



JUDICIAL COMMISSION OF NSW

PRIVACY MANAGEMENT PLAN

JULY 2013
Amended: June 2016

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1. Introduction

1.1. This Privacy Management Plan sets out the policies and practices of the Judicial Commission of NSW intended to ensure compliance with the requirements of the *Privacy and Personal Information Protection Act 1998* ("the Act"). The plan aims to provide guidance in relation to the requirements of the Act and strategies for compliance with these requirements to employees of the Commission who deal with personal information.

1.2 The Judicial Commission is created by the *Judicial Officers Act 1986*. Functions of the Commission conferred by the Act include:

- Assisting courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on these sentences;
- Organising and supervising an appropriate scheme for the continuing education and training of judicial officers.
- Examining and dealing with complaints.

The Commission is a "public sector agency" as defined by s 3 of the Act (being an agency required by or under any Act to be audited by the Auditor-General) and is therefore subject to the Act.

2. Requirements of the plan (summary of the legal requirements of the Act)

2.1 Personal information

2.1.1. The Act is concerned with the protection of personal information.

"Personal information" is defined as any information or opinion about a person whose identity is apparent or can reasonably be ascertained from the information or opinion.¹

2.1.2. This definition is subject to some exceptions. The following exceptions to the definition of personal information may have relevance to the Commission²:

- information that is contained in a "publicly available publication";
- information about an individual who has been dead for more than 30 years;
- information about a witness who is included in a witness protection program under the *Witness Protection Act 1995* or who is subject to other witness protection arrangements made under an Act;
- information or an opinion about an individual's suitability for appointment or employment as a public sector official

For example some of the information that the Research Division of the Commission collects uses and discloses will not be personal information. Our statistical information will for the most part not relevantly be personal information as it will not enable the identification of individuals.

¹ Defined in section 4 of the Privacy and Personal Information Protection Act 1998

² Exceptions to the definition of "Personal information" are contained in s 4(3) of the Act.

Note however there may be particular cases where the identities of well known defendants can reasonably be ascertained from the statistical information. eg where prominent figures are convicted of unusual or distinctive offences). Other information contained in the Commission's Judicial Information Research System ("JIRS") may not be personal information because it is information about an individual that is contained in a "publicly available publication" eg information contained in judgments that are published online.

2.2 The Information Protection Principles (IPPs)

2.2.1 The protections provided by the Act are based on 12 Information Protection Principles set out in Part 2, Division 1 of the Act. They cover collection, storage, use and disclosure of personal information. Many of the principles only require that "reasonable" steps be taken having regard to the circumstances. Factors that will determine the "reasonableness" of steps to be taken will include the sensitivity of the information, the possible uses of the information, the context in which it was obtained and the financial and practical effects of strategies for compliance.

2.2.2 Principle 1 - Collection of personal information for lawful purposes
Personal information must not be collected by the Commission unless it is collected for a lawful purpose that is directly related to and reasonably necessary for a function of the Commission. For example: The information collected by the Research Division for research purposes is lawfully collected as it is directly related to a function of the Commission which is to "monitor or assist in monitoring sentences imposed by courts for the purpose of assisting courts to achieve consistency in imposing sentences."³

2.2.3 Principle 2 - Collection of personal information directly from the individual
Personal information should be collected directly from the individual. This principle has a number of exceptions one of which may be relevant to the Commission. In the case of the Commission's Research Division a large proportion of information is collected from other agencies, particularly, the Bureau of Crime Statistics and Research (BOSCAR). This collection of information is considered to be exempted from the requirements of Principle 2. (This situation is discussed in more detail in 4.2.1).⁴

2.2.4 Principle 3 - Requirements when collecting personal information
If the Commission collects personal information from an individual it must take reasonable steps to ensure that the individual is aware of:

- the fact that the information is being collected
- the purposes for which it is collected

³ As per s 8 of the Judicial Officers Act 1986.

⁴ Section 25 of the Act provides as follows:

"Exemptions where non-compliance is lawfully authorised or required

A public sector agency is not required to comply with section 9, 10, 13, 14, 15, 17, 18 or 19 if:

- (a) the agency is lawfully authorised or required not to comply with the principle concerned, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998)."

- the intended recipients of the information
- whether supply of the information is voluntary and any consequences for the individual if it is not provided,
- any rights to access or correct the information
- name and address of the agency/ies collecting and holding the information

The Commission is not required to comply with Principle 3 if the individual to whom the information relates has expressly consented to the non-compliance. Additionally section 4(5) of the Act provides that information is not "collected" if the receipt of the information is unsolicited.

2.2.5 Principle 4 - Other requirements relating to the collection of personal information

If the Commission collects personal information from an individual it must take reasonable steps to ensure that the personal information collected is relevant to the purpose for which it was collected, not excessive, accurate up to date and that collection does not unreasonably intrude on that person's affairs.

2.2.6 Principle 5 - Retention and security of personal information

As a holder of personal information, the Commission has certain obligations in relation to that information. It must ensure that:

- the information is kept for no longer than is necessary for the lawful purpose,
- the information is disposed of securely
- the information is reasonably protected against loss, unauthorised access, modification or disclosure or other misuse,
- everything reasonable within the power of the Commission is done to prevent unauthorised use or disclosure of information that is given to a person in connection with the provision of a service to the Commission

2.2.7 Principle 6 - Information about personal information held by agencies

The Commission is obliged to take reasonable steps to enable a person to ascertain whether the agency holds personal information about them and if so, the nature of that information, its main purposes and the individual's rights to access that information.

2.2.8 Principle 7 - Access to personal information held by agencies

The Commission must provide an individual with access to their personal information on request and without excessive delay or expense.

2.2.9 Principle 8 - Alteration of personal information

The Commission must make appropriate amendments to personal information at the request of an individual to whom the information relates, to ensure that it is accurate, up to date, complete and relevant to the purpose for which it was collected. Or the agency must attach a statement to the information noting the amendment sought by the individual.

2.2.10 Principle 9 - Agency must check accuracy of personal information before use

The Commission must not use personal information without taking reasonable steps to ensure that the information is relevant, accurate, up to date, complete and not misleading having regard to the purpose for which the information is proposed to be used.

2.2.11 Principle 10 - Limits on use of personal information

The Commission must not use personal information for a purpose other than that for which it was collected unless the individual has consented to that use or such use is necessary to prevent or lessen a serious and imminent threat to the life or health of a person.

2.2.12 Principle 11 - Limits on disclosure of personal information

The Commission must not disclose personal information unless the disclosure is directly related to the purpose for which the information was collected and the individual has been made aware of the likelihood of the disclosure. Unless the agency reasonably believes that such use is necessary to prevent or lessen a serious and imminent threat to the life or health of a person. The Commission is not required to comply with Principle 11 if the individual to whom the information relates has expressly consented to the non-compliance.

2.2.13 Principle 12 - Special restrictions on disclosure of personal information

The Commission must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities; unless such disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of a person. The Commission is not required to comply with Principle 12 if the individual to whom the information relates has expressly consented to the non-compliance.

2.3 Privacy codes of practice

- 2.3.1 A Privacy code of practice is a statement of how an agency proposes to depart from the Information Protection Principles or public register provisions of the Act. A code may modify the application of one or more Information Protection Principle or specify how they are to be applied to particular activities or classes of information where privacy has to be balanced against other public interests. The Judicial Commission has a proposed privacy code of practice. (A copy of the Commissions Privacy Code is attached at [Appendix A](#))

3. Specific issues relevant to the Judicial Commission of NSW

3.1 Classes of information held by the Commission

- 3.1.1 The Research & Sentencing Division's key functions are to undertake original research in the area of sentencing and to maintain the JIRS database. It also assists with the collection, compilation and dissemination of sentencing statistics. The Division's main dealings with personal information are use of information contained on the JIRS database in research publications and disclosure of information from JIRS to judicial

officers and other users. The Division also conducts surveys and collects information relating to sentencing from judicial officers. These surveys are anonymous and avoid ascribing comments to named judicial officers.

The main components of the JIRS database are as follows:

Statistical database: The Commission's statistical database contains information relating to sentencing outcomes. The main purpose of the information held on the statistical database is to assist courts to achieve consistency in imposing sentences by monitoring sentences and disseminating information on these sentences. Sentencing information is presented in a series of bar graphs that indicate for each type of offence the number of offenders who receive a particular sentencing outcome. The database has the following characteristics:

- It is possible to increase the specificity of the information by selecting offender characteristics including for example age bracket, prior record and plea,
- It is not possible to narrow down the statistics to characteristics of the offence beyond the type of offence. For some offences a subcategory of that offence eg a subcategory of armed robbery such as attempt armed robbery is distinguished,
- The statistics are largely anonymous however it may be possible to make inferences about the identity of individuals in high profile or unusual cases,

The Commission is sometimes asked to provide additional information relating to the statistics that enable the identification of the offender eg the name and court file number of the person. This information is contained on an intranet accessible only to research officers.

Judgments and summaries: These databases provide access to judgments in electronic form across a number of jurisdictions including Supreme Court, Court of Appeal, Court of Criminal Appeal, Industrial Relations Commission and Land and Environment Court judgments. Names of offenders are available from the titles of cases. Every effort is made to reduce the risk of identifying juvenile offenders and victims of sexual assault where suppression orders or non-disclosure orders have been made by the Court. Summaries of Court of Criminal Appeal judgments can be searched using the following fields: date, sentencing outcome, property value, drug amount, offender and victim age. All judgments may be searched using a word or Boolean phrase.

- 3.1.2 Complaint's function - The Commission examines and deals with complaints in relation to the conduct of Judicial Officers. The Commission's powers and functions in relation to complaints are granted by the *Judicial Officers Act 1986* (ss 15-39). The personal information dealt with in relation to complaints consists of data identifying complainants and the details of their complaint. Strict confidentiality is preserved in relation to complaint's information. Access to information in relation to complaints is limited to the Chief Executive Officer (CEO), the CEO's Executive Assistant (EA), members of the Judicial Commission and the Commission's Conduct Division when established. Information in relation to a complaint may not be disclosed by these individuals to any other person without the consent of the person from whom the

information was obtained.⁵ Observing principles of natural justice, complaints are made known to the judicial officer who is the subject of the complaint. Access to complaint's information is restricted as complaint's documents are exempt under the *Government Information (Public Access) Act 2009* legislation. Active files are securely stored in a locked safe, in a locked room. Completed files are also stored in a locked cabinet. An electronic register of complaint's information is kept in a locked safe. The only complaints dealt with in the public arena are those classified as serious. All other complaints are dealt with in private. Information in relation to complaints is included in the Judicial Commission's annual report. The person against whom a complaint has been made must not be identified in the annual report unless the complaint has been dealt with by way of public hearing.

3.1.3 Publishing Division - The key functions of the Publishing Division are Publishing and distributing Bulletins, Bench Books, Journals and Monographs.

The Division's main dealings with personal information involve the maintenance of a mailing "database" used for the distribution of the Commission's publications. The mailing database contains subscriber's names and addresses. It also identifies which Commission's publications are received by particular subscribers. For the majority of subscribers, being judicial officers, this information is collected from the New South Wales Law Almanac published by LBC and hence is not relevantly personal information (see exceptions outlined in 2.1.2 above). A smaller proportion of subscribers are retired judges or other individuals with interest in the Commission's publications. The information held in relation to these individuals is relevantly personal information. The Commission maintains a mailing database in the form of the Education Directory Interface (EDI). Access to EDI is restricted to members of the Publishing Division, and other relevant staff, and is protected by username & password. The mailing information is used to ensure the correct distribution of subscription publications and may be used to survey subscribers in relation to the efficacy of publications. Access to and correction of information contained in the database is readily provided on request.

Publications produced by the Publishing Division may contain opinions about judges, witnesses or accused enabling their identification. However these opinions would generally relate to information that is published in judgments and therefore would not relevantly be personal information (see exceptions outlined in 2.1.2 above). Suppression orders made by the Courts in relation to party's names are fully observed by the Division in their publications.

