

# Privacy Act guidance for landlords and property managers

## Introduction

The Privacy Act 2020 governs how agencies collect, store, use, disclose, and give access to personal information. As a landlord or property manager, you need to comply with the Privacy Act. It doesn't matter whether you're an individual renting out a single property or a property manager in a company that looks after hundreds of properties: you must collect and handle personal information responsibly and in accordance with the Privacy Act.

Personal information covered by the Privacy Act is any information that tells you something about a specific individual.

This guidance is designed to help landlords and property managers<sup>1</sup> comply with the Privacy Act. It's directed to landlords and property managers in the private sector and may not apply in the same way to organisations that provide public or social housing. It's also not intended to cover boarding houses, although some of the same considerations will apply to them. This guidance doesn't apply to forms of accommodation not covered by the Residential Tenancies Act 1986, such as certain types of student accommodation and rest homes.

Handling tenants' information responsibly will protect you as well as your tenants.<sup>2</sup> If you breach tenants' privacy rights, you risk facing a complaint or enforcement action. It's best to take the time now to make sure you're doing the right thing to maintain the trust of your tenants and avoid problems further down the track.

## The information privacy principles

The Privacy Act is organised around 13 information privacy principles.<sup>3</sup> We explain below how these principles apply to the collection and handling of tenant information by landlords.

### Principle 1: Limits on what information you can collect

You should only collect personal information from tenants if the information is necessary for renting the property. In other words, you should think about whether you really need the information before you ask for it.

The type of information you can collect will vary, depending on what stage you are at in the rental process, and the purpose of collection associated with that stage. This is like other selection processes. For example, in an employment recruitment process, you can ask for more information (such as reference and criminal record

---

<sup>1</sup> This guidance applies equally to landlords who manage their own rental properties and property managers who manage rental properties on behalf of landlords. The guidance uses the term 'landlord' to refer to both landlords and property managers.

<sup>2</sup> This guidance uses the term 'tenant' to refer to renters at any stage in the rental process, including those who haven't yet been granted a tenancy.

<sup>3</sup> For more on the principles, see [here](#). Principles 12 and 13 are not particularly relevant in the rental context, so are not discussed in this guidance.

checks) once a person becomes the preferred candidate for a position, and then you can collect different types of information from them once they start the job.

We've produced a summary [here](#) of the information you can collect for different purposes, at different stages in the rental process. At every stage, you should only ask for the **minimum amount** of personal information you need.

#### *When you are arranging property viewings*

When people enquire about or book a viewing of a property to see whether they're interested in applying to rent it, the only information you should need is their names and contact details. These details will allow you to follow up to see if they're interested in the property. You can give people the option of completing a full application form before they view a property, but they shouldn't be required to complete one at this stage. Information gathered at viewings for Covid-19 tracking purposes must only be used for that purpose.

#### *When you are receiving applications and shortlisting applicants*

When people apply for a tenancy, you should ask for only the personal information necessary for you to decide whether they are likely to be suitable tenants or not. You can make it optional to answer some questions, but you still need a good reason to ask those questions. You must be upfront about any consequences if optional information isn't provided.

You can ask tenants to consent on the application form to a credit check (or a criminal record check – but see the discussion of criminal records below). However, you must not carry out such checks until you're negotiating an offer of a tenancy. You can also ask for contact details for landlord and non-landlord referees at this stage and ask the tenants to authorise you to obtain references from these people. You can contact the nominated referees for a reference where necessary to make a decision on the application.

To verify an applicant's identity, you can ask to see copies of documents such as their passport or driver licence then record the identification number from such documents. If you meet the tenants in person, you shouldn't need to take a copy or scan of their identity documents. If tenants apply online or by email, and submit images of their identity documents, these images should be deleted as soon as they're no longer needed to verify the person's identity.

A [suitable application form](#) is available on the website of Tenancy Services (part of the Ministry of Business, Innovation, and Employment).

