

Office of Fair Trading

Disclosure of complaint related information policy

Version 3 – April 2017



Contents

1. Purpose	3
2. Scope	3
3. References	3
4. Definitions (for the purpose of this policy).....	3
5. Dealing with requests for release of information held by OFT	4
5.1. General requests	4
5.2. Trader requests	4
5.3. Third-party requests.....	4
5.4. Provision of information to a Commonwealth, Queensland or other State or Territory law enforcement agency.....	5
5.5. Release of confidential personal or commercial information to media (news, public forums, etc.)	5
5.6. Release of information pursuant to a legal process.....	5
6. Enforcement actions	6
6.1. Request from a third party as to an investigation outcome and/or enforcement action .	6
6.2. Release of information to a complainant about an investigation outcome and/or enforcement action.....	6
7. Right to Information (RTI) referrals/requests	6
8. Disclosure of information to defence in a prosecution matter	6

1. Purpose

To outline Office of Fair Trading (OFT) policy on the disclosure of information obtained during complaint investigations or relating to its compliance and enforcement function including information sharing between enforcement agencies.

This policy will be reviewed annually or following legislative or internal policy or procedural changes.

2. Scope

This policy applies to all OFT officers and provides for OFT requirements for the release of information held by OFT and the process for requesting information held, or possibly held, by other enforcement agencies.

In handling requests for the release of confidential personal or commercial information, OFT officers are to ensure their actions accord with the Whole of Government Code of Conduct and the *Information Privacy Act 2009*.

3. References

This policy is to be read in conjunction with the following:

- Department of Justice and Attorney-General's (DJAG's) *Public interest disclosure policy*
- DJAG's internet information on 'Engaging the Media' at <http://intranet.justice.govnet.qld.gov.au/divisions-and-branches/corporate-services/communication-services-branch/engaging-the-media>
- *Information Privacy Act 2009* including Schedule 3 noting the 11 information privacy principles
- OFT's *Public information disclosure policy*
- OFT's *Public information disclosure procedure*
- Whole of government *Code of conduct* located at www.qld.gov.au/gov/code-conduct-queensland-public-service

4. Definitions (for the purpose of this policy)

Confidential commercial information: is information not publicly accessible or available, or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about the business or financial operations of a trader whose identity is obvious, or can reasonably be ascertained, from the information or opinion. It includes information about whether a complaint has been made against an entity and any particulars of the complaint or associated investigation.

Confidential personal information: is information or an opinion, including information or an opinion forming part of a database, whether true or not, and if recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. It does not include information about a deceased person or information publicly available.

Declaration: is a complainant's authority allowing OFT to provide complaint related information (except for demographic data) to the trader if necessary or to refer a matter to another authority for action should the matter fall outside OFT's jurisdiction.

OFT officer: is a person employed by DJAG and performing any OFT functions or duties, including an appointed inspector or investigator.

Request pursuant to a legal process: is any request (including a subpoena to produce materials, summons to produce materials or solicitors letter, telephone call) for the provision of information obtained during complaint investigations or relating to OFT compliance and enforcement functions.

Third-party: is a person who sees or hears something relevant to an investigation and who is neither the complainant nor the subject of the investigation, or a person requesting information about an investigation or enforcement outcome.

5. Dealing with requests for release of information held by OFT

5.1. General requests

Except as provided for in this policy, OFT officers will not disclose or otherwise communicate information obtained during or as a result of, their investigation, compliance and enforcement functions, and will not disclose or otherwise communicate a complainant's or trader's personal information and any confidential commercial information, without the express written approval of the complainant or the trader.

5.2. Trader requests

The OFT *complaint form* and the Product Safety *unsafe product or unsafe service report* carry a declaration that may be signed by the complainant and which confirms the information provided (except for demographic data) may, if necessary, be revealed to the trader, or referred to another authority for action should the matter fall outside OFT's jurisdiction. Where the complainant form or product safety report has not authorised (i.e. there is no authorisation signature), the OFT officer must **not** reveal any personal information about the complainant unless there is a lawful authority to do so.

Should a complaint be assessed as a matter for further investigation, and the complainant has not given authorisation to release personal information, the complainant will receive a letter advising of the escalation of the complaint and that OFT may need to gain their authorisation (in writing) to release personal information in order to progress an investigation. Any authorisation in this regard is to be added to the complaint file.

In the event a trader wishes to make contact with the complainant, e.g. for purposes of providing restitution, the OFT officer may contact the complainant and seek written approval to release personal information to the trader. This written approval is to be recorded in the complaint or investigation file.

5.3. Third-party requests

No confidential personal or commercial information is allowed to be disclosed or otherwise communicated to any third-party unless OFT is under a legal obligation to do so (via a subpoena or equivalent document) or written consent is received by the complainant or trader as appropriate. A copy of the written consent must be placed on the complaint or investigation file. In the event the request for release of information is denied, the third-party should be referred to the department's RTI unit.

