

The Privacy Act 2020 contains a new information privacy principle, IPP 12, which sets rules around sending personal information to organisations or people outside of New Zealand. Sending personal information overseas is known as “cross-border disclosure.”

Purpose

IPP 12 aims to ensure that personal information sent overseas is subject to privacy safeguards that are similar to those in New Zealand.

Businesses and organisations will now be responsible for ensuring that any personal information they disclose to organisations outside of New Zealand is adequately protected. Businesses and organisations must be able to demonstrate that they have undertaken necessary due diligence before making a cross-border disclosure.

Controls

A business or organisation may only disclose personal information to another organisation outside of New Zealand if the receiving organisation:

- is subject to the Privacy Act because they do business in New Zealand
- is subject to privacy laws that provide comparable safeguards to the Privacy Act – or they agree to protect the information in such a way, e.g. by using **model contract clauses**.
- is covered by a binding scheme or is subject to the privacy laws of a country prescribed by the New Zealand Government.

Permission of the person

If none of the above criteria apply, a business or organisation may only make a cross-border disclosure with the permission of the person concerned. The person must be expressly informed that their information may not be given the same protection as provided by the New Zealand Privacy Act.

Cloud storage

A business or organisation may send information to an overseas organisation to hold or process on their behalf as their ‘agent’. This will not be treated as a disclosure under the new Privacy Act.

A typical example of this is an overseas company providing cloud-based services for a New Zealand organisation. The New Zealand organisation will be responsible for ensuring that their agent – the overseas company – handles the information in accordance with the Privacy Act.

Urgent disclosures

A business or organisation may need to make a cross-border disclosure in certain, urgent circumstances where it would not otherwise be allowed. IPP 12 allows cross-border disclosure when it is necessary to maintain public health or safety, to prevent a serious threat to someone’s life or health, or for the maintenance of the law.

For more information, visit [privacy.org.nz/askus](https://www.privacy.org.nz/askus) or find us at:

