Information Handling Policy

Date 23 November 2018
Approved 04 December 2018
Purpose
2. The REA strives to follow best information handling practice.

Who should read and understand this policy?
3. All employees and contractors of REA must read and understand this Policy. All staff of REA play a part in ensuring that REA can meet its statutory obligations.
4. It is particularly important to be familiar with this Policy if your role at the REA involves:
   a. Collecting information from individuals;
   b. Using information about individuals;
   c. Disclosing information about individuals to third parties; or
   d. Responding, or help to respond, to a request made under either the Privacy Act or the Official Information Act (both discussed below).
5. Regular training on the contents of this Policy will be conducted.

Privacy officer
6. General Counsel is REA’s privacy officer. The primary role of the Primary Officer is to encourage the REA’s compliance with the information privacy principles and the provisions of the Privacy Act, as well as dealing with issues concerning personal information generally, such as oversight of requests for personal information. Additionally, the Privacy Officer works with the Privacy Commissioner in relation to any privacy complaints raised against the REA.

Relevant Laws
7. The Privacy Act 1993 governs how agencies, including the REA, collect, store, use, disclose and dispose of “personal information”, which is information about an identifiable individual.
8. In carrying out its statutory functions, REA collects a large amount of personal information about individuals, primarily licensees, but also other members of the public. All REA staff and contractors are likely to handle some personal information at some stage in their roles. It is therefore essential that all staff and contractors are familiar with the contents of this Policy, as well as REA’s external Privacy Statement, which is available here.
9. REA’s Privacy Statement is a public statement about how REA will handle the personal information it collects about individuals.
10. The Official Information Act 1982 applies to any information held by government organisations such as REA. It gives every person the right to request official information held by those organisations. If a person requests official information held by the REA under the Official Information Act, REA must release the information, within specified timeframes, unless there is good reason under the Act for withholding it.
11. The Public Records Act 2005 and the Contract and Commercial Law Act 2017 set out requirements on agencies such as REA to maintain the integrity of public records. They
specifically require agencies to create and maintain full records of their affairs and set out the circumstances in which agencies may digitise and dispose of public records, including the disposal of the original paper or other non-electronic records.

**Collecting information**
12. While carrying out its functions and responsibilities, REA collects\(^1\), handles, uses, and discloses a large amount of information. Often this information is about individuals, but it will also include information about corporations, partnerships, trusts, and other entities, as well as information about real estate transactions. REA also generates a large amount of information, including reports, records, decisions, newsletters, data, and other documents and information.

**Why do we collect personal information?**
13. Information that is about an identifiable individual is known as "personal information".
14. Personal information should only be collected if it is for a lawful purpose connected with a function or activity of the REA, such as administering the licensing regime, handling complaints or investigating offences under the Real Estate Agents Act 2008.
15. Personal information must not be collected by unlawful means or by means that are unfair or intrude to an unreasonable extent on the personal affairs of the individual concerned.

**Where can we collect personal information from?**
16. REA should endeavour where possible to collect personal information directly from the individual concerned.
17. It is permitted to collect personal information about an individual from a third party in certain circumstances, including:
   a. if the information is publicly available;
   b. if the individual concerned authorises the REA to collect personal information about him or her from a third party;
   c. it is necessary to collect personal information from a third party to avoid prejudice to the maintenance of the law;
   d. collecting personal information directly from the individual concerned is not reasonably practicable in the circumstances;
   e. collecting personal information directly from the individual concerned would prejudice the purposes of collection;
   f. REA is authorised by law to collect personal information from a third party.

**Example:** REA can collect personal information about a licensee from a complainant, because REA is authorised by law to receive complaints about licensees.

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\(^1\) “Collection” of information includes “receiving” information. Information received by REA must be handled, stored and disposed of as if REA actively sought and collected the information.
18. Other reasons for collecting personal information about an individual from a third party may apply; contact the Legal team if you require guidance on what is permitted.

**What do we tell the person we are collecting information from?**

19. If personal information is collected directly from the individual concerned, the REA is required to inform the individual of:

   a. the fact that the information is being collected;

   b. why it is being collected;

   c. the intended recipients of the information;

   d. REA’s name and address, as well as the name and address of the agency that will hold the information;

   e. if the information is collected under law, the law that authorises or requires collection and whether providing the information is mandatory or voluntary;

   f. the consequences of not providing the information; and

   g. the individual’s rights of access to (and right to request correction of) that information.

**Handling information**

20. REA must ensure that it complies with the Privacy Act in the way that it collects, stores, uses, and discloses personal information. It must also ensure it complies with the Official Information Act, the Public Records Act and the Contract and Commercial Law Act.

**Security and storage**

21. The Privacy Act obliges REA to take steps to ensure that personal information is protected by reasonable security safeguards against loss, misuse, and unauthorised access, use, modification or disclosure.

