

Decision Checklist: Data security — Checklist for collection, use and disclosure of information — COVID-19

This checklist has been authored for LexisNexis by the *LexisNexis Legal Writer Team*.

Introductory note:

The COVID-19 crisis is requiring organisations to make swift decisions regarding information sharing. Even during such times of crisis, it is important to be mindful of obligations under the [Privacy Act 1988](#) (the Privacy Act).

How to use this checklist:

This checklist outlines the critical privacy obligations to consider, with regard to collection, use and disclosure of information during the COVID-19 pandemic. It should be read alongside guidance published by the [Department of Health](#).

For further guidance that may assist you with decision-making during the pandemic or during other crises, see our [COVID-19 Toolkit on Privacy, Data Protection and Privacy](#).

For detailed guidance on the Privacy Act and how it applies to your organisation, see our [Privacy By Design](#) materials.



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Collection of information	Yes	No
<p>➤ Is your organisation an APP entity?</p>		
<p>If yes, the obligations in the Privacy Act, including the Australian Privacy Principles (APPs) in Sch 1 to the Privacy Act apply. Follow this checklist.</p> <p>If no, the obligations in the Privacy Act, including APPs in Sch 1 to the Privacy Act do not apply.</p>		
<p>➤ Is your organisation collecting information about a person?</p>		
<p>If yes, the obligations in the Privacy Act, including APPs in Sch 1 to the Privacy Act apply. Continue following this checklist.</p> <p>If no, the obligations in the Privacy Act, including APPs in Sch 1 to the Privacy Act do not apply.</p>		
<p>Consider the primary purpose for which you are collecting the information.</p>		
<p>➤ Is the information being collected 'personal information'?</p> <p>personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable (whether the information is true or not and whether the information is recorded in a material form or no (s 6 of the Privacy Act).</p> <p>Consider whether two or more pieces of information about a person would together be 'personal information' about the individual.</p>		
<p>If yes, the obligations in the Privacy Act, including the APPs in Sch 1 to the Privacy Act apply. Continue following this checklist.</p> <p>If no, the obligations in the Privacy Act, including APPs in Sch 1 to the Privacy Act do not apply. Continue to consider whether information being collected would be 'sensitive information'.</p>		
<p>➤ Is the information being collected 'sensitive information'?</p> <p>Sensitive information is a subset of 'personal information' that is afforded greater protections under the Privacy Act. Amongst other things, it includes health and genetic information about an individual, including biometrics (s 6 of the Privacy Act).</p>		



<p>Consider whether two or more pieces of information about a person would together be 'sensitive information' about the individual.</p>		
<p>If yes, the obligations in the Privacy Act, including the APPs in Sch 1 to the Privacy Act apply. Continue following this checklist.</p>		
<p>➤ Is the information employee record/s?</p> <p>An employee record is a record of personal information relating to the employment of the employee</p> <p>➤ Does the exception with regard to employee record/s apply?</p> <p>If the information is employee record/s, the obligations in the Privacy Act, including the APPs in Sch 1 to the Privacy Act do not apply, if the employer is a private sector employer and the employee record is directly related to the current or former employment relationship.</p> <p>The exception does not cover future or prospective future relationships, or if it is used for a purpose not directly related to the employment relationship.</p> <p>If the information is employee record/s, the obligations in the Privacy Act, including the APPs in Sch 1 to the Privacy Act apply if the employer is a public sector employer, or if the employee record is not related to the current or former employment relationship.</p>		
<p>➤ If the information is 'personal information' other than 'sensitive information', is the information reasonably necessary for, or directly related to, or more of your functions and activities?</p> <p>Specify which function and activity of your organisation the 'personal information' is necessary for, or directly related to.</p>		
<p>If yes, then the requirements of APP 3 with regard to the collection of solicited 'personal information' would be met.</p> <p>If no, the 'personal information' must not be collected as per APP 3.3. APP 3.1 and 3.2.</p>		



<p>➤ If the information is 'sensitive information' is the information reasonably necessary for, or directly related to, or more of your functions and activities?</p> <p>Specify which function and activity of your organisation the 'personal information' is necessary for, or directly related to,</p> <p>Consent can be express or implied, provided the four key elements of consent are satisfied:</p> <ul style="list-style-type: none"> • The individual is adequately informed before giving consent. • The individual gives consent voluntarily. • The consent is current and specific. • The individual has capacity to understand and communicate consent. 		
<p>If the answers to both the above questions is yes, then the requirements of APP 3.3 with regard to the collection of solicited 'sensitive information' would be met.</p> <p>If the answers to either of the above questions is no, then the collection of solicited 'sensitive information' APP 3.3 would be permitted if, a 'permitted health situation' exists in relation to the collection of the information. For circumstances that would be a 'permitted health situation' see s 16B of the Privacy Act.</p> <p>If the answer to either of the above question is no, and a 'permitted health situation' does not exist in relation to the collection of the information, the 'sensitive information' must not be collected as per APP 3.3.</p>		
<p>➤ Are you collecting the 'personal information' (including 'sensitive information') by lawful and fair means?</p>		
<p>If yes, the 'personal information' can be collected under APP 3.5.</p> <p>If no, the 'personal information' cannot be collected as per APP 3.5.</p>		
<p>➤ Are you collecting the 'personal information' (including 'sensitive information' directly from the individual?</p> <p>If no, is it unreasonable or impracticable to do so?</p>		



If you are collecting the 'personal information' directly from the individual, or if it is unreasonable or impractical to collect the information directly from the individual, then the requirements of APP 3.6 are met.

