

Guideline - Disclosure that is Required or Authorised by Law, or Disclosure to a Law Enforcement Agency

There are times when Monash University receives requests or demands for personal or health information. Any request or demand for disclosure should be assessed before responding.

The disclosure of personal information is regulated by the Privacy and Data Protection Act 2014 (Vic). The disclosure of health information is regulated by the Health Records Act 2001 (Vic). In particular the privacy principles provide as follows:

Information Privacy Principle 2.1 (f) provides for the use or disclosure of personal information if such use or disclosure is required or authorised by law.

Health Privacy Principle 2.2(c) provides for use or disclose of health information if the use or disclosure is required, authorised or permitted, whether expressly or impliedly, by or under law (other than a prescribed law). And Health Privacy Principle 2.2(j) provides for disclosure if the organisation reasonably believes that the use or disclosure is reasonably necessary for a law enforcement function by or on behalf of a law enforcement agency.

Disclosure without the proper authority may cause the University to breach the Privacy and Data Protection Act 2014 (Vic) or the Health Records Act 2001 (Vic).

This guidance note provides advice regarding:

1. when disclosure is required by law and what to do,
2. when disclosure is authorised by law and what to do,
3. the steps required before making a disclosure to a law enforcement agency, and
4. the recording of disclosures.

1. When disclosure is required by law?

Disclosure of personal and/or health information may be required by law.

What does “required by law” mean?

Required by law means there is a legal obligation to use or disclose personal information in a particular way. The legal obligation may be a warrant, court orders (ie, a summons or subpoena) or a statutory duty. These compel the University to disclose the information specified. A failure to comply with the legal duty may result in a penalty against the University.

What do I do if I receive a notice requiring the University to disclose personal or health information?

A staff member who receives notice of a requirement to disclose personal or health information should make immediate contact with the Monash University Office of General Counsel. Contact details for the Office of General Counsel are available [here](#).

Who is authorised to disclose personal or health information when required by law?

The Chief Operating Officer is authorised to disclose information under these circumstances. The Chief Operating Officer has delegated the authority to approve disclosure to the following university staff:

- the Director, Student Education and Business Services for student matters, and
- the Executive Director, Monash HR for staff matters.

2. When is disclosure authorised by law?

Monash University may refuse to disclose personal or health information about an individual in the absence of a legal obligation to disclose it. However, both the Privacy and Data Protection Act and the Health Records Act provide the University a discretion to disclose information in certain circumstances.

For example, the Privacy & Data Protection Act 2014 (Vic) permits disclosure of personal information where the university believes the use or disclosure is necessary to lessen or prevent a serious or imminent threat to an individual's life, health or safety and welfare, or a serious threat to public health, public safety or public welfare. The requirements of Information Privacy Principle 2.1(f) or (g) must be met. Similarly, the Health Records Act 2001 (Vic) permits disclosure to law enforcement agencies if the requirements of Health Privacy Principle 2.2(c) and (j) are met.

Both of these provisions provide a discretion for the University to use or disclose the information for a law enforcement purpose. The provisions do not impose a duty to disclose. However, the University's practice is to assist law enforcement agencies in the pursuit of law enforcement activities.

What does "authorised by law" mean?

Authorised by law means a specific law permits the use or disclosure but it is not compulsory. This gives the University the discretion to use or disclose the information.

What information should be contained in the request?

The document requesting the disclosure must be in writing. It should include the following:

- specific reference to the legal authority said to authorise the request for the information being requested,
- details of the information requested, and
- details of the purpose of the request for the information.

What do I do if I receive a request for information which claims the disclosure is authorised by law?

A staff member who receives a request for personal or health information which claims the disclosure of the information is authorised by law should make immediate contact with the Monash University Office of General Counsel. Contact details for the Office of General Counsel are available [here](#).