⁵ The Judicial Officers Act 1986: places restrictions on the release and disclosure of information in relation to a complaint. (ss 36 and 37). The Judicial Officers Act 1986 (sections 18(3), 23(3), 24(3)) requires that a complaint be dealt with confidentially, unless the matter has been classified as serious, in which case it must be heard in public by the Conduct Division. The Conduct Division has power to close a hearing in some circumstances (see s 24(2)).

- 3.1.4 Information Management Division - The key functions of the Information Systems Division are maintenance and development of system hardware and software, updating and enhancement of the JIRS database and training of JIRS users.

A database of subscriber details including names, telephone numbers, log-ons, passwords, circuit timetables and information relating to system capacity is stored on an internal network server accessible to systems staff only and secured by password. The database is used to assist officers with the training of subscribers in the use of the JIRS database. Access to update and correct information is readily provided to individuals on request. All reasonable efforts are made to ensure that the information is up to date before it is used. Judicial Officers' passwords and logons may also be disclosed to judge's associates on request.

Details relating to log-ons to the JIRS database are recorded by the Systems Division. Records of logons show: who logs on, for how long and which sections of JIRS are viewed. These records are stored in electronic files that are password protected and accessible by only three officers of the Commission; the Chief Executive Officer, the Systems Manager and the Senior Systems Analyst. This logon information is collected to enable the Commission to evaluate usage of JIRS and thereby improve the service provided to users. For example areas of JIRS that record very low usage may be targeted for review or removal. Additionally subscribers of JIRS who are infrequent users may be approached for training purposes or checked for technical difficulties. The information gathered on usage is disclosed only on a statistical basis in evaluations of JIRS.

- 3.1.5 The Education Division's key functions are designing and conducting conferences and seminars for the continuing education and training of judicial officers. The division's main dealings with personal information concern judicial officers' names, contact details, curriculum vitae, dietary needs, ethnic origin and or religious affiliation (where this is relevant to catering needs or choosing dates for conferences to avoid clashes with religious holidays). This information is contained on a network server that is accessible only to the officers working in the education division and is used in accordance with the purpose of the division to arrange educational seminars. Individuals to whom this information relates are readily provided access to update or correct this information on request. Additionally opinions proffered by judges on a wide variety of issues are recorded in minutes of regular meetings. These minutes are kept in paper files in the education division and are circulated to and approved by those attending these regular meetings. The minutes assist the division in making decisions about which educational programs to run.

- 3.1.6 Corporate Services Division - Maintaining personnel records and administrative records

Personnel records include:

- Personal employee files and service records including salary information;

- Attendance and leave records;
- Recruitment, promotion and transfer records;
- Counselling and discipline records;
- Medical assessment records;
- Performance management and evaluation records;
- Notices of separation and exit questionnaires;
- Workplace health and safety and workers compensation records;
- Equal Employment Opportunity data collection including records of race, sex, marital status, ethno-religious origin and impairments of employees

Personnel records are stored securely on-site in paper form. Payroll records are stored electronically on-site.

All policies in relation to the handling of employee records set out in the Public Sector Personnel Handbook are adopted by the Commission. This handbook gives detailed directions in relation to dealing with records in accordance with the Act and other relevant legislation, including the issue of confidentiality of illness and procedures where employees do not wish to disclose the nature of an illness. The Commission also observes retention and disposal periods for specific classes of employee records as set out in the State Records Authority's, *General retention and disposal authority: administrative records* (GA28).

Administrative records include:

- The Commission's financial statements
- Network and electronic mail accounts;
- Stored electronic mail messages;
- Records of public access to the Commission website
- Vehicle usage;

Financial and other administrative records are disclosed to the Auditor-General to ensure compliance with relevant legislation. Staff have been made aware of the collection and storage of electronic mail and its use in the Commission's Communications Devices Policy.

3.2 Existing policies and law relating to information

- 3.2.1 *Government Information (Public Access) Act 2009*: Nothing in the *Privacy and Personal Information Protection Act 1998* (PIIP) affects the operation of the *Government Information (Public Access) Act 2009* (GIPA): s 5 PIIP Act. Under the GIPA Act the Commission is required to publish particular information and to determine requests for access to, or amendment of documents held by it that may contain personal information. It is a policy of the Commission however that staff, including former staff, do not need to employ Freedom of Information legislation to access their personal files. The PIPA Act creates an alternative means of accessing personal information but the Commission may use limitations and conditions affecting access under the PIPA Act when responding to applications for access and correction made under the *Privacy and Personal Information Protection Act 1998*.

- 3.2.2 *Privacy and Personal Information Protection Act 1998*: in addition to the requirements covered in this Plan the Act prohibits disclosures of personal information by public sector officers otherwise than in connection with the lawful exercise of their official functions.⁶ These provisions are primarily directed against corrupt or irregular disclosure of personal information that staff may have access to at work and not to inadvertent failure to follow policies and guidelines.
- 3.2.3 *State Records Act 1998*: defines the circumstances under which the Commission may dispose of its records and authorises the State Records Authority to establish policies, standards and codes to ensure adequate records management by the Commission. Compliance with requests to delete irrelevant, inaccurate, or out-of-date information under section 15 of the PPIP Act appears to override the restrictions on destruction under the State Records Act (section 20(4)).
- 3.2.4 *Criminal Records Act 1991*: restricts access to and disclosure of spent and quashed convictions. BOCSAR and the Director of Public Prosecutions (DPP) are exempted from restrictions on disclosure.

4. Implementing the Privacy Management Plan

4.1 Classes of personal information held by the Commission

- Personnel records including personal employee files,
- Administrative records including financial documents,
- EDI mailing database including subscribers' names and subscription details,
- Education Division's details of current and previous judicial officers,
- Complaints' database containing complainants' details and details of complaint,
- JIRS database including judgments, summaries of judgments and statistics
- Intranet cases database including names and court file numbers of offenders.