#### *When you are doing further checks on preferred applicants*

Once you've chosen preferred applicants, you can collect more information to confirm their suitability for the tenancy. For example, you can carry out a credit check or criminal record check, with the applicant's consent. However, you should only carry out a credit check or criminal record check when you are near the end of the process, such as for people you are actively negotiating with about the offer of a tenancy. You can also collect additional information needed to carry out such checks, such as asking their date of birth. If you need images of identification

documents to proceed with checks, you should securely dispose of the images once you have completed the verification process ([see principle 9](#)).

If you decide to obtain a record of a tenant's criminal convictions, you should be clear in your own mind about how you'll use this information. Some information in a tenant's criminal record may be old or irrelevant to whether they will make a good tenant or not. You should only take account of relevant convictions, such as those for damage to property, dishonesty, or violence.

A key question for landlords is how they can satisfy themselves that the tenant will be able to afford to pay the rent. You must collect no more personal information than is necessary to confirm that the person is a suitable tenant for the property. In addition to a credit report, it should be enough to ask for one other form of evidence of ability to afford the rent, in a form the tenant is comfortable with providing. Such evidence could include a pay slip or letter from the tenant's employer, or evidence of rental payments in a previous tenancy, for example.

If the tenant's rent would be paid in part or in whole by an accommodation supplement, the tenant may provide a letter from Work and Income, confirming that the tenant receives the supplement, as evidence of ability to pay the rent.

Except in exceptional circumstances, you should not ask for or collect information about how tenants spend their money: this information will usually be unnecessary and unreasonably intrusive. You shouldn't ask for a full bank statement showing individual transactions, for example (although the tenant could choose to provide a statement showing only the total bank balance). Exceptions could include when a tenant has a negative credit record and wants to show that they've taken steps to improve their financial management; or, once a tenancy has started, when a tenant has become unable to afford the rent and wants to negotiate a repayment plan or rent reduction with the landlord.

#### *When you are preparing a tenancy agreement*

When you're entering a tenancy arrangement with a tenant, you can collect additional information needed for the agreement. This could include details of vehicles that will be parked at the property (if necessary for parking arrangements), the tenant's address for service, and contact details for someone who can be contacted in an emergency if you can't get hold of the tenant. You can also ask for the tenant's Work and Income client number if the rent is being paid using the accommodation supplement, and if you can show that it's necessary to collect the client number to manage the tenancy.

#### *When you are managing a tenancy*

Once the tenants have signed a tenancy agreement and started living in the property, you may continue to collect their personal information from time to time for the purpose of managing the tenancy.

For example, information you collect as part of flat inspections, including photographs of rooms, may be personal information. When carrying out a flat inspection, you should collect no more information about the tenants than is necessary to assess how well they are caring for the property. When taking photos,

you shouldn't include people in the shots or focus on the occupants' personal items unless those items contravene the tenancy agreement.

### *Information you should not collect*

There is some personal information you must never specifically ask for when selecting tenants. You should also be careful about collecting this information at any stage in the rental process.

Except in relation to certain specific types of accommodation, when choosing tenants, it is unlawful to discriminate based on:<sup>4</sup>

- sex (including pregnancy or childbirth)
- relationship or family status
- religious or ethical belief
- colour, race, or ethnic or national origins (including nationality or citizenship)
- physical or mental disability or illness
- age
- political opinion
- employment status (being unemployed, on a benefit, or on ACC)
- sexual orientation or gender identity

It's unnecessary, irrelevant, and unreasonably intrusive to ask for information about these personal characteristics when you're selecting tenants. It's unlikely that you could use this information for a lawful purpose during the selection process, due to prohibitions on discrimination under the Human Rights Act.

However, once you select the tenant, you may sometimes have a good reason to record information about characteristics such as disability, if it's relevant to how you manage the tenancy (for example, if it affects how you can most effectively communicate with the tenant or respond to their needs).

It's okay to collect information that you can use for a lawful purpose, even though it might directly or indirectly reveal information about one of the protected grounds under the Human Rights Act listed above. For example, you can collect information about a person's passport for identity verification purposes, even though the passport will also show the person's citizenship. But you shouldn't specifically ask about their citizenship status.

While you shouldn't ask about tenants' nationality or citizenship, you could ask if they have a legal right to remain in New Zealand for the duration of a tenancy that is for a limited term.

