



ACT
Government
Education

ACCESS TO STUDENT RECORDS

GUIDELINES FOR
STAFF

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These guidelines must be read in conjunction with the *Access to Student Records* policy and procedures, and supporting information referenced in these Guidelines.

1. OVERVIEW

1.1. Access to student records is governed by legislation relating to:

- the management of personal and personal health information
- legislation that requires or allows disclosure of personal information
- legislation relating to child protection and law enforcement
- court orders such as subpoenas and notices for non-party production
- orders that may restrict access to student information such as family court orders or personal protection orders.

1.2. Access is also governed by Directorate policy and internal guidelines including

- *Sensitive Information Handling* <https://index.ed.act.edu.au/governance/policies/files-policies/pdf/Sensitive-Information-Handling-Policy.pdf>,
- *Family Law Policy* and related *Guidelines* http://www.det.act.gov.au/publications_and_policies/policy_a-z; and,
- the *School Legal Information Manual* <https://index.ed.act.edu.au/handbooks/school-legal-information.html>.

Staff should be familiar with relevant information in these documents.

2. COMMON DISCLOSURES UNDER PRIVACY LEGISLATION

2.1. Disclosure of personal information with the consent of the individual concerned (or if a student, by a parent or carer), or as authorised or required by law or court order, is allowed by privacy legislation, including the *Information Privacy Act 2014* (ACT). In most circumstances the Directorate will have made it clear when collecting personal information what disclosures are normally made. In these cases it may be possible to rely on the exemption that the individual would reasonably expect the disclosure to be made. These are probably the most common situations in which personal information is requested and can be disclosed by the Directorate. Other exemptions are provided under privacy law but usually involve more complex situations.

2.2. Some privacy provisions differ when personal health information is concerned. For example, providing access to health records, including some counselling records needs special handling.

2.3. Three matrices have been developed to provide guidance on which areas of the Directorate are authorised to manage and respond to requests for student records in various contexts. Each matrix is supported by procedures.

- 2.4. Requests for the disclosure of routine personal information requested by a current student or parent, by a past student or by a third party may be handled by the nominated areas in *Matrix 1 - Disclosure of (Routine) Personal Information Relating to Students by Consent* of the individual concerned or a person with parental responsibility.

Note: Routine information and records are generally those that would have already been provided to the student and parents during the normal course of the student's education at a school. These can be academic records or individual student absences (not including class rolls). Records that identify or provide information about third parties, or Student Accident/Incident Reports, are not considered routine information.

- 2.5. Requests for the disclosure of student personal information that are authorised or required by law may be handled by the nominated areas in *Matrix 2 - Disclosure of Personal Information Relating to Students Authorised or Required by Law* using the steps set out below the tables.

A checklist flowchart for responding to external requests for personal information is provided at section 4 of these guidelines.

- 2.6. Where a staff member is unsure of the validity of a request, where there may be sensitive issues involved, or where it is not clear that the request is allowed by the exemptions of consent, reasonable expectation, or authorised or required by law or where disclosure of non-routine information is sought, the Governance and Legal Liaison section should be contacted for advice: EDULegalLiaison@act.gov.au.
- 2.7. Where a person asserts he or she is the parent or carer of a child at the school but is not known to school staff, then the principal is entitled to ask the person to provide evidence of their identity (such as a driver's licence) and evidence they are the parent or carer and entitled to receive the requested information (e.g. child's birth certificate, court order) before releasing any information, including confirmation of enrolment of the student. If a request for information about a student is received and the school is not certain that person has parental responsibility for the child, no details about the child should be provided, including whether they are enrolled at the school. The person requesting the information should be advised that no information can be provided, and any request should be made in writing to the Directorate's Governance and Legal Liaison section at the following address:

Senior Manager
Governance and Legal Liaison
ACT Education Directorate
GPO Box 158
CANBERRA ACT 2601
Email to EDULegalLiaison@act.gov.au