4.2 Compliance with the Information Protection Principles

4.2.1 Collection

Collection of personal information for lawful purposes

Each division of the Commission collects the classes of information identified in 3.1 for lawful purposes that are directly related to the functions and activities of the Commission.

Research Division: Information is collected for lawful purposes directly related to the functions and activities of the Commission. The information contained in the JIRS database is directly related to a function of the Commission. The relevant function is to "monitor or assist in monitoring sentences imposed by courts for the purpose of assisting courts to achieve consistency in imposing sentences" and the collection of the above information is reasonably necessary for this purpose.⁷

⁶ Section 62 "Corrupt disclosure and use of personal information by public sector officials" of the Privacy and Personal Information Protection Act 1998.

⁷ See sections 8 and 9 of the Judicial Officers Act 1986 conferring these functions on the Commission.

The Publishing Division maintains information in relation to subscriber names and details in accordance with the judicial education functions of the Commission and to fulfil the purpose of disseminating information to judicial officers and others in relation to sentencing.⁸ The Education Division maintains details of current and retired judicial officers to assist in the Commission's purpose of organising and supervising an appropriate scheme for the continuing education and training of judicial officers. The Information Management Division training database and log-on records assist the Commission's in its role of disseminating information on sentencing through training in the use of JIRS and enhancing the utility of the JIRS database generally. The Corporate Services Division maintains personnel and administrative records in relation to Commission employees. Information relating to complaints is collected in accordance with the Commission's function of examining and dealing with complaints.

Collection of personal information directly from the individual

The Publishing, Education, Information Management and Corporate Services Divisions of the Commission collect the personal information that they maintain and use directly from the individuals to which it relates.

The information contained in the JIRS database is not collected directly from the individual to whom it relates. This information is collected from other government agencies such as the Bureau of Crime Statistics and Research and the Attorney General's Department through their "case tracking system". The Collection of this information by the Commission is expressly authorised by s 8 of the *Judicial Officers Act 1986*⁹ and hence compliance with Principle 2 (s 9) would be exempted by virtue of s 25 of the Act.¹⁰

Requirements when collecting personal information

Division heads will review forms and procedures used to collect information to ensure that the notification requirements (specified by principle 3) are met when information is collected from individuals, specifically those individuals are notified at the time of collection of the information of routine uses or disclosures to other persons.

This principle does not apply to the JIRS database as the information is not collected directly from the individual.

Other requirements relating to collection of personal information

The information collected by each division is relevant to its purpose and each division maintains the currency and completeness of records and personal information collected is not excessive for its purpose. Steps are

⁸ See sections 8 and 9 of the Judicial Officers Act 1986 conferring these functions on the Commission.

⁹ The second reading speech relating to the Judicial Officers Act 1986, delivered on 25 September 1986, explains that collection of information from the Bureau of Crime Statistics and Research was contemplated at the time of its enactment.

¹⁰ 25. **Exemptions where non-compliance is lawfully authorised or required**

A public sector agency is not required to comply with section 9, 10, 13, 14, 15, 17, 18 or 19 if:

- (a) the agency is lawfully authorised or required not to comply with the principle concerned, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

taken to ensure the accuracy of the information collected for use in the JIRS database by assisting the Bureau of Crime Statistics and Research to audit samples of the data collected from the courts.

4.2.2 Storage

The JIRS database is stored on a network server and access is restricted by password. A firewall has been installed to ensure external access to the network is securely restricted. Data is backed up and stored securely in a bank vault off-site. The Commission's security requirements in relation to the storage of electronic information and backup strategy are outlined in the Commissions' Communications devices policy.

Electronic databases containing personal information are password secured and paper files containing personal information are securely stored. Access to the Commission itself is by pass-key with the intention of ensuring access to information is appropriately restricted. The premises are also monitored 24 hours a day, 7 days a week. Information relating to complaints that is to be disposed of is first shredded.

4.2.3 Notification, Access and Correction

The Commission has a general practice of readily providing individuals with access to personal information for purposes of review or correction in each of its divisions. Exceptions in relation to access and correction apply to some information maintained by the Research Division and in relation to the Complaints' function of the Commission. In relation to complaints' information, this information is exempted from access by the Freedom of Information Act because of its nature. Requests for correction of information relating to the JIRS database will be investigated and, where it is not possible for the Commission to establish the correctness or otherwise of personal information that is queried, requests by individuals will be referred back to the agency from which the information was originally obtained. (See also 5.7)

Strategies for compliance with Principles 6, 7, and 8 covering access, correction and amendment rights of individuals to their personal information are outlined at "6. Dissemination of policies and practices"

4.2.4 Use

For proposed strategies ensuring personal information is used only for the purposes for which it was collected. See "6 - Dissemination of policies and practices" Compliance with principle 10.

Information used in JIRS is relevant with regard to the purpose for which it was collected. The information is used by the research division of the Commission in research projects with the intended purpose of assisting courts to achieve consistency in imposing sentences by disseminating information and reports on these sentences. In terms of ensuring that the information contained is up to date, databases record the currency of the information contained within them.

4.2.5 Disclosure

The information disclosed from the JIRS database is directly related to the purpose for which the information is collected. The information on sentencing statistics is disclosed to agencies such as the DPP, to Judges and to private practitioners. It is used by these bodies to assist them in deciding whether the sentence that they hand down or that their client receives is not inconsistent with other sentences handed down to other offenders for the same offence; in other words to assist in ensuring that like cases are treated alike. This disclosure is integral to the purpose for which the information is collected by the Judicial Commission. Sentencing information may also be provided to the media and other members of the community as part of the general process of educating the public and promoting transparency in the administration of justice. The information the Commission discloses consists of statistical sentencing outcomes in the Local, District and Supreme courts of the state, category of prior convictions, plea entered and age group. It is Commission policy that Court file numbers and offender names are disclosed only to Judicial Officers and their associates.

For strategies ensuring personal information is disclosed for a purpose that is directly related to the purpose for which it was collected see "6 - Dissemination of policies and practices". Compliance with principles 11 and 12.

