

JOINT SELECT COMMITTEE ON AUSTRALIA'S IMMIGRATION DETENTION NETWORK

Q33

Contracts

Question: Are staff of the Department or any of its agencies or contractors required to sign confidentiality agreements? Is this standard practise? If so, why? Please provide a copy of the most recent confidentiality agreement.

Answer:

DIAC Staff

All non-ongoing and ongoing staff of the department sign an 'acknowledgement of compliance' agreement, stating that they understand and will comply with the department's security policies, standards and procedures and relevant legislation governing the handling of official information.

Serco

Serco must ensure that all service provider personnel that are to carry out work or perform duties under both contracts have signed:

- a confidentiality deed poll; and
- a deed of non-disclosure of personal information prior to commencing work or performing duties.

A Serco code of conduct must also be signed by each employee.

On 18 July 2011, the department requested Serco provide input into the Joint Select Committee question above and to date a reply has not been received as such the department is unable to provide a copy of the most recent confidentiality agreement. The department will provide a copy of the agreement as soon as it becomes available.

IHMS

It is a requirement under the health service contract between the department and the health services provider, International Health and Medical Services (IHMS) that all IHMS employees sign a confidentiality agreement. The confidentiality agreement is relevant to IHMS and the employee only, and a copy is not held by the department.

In turn, IHMS has signed the health services contract ("the contract") which provides that the company will recognise and uphold the confidentiality of the department's confidential information (as defined in the contract). By extension, the IHMS contract undertaking is extended to the employee through the confidentiality agreement. Full details of the confidentiality requirement are covered in the respective contract/agreement as follows:

Health Care Services Agreement - Christmas Island
Clause 12.4(c) and 13.

Mainland Health Services Contract
Clause 47 of the main terms and conditions

JOINT SELECT COMMITTEE ON AUSTRALIA'S IMMIGRATION DETENTION NETWORK

Q33

IHMS are currently seeking legal advice on whether or not its confidentiality agreement remains its own intellectual property, and hence IHMS is unable to provide this to the department at this stage. Therefore the department is not able to provide a copy of the confidentiality agreement that IHMS staff sign to the Joint Select Committee.

Australian Red Cross

Australian Red Cross staff contracted to work with the department sign a 'disclosure of information' agreement, agreeing not to, without prior written consent of the other party, use or disclose any confidential information of another party.

Life without Barriers

Life without Barriers staff contracted to work with the department sign a 'confidentiality agreement' confirming that they understand and agree to protect and respect the right of confidentiality to any person they have involvement with and undertake to comply with the Life Without Barriers privacy policy and associated procedures. They also sign a 'disclosure of information' agreement, agreeing not to, without prior written consent of the other party, use or disclose any confidential information of the other party.

Detention Infrastructure (Capital works)

For capital works it is not standard practice to require staff of the department or any of its agencies or contractors to sign confidentiality agreements.

The above are standard practices in-line with Australian Government regulations under relevant legislation in the Privacy Act, Public Service Regulations and the Migration Act.

This form is to be signed by all DIAC employees, acknowledging that they understand and will comply with DIAC's security policies, standards and procedures and relevant legislation governing the handling of official information.

RELEVANT LEGISLATION (extracts)

THE PUBLIC SERVICE REGULATIONS 1999

Regulation 2.1 – Duty not to disclose information

- (1) This regulation is made for subsection 13 (13) of the Act.
- (2) This regulation does not affect other restrictions on the disclosure of information.
- (3) An APS employee must not disclose information which the APS employee obtains or generates in connection with the APS employee's employment if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programs.
- (4) An APS employee must not disclose information which the APS employee obtains or generates in connection with the APS employee's employment if the information:
 - (a) was, or is to be, communicated in confidence within the government; or
 - (b) was received in confidence by the government from a person or persons outside the government;whether or not the disclosure would found an action for breach of confidence.
- (5) Subregulations (3) and (4) do not prevent a disclosure of information by an APS employee if:
 - (a) the information is disclosed in the course of the APS employee's duties; or
 - (b) the information is disclosed in accordance with an authorisation given by an Agency Head; or
 - (c) the disclosure is otherwise authorised by law; or
 - (d) the information that is disclosed:
 - (i) is already in the public domain as the result of a disclosure of information that is lawful under these Regulations or another law; and
 - (ii) can be disclosed without disclosing, expressly or by implication, other information to which subregulation (3) or (4) applies.
- (6) Subregulations (3) and (4) do not limit the authority of an Agency Head to give lawful and reasonable directions in relation to the disclosure of information.

Note Under section 70 of the *Crimes Act 1914*, it is an offence for an APS employee to publish or communicate any fact or document which comes to the employee's knowledge, or into the employee's possession, by virtue of being a Commonwealth officer, and which it is the employee's duty not to disclose.

THE MIGRATION ACT 1958

Section 488 – Tampering with movement records

- (1) A person must not:
 - (a) read; or
 - (b) examine; or
 - (c) reproduce by any means; or
 - (d) use or;
 - (e) disclose by any means;any part of the movement records, otherwise than in accordance with an authority given under subsection (2).

Penalty: imprisonment for 2 years.

.....

- (4) A person (other than an authorised officer carrying out duties or performing functions under or for the purpose of this Act) shall not:
 - (a) delete, alter or add to any part of the movement records;
 - (b) alter any computer program connected with making, transferring or keeping movement records; or
 - (c) in any other way tamper with a notified database.

Penalty: imprisonment for 10 years.

PRIVACY ACT 1988

Information Privacy Principles 10 and 11 in section 14 of the Privacy Act limit the use and disclosure of personal information contained in records that are in DIAC's possession or control.

Information Privacy Principle 10 - Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:

- (a) the individual concerned has consented to use of the information for that other purpose;
- (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
- (c) use of the information for that other purpose is required or authorised by or under law;
- (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
- (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.

Information Privacy Principle 11 - Limits on disclosure of personal information

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) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
- (b) the individual concerned has consented to the disclosure;
- (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
- (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.

ACKNOWLEDGEMENT OF COMPLIANCE

I have read and understood the above legislation, and the current DIAC security policies, standards and procedures.

I acknowledge that I must comply with the above legislation and act in accordance with DIAC's security policies, standards and procedures; and I must not access classified information for which I do not hold the appropriate level of security clearance and/or do not have the authority to access.

Family name:

Given names:

Signature: Date / /

Employed in DIAC as: APS staff / Consultant / Contractor.