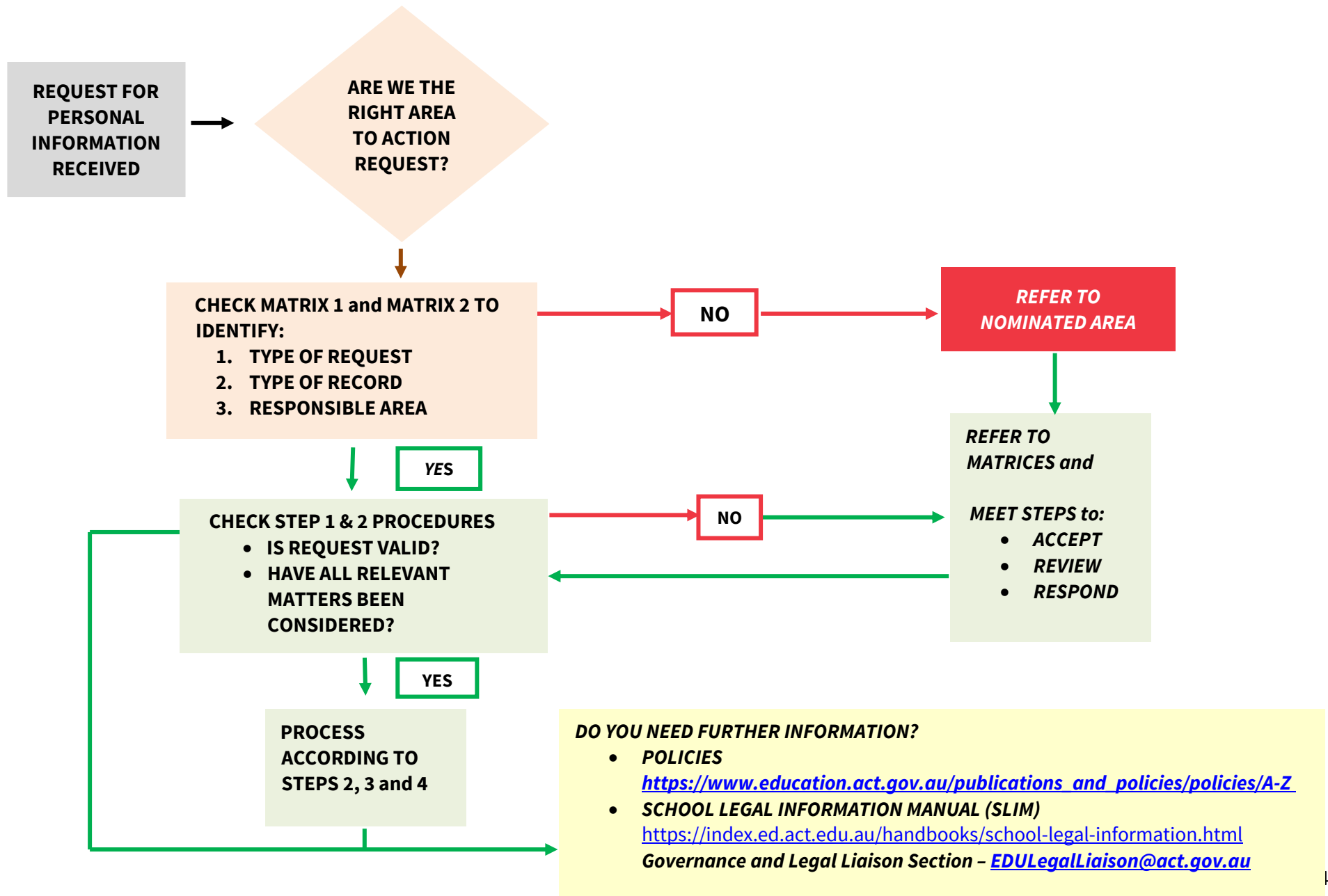
3. COMMON USES UNDER PRIVACY LEGISLATION

- 3.1. The [Information Privacy Act 2014](#) (ACT) provides that a record keeper should not allow personal information to be used other than for the purpose for which the information is collected, unless the purpose of disclosure directly relates to the primary purpose of

collection. Use for another purpose is allowed in circumstances such as with the consent of the individual concerned (or if a student, by a parent or carer), or as authorised or required by law. Other exemptions are provided under privacy law but usually involve more complex situations.

