



PUBLIC TRUSTEE AND GUARDIAN

POLICY

DOCUMENT PROPERTIES	
Name of Policy	Access to Information
PTG Policy Number	18(a)
Creation date reference	2020-1
Endorsed by SLG	21 January 2020
Authorised by	Andrew Taylor, Public Trustee and Guardian
Date for next review (plus three years)	21 January 2023

OVERVIEW

Under legislation which governs the operation of the Public Trustee and Guardian (PTG) there are specific rights available to access *government information* collected or held by PTG.

WHAT THIS POLICY DETERMINES

This policy clarifies the specific pathways for gaining access to information collected or held by PTG and any consideration given, when a request for access to information is made. Due to the nature of the information that may be collected or held by PTG, this policy should be read in conjunction with [PTG Privacy Policy No 18](#).

SAFEGUARDS FOR PROTECTED INFORMATION

Under the *Public Trustee and Guardian Act 1985*, any information about a person that is disclosed to, or obtained by, a PTG officer in their capacity as a PTG information holder, is protected information. It is an offence for an information holder to disclose protected information without legal authority. For the information holder, this means being satisfied that:

- there is a legislative provision to allow disclosure; and
- the information holder has the authorised delegation or permission to disclose information under that provision.

PTG is required to take all reasonable steps to ensure protected information is safe and secure. This means that only certain people within PTG can have access to that information, and that it can only be passed onto other people or organisations in restricted circumstances.

PATHWAYS FOR ACCESS TO PROTECTED INFORMATION

Public Trustee and Guardian Act 1985

Protected information may be disclosed to a court or tribunal under the authority of this Act or another law applying in the Australian Capital Territory.

Guardianship and Management of Property Act 1991

Protected information may be disclosed to appointed managers or guardians in accordance with the direction orders of a court or tribunal.

Information Privacy Act 2014

Protected information may be disclosed under:

- s19 of the Act in exceptional circumstances where there is a threat to life, health or safety of a person, or for law enforcement purposes to prevent or detect a crime, or in compliance with court or tribunal directions;
- s24 of the Act if required, to a board of inquiry under the *Inquiries Act 1991*, a judicial commission under the *Judicial Commission Act 1994* or to a royal commission under the *Royal Commissions Act 1991*; or
- s44 of the Act, if required, to the Privacy Commissioner in relation to a privacy complaint.

Freedom of Information Act 2016

Under s7 of the Act, every person has a right to obtain access to government information (excluding a health record). However, such requests may be refused if the disclosure of information is:

- Under Schedule 1 of the Act including:
 - an act that would be in contempt of a court or tribunal;
 - information subject to legal privilege or, cabinet information;
 - specifically prohibited under law;
 - sensitive information;
 - information relating to a review by the Human Rights Commission, or Ombudsman;
 - the identities of other persons; or,
 - information which would reasonably prejudice law enforcement, public safety or national security considerations.
- under s17 of the Act, contrary to the defined public interest test; or,
- under s38 of the Act, reasonably expected to reveal personal information about a third party, or in breach of the third party's rights under the *Human Rights Act 2004*.

PATHWAYS FOR ACCESS TO YOUR OWN PERSONAL INFORMATION

Information Privacy Act 2014

Under Territory Privacy Principle 12, a person has the right to request access to personal information that PTG holds about that person.

Where it is reasonable and practicable to do so, PTG must provide access to that person, their guardian or legal representative without charge. Due to the structure of case management files about a person, particularly in paper form, the information in a file may need to be redacted prior to providing access to the information requested.

Where the person has an impaired decision-making ability, great care must be taken when disclosing information under this provision. Depending on the person's physical, mental, psychological or intellectual condition or state, safeguarding their interests is paramount. This includes considerations to protect the person from harm or deterioration of their condition, and to preserve the ability of the person to continuously live a safe and secure lifestyle in the general community.

Health (Privacy and Access) Act 1997

Under s8 of the Act, PTG is authorised to release personal health information held by PTG to a health consumer in response to a request for access to specified information relevant to that health consumer. However, access to your personal health information may be restricted:

- under s14A of the Act relating to certain records under either the *Children and Young Peoples Act 2008*, or the *Children's Services Act 1986*;
- under s15 of the Act, if the information is reasonably believed to constitute a risk to the life or physical, mental or emotional health of the consumer or any other person;
- under s17 of the Act, if the information is subject to confidentiality:
 - being information given in confidence to the person who wrote the record by a person other than the consumer, a guardian of a consumer, a person with parental responsibility for a consumer, or a health service provider concerning that provider's treatment of the consumer; or
 - where the consumer has notified the record keeper that the information is confidential, and the consumer becomes a legally incompetent person, or dies.

COMPLAINTS

If you are unhappy with how we have handled your request for access to information, you can complain to us in writing (by letter or email). If you ask, we can help you to lodge your complaint with us. Our email, facsimile and postal address for complaints is:

Email: ptg@act.gov.au

Fax: (02) 6207 9811

Post: Complaints – PO Box 221, Civic Square ACT 2608

If you are not satisfied with our response to your complaint, you may make a formal freedom of information complaint to the ACT Ombudsman. The ACT Ombudsman's contact details for complaints is:

Online Complaint Form: www.ombudsman.act.gov.au/contact-us

Post: Complaints – GPO Box 442 Canberra ACT 2601

LEGISLATION & DEFINITIONS

The principal legislative provisions governing the access to PTG information are:

Information Privacy Act 2014

Health Records (Privacy and Access) Act 1997

Freedom of Information Act 2016

(FOI Act)

Public Trustee and Guardian Act 1985

(PTG Act)

Guardianship and Management of Property Act 1991

Key definitions used in this policy document are:

- *Government information* means information contained in a record held or accessible by an agency or Minister excluding - information relating to the Minister's personal or political activities or created or received by a Minister in their capacity as a member of the Legislative Assembly. (FOI Act)
- *Protected information* means information about a person that is disclosed to, or obtained by, an information holder because of the exercise of a function under this Act by the information holder or someone else. (PTG Act)
- *Information holder* means a person who is or has been - the public trustee and guardian or guardian; or a deputy public trustee and guardian, or guardian; or anyone else who exercises or has exercised a function under this Act. (PTG Act)

END OF POLICY