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LAWYERS

Employer's guide to personal information access requests under the Privacy Act

Set out below are the steps that an employer must follow after receiving a request for access to personal information by an individual about themselves.

If you intend to rely on an exception to allow you to not to provide access to personal information, it is advisable that you obtain advice beforehand.

1. Once a request has been received by an individual for access to their personal information, there is a 20 working day time limit in which an employer must decide:
 - a. If the information is held about the person that is making the request;
 - b. If the information is held in a way that is readily retrievable;
 - c. If the information is held, whether the request for access is granted;
 - d. If access is granted, how access can will be provided; and
 - e. If there is a charge in relation to accessing the information.
2. The requester must be informed of the employer's decision within 20 working days of them receiving the request. This does not mean access must be provided in this time.
3. If access is declined, this can only be done for a limited number of reasons under sections 49-53 of the Act, or where permitted by another law. The requester must be notified of this within the decision-making timeframe.
4. If the request is for a significant amount of information, or it is difficult to find/access, the time to provide a decision can be extended. However:
 - a. Notice of extension must be given to the requester within the original 20 working days;
 - b. Specify how long the extension is;
 - c. Specify the reason for the extension; and
 - d. Inform the requester of their right to make a complaint to the Office of the Privacy Commissioner.
5. A requester may make an access request and ask that it is dealt with urgently. The requester must provide a reason why the request should be handled urgently.
 - a. An employer should either confirm or decline to treat the request urgently in writing after considering:
 - i. The reason for urgency;

- ii. If treating the request urgently would unreasonably interfere with your business
 - iii. What information has been requested and the way in which it is held by the business
 - iv. How much information has been requested
 - v. Whether other people are involved in the process (consultation) before information can be released.
 - b. Private entities such as businesses may ask a requester to pay a reasonable charge for making the information available.
6. If the requested information is held by another part of the business, the request may be transferred after complying with the specific requirements in the Act.
7. If the access request is granted, consideration should be made whether parts of the information should be redacted (blacked-out). The same considerations made when determining whether to grant or decline an access request should be used when deciding if any material should be redacted.

It is worth noting that pointlessly redacted information may result in an unnecessary complaint to the Privacy Commissioner.

Additionally, if the access request is granted, the employer must inform the employee of their right to correction of information under the Act.

8. If a request for personal information is refused without good reason, the requester may complain to the Office of the Privacy Commissioner. As of 1 December 2020, if the Commissioner determines that the information should be released, he may issue an agency with an access determination.

Failing to respond to an access request or failing to provide the requested information without good reason is an automatic interference with an individual's privacy.

As a result of the Privacy Act 2020 coming into force, several parts of the Act have changed, and it is important that employers are aware of their obligations.

Taking shortcuts or failing to address privacy issues properly in a business may result in long investigations and potentially expensive prosecutions.

If there are concerns that your business is not currently compliant with its obligations under the Act, or you are unsure what your obligations are, it is advisable to speak with a professional experienced in the area.