4.3 Compliance with the Public Register provisions

4.3.1 A Public Register is defined by the Act to mean a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).¹¹

The requirements in relation to public registers are that:

- The Agency must not disclose any personal information kept in the register unless they are satisfied that it is to be used for a purpose that is related to the purpose of the register or the Act under which the register is kept. (The agency may require any person who applies to inspect personal information contained in the public register to provide a statutory declaration advising the agency of the intended use of that information.)
- The agency is obliged to suppress personal information in response to a request to do so by an individual to whom the information pertains, where the safety or well-being of any person would be affected if the information was not suppressed, unless the agency is of the opinion that the public interest in maintaining public access to the information outweighs any individual interest in suppressing the information.

4.3.2 The Research Division of the Commission maintains a database of information that is accessible by all members of the public on payment of a subscription fee (known as JIRS). The database contains statistical information, judgments of various courts and summaries of judgments that include further information in relation to the age of the offender and

¹¹ Section 3 of the PPIP Act.

their prior record. This database is unlikely to be a public register for several reasons.

- The statistical database (as discussed in 3.1.2) would only in an exceptional case contain information that would enable the identification of an individual.
- Access to the file numbers and names that comprise the statistics are only given to specific categories of people, rather than to the public at large.
- The information contained in the judgment section of the JIRS database falls within one of the exceptions to the definition of "personal information" as it is "information about an individual that is contained in a publicly available publication"¹². Each judgment is also published online through Lawlink and other legal databases. (It is the case however that the information in relation to the age and prior record of the individual, available through JIRS case summaries, may not be available through the published judgment and this may relevantly be personal information).

5 The Internal Review process

- 5.1 Individuals who feel aggrieved by the way the Commission has dealt with personal information may apply to the Commission for an internal review.¹³

Applications for internal review must relate to conduct which an individual believes:

- breaches an Information privacy principle,
- breaches a code or
- constitutes a disclosure of information kept in a public register

- 5.2 A request for internal review must:

- be in writing
- be addressed to the Commission
- specify a return address in Australia
- be lodged at The Commission's office within 6 months from the time the applicant first became aware of the conduct¹⁴

- 5.3 A flowchart attached at [Appendix B](#) sets out the requirements of the Act in relation to internal review. Requirements including time frames and notification procedures are specified. Following a request for internal review the Commission intends that the process set out in [Appendix B](#) would be followed by an officer of the Commission with sufficient seniority and experience in the subject matter of the complaint (who was not substantially involved in the subject matter of the request). This officer would inform the applicant, at the time of their application, of the timeframe for completion of the review and the range of actions that the Commission may decide to take in resolving the complaint.

¹² Section 4(3) of the PPIP Act

¹³ Sections 52 to 56 of the PPIP Act

¹⁴ Section 53(3) PPIP Act

- 5.4 The Commission intends to assist persons wishing to apply for internal review by providing an application form on request. A copy of the form (in the format recommended by the Office of the Privacy Commissioner) is attached at [Appendix C](#). The form guides the complainant through the requirements of the Act to ensure that all relevant details necessary to initiate an internal review are supplied.
- 5.5 If a person is not satisfied with the result of the internal review they may seek a further review by the Administrative Decisions Tribunal (ADT). The ADT may order the Commission to:
- pay damages to the applicant of up to \$40,000 to compensate for any loss or damage suffered because of the conduct,
 - restrain from conduct contravening an information protection principle or a privacy code of practice or require the performance of the same,
 - correct personal information that has been disclosed,
 - take specified steps to remedy any loss or damage suffered by the applicant,
 - not disclose personal information contained in a public register,
 - perform such ancillary orders as the Tribunal thinks appropriate
- 5.6 Where privacy issues are easy to resolve normal complaint handling procedures are intended to be used as an alternative to internal review to expedite the resolution of a complaint in the complainant's favour. Eg - where the accuracy of a record is disputed and it is found on first investigation by an officer of the Commission to be inaccurate it will readily be corrected.
- 5.7 Research Division: The Commission's intended policy in relation to the statistical databases and other information contained on JIRS that is collected from other agencies is as follows: First to take reasonable steps to satisfy itself in relation to the accuracy of the record and if the Commission is satisfied that the information is not accurate to correct it. Where satisfied that the information is accurate as best as the Commission is able to ascertain, refer that person to the agency who provided the information. (see 4.2.3 and Code of Practice, section 14 attached at [Appendix A](#))
- 5.8 Information in relation to complaints is considered by the Commission to be exempt from internal review by reason of the exemption of this information under GIPA legislation.

6. Dissemination of policies and practices

Outline a training and communication strategy to ensure that staff are comfortable and confident with the information about the privacy policies and practices developed. These should be communicated to all staff as well as contractors and consultants.

