

Australian Capital Territory

# Integrity Commission (Information) Guidelines 2022

Notifiable instrument NI2022–

made under the

***Integrity Commission Act 2018, section 299(1) (Information guidelines)***

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**1 Name of instrument**

This instrument is the *Integrity Commission (Information) Guidelines 2022*.

**2 Commencement**

This instrument commences on the day after notification.

**3 Commission's Guidelines**

I make the Commission's Information Guidelines as set out at Schedule 1 to this instrument.



The Hon Michael F. Adams QC

Commissioner

ACT Integrity Commission

**28 June 2022**



**Schedule 1**

**Integrity Commission (Information)  
Guidelines 2022**



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## 1. Introduction

- 1.1 The ACT Integrity Commission (**Commission**) was created in response to an election commitment made by the 9<sup>th</sup> Legislative Assembly. On 31 October 2017, the Select Committee on an Independent Integrity Commission (**Select Committee**) released its report into their examination. The Select Committee recommended the ACT Government establish a standing ACT independent integrity body to investigate corruption in public administration and strengthen public confidence in government integrity.<sup>1</sup>
- 1.2 The *Integrity Commission Act 2018* (**Act**) was passed by the Legislative Assembly and came into operation on 1 July 2019.
- 1.3 The Act establishes the Commission and provides it with functions to:
- a) investigate conduct that is alleged to be corrupt conduct;
  - b) refer suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action;
  - c) prevent corruption, including by researching corrupt practices and mitigating the risks of corruption;
  - d) publish information about investigations conducted by the commission, including lessons learned;
  - e) provide education programs about the operation of this Act and the commission, including providing advice, training and education services to —
    - (a) the Legislative Assembly and the public sector to increase capacity to prevent corrupt conduct;
    - (b) people who are required to report corrupt conduct under this Act;
    - (c) the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct; and
  - f) foster public confidence in the Legislative Assembly and public sector.<sup>2</sup>
- 1.4 In the course of the Commission's business, it will come into possession of information from a variety of sources. Information may include corruption reports, personal information about people making corruption reports, information obtained in assessing or investigating corruption reports and administrative data pertaining to the staff and operations of the Commission. It may also include physical items received or seized as part of Commission preliminary inquiries or investigations.

<sup>1</sup> Explanatory Statement, Integrity Commission Bill 2018, p 3

<sup>2</sup> s 23(1), *Integrity Commission Act 2018*. All references to sections in these Guidelines are references to the *Integrity Commission Act 2018*, unless otherwise specified.



- 1.5 The Commission recognises the potential for significant reputational damage resulting from the deliberate or inadvertent disclosure of information and will develop and maintain internal policies and procedures which provide direction and coordinated management of information security.
- 1.6 These Guidelines are developed pursuant to the Act<sup>3</sup> to assist the staff of the Commission to understand their obligations under the legislative framework governing information privacy and access in the Territory.

### **Information Privacy Commissioner**

- 1.7 The Act requires the Commission to consult with the Information Privacy Commissioner before making these Guidelines.<sup>4</sup> The Information Privacy Commissioner is appointed pursuant to s 26 of the *Information Privacy Act 2014* and has certain responsibilities under that Act.
- 1.8 Under an arrangement between the ACT Government and the Commonwealth, the Australian Information Commissioner exercises some of the functions of the ACT Information Privacy Commissioner.<sup>5</sup> These duties include handling privacy complaints against, and receiving data breach notifications from, ACT public sector agencies and conducting assessments of ACT public sector agencies' compliance with the Information Privacy Act.<sup>6</sup>
- 1.9 In preparing these Guidelines, the Commission consulted with officers from the Office of the Australian Information Commissioner.

<sup>3</sup> see s 299(1)

<sup>4</sup> s 299(2)

<sup>5</sup> The Australian Information Commissioner is a Commonwealth appointment and is supported by the Office of the Australian Information Commissioner.

