking an unreasonable time to respond they have the right to seek an internal review. However, before seeking an internal review, we encourage them to contact us to ask for an update on their request.

If we are not permitted to provide access to, or amend, personal or health information we will explain why.

Decisions we make about these requests may be the subject of internal or external review (see **Internal and external reviews**).

Complaints - our compliance with information obligations

Individuals who believe we have not complied with the information obligations in this Framework can complain to our Office.

If the complaint relates to our PPIPA or HRIPA obligations, an individual may either complain to our Office³⁹ or to the Privacy Commissioner.⁴⁰ See **Internal and external reviews**.

How to complain to our Office

Anyone with a complaint about our compliance with information obligations should advise the Office contact they have been dealing with or email legal@ombo.nsw.gov.au.

Ordinarily, a complaint should be made within 6 months of any alleged non-compliance, although the Ombudsman may, depending on the circumstances, permit complaints to be made outside that time.

Complaints must be made in writing. We may also require some form of identification and/or authorisation, and additional information, in order to progress the complaint.

We must notify the Privacy Commissioner of any complaints we receive that relate to PPIPA or HRIPA obligations, and to meet the other requirements under PPIPA s 54.

³⁹ [PPIPA s 53](#).

⁴⁰ [PPIPA s 45](#).

We attempt to investigate these complaints as soon as reasonably possible, and in any event within 60 days of receiving a complaint.

If we are unable to complete an investigation within this time, a complainant whose complaint relates to our PPIPA or HRIPA obligations may apply for administrative review by the NSW Civil and Administrative Tribunal: [PPIPA s 53](#).

Once we have completed our investigation, we will advise you within 14 days of our finding, any action we plan to take, and your review options.

Where the complaint relates to our obligations under PPIPA or HRIPA, a complainant who is not satisfied with a finding made after an internal review can seek external review from the NSW Civil and Administrative Tribunal (see **Internal and external reviews**).

GIPA Act applications

We are required to comply with the GIPA Act. However, a significant amount of information we hold is excluded from the scope of that Act.

[Section 43](#) of the GIPA Act provides that applications for access to an agency's 'excluded information' are invalid. 'Excluded information' is defined to include information relating to the Ombudsman's '*complaint handling, investigative and reporting functions*', including Ombudsman functions under CS CRAMA: [GIPA Act Schedule 2 item 2](#).

However, applications may be made for access to information held by the Ombudsman that is not 'excluded information'.

How to make a GIPA application

Anyone wanting to apply under the GIPA Act for access to information that is not 'excluded information' should email legal@ombo.nsw.gov.au or contact the Office using the contact details set out at the end of this Framework.

GIPA applications are handled by our Legal Unit. If an applicant is dissatisfied with the determination of their GIPA application by the Legal Unit, they may seek internal review of their application. Internal reviews are conducted either by the Ombudsman or a statutory officer.

Decisions made about GIPA applications may be reviewed externally by the Information Commissioner and/or NCAT (see **Internal and external reviews**).

Other information

Contacting the Information Commissioner or Privacy Commissioner

Additional information about PPIPA, HRIPA and GIPA rights and obligations is available from the NSW Information and Privacy Commission.

Website: www.ipc.nsw.gov.au

Email: ipcinfo@ipc.nsw.gov.au

Phone: 1800 472 679

Address: Level 15, McKell Building, 2-24 Rawson Place, Haymarket NSW 2000

Post: GPA Box 7011, Sydney NSW 2001

Information about the NSW Civil and Administrative Tribunal (NCAT)

NCAT hears applications for external review of GIPA applications made to the Ombudsman, and complaints about our compliance with information obligations (but only those information obligations imposed by PPIPA or HRIPA).

Website: www.ncat.nsw.gov.au

Phone: 1300 006 228

Visit/post: Level 10, John Maddison Tower, 86-90 Goulburn Street, Sydney NSW 2000

Offences under PPIPA and HRIPA

It is an offence under PPIPA and HRIPA⁴¹ to do any of the following:

- intentionally disclose or use personal or health information accessed as part of our work for an unauthorised purpose
- offer to supply personal or health information that has been disclosed unlawfully
- hinder the Privacy commissioner or a staff member from doing their job
- by threat, intimidation, or false representation require another person to give consent or to do, without consent, an act for which consent is required.

Office awareness of this Framework and our information obligations

All staff bound by this Framework are required to ensure that they have read and understand how it applies to the work they do within the Office. Training on the Framework is conducted on a regular basis.

Disclosures of information under the Framework can only be made by staff who have delegation from the Ombudsman to do so.

Breaches of the obligations in this Framework are reported to Risk and Governance, which keeps a register of all events relating to the Office's strategic risks. Breaches are also reported to the Executive.

⁴¹ [PPIPA Part 8](#); [HRIPA Part 8](#).

Where a breach of our obligations under PPIPA or HRIPA occurs:

1. we make a voluntary notification of the breach to the Privacy Commissioner, and
2. we advise any person affected by the breach of what has occurred, and what we are doing to address it.

Questions about this Framework

Legal Counsel is responsible for maintaining this Framework. For any questions about the Framework or our information obligations, please contact legal@ombo.nsw.gov.au or contact our office using the contact details below:

Phone: 02 9286 1000

Toll free (outside Sydney metro): 1800 451 524

Web: www.ombo.nsw.gov.au

Email: nswombo@ombo.nsw.gov.au

Fax: 02 9283 2911

TTY: 02 9264 8050

Speak and Listen users: 1300 555 727 then ask for 02 9286 1000

Address: Level 24, 580 George Street, Sydney NSW 2000

The Framework is publicly available on our website as open access information under the GIPA Act.