

Confidentiality

Under the *Housing Act 1983* (the Act), the registration and regulation of housing agencies require the provision of information by agencies to the Housing Registrar. This information may include confidential and sensitive material such as:

- **commercial in-confidence information** (eg business plans, financial plans, reports of internal operational reviews, etc); and/or
- **personal information** (eg relating to members of governing bodies of agencies or to tenants and prospective tenants of an agency).

This paper provides a general overview of the management and handling of information by us under the Act.

What information does the Housing Registrar collect?

The Registrar's functions are outlined in Part VIII of the Act. These functions involve the collection of information in order to:

- register rental housing agencies.
- establish and maintain the Register of Housing Agencies.
- monitor compliance by registered agencies with performance standards.
- report to the Minister.

Accordingly, we require registered agencies to:

- provide relevant information as part of ongoing reporting requirements under the Act.
- respond to requests from time to time for information related to one or more performance standards.
- supply information during an investigation of a registered agency in accordance with the Act.

What protection do agencies have in regard to commercial in-confidence information disclosed to the Housing Registrar?

Any commercial in-confidence information disclosed or provided to us, whether written or oral, is kept in strict confidence and only used for purposes outlined in the Act.

What protection under privacy legislation do tenants, prospective tenants and governing bodies of agencies have?

Information collected by Victorian government bodies is covered by the *Information Privacy Act 2000*. This legislation relates primarily to personal information, which is defined as information that directly or indirectly identifies a person, such as a tenant or prospective tenant.

Any information provided by agencies to us about the agency or its governing body is therefore not covered by privacy legislation, as they are not natural persons.

Can third parties apply under the Freedom of Information Act to access information disclosed to the Housing Registrar?

The Victorian *Freedom of Information Act 1982* (FOI Act), creates 'a general right' to access documents held by Ministers and government agencies. This right is limited only by the exceptions and exemptions necessary to protect essential public interests and the private or business affairs of persons about whom information is collected and held by government agencies.

Therefore, the right to apply for access to information held by us is limited by legislative exemptions and exceptions, which include the following:

- documents which disclose information about the personal affairs of a person other than the applicant.
- documents containing trade secrets and business, and commercial and financial information.
- documents containing information communicated in confidence.

Will the Housing Registrar share information received from agencies with other parts of government or the general public?

Part 2 of Schedule 8 of the Act outlines information that the Registrar is to make available to the public. Such information includes the address of the registered office of the registered agency, the names of the members of the governing body of the agency, and the names of any public officer of the registered agency.

Otherwise, information will only be provided to third parties in accordance with the Act and the FOI Act. Section 128 provides that in certain circumstances an inspector, appointed by the Registrar to investigate an agency, may disclose information acquired in the course of an investigation of a registered agency to the Registrar, to the police, to a court or to the Victorian Civil and Administrative Tribunal (VCAT), or to a person appointed as the liquidator of the registered agency. This is most likely to happen where it is suspected that fraud or unlawful activity has occurred.

Does the Housing Registrar obtain information from other areas of the Department of Human Services (DHS) regarding the agency?

In order to fully monitor and evaluate agency compliance, we will seek feedback from relevant business units of the DHS/Office of Housing (OoH). This might include information available to those business units relevant to demonstrating an agency's compliance with Performance Standards and/or information collected from external third parties.

What responsibilities do agencies have in regard to confidential information provided to them by the Housing Registrar?

Information provided to agencies, such as the outcome of assessment of agency compliance with legislative requirements and performance against Performance Standards, is strictly confidential and is not to be publicly disclosed by the agency except for the purposes of obtaining legal or financial advice or with our written consent.

How confidential is information disclosed to a third party in the course of obtaining external legal or financial advice?

We will formally seek advice relating to specific information provided by an individual agency from external experts as required. External experts will be informed of the confidential nature of any agency information provided to them.

In addition, legal advisors are bound by a duty of confidentiality. Likewise, financial advisors are required to treat information communicated by clients as confidential.

Is information collected by the DHS regarding complaints about a registered agency kept confidential?

Section 99 of the Act provides that the Registrar may appoint an employee of the DHS to investigate a complaint against a registered agency by a tenant or prospective tenant of the registered agency. Inevitably, investigation of complaints will involve the collection of personal information. This information will be handled in accordance with the law: all employees of the DHS are bound by the DHS privacy policy and the Victorian privacy laws. DHS recognises that much of the information handled is sensitive and is committed to protecting the privacy of personal information.

This guide does not constitute legal advice. It is intended to offer general guidance only to assist agencies understand particular aspects of confidentiality and privacy in the context of registration and regulation.