<sup>6</sup> <https://www.oaic.gov.au/privacy/privacy-in-your-state/privacy-in-the-act/>



## 2. The scope of these Guidelines

2.1 The language in the Act requiring the Commission to create these Guidelines is brief. The section states:

### 299 Information guidelines

- (1) The commission must make guidelines about the handling of information under this Act (the **information guidelines**).
- (2) Before making an information guideline, the commission must consult the information privacy commissioner.
- (3) The information guidelines are a notifiable instrument.

2.2 The Act is silent as to the meaning of ‘information’ and ‘handling’ and neither term is defined in the *Legislation Act 2001*.<sup>7</sup> In accordance with well-established principles of statutory interpretation, both words will have their plain and ordinary meaning unless the contrary is shown.<sup>8</sup>

2.3 The Macquarie Dictionary defines the words as follows:

**information:** [relevantly] knowledge communicated or received concerning some fact or circumstance; news.

**handle:** [relevantly] to manage, direct or control<sup>9</sup>

2.4 These Guidelines, therefore, are to assist the Commission with the management or control of knowledge, intelligence or news. They form an integral part of the Commission’s Records Management Program.

2.5 Information may take the form of electronic data, handwritten or word-processed information, emails, reports, memoranda, tables, receipts, invoices, statements. It may also be information in aural form (sound), or visual form such as pictures, photographs, charts and graphs.

<sup>7</sup> A definition in the Dictionary of the *Legislation Act 2001* applies to all Acts and statutory instruments in the ACT: s 144, *Legislation Act 2001*

<sup>8</sup> *Cody v J H Nelson Pty Ltd* [1947] HCA 17; (1947) 74 CLR 629 at 647 per Dixon J

<sup>9</sup> *Macquarie Dictionary*, (Macquarie Dictionary Publishers, 8<sup>th</sup> ed, 2020)



### 3. Requirements of the Integrity Commission Act 2018

- 3.1 The Act creates a regime for the protection of information received and distributed by the Commission. There are two elements to the regime:
- (i) provisions relating to 'restricted information' relating to Confidentiality Notices; and
  - (ii) provisions relating to 'protected information.'

#### Restricted information

- 3.2 Part 3.2 of the Act relates to Confidentiality Notices issued by the Commission in connection with preliminary inquiry notices and examination summonses. A preliminary inquiry notice is issued in furtherance of a preliminary inquiry,<sup>10</sup> while an examination summons may be issued in furtherance of an investigation.<sup>11</sup>
- 3.3 As Commission preliminary inquiries and investigations are necessarily covert for some time, it is critical an individual receiving a preliminary inquiry notice or examination summons does not disclose certain information. Part 3.2 creates a regimen whereby a preliminary inquiry notice or examination summons may be accompanied by a Confidentiality Notice requiring a recipient not disclose 'restricted information,' except in certain circumstances.
- 3.4 'Restricted information' is defined as meaning any of the following:
- (a) evidence or information given to, or obtained by, the Commission;
  - (b) the contents of a document, or a description of a thing, produced to or obtained by, the Commission;
  - (c) the contents of a document or a description of a thing, that the Commission has made a copy of or seized under part 3.5 (Commission – powers of entry, search and seizure);
  - (d) the existence of, or any information about, a confidentiality notice, preliminary inquiry notice or examination summons;
  - (e) the subject matter of a preliminary inquiry or investigation'
  - (f) information that would identify a person, or could allow the identity of a person to be worked out; who –
    - (i) has been or is proposed to be examined by the Commission; or
    - (ii) has produced or may produce a document or other thing to the Commission;
  - (g) the fact that a person –
    - (i) has been or is proposed to be examined by the Commission; or
    - (ii) has produced or may produce a document or other thing to the Commission.<sup>12</sup>
- 3.5 The disclosure of restricted information may be an offence and penalties may apply. However, certain kinds of disclosure, called 'permitted disclosures' are allowed to

<sup>10</sup> pursuant to s 90(1)

<sup>11</sup> pursuant to s 147(1)

<sup>12</sup> s 76



enable recipients of preliminary inquiry notices or examination summonses to comply with the Commission's requirements. For example, the person may disclose information to an interpreter if they have insufficient understanding of English to understand the documentation. It is incumbent upon the person to ensure the person to whom a permitted disclosure is made is also given a copy of the confidentiality notice and is made aware that they are also bound by its terms.