- 3.2. Some privacy provisions differ when personal health information is concerned. For example the [Health Records \(Privacy and Access\) Act 1997](#) includes special provisions that relate to health information where staff are identified as part of a treating team. Using personal health information, including counselling records, needs special consideration.
- 3.3. *Matrix 3 – Use of Information by Directorate staff* and associated protocols relate to circumstances where different areas of the Directorate may seek access to personal information held by another area.
- 3.4. Where staff require assistance, Governance and Legal Liaison section should be contacted for advice either by email to EDULegalLiaison@act.gov.au or by telephone to (02) 6205 9159 or (02) 6205 8510.

4. CHECKLIST FLOWCHART FOR RESPONDING TO EXTERNAL REQUESTS FOR PERSONAL INFORMATION



5. MATRIX 1: DISCLOSURE OF (ROUTINE) PERSONAL INFORMATION RELATING TO STUDENTS BY CONSENT OF INDIVIDUAL OR PERSON WITH PARENTAL RESPONSIBILITY – COMMON EXAMPLES

Request: (Person or area that has requested the information)	Status of student	Academic Records e.g. school reports	Other School records e.g. names, DOB, attendance		Counsellor Records	Health Records	Incidents Records	Year 10 Certificate	Year 12 Certificate
Student Parent/carer	Current	School	School		SW	G&LL	G&LL	P&A	BSSS
	Past student	RMU	RMU		SW	G&LL	G&LL	P&A	BSSS
External e.g. P&C Assocs, School photographer	Current	N/A	School		N/A	N/A	N/A	N/A	N/A
ACT Health Health professionals	Current	School	School		SW	SW	N/A	N/A	N/A
	Past student	G&LL	G&LL		SW	G&LL	N/A	N/A	N/A
External e.g. Employment Agencies	Current	School	School		N/A	N/A	N/A	N/A	BSSS
	Past student	G&LL	G&LL		N/A	N/A	N/A	P&A	BSSS
Solicitor	Current	G&LL	G&LL		G&LL	G&LL	G&LL	P&A	BSSS
	Past student	G&LL	G&LL		G&LL	G&LL	G&LL	P&A	BSSS
Gov't agencies e.g. NSW Transport	Current	N/A	School		N/A	N/A	N/A	N/A	N/A
Gov't agencies e.g. NSW Corrective Services	Current	School	School		SW	G&LL	N/A	P&A	BSSS
	Past student	G&LL	G&LL		SW	G&LL	N/A	P&A	BSSS
Interstate Schools	Current	School	School		N/A	G&LL	G&LL	P&A	N/A
	Past student	G&LL	G&LL		N/A	G&LL	G&LL	P&A	N/A
Non ACT Health Professionals	Current	School	School		SW	SW	N/A	N/A	N/A
	Past student	G&LL	G&LL		SW	G&LL	N/A	N/A	N/A
	Area processes & authorises release	Area processes & authorises release	Area processes & authorises release		Area processes & authorises release	Area processes & authorises release	Area processes & authorises release	Area processes & authorises release	Area processes & authorises release

BSSS Board of Senior Secondary Studies	G&LL – Governance and Legal Liaison	School – Relevant School
P&A – Planning and Analytics	RMU – Records Management Unit	SW – Student Wellbeing

INFORMATION MAY BE PROVIDED TO THE PERSON MAKING THE REQUEST BY AN OFFICER AUTHORISED TO DO SO, IF:

Step 1	
<input type="checkbox"/>	<ul style="list-style-type: none">• The request is in writing by the individual concerned or by a person with parental responsibility.
<input type="checkbox"/>	<ul style="list-style-type: none">• The request is in writing and if records are sought by a person other than the individual concerned (a third party), a signed consent by the individual concerned or a person with parental authority is provided.
<input type="checkbox"/>	<ul style="list-style-type: none">• Evidence of identity of the person with parental responsibility and (where relevant) the third party authorised to receive the requested records, together with evidence of relationship to the child should be sighted and a note made of this. (A current driver's license or passport and the child's birth certificate will meet these requirements). A copy of any current court orders should also be provided. If there are no orders, the parent should provide written confirmation there are no court orders in place that would preclude the requested information being provided to them.
<input type="checkbox"/>	<ul style="list-style-type: none">• Where the person is known to the school as a current parent or carer of a student at the school, the principal has the discretion not to require evidence of identity.
<input type="checkbox"/>	<ul style="list-style-type: none">• If there is any doubt about the authenticity of the request INCLUDING whether the person has parental responsibility for the child, DO NOT provide information. Seek advice from the Governance and Legal Liaison section.
Step 2	
<input type="checkbox"/>	<ul style="list-style-type: none">• Locate the relevant student file and/or related documents. If files are located at the Records Management Unit use the student retrieval form at https://index.ed.act.edu.au/corporate-support/records-management.html.
<input type="checkbox"/>	<ul style="list-style-type: none">• The record's status as personal information or a personal health record has been established.
<input type="checkbox"/>	<ul style="list-style-type: none">• Where a record is a health record, requests for access should be made to the Governance and Legal Liaison section. Refer to health privacy information at https://index.ed.act.edu.au/handbooks/school-legal-information/health-privacy.html.
<input type="checkbox"/>	<ul style="list-style-type: none">• The <i>School Legal Information Manual</i> https://index.ed.act.edu.au/handbooks/school-legal-information/privacy.html has been checked to ensure relevant matters are considered for all records other than Year 10 and Year 12 Certificates. Applications for replacement Year 10 and Year 12 Certificates require a certified copy of proof of identity documents.
<input type="checkbox"/>	<ul style="list-style-type: none">• Relevant policies including <i>Access to Student Records</i> (http://www.det.act.gov.au/publications_and_policies/policy_a-z) and <i>Sensitive Information Handling</i> https://index.ed.act.edu.au/governance/information-governance/sensitive-information-handling.html have been referenced and criteria met.
<input type="checkbox"/>	<ul style="list-style-type: none">• There are no Family Court or other court orders that would PROHIBIT the requestor receiving the record. Refer Family Law Guidelines https://index.ed.act.edu.au/sites/default/files/FamilyLawGuidelinesETD-040613.pdf.

• The student has not advised that they DO NOT wish their records to be provided to parents/carers (SLIM FAQ 18 <https://index.ed.act.edu.au/handbooks/school-legal-information/privacy.html>).

• If there is information relating to another person (other than the student) included in the requested information, the information MUST NOT be provided. Contact the Governance and Legal Liaison section for advice.

Step 3

• Ensure that the information is accurate, up to date, complete, and relevant having regard to the purpose for which the information is proposed to be used or disclosed.

• NO originals of documents may be released to an individual, an external agency, a non-government or interstate school or to a home schooling family.

• The officer to release information should be at a senior level.

• A response providing requested records should be forwarded by registered post where identification is required from the recipient, OR if the information is collected, photographic evidence of identity e.g. a driver's licence should be sighted. Where the person is a current parent or carer of a student at the school, the principal has the discretion not to require evidence of identity. Where the individual has asked to receive records electronically and provided an email address they consider to be private and secure, the documents may be sent electronically to that address. Care should be taken to ensure documents sent electronically are sent to the correct recipient.

Step 4

• Ensure a copy of the response letter and copies of any documents provided are appropriately filed together with all related correspondence.