Objectives	Policy	Strategy	Responsibility	Timeframe
<p>To comply with IPP 3 - ensure that when personal information is collected, reasonable steps are taken to make the person aware of:</p> <ul style="list-style-type: none"> the fact that the information is being collected, the purposes of collection, intended recipients of the information, whether supply of the information is voluntary and consequences of failure to supply, rights of access and correction, name and address of the agency collecting and the agency holding the information. 	<p>When "personal information" is collected from individuals by the Commission each officer will take reasonable steps to ensure that the individual concerned is informed of:</p> <ul style="list-style-type: none"> the fact that the information is being collected, the purposes of collection, intended recipients of the information, whether supply of the information is voluntary and consequences of failure to supply, rights of access and correction, name and address of the agency collecting and the agency holding the information. <p>Unless the individual to whom the information relates has expressly consented to the non-compliance.</p>	<p>Each Division head to review forms and procedures used to collect information to ensure that notification requirements are met when information is collected from individuals, specifically that individuals are notified at the time of collection of the information of routine uses or disclosures of the information to other persons.</p> <p>A form of words to notify individuals whose information is collected by telephone to be devised.</p> <p>Where it is deemed appropriate following this review pamphlets will be provided to those whose information is already held by the Commission notifying them of the purpose of collection and of their rights of access and correction.</p>	Each Division head	End of March 2001.
<p>To comply with IPP 6 - Enabling a person to ascertain whether personal information is held about them, its nature and purpose and their rights of access to the information</p> <p>To comply with IPP 7 - Providing an individual with access</p> <p>To comply with IPP 8 and at the request of an individual make appropriate amendments to ensure the personal information is accurate, up to date, complete and not misleading. Or attach a statement to the information about the amendment that is sought so as it may be read with the information.</p>	See 4.2.3	<p>Provide memo to all staff advising of an individual's rights to access and correct information. (In relation to JIRS ensure that staff are aware of the Commission's policy to refer requests in relation to the accuracy of information contained on JIRS to the agency from which the information was originally obtained following a preliminary investigation.)</p> <p>Staff to sign memo to indicate that they have been notified of requirements.</p> <p>Information to be included as part of induction material for new staff.</p>	Administrative officer	February 2001
To comply with IPP 10 - Requirement to not use personal information for purposes other than those for which it was collected	<p>All staff are required to use personal information only for purposes of fulfilling the Commission's objectives. Eg In the case of the Research division - personal information in databases only to be used for the broad purpose of assisting courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on these sentences</p> <p>It is Commission Policy not to use logons information to monitor sentencing practices of individual judicial officers.</p>	<p>Memo forwarded to all staff advising of requirement that personal information be used only for specific purposes.</p> <p>Staff to sign memo to provide evidence that they have been notified of policy.</p> <p>New staff to be shown memo as part of normal process of induction.</p> <p>Add information to code of conduct issued to all staff</p>	<p>Administrative officer</p> <p>Administrative officer</p> <p>Administrative officer</p>	<p>By end February 2001</p> <p>Ongoing</p> <p>Ongoing</p>
To comply with IPP 11 - Requirement not to disclose personal information unless the disclosure is directly related to	All staff required to disclose personal information only for purposes of fulfilling the Commission's objectives.	Memo forwarded to all staff advising of requirement that personal information be disclosed only for specific purposes and of specific policy to disclose		By end February 2001

<p>the purpose of collection.</p>	<p>It is Commission policy that Court file numbers and offender names are disclosed only to Judicial Officers and their associates.</p> <p>Arrangement is to be made to obtain consent from individuals where a proposed disclosure is not directly related to the purpose of collection.</p>	<p>identifying information from JIRS only to Judicial officers.</p> <p>Staff to sign memo to indicate that they have been notified.</p> <p>Add information to code of conduct issued to all staff</p> <p>Review forms and procedures to ensure that consent to further disclosures that are not directly related to the purpose of collection is obtained where necessary.</p>		<p>March 2001</p>
<p>To comply with IPP 12 - must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious beliefs</p>		<p>Advise staff of requirement by memo and add information to code of conduct issued to all staff</p>		<p>February 2001</p>
<p>Internal review procedure (Except Complaints' information as exempted under FOI legislation)</p>	<p>The Commission will follow the internal review procedure set out at Appendix B. This process does not apply to Complaints information as it is exempt under FOI legislation.</p> <p>Application forms for internal review (Appendix C) will be provided by the Commission to persons wishing to apply for internal review at which time the individual will be informed about the possible outcomes of such a review.</p> <p>Individuals will be informed about their rights to internal review on any forms completed by persons providing personal information.</p>	<p>Staff to be made aware through memo of the legal rights people have to internal review, what constitutes an internal review and the time limits involved in processing these.</p> <p>Application form for internal review at Appendix C be made readily available,</p> <p>Record statistics and any actions taken by the Commission in relation to internal reviews conducted during the year and include in the Commission's annual report.</p>		<p>February 2001</p> <p>Ongoing</p>

7. **Disclosure of personal information outside NSW**

Statistical information from JIRS may be disclosed by the Commission to individuals outside New South Wales where individuals are subscribers or are considering subscribing to the JIRS database.

Judicial Commission's draft Privacy Code

Amended: 1 July 2013

**Judicial Commission of NSW
Code of practice**

This is a code of practice made in accordance with Part 3 Division 1 of the Privacy and Personal Information Protection Act 1998

1. Coverage

This code is intended to cover the Judicial Commission of New South Wales in relation to its activities including assisting courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on these sentences; organising and supervising an appropriate scheme for the continuing education and training of judicial officers and examining and dealing with complaints.

2. Interpretation

"Commission" means the Judicial Commission of New South Wales

"Functions" includes the functions of the Commission as set out in the *Judicial Officers Act 1986*.

Sections referred to in this code relate to the sections of the *Privacy and Personal Information Protection Act 1998* unless otherwise stated.

3. The Code

Section 8 [Collection of personal information for lawful purposes]

There is no intention to depart from the requirements of section 8

Sections 9 [Collection of personal information directly from the individual] and 10 [Requirements when collecting personal information]

There is no intention to depart from the requirements of sections 9 and 10 subject to the following:

Assisting courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on these sentences

Collection of sentencing information by the Commission from BOCSAR, the Courts and other bodies is impliedly authorised by s 8 of the *Judicial Officers Act 1986*. Section 8 gives the Commission the power to monitor sentences imposed by courts and to disseminate information on these sentences. Thus compliance with sections 9 and 10 is exempted by s 25 of the *Privacy and Personal Information Protection Act 1998*.

The Commission also collects details relating to log-ons to the Judicial Information Research System (JIRS) database. Records of logons show: the log in name (from which it would be possible to identify the person), how long an individual uses the database and which sections of JIRS are viewed. This information is used only in aggregate form to monitor usage of the JIRS database and assist with the administration of the database. This

forms part of the administration involved in the disseminating of information on sentencing and thus is also impliedly authorised by s 8 of the *Judicial Officers Act* 1986. The Commission intends to place a notice on JIRS in compliance with s 10 of the *Privacy and Personal Information Protection Act* 1998 to inform users of the collection of this information.