As discussed further below, you should not ask people if they have experienced or are experiencing family violence when you are selecting tenants.

---

<sup>4</sup> There is more information about tenancy and human rights [here](#).

You shouldn't ask for any other personal information that isn't directly relevant to selecting a tenant or managing a tenancy. For example, you shouldn't ask about tenants' employment history (though you can collect information about their current employment) or ask for their social media URLs.

## **Principle 2: Limits on who you can collect information from**

In general, you should collect personal information about tenants directly from the tenants themselves. However, there are exceptions to this principle.

Landlords can collect information from other sources when deciding whether to rent a property to a tenant and should usually do so with the consent of the individual concerned. For example, tenants can authorise you to obtain a criminal record or credit check,<sup>5</sup> or to talk to their referees about them. However, you should only ask for consent to obtain information from specific sources: you shouldn't ask for broad consent to collect information from 'other sources'.

You can also collect information about tenants if that information is publicly available: for example, if it's on a news website. If you collect information from publicly available sources, you need to make sure it's relevant and accurate before using it (see principle 8). It could, for example, be about someone else with the same or a similar name. It could be incorrect or out of date. You also need to use the information in a way that isn't unfair or unreasonable in the circumstances.

You shouldn't assume information is publicly available just because some people are able to view it. A Facebook or other social media profile may be accessible by the tenant's friends and family, but not by the world at large. You shouldn't ask for permission to view social media profiles that are restricted in this way. Seeking or requiring access to such personal profiles is unreasonably intrusive on individuals' personal affairs (see principle 4).

You may sometimes need to collect personal information from others during the tenancy. For example, if neighbours complain about the tenants' behaviour, you can collect and record information from the neighbours. Indeed, you may need to collect this information if you're deciding whether to issue a notice of anti-social behaviour to the tenants under the Residential Tenancies Act.

## **Principle 3: What you need to tell tenants**

When you collect personal information from tenants, you need to make them aware of certain matters, such as:

- why you are collecting their information and how you'll use it
- who will hold the information and who the information may be shared with
- what the consequences will be if the tenant doesn't provide the information

---

<sup>5</sup> Credit reporting is governed by a special code made under the Privacy Act. The Credit Reporting Privacy Code allows credit information to be disclosed to a landlord, with the tenant's authorisation, for the purpose of assessing the individual's creditworthiness as a tenant.

- their right to ask for information you hold about them, and to ask for that information to be corrected (see principles 6 and 7)

A common way to meet this requirement is by providing tenants with a privacy statement that explains how you'll handle their personal information. In particular, you should include a privacy statement, or a link to the statement, with your tenancy application form and with your tenancy agreement. Our online tool [Priv-o-matic](#) can help you create your own privacy statement.

The privacy statement for your application form shouldn't list purposes for collection that are overly broad or that don't relate to the core purpose of deciding whether applicants will be suitable tenants. You should also be careful about using the privacy statement to seek consent from the tenants to the collection, use, or disclosure of their personal information: see the discussion of consent below.

#### **Principle 4: Limits on how you can collect information**

You can only collect information from tenants in ways that are lawful and fair, and that don't intrude unreasonably on their personal affairs.

What is fair depends a lot on the circumstances, but coercive or misleading behaviour will be unfair. What is reasonable also depends on the circumstances, such as the purpose for collection, the sensitivity of the information concerned, and the time and place it was collected.

For example, it would be unreasonably intrusive to install cameras that could be used to film or record your tenants inside the house or flat they're renting. But it could be justifiable to have security cameras in the public areas of an apartment complex if you have a lawful purpose for monitoring this area.

As discussed in relation to principle 1, it will usually be unnecessary and unreasonably intrusive on personal affairs to ask tenants about matters such as their ethnicity, disabilities, sexuality, or relationships status.

#### **Principle 5: Keeping information secure**

You must keep the information you hold about tenants secure, and make sure it can only be accessed by people who are authorised to do so.

A good starting point is to collect and retain only the personal information you really need (principles 1 and 9). The less information you hold, the less risk there is of sensitive information being lost or misused.

The personal information you have a good reason to collect and keep must be stored in a secure system, and you must be able to control who has access to it.

