

Office of the Commissioner for Body Corporate and Community Management

Practice Direction 37

Privacy

This Practice Direction is issued pursuant to section 233 of the *Body Corporate and Community Management Act 1997* (**BCCM Act**). Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's office.¹ Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided for under Chapter 6 of the BCCM Act.

BCCM dispute resolution functions and the IP Act

1. The Commissioner's office collects and discloses personal information in the course of providing its dispute resolution services.
2. The Information Privacy Act 2009 (**IP Act**) imposes obligations on Queensland government agencies in respect of the collection, storage, use and disclosure of personal information.
3. The IP Act provides a right for individuals to have their personal information collected and handled in accordance with certain rules or 'privacy principles'. An agency which holds an individual's personal information must not disclose that information unless one of the exceptions in the IP Act applies.²
4. However, the IP Act provides that the functions of a judicial or quasi-judicial entity³ and a member of, or the holder of an office connected with a function of a quasi-judicial entity,⁴ are *excluded* from the operation of the privacy principles in the IP Act.⁵
5. The IP Act does not prescribe what a judicial or quasi-judicial function is. The Office of the Information Commissioner considers that, in so far as its adjudication functions are concerned, the Commissioner's office is a quasi-judicial entity. And, to the extent that a person is acting as an adjudicator, that person is a quasi-judicial officer connected with a function of a quasi-judicial entity.
6. In addition, the conciliation process is also likely to be a quasi-judicial function.
7. Personal information managed as part of an adjudication or conciliation application, is therefore not likely to be subject to the requirements of the IP Act.
8. To the extent the Commissioner's office is *not* exercising its quasi-judicial functions, it is bound by the information privacy principles in the IP Act.⁶

¹ Office of the Commissioner for Body Corporate and Community Management

² See IPP 11 at Schedule 3 of the IP Act

³ In relation to its quasi-judicial functions

⁴ In relation to its quasi-judicial functions

⁵ See section 19 and Schedule 2, Part 2 of the IP Act

⁶ See Schedule 3 of the IP Act



9. Where the IP Act applies, it allows for disclosure of personal information if it is authorised or required under a law.⁷ Accordingly, where information is required to be provided to specified parties or persons under the BCCM Act - including personal information - the disclosure will be permitted under the IP Act.
10. Please refer to the relevant privacy statements which contain more detailed information about the authorised disclosure of personal information:
 - adjudication: [Form 15 Privacy Statement](#)
 - conciliation: [Form 22 Privacy Statement](#)
11. For further information about whether the IP Act applies to personal information held by the Commissioner's office, please contact Right to Information and Privacy, Department of Justice and Attorney-General. You can contact them [here](#).

Our commitment to privacy

12. Regardless of whether the IP Act applies, the Commissioner's office is committed to the responsible management of all personal information it holds, including personal information obtained, used, stored and disclosed as part of a dispute resolution application.
13. Individuals also have the right to privacy under the Human Rights Act 2019 (**HR Act**). The HR Act requires public entities performing a public function to act compatibly with human rights, including the right to privacy and reputation.⁸ These rights protect the privacy of individuals from 'unlawful' or 'arbitrary' interference.
14. The HR Act came into force on 1 January 2020 and applies to all acts and decisions made by public entities on or after this date. The Commissioner's office is mindful of its obligations to act in accordance with the HR Act.

Distribution and publication of orders

15. Adjudicators are required to give a copy of an order they make deciding an adjudication application to the parties, body corporate, and any persons who made submissions about the application.⁹
16. Additionally, in accordance with the fundamental principle of open justice,¹⁰ the commissioner publishes adjudicators' orders online on the publicly available database, Australasian Legal Information Institute, which can be accessed for free [here](#).
17. In appropriate situations, where an adjudicator considers it necessary, they may omit personal, identifying, or confidential information from an order. Similarly, the commissioner may redact personal, identifying, or confidential information from orders published online.
18. If a person wants certain information omitted from an order, they should request this in writing as early as possible in the dispute resolution process. The onus is on the person requesting the information be omitted to establish that it is necessary and in the interests of justice to do so.

⁷ IPP 11(1)(d) at Schedule 3 of the IP Act

⁸ Section 25 of the HR Act

⁹ Section 274 of the BCCM Act

¹⁰ As provided for under section 299 of the BCCM Act

19. For the avoidance of doubt, it is generally desirable and in the interests of justice for adjudicator's orders and reasons for decisions to be made available in their entirety. The adjudicator or commissioner will have regard to the circumstances in deciding whether it is necessary and in the interests of justice for the information to be omitted or redacted, including the reason for the request; any evidence supporting the request; and the significance of the information to the meaning of the order. Without limiting the discretion of the adjudicator or the commissioner, relevant circumstances could include whether a person's safety is at risk or a suppression order has been made by another court, tribunal, or authority.

Other legislation requiring disclosure of information

20. Parties should also be aware that correspondence and documents sent to the Commissioner's office may be publicly accessible pursuant to the provisions of the *Right to Information Act 2009*. You can find out more about Right to Information [here](#).

COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT

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