
Office of National Intelligence

Rules to protect the privacy of Australians

I, Anthony Albanese, Prime Minister of Australia, being the Minister responsible for the Office of National Intelligence (ONI), revoke any previous privacy rules made for section 53 of the *Office of National Intelligence Act 2018* (the Act) and make these Rules in accordance with section 53 of that Act.

These Rules commence at the same time that Schedule 10, Part 3 of the National Security Legislation Amendment (Comprehensive Review and Other Measures No.1) Act 2022 commences.

In making these Rules, I have had regard to the need to ensure that the privacy of Australian persons is preserved as far as is consistent with the proper performance by ONI of its functions. Any activity undertaken by ONI must be proportionate to a legitimate end and be necessary in the circumstances. In the execution of ONI's functions, it will adhere to the principles of necessity, proportionality and propriety; meaning that consideration of the nature and consequences of the acts to be done will be weighed against the purposes for which they are carried out.

Before making the Rules, I:

- a. consulted the Director-General of ONI, the Inspector-General of Intelligence and Security (IGIS), the Attorney-General and the Privacy Commissioner; and
- b. provided a copy of the rules I was proposing to make to the Director-General of ONI, the IGIS, the Attorney-General and the Privacy Commissioner.

Dated this the 29th day of September 2022.

Anthony Albanese

Definitions

Expressions used in these Rules have the same meaning as in the Act.

assumed identity has the meaning given by Part IAC of the *Crimes Act 1914*.

authorised intelligence officer has the same meaning as in section 15K of the *Crimes Act 1914*.

Australian person is an Australian citizen or permanent resident.

intelligence information has the same meaning as in subsection 53(1C) of the Act.

personal information means personal information about an Australian citizen or permanent resident.

personal information about an Australian citizen or permanent resident has the same meaning as in subsection 53(1B) of the Act.

national intelligence community has the same meaning as in section 4 of the Act.

permanent resident has the same meaning as section 4 of the Act.

privacy approval means an approval granted under rule 2.3.

serious crime has the same meaning as in section 3 of the *Intelligence Services Act 2001*.

Rule 1 – Presumptions about who is an Australian person

- 1.1 For the purposes of these Rules, where it is not clear whether a person is an Australian person, the following presumptions apply unless there is evidence to the contrary, including from the context in which the information was collected or the content of the information:
- a. a person within Australia is presumed to be an Australian person; and
 - b. a person outside Australia is presumed not to be an Australian person.

Rule 2 – Collection of personal information

- 2.1 ONI, in the performance of its functions under paragraph 7(1)(g) of the Act, may collect personal information relating to matters of political, strategic or economic significance to Australia that is accessible to any section of the public.
- 2.2 An authorised intelligence officer for ONI may only:
- a. acquire or use an assumed identity; or
 - b. acquire and use an assumed identity;
- for the purpose of ONI carrying out its functions under paragraph 7(1)(g) of the Act.

Note: The Director-General may develop policies and procedures in relation to the performance of ONI's functions under paragraph 7(1)(g) of the Act.

Additional conditions to be met before undertaking certain collection activities

- 2.3 The Director-General must give approval (a *privacy approval*) before ONI undertakes activities where the following criteria apply:
- a. an assumed identity will be used; and
 - b. the proposed activities have the specific purpose, or purposes which include the specific purpose, of collecting personal information.
- 2.4 Before the Director-General gives a privacy approval, the Director-General must be satisfied that:
- a. any activities which may be done in reliance on the privacy approval are necessary for the proper performance of ONI's functions under paragraph 7(1)(g) of the Act; and
 - b. there are satisfactory arrangements in place to ensure that nothing will be done in reliance on the privacy approval beyond what is necessary for the proper performance of ONI's functions under paragraph 7(1)(g) of the Act; and
 - c. there are satisfactory arrangements in place to ensure that the nature and consequences of activities done in reliance on the privacy approval will be reasonable, having regard to the purposes for which the activities are carried out.
- 2.5 A privacy approval must be in writing and must specify how long it will have effect.
- 2.6 If the Director-General gives a privacy approval under rule 2.3, the Director-General must ensure that a copy of the approval is kept by ONI and is available for inspection on request by the IGIS.

Rule 3 – Retention and handling of intelligence information

- 3.1 ONI may only retain intelligence information that is personal information where it is necessary to do so for the proper performance of ONI’s functions, or where the retention is otherwise authorised or required by law or under another Act.
- 3.2 Where ONI retains such intelligence information, ONI must ensure that:
- a. the information is protected by such security safeguards as are reasonable in the circumstances against loss, against unauthorised access, use, modification or disclosure, and against other misuse or interference; and
 - b. access to the information is only provided to persons who require such access for the proper performance of an ONI function.

Rule 4 – Communication of intelligence information

- 4.1 ONI may only communicate intelligence information that is personal information where it is necessary to do so for the proper performance of ONI’s functions or where such communication is authorised or required by or under another Act. In addition, the following specific rules apply.
- 4.2 ONI may communicate such intelligence information where:
- a. the subject of the information has consented, either expressly or impliedly, to the communication or the obtaining of that information for use for intelligence purposes, or in the performance of ONI's functions; or
 - b. the information is accessible to any section of the public; or
 - c. the information concerns activities of an Australian person in respect of which the Australian person is a representative of the Commonwealth or a State or Territory in the normal course of official duties; or
 - d. the communication of the intelligence information is reasonably necessary for the purposes of:
 - (i) maintaining Australia’s national security;
 - (ii) maintaining Australia’s national economic well-being;
 - (iii) promoting Australia’s foreign relations;
 - (iv) preventing or investigating the commission of a serious crime; or
 - (v) responding to an apparent threat to the safety of a person; or
 - e. the information is about a person who is, or was, at the time of collection, collected in accordance with a privacy approval granted under rule 2.3; or
 - f. the information was provided to ONI by an intelligence agency or an agency with an intelligence role or function for the purposes of ONI preparing the Intelligence Daily or a compilation brief for the Prime Minister.

Communication of intelligence information to the national intelligence community for their purposes

- 4.3 ONI may communicate such intelligence information to an agency in the national intelligence community where the information relates, or appears to relate, to the performance of the functions of the relevant agency.

Rule 5 – Accuracy of information

- 5.1 ONI is to take reasonable steps to ensure that intelligence information that is personal information that ONI retains or communicates is retained or communicated in a fair and reasonable manner.

Rule 6 – Oversight by the IGIS

- 6.1 To facilitate the oversight role of the IGIS, ONI is to take the following measures:
- a. the IGIS is to have access to all personal information and intelligence information that is personal information held by ONI;
 - b. the IGIS is to be consulted about the processes and procedures applied by ONI to the collection of personal information, and the communication, handling and retention of intelligence information that is personal information;
 - c. where a presumption under rule 1.1(b) has been found to be incorrect, ONI is to advise the IGIS of the incident and measures taken by ONI to protect the privacy of the Australian person; and
 - d. in any case where a breach of these rules is identified, ONI is to advise the IGIS of the incident and the measures taken by ONI to protect the privacy of any affected Australian person or of Australian persons generally.