3. Disclosure to Law Enforcement Agencies

Generally the University will act in a manner to assist law enforcement agencies in the pursuit of law enforcement activities. However, disclosure is limited to the specific information contained in the written request, and limited also to what is legally permitted.

What is the legal obligation of the University to disclose to a law enforcement agency?

The University has a discretion to determine whether and what to disclose in response to the request by the law enforcement agency. In general, disclosure is limited to what is specified in the request for disclosure.

The University may only disclose the information if the University is satisfied the request meets the following requirements:

- the University forms a reasonable belief, that the disclosure of the information is reasonably necessary for any one of the five purposes identified below, and
- the University must keep a written record of the disclosure – the record keeping requirements are outlined at point 4 below.

Disclosure to a law enforcement agency must be tied to one of 5 specified purposes. These include:

1. prevention, detection, investigation, prosecution or punishment of crime and other breaches of the law
2. enforcement of crimes confiscation laws
3. protection of the public revenue
4. prevention, detection, investigation or remedying of seriously improper conduct
5. preparation and conduct of court or tribunal proceedings, or implementation of the orders of a court or tribunal.

The Health Records Act contains similar provisions. Please contact the Privacy Officer for specific advice relating to the disclosure of health information.

What is a “Law Enforcement Agency”?

The definition of a law enforcement agency, as contained in the Privacy and Data Protection Act, is very broad may include Victoria Police and the Australian Federal Police. Law enforcement agencies may include:

- Victoria Police,
- the police force of another state or territory,
- the Australian Federal Police and others,
- Independent Broad-based Anti-Corruption Commission,
- an agency responsible for the performance of functions or activities directly related to the prevention, detention, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction for a breach, or
- an agency responsible for the execution or implementation of an order or decision made by a court or tribunal.

What information should be contained in the request?

The request must:

- be in writing and on the official letterhead of the law enforcement agency,
- include the name and contact details of the law enforcement agency,
- include the identity and contact details of the individual making the request,
- include the specific information required, and
- include the reason the law enforcement agency is seeking the information.

Who is authorised to disclose the information on behalf of the University?

The Chief Operating Officer is the authorised university officer for the disclosure of personal or health information to law enforcement agencies. The Chief Operating Officer has delegated the authority to approve disclosure to the following university staff:

- the Director, Student Education and Business Services for student matters, and
- the Executive Director, Monash HR for staff matters.

Before authorising the disclosure, the authorised officers may take appropriate steps to:

1. verify the identity and authority of the person making the request, and
2. form a reasonable belief that the disclosure is reasonably necessary for one or more of the law enforcement purposes outlined under legal obligations, and
3. ensure that the information that may be disclosed is reasonably necessary for the law enforcement purpose, and does not involve excessive disclosure of information.

No other university staff member is authorised to disclose personal or health information to law enforcement agencies.

What do I do if receive a request for information from law enforcement?

If the request is for student or staff information staff should forward the written request to privacyofficer@monash.edu. The Privacy Officer will arrange for the appropriate approvals prior to the disclosure of the information.

4. Recording of Disclosures

All disclosures to law enforcement agencies must be recorded in writing. This is a legal obligation contained in IPP2.2 and HPP2.3.

The appropriate method of recording a disclosure to law enforcement is to complete the Notification to Privacy Officer of disclosure of personal or health information to police or another agency form which is available on the [Office of General Counsel intranet](#).

The information required to be recorded includes:

- the personal information used or disclosed, with a copy of any materials supplied,
- the law enforcement agency or agencies and their representatives' names,
- the basis of the reasonable belief reached by the university that the use or disclosure was reasonably necessary, and
- the name and title of the decision maker.

The form must be returned to the Privacy Officer by email at privacyofficer@monash.edu. This ensures that the Privacy Officer is the central repository of all written records of these disclosures. This creates a single audit-able source to show Monash compliance with these obligations if required by an external agency.

Additional advice is available from the University Privacy Officer who can be contacted by email at privacyofficer@monash.edu or ext 29589.