- 3.6 The provisions relating to restricted information apply only to a recipient of a Confidentiality Notice, not to staff of the Commission.

### Protected information

- 3.7 It is an offence under the Act for the Commissioner, a member of staff of the Commission, the Inspector or a member of staff of the Inspector to use or divulge 'protected information' about someone else.<sup>13</sup> 'Protected information' is defined as:

Information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.<sup>14</sup>

- 3.8 The Commissioner and staff of the Commission are therefore prohibited from using or divulging protected information unless the information is used or divulged:

- under the Act or another Territory law;
- in relation to the exercise of a function by the Commissioner, staff of the Commission, the Inspector or staff of the Inspector;
- in a court proceeding; or
- with the consent of the person about whom the protected information relates.<sup>15</sup>

- 3.9 The Act does allow protected information to be divulged in certain circumstances:

#### **To keep a complainant, referring entity and/or notifier informed**

The Commission must tell a complainant, referring entity and/or notifier if their complaint is dismissed, referred to another entity, investigated, or if the investigation is discontinued or completed.<sup>16</sup> Such information must be accompanied by a non-disclosure notice.<sup>17</sup> The Commission has the discretion not to tell the complainant, referring entity and/or notifier if such a disclosure would adversely affect their safety or that of an investigation under the Act, if the information could allow the identity of

<sup>13</sup> s 297

<sup>14</sup> s 297(5)

<sup>15</sup> s 297(3)

<sup>16</sup> ss 72, 73 and 74

<sup>17</sup> s 198





another person to be worked out or if telling them would be contrary to a law in force in the Territory.<sup>18</sup>

### **To share information with another entity**

The Commission may disclose information it has obtained in the exercise of its functions under the Act to an ‘information sharing entity’ if the Commission considers that the information is relevant to the exercise of the functions of the information sharing entity and such a disclosure is appropriate.<sup>19</sup>

An ‘information sharing entity’ includes:

- an integrity body;
- a law enforcement body;
- a prosecutorial body;
- a referral entity;
- the head of a public sector entity;
- another entity pursuant to a memorandum of understanding or an agreement entered into by the Commission with that other entity; or
- another entity if the Commission dismisses or discontinues an investigation and gives the corruption report to that entity.<sup>20</sup>

The Commission is precluded from providing a video recording or transcript of a person’s evidence at an examination to a law enforcement agency, a prosecutorial body, the public sector standards commissioner or Legislative Assembly commissioner for standards or the person’s employer except in limited circumstances.<sup>21</sup>

### **To comply with natural justice and procedural fairness requirements**

The Act requires the Commission to provide information to recipients of preliminary inquiry notices and examination summonses about the general nature of the matters about which they are to give evidence or provide documents. In the ordinary course, a preliminary inquiry notice or examination summonses is accompanied by a Confidentiality Notice which makes it an offence for the recipient to disclose specified information except in certain circumstances.<sup>22</sup>

<sup>18</sup> s 75

<sup>19</sup> s 196

<sup>20</sup> s 196(3)

<sup>21</sup> s 196(2)

<sup>22</sup> s 85



## Reporting obligations under the Act

3.10 The Commission has obligations to report certain information to the Inspector,<sup>23</sup> the Legislative Assembly<sup>24</sup> and in the annual report<sup>25</sup> and such disclosures are permitted as they are required by the Act.

## Obligations imposed on staff of the Commission

3.11 The Commission provides staff with information about their obligations under the Act and clear direction as to the potential criminal consequences for non-compliance. Pursuant to this, upon commencing employment with the Commission, all staff, contractors, consultants and secondees are required to sign a secrecy agreement. This recognises the sensitive nature of the Commission's work and ensures the obligation to maintain confidentiality is clear to all staff.

3.12 The Commission will develop and maintain procedures to ensure the suitability of staff to access Commission information. This will include ensuring all staff:

- are eligible and suitable to have access to Commission information;
- have had their identity established;
- have declared they are willing to comply with all relevant legislation, policies, standards, protocols and guidelines that safeguard information received and stored by the Commission; and
- hold the appropriate level of security clearance to access classified information and resources, as appropriate to their duties.

