

## > Employee Records and the Privacy Act

The current 'employee records' exemption under the *Privacy Act* does not necessarily offer protection in all cases when dealing with employee records.

### ***B v Cleaning Company [2009] PrivCmrA 2***

The complainant was employed by a large cleaning company for several years before resigning from their position. The complainant owed a sum of money to another organisation and had entered into a repayment arrangement. The complainant had defaulted on that arrangement.

The cleaning company disclosed information to the other organisation on the whereabouts of former employee, including their address and financial details.

The former employee complained that the personal information collected for the purposes of their employment was inappropriately disclosed by the cleaning company.

Section 7B(3) of the Privacy Act exempts the handling of employee records. To be exempt, the act or practice complained of must be related to a current or former employment relationship, and the personal information subject to the complaint must be held in an employment record.

NPP 2.1 provides that an organisation must not use or disclose personal information about an individual for a purpose **other than the primary purpose of collection** unless an exception in National Privacy Principle 2.1(a)-(h) applies.

The cleaning company claimed that the disclosure was subject to the employment records exemption and that it did not have to comply with the requirements of NPP 2.1.

While the information was held in an employment record, the act or practice complained about was the disclosure of the complainant's personal information to an organisation to which the complainant was personally indebted. This disclosure was not related to their employment and was therefore an act or practice unrelated to the administration of the complainant's employment with the cleaning company. As such, the disclosure was not exempt and must comply with NPP 2.1.

The Commissioner formed the view that none of the exceptions listed at NPP 2.1 applied to the disclosure and found that the cleaning company had interfered with the complainant's privacy.

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A review of the 'employee records' exemption under the *Privacy Act* is being considered under the Australian Law Reform Commission's Review, Stage 2, due for 2010

**Notes for employers**

- Ensure you have an appropriate privacy policy in place
- Ensure employees are adequately trained in relation to that policy and in dealing with the collection, use and disclosure of personal information (including employee records)

**Further References:**

Guide to handling personal information security breaches

[http://www.privacy.gov.au/publications/breach\\_guide.html](http://www.privacy.gov.au/publications/breach_guide.html) <viewed 23 June 2009>

Ten Steps to handling other people's personal information

[http://www.privacy.gov.au/publications/ten\\_steps/ten\\_steps\\_org.pdf](http://www.privacy.gov.au/publications/ten_steps/ten_steps_org.pdf) <viewed 23 June 2009>