Complaint's function - Examining and dealing with complaints

Under s 25 of the *Privacy and Personal Information Protection Act* 1998 information acquired by the Commission and the Conduct Division pursuant to the *Judicial Officers Act* 1986 is exempt from sections 9 and 10. Thus compliance with sections 9 and 10 is not required if it might detrimentally affect or prevent the exercise of the Commission's complaint functions in relation to the collection of information from and about complainants and judicial officers. The Commission ensures that the need for confidentiality is appropriately balanced with the requirements of natural justice. In keeping with the requirements of natural justice, in every case the judicial officer is advised of the details of any complaint against them as soon as practicable after it is received. The commission complies with several confidentiality provisions within the *Judicial Officers Act*. Section 37 of the *Judicial Officers Act* 1986 ensures that members and officers of the Commission may not disclose any information relating to a complaint, unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Act (except sections 8 and 9),
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) with other lawful excuse.

Sections 18(3) and 23(3) of the *Judicial Officers Act* 1986 place a responsibility on the Commission and the Conduct Division to ensure that the examination or investigation of complaints take place in private. Section 49(3) of the *Judicial Officers Act* 1986 provides that an individual against whom a complaint has been made may not be identified in an annual report made by the Commission unless the person:

- has been the subject of a public hearing under this Act
- has been the subject of a report laid before a House of Parliament under Part 6 or
- has been convicted of an offence connected with the complaint.

Sections 11 [Other requirements when collecting personal information] and 12 [Retention and security of personal information]

There is no intention to depart from compliance with the requirements of sections 11 and 12.

Section 13 [Information about personal information held by agencies]

There is no intention to depart from the requirements of section 13 subject to the following:

Assisting courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on these sentences

The Commission intends to alert people to the fact that it holds personal information about particular individuals in the database behind the Sentencing Information System, as well as the nature and purpose of that information by use of a general statement to this effect on JIRS. Some practical difficulties exist with providing a reliably comprehensive account of the information that is held about a particular individual. The method of storage of personal information and the method of provision of information to the Commission means that it

may not be possible for the Commission to reliably ascertain all of the information held about an individual.

Business case for exemptions in certain circumstances under ss 13 and 14 re: JIRS

It is not possible for users of the statistical component of Sentencing Information System (SIS) (including research officers) to search the SIS by file name or number. Personal information is not contained in a format that enables details to be located by use of a person's name. The programmer who prepares the system is the only person who can search by name in the original data (which is provided by the Bureau of Crime, Statistics and Research). Additionally the information is stored in several disaggregated files. There are separate files for each of the courts and some separate files for particular offence types. A percentage of file numbers are provided without names by the Bureau. Thus there are several practical difficulties with providing reliable information about personal information contained in the SIS. It is for these reasons that the Commission wished an exemption from compliance with ss 13 and 14 in those instances where it is not practicable to ascertain reliably whether information is held about a particular individual. It is however possible for searches by name to be performed on the judgment and summaries databases component of SIS.

Complaint's function - Examining and dealing with complaints

Under s 25 of the *Privacy and Personal Information Protection Act 1998* compliance with section 13 is not required if it might detrimentally affect or prevent the exercise by the Commission of its complaints' function. Specifically requests for access to personal information which may be contained on complaint's files are refused as these are exempt documents under Schedule 1 clause 12 of the *Freedom of Information Act 1989* and s 37 of the *Judicial Officers Act 1986*.

Section 14 [Access to personal information held by agencies]

There is no intention to depart from the requirements of section 14 subject to the following:

Assisting courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on these sentences

There is no intention to depart from compliance with the requirements of this section. However where it is not reasonably practicable for the Commission to reliably determine whether information is held about an individual on the *JIRS* the Commission will not be in a position to provide access. The Commission may be exempted from releasing information by Sch 1 of the *Freedom of Information Act 1989* (which is imported into the *Privacy and Personal Information Protection Act* by s 20(5)).

Complaint's function - Examining and dealing with complaints

Compliance with section 14 is not required if compliance might detrimentally affect or prevent the exercise by the Commission of its complaints' function. Specifically requests for access to personal information which may be contained on complaint's files are refused as these are exempt documents under Schedule 1 clause 12 of the *Freedom of Information Act 1989* and s 37 of the *Judicial Officers Act 1986*.

Section 15 [Alteration of personal information]

There is no intention to depart from the requirements of section 15 subject to the following:

Assisting courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on these sentences

It is in the interests of the Commission and the interests of the administration of justice that personal information contained on the *JIRS* is as accurate as possible. Where errors in such personal information are brought to the attention of the Commission these will be corrected in accordance with this principle. However compliance with s 15(2) is not required where compliance is likely to detrimentally affect or prevent the exercise by the Judicial Commission of its function of disseminating information relating to sentencing. Specifically, where the accuracy of personal information held on the Sentencing Information System is confirmed by an authoritative source (eg by an audit of the original court file) the Commission does not intend to jeopardise the perceived accuracy of its Sentencing Information System by attaching a statement to the information to the effect that its accuracy is disputed.

Conduct Division - Examining and dealing with complaints

Compliance with section 15 is not required if compliance might detrimentally affect or prevent the exercise by the Commission of its complaints' function. Specifically requests for access to personal information which may be contained on complaint's files are refused as these are exempt documents under Schedule 1 clause 12 of the *Freedom of Information Act* 1989 and s 37 of the *Judicial Officers Act* 1986.

Section 16 [Agency must check accuracy of personal information before use] and 17 [Limits on use of personal information]

There is no intention to depart from the requirements of sections 16 and 17.

Sections 18 [Limits on disclosure of personal information] and 19 [Social restrictions on disclosure of personal information]

There is no intention to depart from the requirements of sections 18 and 19 subject to the following:

Assisting courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on these sentences

Sections 18 and 19 do not operate to prevent other agencies from disclosing information to the Commission, nor do they prevent the Commission from disclosing sentencing information to other persons and agencies where such disclosures are reasonably contemplated by the *Judicial Officers Act*. Specifically sections 18 and 19 do not operate to prevent the Commission from disclosing Court file numbers and offender names to persons and agencies that bring such information before the courts in furtherance of the Commission's function of assisting the courts to achieve consistency in sentencing. Section 8 of the *Judicial Officers Act* 1986 invests the Commission with the function of disseminating information and reports on sentences imposed by courts for the purpose of assisting courts to achieve consistency in sentencing. Disclosures to persons and agencies that bring sentencing information before the courts thus are relevantly lawfully authorised under s 25 of the *Privacy and Personal Information Protection Act* 1998.

