



**Office of the Victorian
Information Commissioner**

A high-angle, slightly blurred photograph of a crowd of people walking on a light-colored tiled floor. The image is split vertically: the left half is in grayscale, and the right half is overlaid with a solid magenta color. The people are seen from above, their legs and feet in motion, creating a sense of a busy public space.

OVIC regulatory approach and policy

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- OVIC Regulatory Action Policy
- Types of regulatory action, and what to expect
- Privacy investigations and compliance notices
- Forward work program

Regulatory action policy

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OVIC Regulatory Action Policy

- Sets out OVIC's approach to regulatory action.
- Regulatory action: activities that promote, assure or enforce the *Freedom of Information Act 1982* and the *Privacy and Data Protection Act 2014*.
- For privacy, this ranges from advice and guidance to investigations and compliance notices.

Goals of regulatory action

- OVIC uses the regulatory powers in the PDP Act and FOI Act to:
 - Foster public trust and awareness
 - Influence government to consider information rights in implementing new programs and policies
 - Deter conduct that contravenes the IPPs

Guiding principles for regulatory action

- Independent
- Collaborative
- Targeted and proportional
- Transparent and consistent

Types of privacy regulatory action

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Levels of privacy regulatory action



Factors when deciding the appropriate level of action

- The seriousness of the issue, considering impact and likelihood
- Whether the issue arose from inadvertent, deliberate or reckless conduct
- Whether the regulated body self-reported the incident to OVIC
- Whether the issue is systemic, ongoing or isolated
- Whether the regulated body has already addressed the issue
- If regulatory action would have educational, deterrent or precedent value
- If the regulated body was subject to prior action, and the issue is related to that previous action

Preliminary inquiries

- When OVIC identifies an issue, we may start by making preliminary inquiries. For example:
 - a telephone call or email to agency privacy officer requesting information and documents
 - a meeting or in-person briefing about the issue.
- OVIC may offer non-binding suggestions.
- Preliminary inquiries also help OVIC decide whether more formal action is required.

Audits and examinations

- The PDP Act authorises OVIC to conduct examinations and audits.
- OVIC may use an examination or audit:
 - as a proactive assurance tool
 - across a number of organisations to assess a particular privacy issue
 - to respond to a potential breach of the PDP Act.

Investigations and compliance notices

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Investigations

- OVIC may commence an investigation on its own initiative or in response to a complaint or referral.
- The investigation is to decide whether OVIC should serve a compliance notice on a regulated body.

Compliance notices

- A notice requiring an organisation to take specified action within a specified time to remedy breaches and comply with IPPs and the PDP Act.
- To serve a compliance notice, OVIC must be satisfied that:
 - the organisation has breached an IPP, code of practice or information usage arrangement, and
 - the breach is serious, flagrant, or repeated (i.e., similar breaches have occurred at least 5 times in the last 2 years).

OVIC approach to investigations

- Our approach to an investigation depends on each case
- Objective is to determine
 - what has occurred
 - whether the IPPs have been breached
 - if so, whether the breach is serious or flagrant
 - if so, whether a compliance notice should be imposed – e.g., has the issue already been addressed.

Expectations on OVIC and investigated organisations

- OVIC expects organisations subject to an investigation to:
 - provide information on request
 - make staff available to discuss the issue with OVIC staff.
- Regulated agencies should expect OVIC to be transparent in the exercise of its powers.
- OVIC will provide organisations a fair hearing and an opportunity to respond to any proposed adverse findings.
- Section 122 of the PDP Act provides that it is an offence to obstruct or mislead a Commissioner or OVIC staff member.

Conclusion of an investigation

- Section 111 of the PDP Act permits the Commissioner to publish a report, where it is in the public interest to do so.
- Where appropriate, OVIC will publicly report on the outcome of its regulatory action.
- OVIC will give a regulated body a reasonable opportunity to respond to any adverse findings.
- OVIC will monitor and liaise with the regulated body about its implementation of a compliance notice or response to any recommendations.

Other investigative functions

Investigations in response to Ministerial request

At the request of the Minister, OVIC must investigate and report to the Minister on any matter relating to information privacy under the PDP Act.

Freedom of information investigations

OVIC can investigate how regulated bodies are meeting their obligations under the FOI Act through own motion investigations.

Forward work program and next steps

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