<sup>23</sup> Part 4.1

<sup>24</sup> Part 4.2

<sup>25</sup> Part 4.3



## 4. Other legislative obligations

4.1 The Commissioner and staff of the Commission are required to comply with requirements in the following Territory Acts to the extent they do not conflict with their obligations under the Act:

- the *Territory Records Act 2002*
- the *Public Sector Management Act 1994*
- the *Freedom of Information Act 2016*
- the *Information Privacy Act 2014*
- the *Health Records (Privacy and Access) Act 1997*

4.2 Staff of the Commission must also be mindful that a criminal sanction may occur if they breach s 153 (Disclosure of information by territory officer) of the *Crimes Act 1900*.<sup>26</sup>

### The Information Privacy Act 2014

4.3 The *Information Privacy Act 2014* ('**IP Act**') regulates the handling of personal information by public sector agencies. It is designed to promote the protection of the privacy of individuals and balance that with the interests of public sector agencies in carrying out their functions or activities.<sup>27</sup> Prior to the introduction of the IP Act, the *Privacy Act 1988* (Cth) applied to the ACT. As a public sector agency, the Commission is required to comply with the requirements of the IP Act.<sup>28</sup>

4.4 Personal information is defined in the IP Act as:

- information or an opinion about an identified individual, or an individual who is reasonably identifiable –
  - whether the information or opinion is true or not; and
  - whether the information or opinion is recorded in a material form or not; but
- does not include personal health information about the individual.<sup>29</sup>

4.5 The IP Act creates the Territory Privacy Principles ('**TPPs**').<sup>30</sup> The TPPs "cover the collection, use, storage and disclosure of personal information, and an individual's access to and correction of that information."<sup>31</sup>

<sup>26</sup> Section 153 makes it a criminal offence for officers of the Territory (current and former) to publish or communicate a fact or document which comes into their knowledge or possession by virtue of being an officer of the Territory about which they have a duty not to disclose.

<sup>27</sup> s 7, *Information Privacy Act 2014*

<sup>28</sup> s 20 of the IP Act states public sector agencies must comply with the TPPs

<sup>29</sup> s 8, IP Act. 'Personal health information' is defined in the *Health Records (Privacy and Access) Act 1997*, dictionary

<sup>30</sup> s 13 states the Territory Privacy Principles are contained in Schedule 1 of the IP Act. The TPPs are modelled on the Australian Privacy Principles ('**APPs**') in the *Privacy Act 1988* (Cth)

<sup>31</sup> *Australian Privacy Principle Guidelines*, Office of the Australian Information Commissioner, <https://www.oaic.gov.au/assets/privacy/app-guidelines/app-guidelines-july-2019.pdf>, p 7. As stated in the Australian Privacy Principle Guidelines at p 7, "Under an arrangement between the ACT Government and the



4.6 Schedule 1 of the IP Act sets out the 11 TPPs that public sector agencies must comply with:

1. TPP 1 – open and transparent management of personal information
2. TPP 2 – anonymity and pseudonymity
3. TPP 3 – collection of solicited personal information
4. TPP 4 – dealing with unsolicited personal information
5. TPP 5 – notification of the collection of personal information
6. TPP 6 – use or disclosure of personal information
  
8. TPP 8 – cross-border disclosure of personal information
  
10. TPP 10 – quality of personal information
11. TPP 11 – security of personal information
12. TPP 12 – access to personal information
13. TPP 13 – correction of personal information<sup>32</sup>

4.7 The IP Act creates criminal offences for the unauthorised and reckless use or disclosure of protected information by a public sector officer who has obtained information through their role performing their functions under the IP Act. Further, the Information Privacy Commissioner has powers to investigate possible interferences with privacy.

4.8 The Commission will ensure all internal information management policies comply with the requirements of the TPPs and the IP Act to the extent they do not conflict with the requirements of the Act.

