

Access Directions: An Introduction

This guidance is designed to assist agencies who have questions about the application of the Privacy Commissioners' new power to make access directions.

1. What is an access direction?

An access direction is a written notice from the Privacy Commissioner to an agency enforcing the rights under Information Privacy Principle 6 (IPP6). An access direction may direct an agency to:

- confirm whether it holds any specified personal information;
- make a decision whether to disclose personal information;
- review the Agency's earlier response to an access request and issue a new decision about access to personal information;
- provide an individual with access to information requested unless the Agency identifies a proper basis under the Privacy Act not to do so;
- provide an individual access to specified personal information;
- make specified information available to the individual in a particular way;
- review a charge levied by the agency for providing access to personal information.

The Privacy Commissioner has the discretion to amend or cancel an access direction at any time.

2. Who can be issued with an access direction and when can it be issued?

The Privacy Commissioner can issue an access direction to any "agency" as defined in the Privacy Act. An agency is any individual, person, entity, organisation or business that the Privacy Act applies to – either a New Zealand agency, an overseas agency or individual who holds personal information and is subject to the Act.

The Privacy Commissioner can issue an access direction after an investigation. That will involve notifying the agency complained about and providing an opportunity to comment and using reasonable endeavours to settle the complaint.

3. What will the Privacy Commissioner take into account?

Issuing an access direction is discretionary and will depend on the particular circumstances. The Privacy Commissioner will carefully consider each identified access direction on a case by case basis, including all relevant factors.

The Commissioner will act in accordance with the Compliance and Regulatory Action Framework in making decisions about access directions.

4. What does an access direction look like?

An access direction can take any form. A template access direction has been prepared by the Commissioner and forms part of the Commissioner's Access Directions Guidelines.

The Commissioner can vary an access direction at any time if the Commissioner considers that any of the information in the notice needs to be added to or changed, or part of the notice is no longer needed.

5. How should an agency respond to an access direction?

An agency must either take steps to comply with the notice or appeal it. Or the agency may take some steps to comply, while appealing part of the access direction.

If an agency disagrees with the access direction, it can appeal the notice in the Human Rights Review Tribunal (within 20 working days from issue of the access direction unless exceptional circumstances apply).

6. Other frequently asked questions

Does an agency have the right to comment?

The Privacy Commissioner will notify an agency about an investigation that could lead to an access direction being issued and provide the agency concerned with a reasonable opportunity to comment. The Commissioner will determine an appropriate period for comment, taking into account the relevant circumstances.

Will the access direction be made public?

The Act does not specify when the Commissioner can publish details about an access direction including the identity of the agency concerned. Section 206 requires the Commissioner and staff to maintain secrecy in respect of all matters that come to their knowledge in the exercise of functions under the Act unless the Commissioner considers they ought to be disclosed to give effect to the Act.

The Office has a Naming Policy (available on our website) that will be considered before disclosing the identity of an affected agency. In accordance with this Policy, the Commissioner may publish details on the Office website about an access direction including the identity of the agency concerned, if the Commissioner considers it is in the public interest to do so.

Can an access direction be appealed?

An agency may appeal all or any part of an access direction. An appeal must be lodged in the Tribunal within 20 working days. The Tribunal may accept an appeal lodged not later than three months after the appeal period if the Tribunal is satisfied exceptional

circumstances prevented the appeal from being lodged within the appeal period.

If the agency does not appeal or comply with the access direction the individual can apply to the Tribunal to enforce the access direction.

Whether an individual agrees or disagrees with an access direction they can file a proceeding with the Tribunal. Among other remedies, they can seek damages and costs in Tribunal proceedings.

Can an access direction be varied or cancelled?

Yes, under section 92(3), the Commissioner may, at any time, at the request of the individual or on the Commissioner's own initiative amend or cancel an access direction.

Will there be reporting on access directions?

The Commissioner publicly reports on its activities at least annually, and this reporting will likely include information about the number of access directions issued, including identifying agencies that have been the most common recipients of an access direction.