22. Access to REA’s information business systems, which is where most of the personal information held by REA is stored, is via individualised accounts and passwords. Personal information stored elsewhere in REA should be stored securely.

23. If additional security safeguards are necessary (for instance for particularly sensitive personal information), options may include:

   a. Password protecting or encrypting the information;

   b. Putting the information in a secure folder with limited access, if appropriate;

   c. Adopting other IT safeguards as guided by the IT team to ensure the information is secure.
24. From a practical perspective, it is essential that personal information is stored appropriately, in an easily retrievable location, to enable REA to locate the information easily when necessary to carry out its functions. REA must be able to meet its obligations under the Privacy Act and the Official Information Act in relation to that information (for instance, to be able to respond promptly to information requests) or to correct information at the request of the individual.

Use

Check accuracy of the personal information

25. Before using or disclosing any personal information, REA must take reasonable steps to ensure that the information is accurate, up to date, complete, relevant, and not misleading. This may involve double checking the information against the file or against any publicly available information (such as the white pages). Occasionally it may be appropriate to check the information with the person it is about to ensure it is accurate.

What can the personal information be used for?

26. Generally, personal information should only be used for the purpose for which it was collected. REA can use personal information collected for one purpose for another purpose in limited circumstances, including:

a. If it is required to do so by law;

b. If the individual concerned authorises the other use;

c. If it is necessary to use it for another purpose to avoid prejudice to the maintenance of the law; or

d. If the other purpose is directly related to the purpose for which it was collected.

27. Other reasons may exist for using personal information obtained for one purpose for another purpose.

Example: REA cannot use personal information that was collected to investigate a complaint for another purpose. For instance, complainant A complained about licensee X. Sometime later, REA received another complaint from complainant B about licensee X. REA could not use the information from the first complaint for the second complaint.

28. Consult REA’s Legal team if you wish to use personal information for a purpose other than the purpose for which it was obtained.

Disclosure

When can personal information be disclosed outside REA?

29. There are only limited circumstances in which REA may disclose personal information about an individual to a third party. These include if REA reasonably believes that:
a. The disclosure is for the purpose for which the personal information was obtained, or directly related to that purpose;

b. The disclosure is to the individual concerned;

c. The individual concerned authorises the disclosure to a third party;

d. The disclosure is necessary to avoid prejudice to the maintenance of the law;

e. The disclosure is necessary to prevent or lesson a serious threat to public health or public safety, or to the life or health of any individual.

30. Consult REA’s Legal team if you are not sure whether you are able to disclose personal information outside REA.

Access to personal and other information

31. Any individual is entitled to ask REA to provide him or her with a copy of his or her personal information that is held by REA.

32. REA must provide the information sought to the individual concerned unless one of the grounds set out in sections 27, 28, or 29 of the Privacy Act apply, in which case it may decline to do so.

33. If you are asked to respond on behalf of REA to a request made under the Privacy Act, you should follow the process for responding to requests for information set out in the Information Handling Procedures Guidelines: Official Information Act 1982 and Privacy Act 1993 Requests.

Correction

34. An individual is also allowed to ask for their personal information to be corrected if he or she believes the information is not accurate.

35. REA is not obliged to change the information it holds, but it must allow the individual the opportunity to provide information that they believe is accurate. That information will be attached to the information requested to be corrected.

Accidental disclosure

36. Occasionally, despite the best intentions and processes, personal information may be accidentally disclosed to a third party and breaches the privacy of an individual. If this happens, you must report it to the Privacy Officer immediately.

37. Good handling of such a breach assists REA to retain the trust of the people whose information is improperly released and helps those people to protect themselves from harm.

38. If you think you may have inadvertently released someone's personal information to someone who should not have the information, please refer to the Privacy Incident Response Guide. The Privacy Incident Response Guide will instruct you on how to proceed, beginning with urgently notifying the Privacy Officer and taking immediate steps to contain the breach. For example, if personal information was posted on REA’s website, remove that content as soon as the breach is identified.

39. You must also report near misses to the Privacy Officer. A near miss is a situation that had the potential to result in a privacy breach, but due to a fortunate break in the chain of events, did not do so. More information about near misses and how to respond to
them can be found in the Privacy Incident Response Guide.

40. Privacy breaches, including near misses, are reported to the Board at each of its meetings.

**Official information requests**

41. Release of information is also permitted under the Official Information Act (OIA). Unlike the Privacy Act, that seeks to protect personal information from disclosure or unauthorised use, the OIA promotes the availability of official information.

42. The fundamental principle of the OIA is that official information should be made available unless there is good reason to withhold it. It seeks to balance the public interest in making official information available with factors favouring withholding of information, such as the need to preserve personal privacy.