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Australian Government, the Information Commissioner is exercising some of the functions of the ACT Information Privacy Commissioner. These responsibilities include handling privacy complaints against, and receiving data breach notifications from, ACT public sector agencies, and conducting assessments of ACT public sector agencies' compliance with the Information Privacy Act. ... Given these similarities [between the TPPs and the APPs], the information, examples and good privacy practices outlined in the APP guidelines may assist the general public and ACT public sector agencies to interpret and apply the TPPs. The guidelines should be read with reference to the full text of the TPPs and the Information Privacy Act."

<sup>32</sup> Two of the APPs are not relevant to the Territory and are excluded from the TPPs (APPs 7 and 9)



## The Freedom of Information Act 2016

4.9 The *Freedom of Information Act 2016* ('**FOI Act**') recognises that government information is a public resource and seeks to:

- provide a public right of access to government information;
- promote public participation in government decision making and increase government accountability;
- promote a culture of openness and transparency in government; and
- improve public understanding of government decisions and confidence in government processes.<sup>33</sup>

4.10 The Act allows for members of the public to apply to access government information. Government information means information held by an agency or Minister.<sup>34</sup> An agency includes a statutory office-holder and the staff assisting the statutory office-holder.<sup>35</sup> As the Commissioner is a statutory office-holder, the FOI Act applies to the Commission.

4.11 The FOI Act requires the Commissioner to appoint a person as the Commission's Information Officer for the FOI Act. The functions of the Information Officer are:

- to deal with access applications made to the agency under Part 5;
- at the request of the principal officer of another agency – to deal with access applications made to the other agency;
- to deal with requests made of the agency under part 6;
- to ensure that the agency meets its obligation to publish open access information;
- to consider the appropriateness of the agency's publication undertakings;
- to proactively consider whether and how public access information may be given to other government information held by the agency.

4.12 The FOI Act requires the Information Officer to deal with access applications made to the Commission.<sup>36</sup> The Commission must also keep a record of access applications, called a 'disclosure log.' The disclosure log must include the following information:

- the access application;
- the decision notice or notices given under section 51;
- if government information was given to the applicant in response to the application – the information;

<sup>33</sup> Explanatory Statement, Freedom of Information Bill 2016, p 2

<sup>34</sup> s 14(a), *Freedom of Information Act 2016*

<sup>35</sup> s 15(1)(b), *Freedom of Information Act 2016*

<sup>36</sup> s 33, FOI Act



- a statement of the amount of any fees paid or waived in relation to the application and the amount of time spent dealing with the application;
- The details of any decision made by the ombudsman in relation to the application;
- Any additional information the ombudsman decides to disclose when making a decision mentioned above;
- Details of any decision made by the ACAT in relation to the application;
- Any additional information the ACAT decides to disclose when making a decision mentioned above.

4.13 The Commission is not required to make information publicly available if the information is considered 'contrary to the public interest information.' 'Contrary to the public interest information' means information that is taken to be contrary to the public interest to disclose under Schedule 1 or the disclosure of which, on balance, would be contrary to the public interest under the test set out in section 17.<sup>37</sup>

4.14 Schedule 1 to the FOI Act states that contrary to the public interest information includes "information in the possession of the Integrity Commission, or the Integrity Commission Inspector, unless the information is administrative in nature."<sup>38</sup> The Commission is therefore not required to provide information to the public in response to an access application unless the information relates to the administration of the Commission. Even then, there may be a basis for refusing access under the public interest test contained in s 17 of the FOI Act.

<sup>37</sup> s 16, FOI Act

<sup>38</sup> s 1.1B, Schedule 1, FOI Act



## 5. Commonwealth legislation

- 5.1 The Commission intends to apply to the Minister for Home Affairs for recognition under the *Telecommunications (Interception and Access) Act 1979* (Cth) ('**TIA Act**'). Such recognition would enable the Commission to apply for warrants to intercept telecommunications, access stored communications and access telecommunications data, providing the Commission with a critical investigatory tool.
- 5.2 Recognition under the TIA Act requires the Commission to comply with the storage, maintenance, destruction and disclosure obligations specified in the TIA Act. The Commission is to introduce policies and procedures to ensure the TIA Act requirements are met.
- 5.3 There are also reporting obligations imposed upon the Commission that require the disclosure of information obtained by the Commission pursuant to a warrant issued under the Act.