

SOUTH AUSTRALIA



STATE TAXATION OFFICE

General

**Circular No. 52
(formerly General Circular No. 3)**

CLAIMS OF PRIVACY BY FINANCIAL INSTITUTIONS

BACKGROUND

A financial institution recently queried whether it was obliged to provide financial information in relation to a client which was requested by the State Taxation Office as part of a stamp duty investigation. The financial institution was concerned about the credit reporting aspects of the Privacy Act, 1988. This circular seeks to clarify the State Taxation Office position.

PRIVACY LEGISLATION AND INVESTIGATIONS

The legislation in question is the Privacy Act, 1988 (Commonwealth, No. 119/1988) and the Privacy Amendment Act, 1990 (Commonwealth, No. 116/1990).

The Act binds the Crown in the right of each of the States (Section 4(1)).

Section 14 of the Act contains the Information Privacy Principles. Principle 11 - Limits on disclosure of personal information is of relevance to investigations and financial institutions. It states:-

- “1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:
- a)
 - b) the individual concerned has consented to the disclosure;
 - c)
 - d) the disclosure is required or authorised by or under law; or
 - e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.
3. A person, body or agency to whom personal information is disclosed under clause 1 of this principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.”

The “personal information” in question is defined as:-

“...information 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 an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.”

A “record-keeper” is any agency that is in possession or control of a record of personal information (Section 10(1)).

The effect of these provisions is that in the course of an investigation, information (that would be included in the definition of personal information) would be required and requested from a record-keeper, and this would be subject to the Privacy Act.

The State Taxation Office, in general, is entitled to the information without a breach of the provisions on the part of the record-keeper in accordance with Principle 11, 1(d) and 1(e) as described above.

18 June 1992

COMMISSIONER OF STATE TAXATION