43. Providing information openly and with the appropriate context:
   a. enables members of the public to more effectively participate in the making and administration of laws and policies; and
   b. promotes the accountability of Ministers and officials.

44. REA’s policy is to make information requested available wherever possible, to promote transparency and accountability.

45. For the OIA to apply, the information must be “held” by REA. It doesn’t matter where the information originated from, if the information is “held” by REA or its employees and contractors in their official capacity, the OIA will apply.

46. Information “held” includes:
   a. all written documents (including final and draft versions);
   b. non-documentary material such as that stored in or generated by computers, including databases, video or tape recordings;
   c. information that is known to the agency but not yet recorded, including information in the memory of an employee or contractor of REA;
   d. documents and manuals setting out internal rules or guidelines for decision-making by REA; and
   e. the reasons for any decisions that have been made about a person.

47. Requests for official information must be dealt with promptly, and within timeframes specified by the OIA. Strict adherence to these timeframes is essential to ensure that REA is compliant with its obligations under the Act.

48. If you are asked to respond on behalf of the REA to a request made under the Official Information Act, you should follow the process for responding to requests for information set out in the Information Handling Procedures Guidelines Official Information Act 1982 and Privacy Act 1993 Requests.

**Proactive release**

49. Proactive release is release of information to licensees, other government agencies or the wider public without a specific request for information. Typically, proactive release is on topics that are likely to be of interest to more than one requester, thereby avoiding the need for REA to spend time responding to many individual requests for the same or similar information. For example, REA releases licensing and compliance statistics
information by placing its website. These statistics show complaint outcomes and Tribunal activity.

50. If you want to proactively release information, please refer to the Media and Communications Policy if the information may be released to the media, and also consult the Legal team.

Protected disclosure

51. The Protected Disclosures Act 2000 aims to protect employees who want to “blow the whistle” on any serious wrongdoing in or by their organisation. If you believe that there is serious wrongdoing in or by REA, you may disclose information about that serious wrongdoing.

52. To obtain the protections in the Act, specific procedures must be followed. These are set out in REA’s Protected Disclosures Policy.

Disposing information

Retention

53. REA is obliged under the Public Records Act and the Contract and Commercial Law Act to retain public records, either until it is authorised to dispose of them by the Chief Archivist or it is required to dispose of them under another Act.

54. Under the Privacy Act, personal information should not be retained for longer than is necessary for lawful purposes.

55. There is often good reason to retain personal information for a period after it is used. For example, if personal information has been used in deciding a licence application, there may be good reason to hold on to it for a period after the application is decided to form part of the record of that decision. Following that, it should be disposed of in accordance with the Public Records Act.

Disposal/ Archiving

56. The Public Records Act governs the disposal of public records or official information. “Disposal” of information includes archiving or deleting it.

57. Under the Public Records Act, REA must create and maintain full and accurate records of its business, including the records of any matter that is contracted to an independent contractor and ensure its ongoing accessibility.

58. REA records must not be disposed of without the authority by the Chief Archivist, unless the paper and non-electronic records are converted to electronic form and certain conditions are met, or the disposal is required by another Act.

59. The Chief Archivist makes authorisations by releasing “general disposal authorities”\(^2\) for use by all public sector organisations, as well as organisation-specific disposal authorities. As at the date of this Policy, REA does not have a specific disposal authority issued by the Chief Archivist.

60. REA is permitted to digitise paper or other non-electronic information and dispose of the original, or "source information", in accordance with the Contract and Commercial Law Act without an organisation-specific disposal authority, where certain conditions are

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\(^2\) These are located on the Archives NZ website.
met. Disposal of source information is permitted if the electronic form provides reliable assurance that the integrity of the information is maintained (i.e., it is complete and unaltered); the information is readily accessible and useable subsequently if required; and the information does not fall within certain prescribed categories of information.

61. If you are considering disposing of source information or are undertaking a digitisation project, please consult REA’s Legal team.

62. Before disposing of personal information, consider first whether there is any legitimate basis for holding onto the information for the purposes of REA’s functions. If there is, it may be too soon to dispose of the personal information.

63. If you think there is no longer a legitimate basis to hold on to the information talk to REA’s Legal team. They will consider whether REA is authorised by a disposal authority to dispose of the information or whether REA is required to dispose of the information under another Act.

**Monitoring and review**

64. General Counsel and the Corporate Services Manager are responsible for maintaining this policy and the *Information Handling Procedures Guidelines*.

65. The Policy will be monitored and reviewed every 2 years.

**Authorisation**

[Signature]

John Auld  
Board Chair  

Dated: 4 December 2018

**Related Policies**

- Information Handling Procedures Guidelines
- Real Estate Authority Privacy Statement
- Privacy Incident Response Guide
- Media Communications Policy
- Information and Records Management Policy
- ICT Acceptable Use Policy