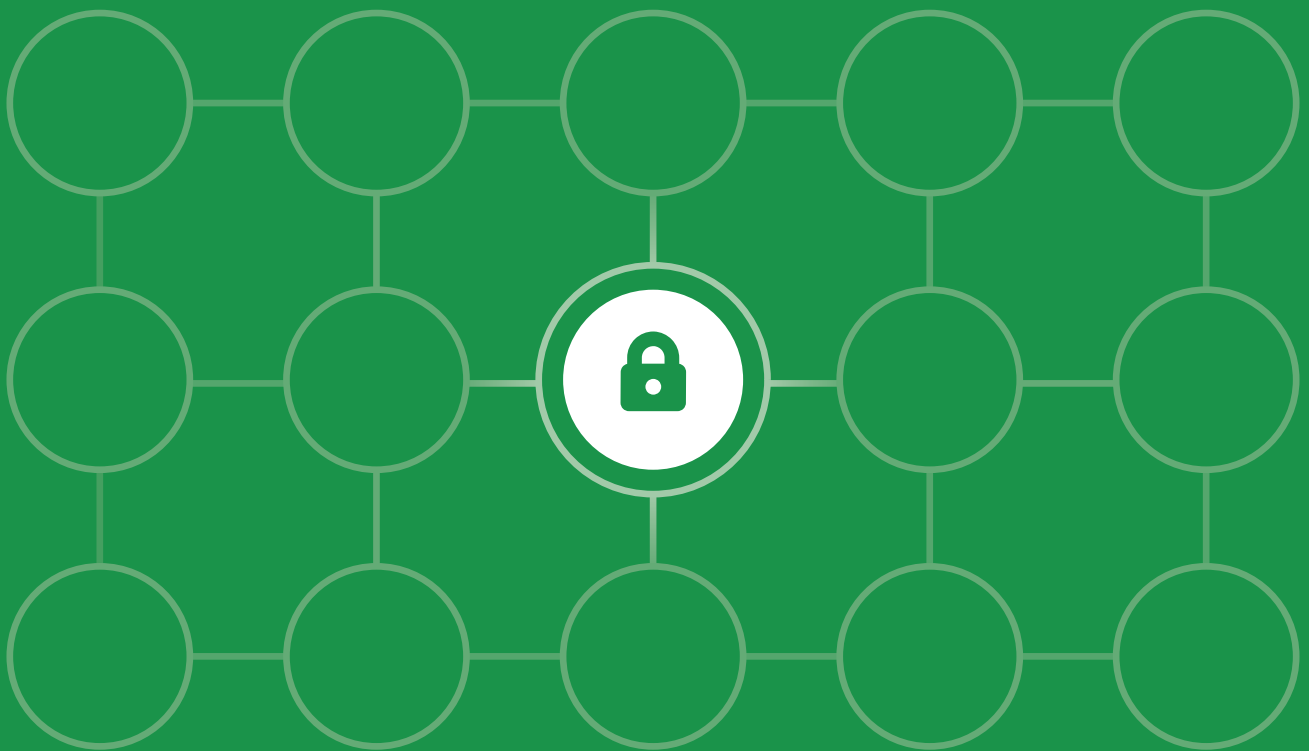


A quick guide: Access to personal information under the Privacy Act 2020



For more than 20 years Allen + Clarke has been a trusted advisor to the public sector, businesses, and NGOs. This guide draws on our team's wealth of experience building systems and processes, training teams, and directly managing personal information requests. Our team uses this guide to help our clients manage requests under the Privacy Act 2020. We are pleased to share it with you.

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The Privacy Act 2020

This guide focuses on a key part of New Zealand's privacy framework – the right of individuals to access their personal information under the Privacy Act 2020 (referred to in this guide as 'the Act'). It covers the ins and outs of responding to requests for personal information held by agencies, as well as reasons that may justify refusing to provide access.