If you are not collecting the 'personal information' directly from the individual and it is not unreasonable or impractical to do so, the 'personal information' cannot be collected as per APP 3.6.

➤ Have you notified the individual that their information is being collected?		
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If yes, then the requirements of APP 5 are met.

If no, consider the requirements of APP 5 regarding the collection of personal information. Otherwise, a breach of APP 5 would occur.

➤ Are you collecting the personal information (including 'sensitive information') lawfully following the checklist above?		
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Use of personal information	Yes	No
<p>➤ For each proposed use, consider are you using the 'personal information' (including 'sensitive information') for the primary purpose for which it was collected?</p>		
<p>If yes, under APP 6.1 the 'personal information' can be used for the primary purpose for which it was collected.</p> <p>If no, the 'personal information' cannot be used for another purpose (a secondary purpose) as per APP 6.1.</p>		
<p>➤ If no, has the individual provided consent to the use of their 'personal information' (including 'sensitive information')?</p> <p>Consent can be express or implied, provided the four key elements of consent are satisfied:</p> <ul style="list-style-type: none"> • The individual is adequately informed before giving consent. • The individual gives consent voluntarily. • The consent is current and specific. • The individual has capacity to understand and communicate consent. 		
<p>If the individual has provided consent to the use of their 'personal information' (including 'sensitive information'), it can be used for a secondary purpose.</p>		
<p>➤ If the 'personal information' is being used for a secondary purpose and the individual has not provided consent, does a permitted health situation exist?</p> <p>For circumstances that would be a 'permitted health situation' see s 16B of the Privacy Act.</p>		
<p>If yes, under APP 6.1(b) the 'personal information' can be used.</p>		
<p>➤ If the 'personal information' is being used for a secondary purpose and the individual has not provided consent, is the secondary purpose related to the primary purpose (if the information is 'personal information')?</p>		



<p>➤ If the 'personal information' is being used for a secondary purpose and the individual has not provided consent, is the secondary purpose directly related to the primary purpose (if the information is 'sensitive information')?</p>		
<p>If the information is 'personal information' and you have answered yes, to the first question, the information can be used for the secondary purpose as per APP 6.1(b).</p> <p>If the information is 'sensitive information' and you have answered yes, to the second question, the information can be used for the secondary purpose as per APP 6.1(b).</p>		
<p>➤ Are you using the personal information (including 'sensitive information') lawfully following the checklist above?</p>		



Disclosure of information	Yes	No
<p>➤ For each proposed disclosure, consider who it will be disclosed to (external/internal) and whether you are disclosing the 'personal information' (including 'sensitive information') for the primary purpose for which it was collected?</p>		
<p>If yes, under APP 6.1 the 'personal information' can be disclosed for the primary purpose for which it was collected.</p> <p>If no, the 'personal information' cannot be disclosed for another purpose (a secondary purpose) as per APP 6.1.</p> <p>If yes, under APP 6.1 the 'personal information' can be disclosed for the primary purpose for which it was collected.</p>		
<p>➤ If no, has the individual provided consent to the disclosure of their 'personal information' (including 'sensitive information')?</p> <p>Consent can be express or implied, provided the four key elements of consent are satisfied:</p> <ul style="list-style-type: none"> • The individual is adequately informed before giving consent. • The individual gives consent voluntarily. • The consent is current and specific. • The individual has capacity to understand and communicate consent. 		
<p>If the individual has provided consent to the use of their 'personal information' (including 'sensitive information'), it can be disclosed for a secondary purpose.</p>		
<p>➤ If the 'personal information' is being disclosed for a secondary purpose and the individual has not provided consent, does a 'permitted health situation' exist?</p> <p>For circumstances that would be a 'permitted health situation' see s 16B of the Privacy Act.</p>		
<p>If yes, under APP 6.1(b) the 'personal information' can be disclosed.</p>		
<p>➤ If the 'personal information' is being disclosed for a secondary purpose and the individual has not provided consent, is the secondary purpose related to the primary purpose (if the information is 'personal information')?</p> <p>➤ If the 'personal information' is being disclosed for a secondary purpose and the individual has not provided consent, is the secondary purpose directly</p>		

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related to the primary purpose (if the information is 'sensitive information')?

If the information is 'personal information' and you have answered yes, to the first question, the information can be disclosed for the secondary purpose as per APP 6.1(b).

If the information is 'sensitive information' and you have answered yes, to the second question, the information can be disclosed for the secondary purpose as per APP 6.1(b).

- Are you disclosing the personal information (including 'sensitive information') lawfully following the checklist above?