

OFFICE OF NATIONAL INTELLIGENCE RULES TO PROTECT THE PRIVACY OF AUSTRALIANS

I, Scott Morrison, Prime Minister of Australia, being the Minister responsible for the Office of National Intelligence (ONI), make these Rules in accordance with section 53 of the *Office of National Intelligence Act 2018* (the Act).

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 National Intelligence, 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 National Intelligence, the IGIS, the Attorney-General and the Privacy Commissioner.

Dated this the eighteenth day of December 2018.

Scott Morrison

DEFINITIONS

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

Assumed identities regime means the provisions contained in Part IAC of the *Crimes Act 1914*.

Australian person is an Australian citizen or permanent resident. Permanent resident has the same meaning as section 4 of the Act.

Identifiable information has the same meaning as section 4 of the Act.

Information that is accessible to any section of the public is information that is published or broadcast for consumption by members of the public including information that is freely subscribed to or purchased or otherwise accessed unilaterally. It does not include information that cannot be accessed unilaterally by a member of the public, including where the originator or owner of the information has imposed privacy restrictions or other protections.

Privacy Approval means an approval granted under rule 2.4.

National Intelligence Community has the same meaning as in section 4 of the Act.

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 shall 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 IDENTIFIABLE INFORMATION

2.1 ONI, in the performance of its functions under paragraph 7(1)(g) of the Act, may collect identifiable information that is of political, strategic or economic significance to Australia.

2.2 ONI's Open Source Centre (OSC) is the only part of ONI which may carry out ONI's function described in 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 ONI must obtain the approval of the Director-General before the OSC 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 identifiable information about an Australian person or Australian persons.

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 2.4, 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 IDENTIFIABLE INFORMATION

3.1 ONI may only retain identifiable information where it is necessary to do so for the proper and lawful performance of ONI's functions, or where the retention is otherwise authorised or required by law.

3.2 Where ONI retains identifiable information, ONI must ensure that:

- a. the information is protected by such security safeguards as are reasonable in the circumstances against loss, unauthorised access, use, modification or disclosure, and against other misuse; 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 IDENTIFIABLE INFORMATION

4.1 This rule applies to the communication of identifiable information obtained by ONI in the performance of its functions under paragraphs 7(1)(a), (b), (c), (d), (e), (f), (g) and (i) of the Act.

4.2 ONI may only communicate identifiable 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.

4.3 ONI may communicate identifiable information concerning an Australian person 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 identifiable information is reasonably necessary for the purpose 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.
- 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 2.4 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 identifiable information to the National Intelligence Community and Other Agencies for Their Purposes

4.4 ONI may communicate identifiable 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.

4.5 ONI, in the performance of its functions under paragraph 7(1)(g) of the Act, may communicate identifiable information about an Australian person or Australian persons, contained in a report or product received from an authority of another country to a Commonwealth agency or State authority approved by the Director-General for the purposes of this rule.

4.6 Before approving an agency or authority for the purpose of rule 4.5, the Director-General is to be satisfied that there are satisfactory arrangements in place to ensure that the agency or authority will preserve the privacy of Australian persons, consistent with the ONI privacy rules.

4.7 If the Director-General gives an approval under rule 4.5, 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.

Communication of identifiable information not deliberately collected

4.8 ONI may communicate identifiable information about Australian persons that were not the subject of deliberate collection to any authority that ONI may cooperate with under section 13 of the Act, provided the authority has been approved by the Director-General for the purposes of this rule.

4.9 Before approving an authority for the purpose of rule 4.8, the Director-General is to be satisfied that there are satisfactory arrangements in place to ensure that the authority will preserve the privacy of Australian persons, consistent with the ONI privacy rules.

4.10 If the Director-General gives an approval under rule 4.8, 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 5 – ACCURACY OF INFORMATION

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

RULE 6 – OTHER IDENTIFIABLE INFORMATION

6.1 In communicating identifiable information that is not regulated under Rule 4, such as identifiable information that is obtained for administrative purposes, or staffing information, ONI will first consider the extent to which the communication is consistent with the proper performance of its functions, and with the privacy interests of the individuals to whom the information relates.

6.2 The Director-General of National Intelligence is to establish internal policies and procedures relating to the collection, communication, retention and handling of any identifiable information to which Rule 4 does not apply, such as staffing or other information that is obtained for administrative purposes.

6.3 These policies and procedures must be made having regard to the privacy interests of individuals to whom such information relates, and to the requirements necessary to ensure the proper and effective performance by ONI of its functions.

RULE 7 – OVERSIGHT BY THE IGIS

- 7.1 To facilitate the oversight role of the IGIS, ONI is to take the following measures:
- a. the IGIS is to have access to all identifiable information held by ONI;
 - b. the IGIS is to be consulted about the processes and procedures applied by ONI to the collection, communication, retention and handling of identifiable information;
 - c. where a presumption under rule 1.1(a) 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.