With some exceptions the Act applies to any person, organisation, or business in either the private or public sector that collects and holds information about people.¹

The flowchart provided on the next page is a useful step-by-step reference for managing requests for personal information. The Act promotes and protects individual privacy. It establishes the framework to safeguard the right of individuals to privacy of personal information, while also recognising that other rights and interests may need to be considered (s 3).

Thirteen information privacy principles (IPPs) are covered in the Act, which specify how agencies should collect, handle, store, use, disclose, and share individuals' personal information (s 22).

Why might someone want access to their personal information?

There are many reasons why people may want access to information that agencies hold about them, including to:

- Better understand what information the agency has about them
- Check their details are accurate and correct them if they're not

- Check that an agency has all the relevant information relating to an issue about them and that it's accurate and complete
- Better understand a decision an agency has made, or is in the process of making, that impacts or could impact on them
- Query or challenge a decision by the agency that impacts on them.

Does an agency need to provide access to a person's personal information?

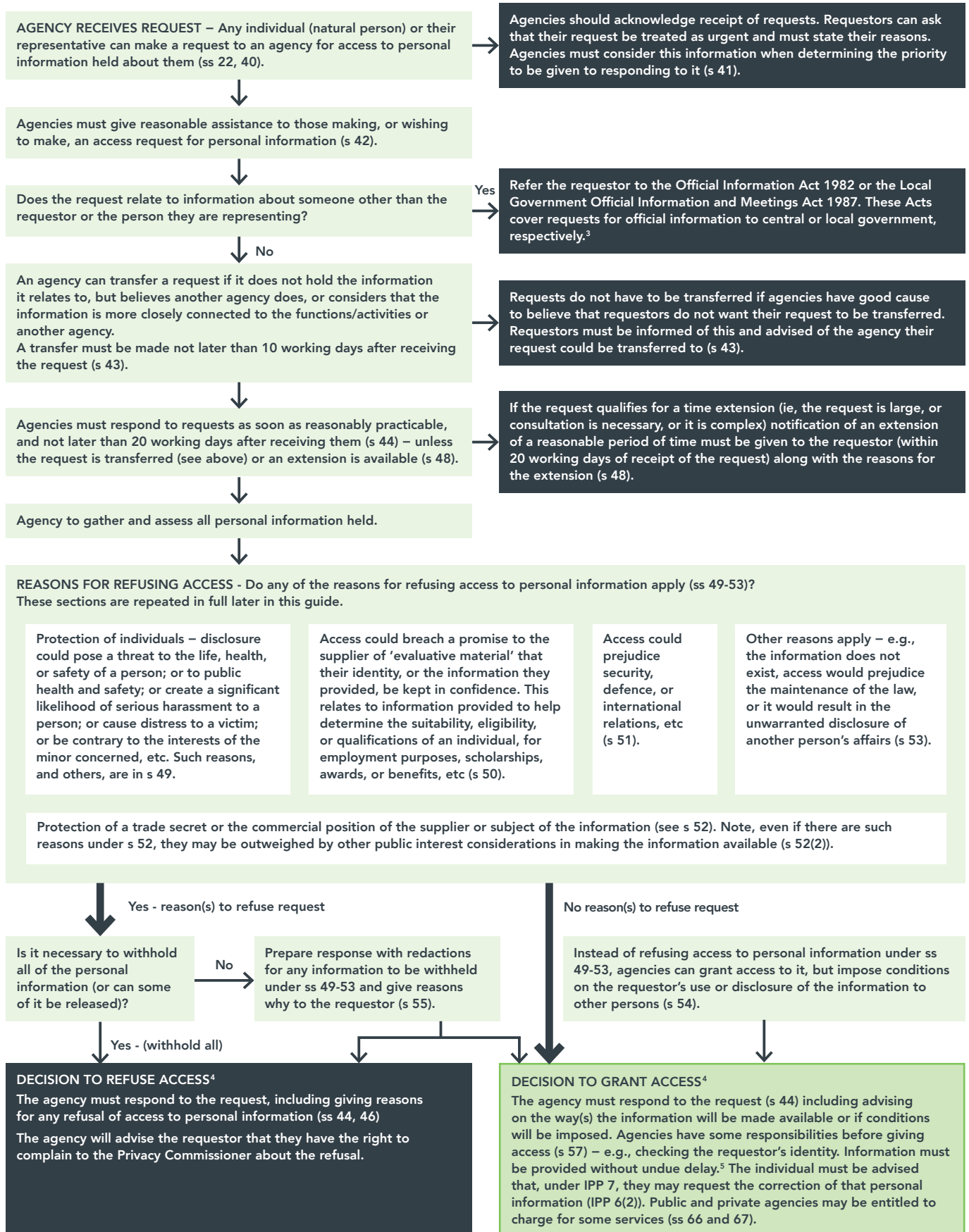
In most cases, agencies must provide requestors access to their personal information. According to information privacy principle 6 (IPP 6) of the Act, an individual is entitled to obtain confirmation of whether an agency holds any personal information about them and to have access to that information.