If you have employees, you need to ensure they understand how to handle tenants' information safely. Some employees may not need to access tenant information or may only need to access some tenant information. Your employees must access this information only for work-related purposes. A good practice is to keep property information separate from tenant information, so personal information about tenants can be accessed only by those who need to do so.

The same personal information may be held by more than one agency. If you're a property manager, some information you hold about tenants may also be held by the landlords you work for. If so, both you and the landlord are required to hold the information securely.

If you store tenant information with another business, such as a cloud computing provider, you're still responsible under the Privacy Act for this information. If there's a privacy breach at the agency that is storing information for you, and personal information about your tenants is affected, you'll need to respond to the breach. There's more information about what you need to do when responding to a privacy breach [here on our website](#).

## **Principles 6 and 7: Tenants requesting access to and correction of information**

*Tenants have a right to request their personal information*

Tenants have a right to ask you for information you hold about them. If tenants request their information, you must respond promptly and provide the requested information unless there is a legitimate ground for withholding it. You also need to tell the tenants that they have the right to ask for the information to be corrected.

The Privacy Act allows you to refuse to provide some or all the requested information on certain grounds. For example, you can withhold information if releasing it might endanger someone's safety or breach someone else's privacy. If you refuse to provide some information, you must tell the tenant why you've withheld it, and let them know they have a right to complain to the Privacy Commissioner.

You can impose a charge for providing a tenant with their information in response to a Privacy Act request, but it must be a reasonable charge based on the cost of the labour and materials involved in providing the information.

Before you provide the requested information, you should check that it's going to the right person (the individual whose personal information it is). Check that you have the right email or postal address and have correctly entered or written it.

*What information do you need to provide?*

Unsuccessful applicants for a tenancy can ask for any information you hold about them, including information that influenced your decision not to offer them the tenancy. If you're asked for information that influenced your decision, you should provide copies of all the information you collected for the purpose of deciding on the application, such as:

- the person's completed application form and any supporting documents
- a credit report on the person if one was obtained
- any information you collected from public sources

You shouldn't provide the requester with information about other applicants in order to show that their applications were stronger because it isn't information about the requester and providing it would breach the privacy of the other applicants.



You can only refuse to provide the requester with information about them if one of the withholding grounds in the Privacy Act applies. For example, there is a withholding ground for 'evaluative material' that means you **may** be able to refuse to provide access to a reference that was provided in confidence with the tenant's authorisation. 'Evaluative material' is information that is someone's opinion – so the withholding ground wouldn't apply to factual information provided by a referee, such as the length of the applicant's previous tenancy or whether they paid the rent consistently on time. You can find more guidance about withholding evaluative material [here on our website](#).

If current tenants ask for all the information you hold about them, this may include a range of different types of information. For example, it could include rental payment records, reports of inspections and damage, and complaints received about the tenants.

You don't need to hold on to tenants' information just because they might ask for it one day: you should delete information when you no longer need it (principle 9). But you must not destroy tenant information **after** you receive a request for that information: if you do, you'll be committing an offence.

*Tenants can ask you to correct information about them*

If a tenant thinks the information you hold about them is incorrect, they can ask for that information to be corrected. You should check the information, and if you agree that it's wrong you should correct it. If you don't agree that the information is wrong, you don't have to correct it. But you must, if possible, attach to the information a statement of the correction sought by the tenant, if the tenant asks you to do this. If the information has previously been passed on to anyone else, you need to take reasonable steps to inform them of any corrections.

There's more information about the access and correction principles [here on our website](#).

### **Principle 8: Making sure information is accurate**

Before you use or disclose information about tenants, you need to take reasonable steps to ensure the information is accurate, up to date, complete, relevant, and not misleading.

You only need to take steps to check accuracy that are reasonable in the circumstances. You'll need to consider the source of the information and how reliable the source is likely to be. How old is the information? Is it first-hand information or hearsay? Is the source likely to be biased?

One way of checking whether information about tenants is accurate, complete, and relevant is to ask the tenants about it. If the information seems to reflect badly on the tenants, you should consider asking them for their side of the story: there may be other information that provides balance or context.