6. MATRIX 2: DISCLOSURE OF PERSONAL INFORMATION RELATING TO STUDENTS AUTHORISED OR REQUIRED BY LAW – COMMON EXAMPLES

Request: (Person or area that has requested the information)	Status of student	Academic Records e.g. school reports	Other School Records e.g. names, DOB, attendance record	Counsellor Records	Health Records	Sensitive information e.g. incidents or including third parties	Year 10 Certificate	Year 12 Certificate
Australian Federal Police	Current	G&LL	G&LL	G&LL	N/A	G&LL	G&LL	BSSS
	Past student	G&LL	G&LL	G&LL	N/A	G&LL	G&LL	BSSS
Centrelink	Current Past student	N/A	School	N/A	N/A	N/A	N/A	N/A
FOI Request	Current	G&LL	G&LL	G&LL	G&LL	G&LL	G&LL	G&LL
Health records request	Past student	G&LL	G&LL	G&LL	G&LL	G&LL	G&LL	G&LL
Juvenile Justice	Current Past student	School	School	SW	G&LL	N/A	P&A	BSSS
Office for Children, Youth & Family Support	Current	School	School	SW	G&LL	School	P&A	N/A
Office of Regulatory Services e.g. Liquor Licensing	Current	N/A	School	N/A	N/A	N/A	N/A	N/A
Subpoena or Notice for non party production	Current	G&LL	G&LL	G&LL	G&LL	G&LL	G&LL	G&LL
	Past student	G&LL	G&LL	G&LL	G&LL	G&LL	G&LL	G&LL
		Area processes & authorises request	Area processes & authorises request	Area processes & authorises request	Area processes & authorises request	Area processes & authorises request	Area processes & authorises request	Area processes & authorises request

BSSS - Board of Senior Secondary Studies	G&LL – Governance and Legal Liaison	School – Relevant School
P&A – Planning and Analytics	RMU – Records Management Unit	SW – Student Wellbeing

INFORMATION MAY BE PROVIDED TO THE PERSON MAKING THE REQUEST BY AN OFFICER AUTHORISED TO DO SO, IF:

Step 1	
<input type="checkbox"/>	• The request is in writing on agency letterhead by a person <u>authorised by the agency to request the information</u> and is in a <u>format appropriate to the relevant legislation</u> AND clearly sets out the information required.
<input type="checkbox"/>	• If there is any doubt about the authenticity of the request DO NOT provide information. Seek advice from the Governance and Legal Liaison section.
<input type="checkbox"/>	• If the request is in the form of a subpoena or a notice for non-party production it should be referred IMMEDIATELY to the Governance and Legal Liaison section as strict timeframes apply. Refer https://index.ed.act.edu.au/handbooks/school-legal-information/court-processes-and-procedure.html .
<input type="checkbox"/>	• If the request is in the form of an application under the <i>Freedom of Information Act 2016</i> or under the <i>Health Records (Privacy and Access) Act 1997</i> it should be referred IMMEDIATELY to the Governance and Legal Liaison section as strict timeframes apply.
<input type="checkbox"/>	• Locate the relevant student file and/or related documents. If files are located at the Records Management Unit, use the student retrieval form at https://index.ed.act.edu.au/corporate-support/records-management.html .
Step 2	
<input type="checkbox"/>	• The record's status as personal information or a personal health record has been established https://index.ed.act.edu.au/handbooks/school-legal-information.html .
<input type="checkbox"/>	• The <i>School Legal Information Manual</i> (https://index.ed.act.edu.au/handbooks/school-legal-information/privacy.html) has been checked to ensure relevant matters are considered for all records other than Year 10 and Year 12 Certificates.
<input type="checkbox"/>	• Relevant policies including <i>Access to Student Records</i> (http://www.det.act.gov.au/publications_and_policies/policy_a-z), <i>Sensitive Information Handling</i> https://index.ed.act.edu.au/governance/information-governance/sensitive-information-handling.html , <i>Child Abuse and Neglect Guidelines</i> http://www.det.act.gov.au/_data/assets/pdf_file/0006/17619/childabp.pdf have been referenced and criteria met.
Step 3	
<input type="checkbox"/>	• Ensure that the information is accurate, up to date, complete, and relevant having regard to the purpose for which the information is proposed to be used or disclosed.
<input type="checkbox"/>	• NO originals of documents should be provided.
<input type="checkbox"/>	• The officer to release information should be at a senior level and should satisfy him/herself that the information requested is authorised or required by law.
<input type="checkbox"/>	• Documents should be forwarded by secure means such as by registered post, secure hand or courier. If collected, proof of identity and authority should be sighted. Where the individual has asked to receive records electronically and provided an email address they consider to be private and secure, the documents may be sent electronically to that address. Care should be taken to ensure documents sent electronically are sent to the correct recipient.