5.4. Provision of information to a Commonwealth, Queensland or other State or Territory law enforcement agency

Request received – Where a request is received from a law enforcement agency for the release of confidential personal or commercial information held by OFT, OFT officers are to ensure the information requested is in writing and required for the purpose of a law administered by that agency. The release of such information must be approved by appropriate OFT managers as OFT Commissioner delegates.

Voluntary provision – Where OFT believes information obtained should be provided to another agency who administers any law of the Commonwealth or of any State or Territory, OFT may release the information subject to authorised written approval. Eg. OFT may report a person is unlawfully operating a business while bankrupt to the Australian Financial Security Authority which administers the *Bankruptcy Act 1966*.

Legislative provision – In some circumstances, legislation allows for agency officers to communicate information that has come to their knowledge to relevant parties or national, state or territory law enforcement agencies.

Information privacy principles 10 and 11 of Schedule 3 of the *Information Privacy Act 2009* provide exceptions to the limits of disclosure if the disclosure is authorised or required under law. For example, section 110 (2) of the *Fair Trading Act 1989* allows for disclosure of information under law in certain circumstance. However, OFT will only disclose information under law to another party or agency if that disclosure is for a particular purpose.

5.5. Release of confidential personal or commercial information to media (news, public forums, etc.)

The release of information held by OFT to the media is managed in accordance with DJAG's media interaction directives and *Public interest disclosure policy* and the OFT's *Public information disclosure policy*. Only OFT staff who have been specifically approved to deal with the media may do so. The OFT media team coordinates all information released by the OFT to media to ensure consistency of responses, maintain the department's integrity and to protect its reputation. All media requests and inquiries must be referred to the OFT media team at oftmedia@justice.qld.gov.au.

5.6. Release of information pursuant to a legal process

OFT officers may receive a legal process or request for information which is required for legal proceedings. These requests may include summons to produce documents, subpoenas, notices of non-party disclosure, letters from solicitors acting for a party not connected to an OFT matter. As a matter of priority (within 24 hours) such legal processes or requests received by OFT are referred to the OFT unit manager for immediate attention and action. The manager will then provide the request to OFT's legal unit for advice. Appropriate records of time and date of receipt of such legal processes or requests are noted and retained for future reference.

These requests are distinct from witness summonses or subpoenas to appear and give evidence directed to a named person which are also referred to OFT legal unit for advice. Under no circumstances should an OFT officer provide the information requested without specific instructions from their manager or director. Detailed notes of the instructions received are retained for future reference.

A copy of all materials released pursuant to a legal process request are kept for future reference along with a record of the time taken to compile the information.

6. Enforcement actions

6.1. Request from a third party as to an investigation outcome and/or enforcement action

As per options noted at 5.3.

6.2. Release of information to a complainant about an investigation outcome and/or enforcement action

OFT officers are guided by section 4.4 of the Whole of Government Code of Conduct and Part 7 and Schedule 3 (Information Privacy Principles) of the *Information Privacy Act 2009*.

OFT officers will consider whether the release of information would unfairly invade someone's privacy, breach a Privacy Principle or defame someone. Outcome advice to complainants will be provided in a timely manner where possible with a desire to be as open and accountable as possible. Complainants can be advised of:

- the outcome decision including the specifics of enforcement action taken
- the reasons for the decision
- relevant findings of fact, and
- the evidence upon which the decision was made.

Where the complaint is unsubstantiated or adverse to the complainant, the following information should be included in the outcome advice to the complainant:

- why OFT were unable to uphold the complaint
- why OFT were unable to confirm the complainant's version of events
- why what was alleged was not improper, or
- why OFT could not establish a breach.

If requested, **a copy** of enforcement action documentation can be provided to the complainant **after any personal details are deleted (blocked) and manager approval and endorsement is gained**. Should OFT officers remain uncertain about information/documentation that can be disclosed, they are to discuss the matter with their manager.

7. Right to Information (RTI) referrals/requests

In the event a request for information under this policy is denied or a definitive decision cannot be made, the person making the request will be referred to DJAG's RTI unit.

Upon receipt of a request from DJAG's RTI unit, the OFT unit manager is notified immediately. An appropriate OFT officer is assigned to manage the request and ensure all necessary correspondence relevant to the request is assembled for Manager/Director information and approval prior to providing the information to the RTI unit for consideration.

8. Disclosure of information to defence in a prosecution matter

The prosecution has a duty to make a full and early disclosure of the prosecution's case to the defence. This duty extends to all facts and circumstances and the identity of all witnesses reasonably regarded as relevant to any issue likely to arise, in either the case for the prosecution or the defence.

Before releasing any information about the prosecution, the OFT officer will first contact the OFT legal unit to discuss and ascertain what information is to be released.

Section 41 of the *Justices Act 1886* provides that the laws relating prosecution disclosure are set out in the *Criminal Code Act 1899*, Schedule 1 (the Criminal Code) chapter division 3, Disclosure by the prosecution. Chapter subdivisions A to F provide for disclosure requirements in this regard. The address, telephone number and business address of any witnesses are omitted from statements provided to the defence, except where those details are material to the facts of the case (Chapter subdivision D, section 590AP of the Criminal Code).