Business case for sections 18 and 19 in relation to JIRS

The Commission wishes, in accordance with its function of assisting the courts to achieve consistency in sentencing to disclose personal information in relation to sentencing, (specifically Court file numbers and offender names) to Judicial Officers

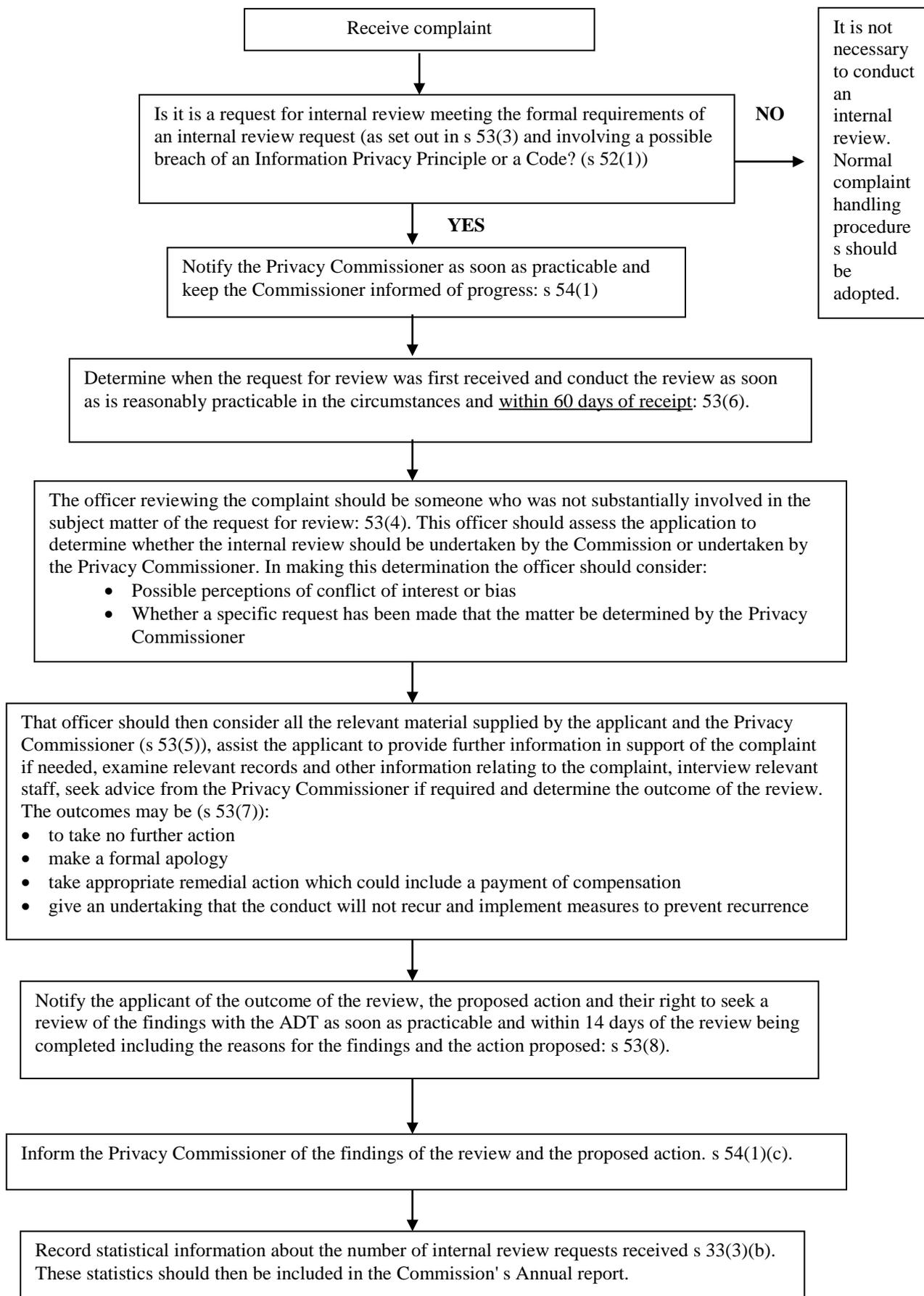
*and their associates as well as agencies such as the DPP, Public Defenders, Legal Aid Commission and private practitioners. This information is used by these bodies to assist them in deciding whether the sentence that they hand down or that their client may receive or receives is not inconsistent with other sentences handed down to other offenders for the same offence; In other words to assist in ensuring that like cases are treated alike. This disclosure is integral to the purpose for which the information is collected by the Judicial Commission. This is in addition to what is currently stated **4.2.5 Disclosure Privacy Management Plan**.*

Part 6 - Public registers

Assisting courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on these sentences

Part 6 of the *Privacy and Personal Information Protection Act 1998* does not operate to prevent the Commission from obtaining information, in the exercise of its sentencing functions, including suppressed information, kept on a public register by the Bureau of Crime Statistics and Research, the Attorney General's Department's case tracking system or the courts.

**INTERNAL REVIEW OF CONDUCT BREACHING AN INFORMATION
PRIVACY PRINCIPLE OR A CODE**



Application for review of conduct under section 53 of the Privacy and Personal Information Protection Act 1998 (for conduct breaching an information privacy principle or a code)

(To be completed by the individual bringing the complaint)

1. Your full name:

2. Your residential address:

3. Your postal address:

4. What is your complaint?:

5. When did the conduct you are complaining about occur? (be as specific as you can):

6. When did you become aware of this conduct:

7. What effect did the conduct have on you or another person?:

8. What effect could the conduct have on you or another person:

9. What would you like to see the agency do about the conduct?:

I understand that details of my application will be referred to the Privacy Commissioner in accordance with section 54(1) of the Privacy and Personal Information Protection Act 1998 and that the Privacy Commissioner will be kept advised of the progress of the review.

Signature of Applicant: _____

Dated: _____