However, the Act also recognises that there may be good reasons for an agency to refuse an individual access to their personal information or parts of their information (ss 49-53). A common example is that the personal information requested by the individual is also information about another person. In these cases, providing the requestor access to all of the information could pose an unwarranted breach to the other person's privacy and right to have information about them kept confidential.

Reasons for refusing requests are summarised in the flowchart below and are also set out in full further on in this guide. More information on reasons for refusing an access request is available on the Privacy Commissioner's website.²

Managing requests for personal information

This flowchart summarises the key steps agencies should follow when responding to an access request made by an individual (or their representative).



Note: Other legislation can expressly override or alter IPP 6 and authorise or require personal information to be made available, or prohibit or restrict the availability of personal information, or regulate the manner in which personal information can be obtained or made available (s 24). Examples include the Health Act 1956 and the Immigration Act 2009. This could impact on the process steps in the flow chart, above.

What happens if an agency doesn't respond to a request for personal information, or refuses to provide access?

The requestor could make a complaint to the Office of the Privacy Commissioner (OPC). In most cases the OPC will contact the agency to work on resolving the matter and encourage the release of information that the requestor is entitled to. If the matter isn't resolved, the OPC's investigation may determine that the person's complaint has substance and issue an access direction, requiring the agency to release some or all of the requested information (s 91).

Access directions are binding written notices enforcing the right of access under IPP 6. They can require an agency to confirm whether it holds information or

require the disclosure of information to an individual (s 92). They set out what information the agency must provide access to, how they should do it, and the timeframe to do so.

An agency may appeal an access direction to the Human Rights Review Tribunal within 20 days of receiving notice of it (ss 105 and 106). An aggrieved individual may enforce an access direction in the Human Rights Review Tribunal if it has not been complied with. Failure to comply with an access order from the Tribunal is an offence, with a fine of up to \$10,000 (s 104).



Tips for responding to access requests



Be thorough when searching for information covered by the request. It might not be all in one place or not just on their file. It could be in different forms (e.g., documents, files, videos, communications, notes, etc.) and held by different teams in the agency. Aim to do the search once and do it well. If information is missed the requestor could lodge a complaint.



Read your agency's privacy policy and processes for managing information access requests. If there are none, talk to your privacy officer or your manager.



In most cases, if a person asks for their personal information, they are entitled to it. If you think a ground to refuse a request or withhold information might apply, test your reasoning. You could run it by a colleague such as your agency's privacy officer or someone with more experience responding to such requests. Look at other similar requests your agency may have managed and check OPC's guidance about the reasons for refusal, which cover the key components of each reason and questions to work through when applying them.²



Ask yourself why the requestor may want the information. Putting yourself in their shoes and communicating directly with the requestor can provide useful context that helps you check potential information sources and locate the relevant information your agency holds.



Make sure you're reasonably satisfied the requestor is who they say they are and entitled to the information before you release it. Options to confirm their identity could include sighting photo ID, completing and signing an ID confirmation form, asking set ID confirmation questions, and otherwise following your agency's typical processes.