Step 4

- Where information is provided for the purposes of enforcement of the criminal law, the *Information Privacy Act 2014* ACT requires that a note of this should be included with the record containing the information disclosed. This may be done by including the correspondence related to the request. (No personal health information can be provided unless a warrant or subpoena is issued.)
- Ensure a copy of the response letter and copies of any documents provided are appropriately filed together with all related correspondence.

7. MATRIX 3: ACCESS TO STUDENT RECORDS - USE OF INFORMATION BY DIRECTORATE STAFF

Student records are created from information provided by parents, such as enrolment forms and medical history, and by information generated by schools, such as academic and assessment data and individual learning and support needs.

This information is used by staff for purposes such as administration, providing appropriate education opportunities and support for individual students, and meeting duty of care responsibilities towards students. Information is also used for the purpose of effectively managing the public school system, including contacting parents as part of surveys.

Information should only be created or accessed by staff where relevant to their duties and responsibilities.

“OWNERSHIP” OF STUDENT RECORDS i.e. record keepers

Nature of record	Academic records	Name, DOB, attendance	Counselling	Special Needs	Incidents (Claims)	Assessment Data	Year 10 Certificate	Year 12 Certificate
Current	School	School	SW	DE	G&LL	P&A	P&A	BSSS
Past student	RMU	RMU	SW	DE	G&LL	P&A	P&A	BSSS

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P&A – Planning and Analytics	RMU – Records Management Unit	SW – Student Wellbeing
DE – Disability Education		

Note: Education ICT holds information that may be provided to the appropriate area of EDU.

PROTOCOLS

The use of personal information and personal health information that is collected for a particular purpose must not be used for another purpose except in particular circumstances set out under privacy legislation. Such circumstances include where the information is used for a purpose directly related to the primary purpose for which the information was collected, where parents and/or students have provided consent, where it is required or authorised under law, and where use is reasonably necessary to lessen or prevent a serious threat to the life, health or safety of an individual, or to public health or safety. It is important that this occurs in a considered and structured way. Some considerations in decision-making include:

1	The principal or manager (or person authorised by the principal or manager) of the school or area that seeks the information should make a request in writing to the principal or manager who holds the record. The request should clearly state what information is required and for what purpose. If this is done on a regular basis, one request (for example annually) will be sufficient.
2	The principal or manager (or person authorised by the principal or manager) should consider whether there are any issues that should be clarified prior to responding, for example whether there are any difficulties in respect of privacy legislation or of legislation such as the <i>Children and Young People Act 2008</i> .
3	The person authorised to release the information must ensure that the information is accurate, up to date, complete and relevant, having regard to the purpose for which the information is proposed to be used. The officer to release information should be at a senior level and should ensure that obligations under privacy and other relevant legislation have been considered.
4	Documents should be forwarded by secure means having regard to relevant directorate policies. A file copy of relevant documents should be created to ensure there is a clear record of action and a record of the information provided.
5	Where a consultant or a service provider is to be used a formal agreement must be put in place in respect of the contracted work. This should contain appropriate contractual provisions requiring the contracted service provider, and any subcontractor for the contract, to comply with the Territory Privacy Principles contained in the <i>Information Privacy Act 2014 (ACT)</i> or a corresponding law. The above steps will also apply.
6	Where a service level agreement is in place, the above steps will need to be reflected in appropriate arrangements for the flow of information.

