

## **Procedure: Disclosing personal information about students for law enforcement and regulatory purposes**

### **1. Purpose**

This procedure defines the process for authorising permissible disclosure of personal information about students for law enforcement and regulatory purposes.

### **2. Terms of Reference**

- Privacy Policies of La Trobe University
- Information Privacy Principles of the Information Privacy Act 2000 (Vic)
- Health Privacy Principles of the Health Records Act 2001 (Vic)

### **3. Introduction & Scope**

When information can identify a student then it is personal information and must be handled in accordance with requirements of the Information Privacy Act 2000 (Vic), and in some situations, the Health Records Act 2001 (Vic)<sup>1</sup>.

A significant aspect in complying with privacy laws is ensuring permissible uses and disclosure of personal information.

The University has a long standing commitment to hold confidential all personal information about students by disclosing only with the consent and knowledge of the student, or when legally required to do so.

Consent from students may result in various forms of uses and disclosure. However, consent must be obtained in a manner that supports validity. Please refer to the *Information Sheet regarding seeking valid Consent*, available at <http://www.latrobe.edu.au/privacy/tu>.

Disclosing personal information about students for law enforcement and regulatory purposes encompasses a number of possible situations. For example, responses to law enforcement agencies requesting personal information about students, or government authorities charged with legal need for personal information about students.

There may also be an occasion when personal information about a student is provided to a relevant authority in support of an investigation into suspected unlawful activity.

When disclosing personal information about students it is necessary to comply with privacy laws.

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<sup>1</sup> *Information Privacy Principle 2.1* of the *Information Privacy Act 2000 (Vic)* deals specifically with eight categories of use and disclosure. *Health Privacy Principle 2.2* of the *Health Records Act 2001 (Vic)* deals specifically with twelve categories of use and disclosure.

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This procedure outlines a process for authorising permissible disclosure of personal information about students:

- In response to requests from law enforcement agencies;
- In response to requirements or authorisations by law; and
- In reporting concerns to relevant authorities in supporting investigation into suspected unlawful activity.

**4. Responsibility for Procedure**

Academic Services Division is responsible for applying this procedure.

**5. Procedure Approval**

This procedure has been approved by the University Secretary.

**6. Key Definitions**

*6.1 Personal Information*

Personal information is defined as information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

*6.2 Health Information*

Health information is defined as personal information or an opinion about:

- The physical, mental or psychological health (at any time) of an individual; or
- A disability (at any time) of an individual; or
- An individual's expressed wishes about the future provision of health services to him or her; or
- A health service provided, or to be provided, to an individual that is also personal information or other personal information collected to provide, or in providing, a health service

Please refer to *appendix 1* for a complete definition of health information as defined by the Health Records Act 2001 (Vic).

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## **7. Permissible Disclosures**

### *7.1 Requests from law enforcement agencies*

Permissible disclosure of personal information in response to requests from law enforcement agencies requires two steps.

Firstly, it must be determined whether a law enforcement agency is requesting disclosure. Law enforcement agencies<sup>2</sup> most relevant to the University include:

- The police force of Victoria or of any other State or of the Northern Territory; and
- An agency (primarily the Australian Taxation Office in respect to this procedure) responsible for the protection of the public revenue under a law administered by it.
- An agency (eg. Department of Immigration, Multicultural and Indigenous Affairs) responsible for the performance of functions or activities directed to the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction for a breach.

There are other types of law enforcement agencies. Please refer to *appendix 1* for a complete definition of law enforcement agencies.

When it is established that a law enforcement agency is requesting disclosure, it is important to then determine whether disclosure of personal information about a student is reasonably necessary for one or more of the following purposes by or on behalf of the law enforcement agency:

- The prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction;
- The protection of the public revenue;
- The prevention, detection, investigation or remedying of seriously improper conduct;
- The preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
- The enforcement of laws relating to the confiscation of the proceeds of crime.

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<sup>2</sup> The definition of a law enforcement agency is obtained from Section 3, Information Privacy Act 2000 (Vic).

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Disclosure of personal information about a student might be considered “reasonably necessary” if an enforcement agency cannot effectively carry out one (or more) of the stated purposes. Consideration of “reasonably necessary” in this instance will be dependent upon whether:

- There are other practical and less intrusive measures available; and
- The potential harm to the public interest outweighs the privacy interests of the student(s) concerned.

The requesting agency should demonstrate why disclosure is reasonably necessary.

*7.2 Required by Law*

Required by law covers situations when the University has a legal obligation to disclose personal information about the student(s) according to the laws (which includes subordinate legislation such as regulations, determinations, codes or awards) of Victoria or the Commonwealth. In other words, the University generally has no choice but to disclose personal information about students.

Examples of requirement by law include:

- A subpoena or summons issued by a court, tribunal or similar body requiring the provision of personal information about a student, or the production of a student file or documentation held by the University;
- An order or notice issued by a government agency and/or enforcement agency for the provision of personal information about a student, or the production of a student file or documentation held by the University;
- Statutory requirements to report personal information about students to agencies or law enforcement agencies; and
- Legislation that requires the University to carry out an action which of necessity involves disclosure of personal information about a student.

For more information about responding to subpoenas, refer to the paper “*The Law Relating to Subpoenas and the University’s Obligations when it receives a Subpoena*”, available at [www.latrobe.edu.au/legalservices](http://www.latrobe.edu.au/legalservices).