Always document your reasoning for refusing or withholding personal information and add this to the file. Doing this will also help you prepare your response to the requestor and any follow-up to your response.



Keep track of time frames. Know your deadlines and how long it takes for internal processing and sign-out and factor these in. The timeframes in the Act are the outer limits, not the target. Aim to respond as soon as reasonably practicable.



If you find a gap in your agency's privacy processes when responding to a request, raise this with your privacy officer, along with any guidance you find about the issue (e.g., from the OPC website).



Where to find more info about privacy requirements

The OPC website has extensive guidance and resources on privacy topics including the collection, storage, use, disclosure, and sharing of personal information. This covers:

- The privacy rights and responsibilities of individuals and agencies
- Guidance on the Privacy Act 2020 and the 13 information privacy principles
- Privacy codes of practice for some industries and types of information
- Resolving privacy issues and how to make complaints
- Information sharing and information matching
- Notification of privacy breaches
- AskUs – an online Q&A knowledgebase
- Tools and resources including free online learning modules, a privacy statement generator for agencies, a tool to help people request personal information, and an online reporting tool for privacy breaches
- News and events.

Check out www.privacy.org.nz for more info.

Key provisions covering refusal of access to personal information

Note, these provisions are provided for reference only. Always refer to the source legislation, available at www.legislation.govt.nz

49 Protection, etc, of individual as reason for refusing access to personal information

- (1) An agency may refuse access to any personal information requested if—
- (a) the disclosure of the information would—
 - (i) be likely to pose a serious threat to the life, health, or safety of any individual, or to public health or public safety; or
 - (ii) create a significant likelihood of serious harassment of an individual; or
 - (iii) include disclosure of information about another person who—
 - (A) is the victim of an offence or alleged offence; and
 - (B) would be caused significant distress, loss of dignity, or injury to feelings by the disclosure of the information; or
 - (b) after consultation is undertaken (where practicable) by or on behalf of the agency with the health practitioner of the individual concerned, the agency is satisfied that—
 - (i) the information relates to the individual concerned; and
 - (ii) the disclosure of the information (being information that relates to the physical or mental health of the requestor) would be likely to prejudice the health of the individual concerned; or
 - (c) the individual concerned is under the age of 16 and the disclosure of the information would be contrary to the interests of the individual concerned; or
 - (d) the disclosure of the information (being information in respect of the individual concerned who has been convicted of an offence or is or has been detained in custody) would be likely to prejudice the safe custody or the rehabilitation of the individual concerned.

(2) In this section,—

health practitioner means—

- (a) a medical practitioner; or
- (b) a person who is, or is deemed to be, registered with an authority appointed by or under [the Health Practitioners Competence Assurance Act 2003](#) as a practitioner of a particular health profession and whose scope of practice includes the assessment of a person's mental capacity

medical practitioner means a person who—

- (a) is, or is deemed to be, registered with the Medical Council of New Zealand as a practitioner of the profession of medicine; and
- (b) holds a current practising certificate

victim has the meaning given to it in [section 8](#) of the Prisoners' and Victims' Claims Act 2005.

50 Evaluative material as reason for refusing access to personal information

- (1) An agency may refuse access to any personal information requested if—
- (a) the information is evaluative material and the disclosure of that information or of the information identifying the person who supplied it would breach an express or implied promise—
 - (i) that was made to the person who supplied the information; and
 - (ii) that was to the effect that the information or the identity of the person who supplied it, or both, would be held in confidence; or
 - (b) the information is evaluative material that was made available by the agency to another agency, and that other agency may refuse to disclose the information under paragraph (a).
- (2) In this section, evaluative material—
- (a) means evaluative or opinion material compiled solely—
 - (i) for the purpose of determining the suitability, eligibility, or qualifications of the individual to whom the material relates—
 - (A) for employment or for appointment to office; or
 - (B) for promotion in employment or office or for continuance in employment or office; or
 - (C) for removal from employment or office; or
 - (D) for the awarding of contracts, awards, scholarships, honours, or other benefits; or
 - (ii) for the purpose of determining whether any contract, award, scholarship, honour, or benefit should be continued, modified, or cancelled; or
 - (iii) for the purpose of deciding whether to insure any individual or property or to continue or renew the insurance of any individual or property; but
 - (b) does not include any evaluative or opinion material described in paragraph (a) that is compiled by a person employed or engaged by an agency in the ordinary course of that person's employment or duties.