If you're disclosing information about tenants to other people (for example, if you're providing a reference for a tenant with their consent), you should be especially careful not to pass on information unless you're sure it's correct.



### **Principle 9: Limits on retaining personal information**

You should only keep personal information about tenants for as long as you still need it for purposes related to the tenancy. Once you no longer have a good reason to keep it, you should securely dispose of it (for example, shredding paper documents or permanently deleting digital files).

Other laws may require you to keep certain records containing personal information for a specified period. If so, you can comply with those legal requirements without breaching the Privacy Act. For example, under the Residential Tenancies Act you must keep certain documents during the term of the tenancy and for 12 months after the tenancy ends. These documents include reports of the landlord's inspections of the property, and correspondence between a landlord and tenants, people to whom the landlord has offered a tenancy, or people who have entered negotiations for a tenancy with a landlord. Landlords also need to keep certain business records, which will include personal information, for seven tax years.

In general, you shouldn't hold on to information about people who have only viewed a property but not applied for a tenancy, or who applied but were not successful. You might want to keep unsuccessful applications for a short period of time in case any issues are raised about the selection process. You can also keep a tenant's application on file if the tenant asks you to retain it, so they don't have to resubmit the information when they apply for another property.

After a tenancy ends, it's reasonable to retain the tenants' information for a period to comply with the Residential Tenancies Act and in case you need to follow up on any issues. But you shouldn't hold on to their information forever: you should securely dispose of it once you no longer need it.

### **Principle 10: Limits on using personal information**

You should generally use the personal information you hold about tenants only for a purpose for which you collected the information, or a directly related purpose. There are exceptions to this principle: for example, you can use the information to deal with a serious threat to health or safety. You can also use the information for another purpose if the tenant has agreed you can do so (but see the discussion of consent below).

Unless one of the exceptions applies, you shouldn't use tenant information for purposes unconnected with the tenancy. For example, you shouldn't use tenants' contact details to promote another business you own, unless they've explicitly agreed to receive such information from you.

### **Principle 11: Limits on disclosing personal information**

You shouldn't disclose personal information you hold about tenants to anyone else, unless the disclosure is for one of the purposes you collected the information for, or another exception applies. The exceptions are like those for principle 10, including that the tenant has authorised the disclosure.

Disclosure can take many different forms. For example, you shouldn't chat to your friends or post information online about your tenants' personal details or behaviour. You should think particularly carefully before making information about tenants more widely available on a webpage or database: see the discussion of tenant 'blacklists' below.

The Privacy Act does allow you to disclose information about tenants to the Police or other appropriate authorities in some circumstances. These circumstances include when you have good reason to think disclosure is necessary to prevent a serious threat to someone's life or health. For example, you could tell the Police if you have evidence that a tenant is making credible threats of harm against others.

## **Other issues**

### **When and how you should seek consent from tenants**

If you're using or disclosing tenants' personal information for one of the purposes you collected the information for, and you clearly told the tenants about this purpose when you collected the information, you don't need further permission.

Consent becomes relevant when you want to do something that otherwise wouldn't be allowed under some of the privacy principles. If you have reasonable grounds for believing your tenants have authorised you to do so, you can:

- collect tenants' personal information from someone other than the tenants themselves (for example, from a credit reporting company or a referee)
- use or disclose tenants' personal information for a purpose other than the purpose for which you collected the information

Stating your purposes at the time of collection and asking tenants to agree to or acknowledge understanding of these purposes, can also be considered a form of consent.

When you're thinking about whether tenants have given informed consent to what happens with their information, try putting yourself in the shoes of an average person reading your forms and privacy statement. Would they clearly understand what you're planning to do with the personal information you collect, and are they able to say 'no' to things they don't feel comfortable with?

Here are some general principles to follow:

- Consent should be informed and specific. Tenants should clearly understand what they're being asked to agree to, and what will happen if they don't agree.
- You shouldn't bundle together multiple different things you want to do with tenants' information and ask them to agree to all of them at once. A tenant should be able to say which uses of information they agree to and which ones they opt out of.
- You shouldn't ask for broad agreement to collect information from 'other sources' or use information for 'other purposes'.