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*7.3 Authorised by Law*

A law authorising disclosure of personal information about students does not make it compulsory for the University to do so. The University has some discretion as to whether or not to make disclosure. Words such as “may” are indicators of discretionary powers to disclose personal information about students.

If an agency is relying on this provision in seeking information about a student, it is suggested you seek advice from the University’s Legal Services or Privacy Officer.

*7.4 Suspected unlawful activity*

Disclosure of personal information about a student may occur when there is reason to suspect that unlawful activity has been, is being, or may be engaged in by a student, and that the University uses or discloses the personal information as a necessary part of its investigations, or in reporting its concerns to related persons or authorities.

Where the University proposes to use or disclose personal information for an investigation:

- Suspicion should be based on reasonable grounds, not just unsubstantiated gossip or rumour;
- The activity being investigated must be unlawful, not simply unethical or objectionable;
- The disclosure must be necessary, after consideration of alternatives;
- The disclosure should be confined in terms of the number of individuals accessing the disclosed information;
- Those who get access to the disclosed information should be accountable; and
- The authority(s) receiving the disclosed information should be based on a need to know basis because of their relevant duties to perform in the circumstances.

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## **8. Authorising Disclosure**

### *8.1 Academic Services*

A request or circumstance (except a request or circumstance directed to the University's Security Manager) requiring disclosure of personal information about a student for law enforcement and regulatory purposes must be forwarded to the Academic Services Division to determine authorisation.

In accordance with the best custodian principle<sup>3</sup>, the Academic Services Division is the original collector of personal information about students and is responsible for maintaining this information in the University's central student data set (both digital and paper). An essential element in the maintenance of the central student data set is authorising access to it by others.

### *8.2 University Privacy Officer*

The University's Privacy Officer will assist the Academic Services Division with requests or circumstances requiring personal information about students that cannot be addressed by these procedures alone.

### *8.3 Legal Services*

Legal Services must be consulted where legal interpretation and understanding is required for assessing permissible disclosure of personal information.

## **9. Recording Authorised Disclosure**

Authorised disclosure of personal information about students for law enforcement and regulatory purposes must be recorded and retained.

At minimum, the recording of authorised disclosures must include:

- Name and contact details of the law enforcement agency or agency;
- Representatives' names and contact details from the law enforcement agency or agency;
- Details of personal information disclosed;
- Copy of materials supplied (if applicable);
- Details of the basis for authorising disclosure;
- Name and title of representative(s) from Academic Services making decision;
- Date of request or requirement; and
- Date of disclosure.

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<sup>3</sup> Basically, this principle means the best custodian of a large set of personal data is its original collector, who should retain control of it, maintain its quality and manage any necessary and authorised access to it by others.

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It is important to establish that representative(s) of the law enforcement agency or agency requesting personal information are who they purport to be. This may involve the provision of contact information for confirmation which can be incorporated into the recording of authorised disclosure.

Recorded details will be retained by the Academic Services Division within a secured record keeping system assisted by the Records Services Unit for a minimum of 5 years from date of disclosure.

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**Appendix 1**

**Defining a law enforcement agency**

As defined by s.3, Information Privacy Act 2000 (Vic), a law enforcement agency means:

- (a) the police force of Victoria or of any other State or of the Northern Territory; or
- (b) the Australian Federal Police; or
- (c) the Australian Crime Commission; or
- (d) the Commissioner appointed under section 8A of the Corrections Act 1986; or
- (e) the Business Licensing Authority established under Part 2 of the Business Licensing Authority Act 1998; or
- (f) a commission established by a law of Victoria or the Commonwealth or of any other State or a Territory with the function of investigating matters relating to criminal activity generally or of a specified class or classes; or
- (fa) the Chief Examiner and Examiners appointed under Part 3 of the Major Crime (Investigative Powers) Act 2004;
- (fb) the Special Investigations Monitor appointed under Part 2 of the Major Crime (Special Investigations Monitor) Act 2004
- (g) an agency responsible for the performance of functions or activities directed to –
  - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction for a breach; or
  - (ii) the management of property seized or restrained under laws relating to the confiscation of the proceeds of crime or the enforcement of such laws, or of orders made under such laws; or
- (h) an agency responsible for the execution or implementation of an order or decision made by a court or tribunal, including an agency that –
  - (i) executes warrants; or
  - (ii) provides correctional services, including a contractor within the meaning of the Corrections Act 1986, or a sub-contractor of that contractor, but only in relation to a function or duty or the exercise of a power conferred on it by or under that Act; or
  - (iii) makes decisions relating to the release of persons from custody; or
- (i) an agency responsible for the protection of the public revenue under a law administered by it.

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**Defining Health Information**

As defined by s.3 of the Health Records Act 2001 (Vic), "**health information**" means —

- (a) information or an opinion about—
  - (i) the physical, mental or psychological health (at any time) of an individual; or
  - (ii) a disability (at any time) of an individual; or
  - (iii) an individual's expressed wishes about the future provision of health services to him or her; or
  - (iv) a health service provided, or to be provided, to an individual—  
that is also personal information; or
- (b) other personal information collected to provide, or in providing, a health service; or
- (c) other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances; or
- (d) other personal information that is genetic information about an individual in a form which is or could be predictive of the health (at any time) of the individual or of any of his or her descendants—but does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of this Act generally or for the purposes of specified provisions of this Act.