51 Security, defence, international relations as reason for refusing access to personal information

- (1) An agency may refuse access to any personal information requested if the disclosure of the information would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
 - (i) the Government of any other country or any agency of the Government of any other country; or
 - (ii) any international organisation; or
 - (c) to prejudice the security or defence of—
 - (i) the Cook Islands; or
 - (ii) Niue; or
 - (iii) Tokelau; or
 - (iv) the Ross Dependency; or
 - (d) to prejudice relations between any of the Governments of—
 - (i) New Zealand;
 - (ii) the Cook Islands;
 - (iii) Niue; or
 - (e) to prejudice the international relations of the Government of—
 - (i) the Cook Islands; or
 - (ii) Niue.

52 Trade secret as reason for refusing access to personal information

- (1) An agency may refuse access to any personal information requested if the information needs protecting because making the information available would—
- (a) disclose a trade secret; or
 - (b) be likely to unreasonably prejudice the commercial position of the person who supplied the information or who is the subject of the information.
- (2) Subsection (1) does not apply if, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations that make it desirable, in the public interest, to make the information available.

53 Other reasons for refusing access to personal information

- (1) An agency may refuse access to any personal information requested if—
- (a) the information requested does not exist or, despite reasonable efforts to locate it, cannot be found; or
 - (b) the disclosure of the information would involve the unwarranted disclosure of the affairs of—
 - (i) another individual; or
 - (ii) a deceased person; or
 - (c) the disclosure of the information would be likely to prejudice the maintenance of the law by any public sector agency, including—
 - (i) the prevention, investigation, and detection of offences; and
 - (ii) the right to a fair trial; or
 - (d) the disclosure of the information would breach legal professional privilege; or
 - (e) the disclosure of the information, being information contained in material placed in any library or museum or archive, would breach a condition subject to which that material was placed; or
 - (f) the disclosure of the information would constitute contempt of court or of the House of Representatives; or
 - (g) the request is made by a defendant or a defendant's agent and is—
 - (i) for information that could be sought by the defendant under the Criminal Disclosure Act 2008; or
 - (ii) for information that could be sought by the defendant under that Act and that has been disclosed to, or withheld from, the defendant under that Act; or
 - (h) the request is frivolous or vexatious, or the information requested is trivial.

Notes and references

1. The Act does not apply to an individual acting in their personal or domestic capacity, courts and tribunals when they are doing their judicial tasks, news media when they are gathering and reporting news, and Members of Parliament (MPs) acting in their official capacity (see s 8(b) for all exceptions).

2. For guidance and examples of grounds for refusal refer to:

www.privacy.org.nz/privacy-act-2020/privacy-principles/6/

3. For guidance on the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987, refer to the Ombudsman's website (www.ombudsman.parliament.nz), your agency's processes, and Allen + Clarke's free guide: Release of Official Information Under the Official Information Act 1982.

Some requests could seek information that includes both personal information about the requestor (the Privacy Act applies) and official information held by a Minister or a central or local government agency (official information legislation applies). An appropriate response to the requestor may, therefore, need to be processed and managed under both legislative frameworks.

4. In some specific situations an agency may decide to neither confirm nor deny personal information is held (s 47).

5. After granting the request, the agency must provide the information without due delay. Failure to do so is treated as a decision to refuse the request (s 69(4)(b)).

Are you meeting your Privacy Act 2020 obligations?

This guide has been developed by experts who can support you to manage requests for personal information and navigate the Privacy Act 2020.

Allen + Clarke can:

- provide flexible capacity to help you respond to personal information requests
- develop systems, policies, and processes for your Privacy Act 2020 obligations
- incorporate privacy considerations into policy and programme development.

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