- You can't ask tenants to 'waive their rights' under the Privacy Act. If you ask tenants to waive their rights, this will have no legal effect.
- It's a good idea to allow tenants to change their minds and opt out of uses or disclosures they previously agreed to, if these uses or disclosures aren't related to your core purpose of managing the rental property.
- You can get consent verbally, but if you do it's a good idea to immediately record the consent in writing.

### **Tenant 'blacklists'**

Landlords sometimes share information about tenants on tenant 'blacklists'. Such lists might be hosted on a private social media group that's accessible only to group members, for example. Using information supplied by landlords, they claim to provide information about 'bad tenants' so that landlords can avoid renting to these tenants.

Tenant 'blacklists' don't comply with the Privacy Act. The Office of the Privacy Commissioner will use its powers under the Privacy Act to investigate any 'blacklists' the Office becomes aware of and to take enforcement action against sites that are breaching the Act.

Tenant 'blacklists' lack transparency and are likely to contain information that's inaccurate or incomplete. They can unfairly keep tenants out of the rental market based on inaccurate information. They also represent a risk to the security of tenant information, as such lists could be leaked to unauthorised individuals. For these reasons, the use of tenant 'blacklists' has been criticised by groups representing both tenants and landlords.

If you submit information to such lists, you may be in breach of privacy principles 8 (accuracy) and 11 (disclosure). If you obtain information about tenants from 'blacklists' you may be in breach of principle 2 (collection directly from the individual), and if you use information from 'blacklists' without verifying its accuracy, you may be in breach of principle 8. If you manage such a list, you also risk breaching a number of privacy principles, and you should bear in mind that you must provide tenants with information you hold about them if they ask for it.

In addition, tenant 'blacklists' could breach other legal restrictions. The information on them could be defamatory. It could also breach suppression orders, including name suppression orders relating to Tenancy Tribunal proceedings that can be made under the Residential Tenancies Act.

### **Family violence**

When selecting tenants, you shouldn't ask them whether they have experienced or are currently experiencing family violence. Such information is not relevant to deciding whether a person will be a suitable tenant and is highly sensitive. Asking potential tenants about family violence would be unreasonably intrusive.

If a current tenant tells you they are experiencing family violence, you should be particularly careful not to use or disclose that information unless you have reasonable grounds to believe the use or disclosure is allowed under one of the

exceptions to the privacy principles. For example, you can disclose the information with the tenant's consent.

If you have good reason to believe a tenant is experiencing family violence, and that disclosure of their information is necessary to prevent a [serious threat](#) to the tenant's health or safety, or the health or safety of others, you can disclose information to the appropriate authorities.

Changes to the Residential Tenancies Act (not yet in force at the time this guidance is published) will allow a tenant to end a tenancy quickly to seek safety from family violence. The tenant will need to provide the landlord with evidence that they are experiencing family violence. The information to be provided as supporting evidence will be set out in regulations.

You won't be in breach of the Privacy Act if you receive and respond to the information provided by a tenant in accordance with the family violence provisions of the Residential Tenancies Act. However, disclosure of the tenant's notice of withdrawal and supporting evidence is restricted by both the Residential Tenancies Act and the Privacy Act.

### **Privacy Act complaints and enforcement**

If you breach the Privacy Act, you risk a tenant making a complaint to the Privacy Commissioner. The complaint might lead to you having to remedy the breach or to pay financial compensation. Complaints that cannot be resolved may be escalated to the Human Rights Review Tribunal.

Even without a complaint, the Privacy Commissioner will proactively investigate privacy breaches and systemic privacy problems. For example, the Commissioner will be auditing tenancy application forms and privacy policies and conducting an annual survey as part of monitoring compliance in the sector. The Commissioner can direct you to take action to comply with the Privacy Act, and you could face fines for non-compliance.

### **For more information**

This guidance can't cover all the Privacy Act issues that might come up between landlords and tenants. More information is available on the Office of the Privacy Commissioner website [www.privacy.org.nz](http://www.privacy.org.nz) or by calling 0800 803 909.

We strongly encourage landlords to learn more about the Privacy Act by doing our e-learning modules, available [here](#). You might also like to get expert advice from a lawyer or other privacy professional.