



Use and Disclosure of Protected Information

The [Security of Critical Infrastructure Act 2018](#) (the Act) limits the use and disclosure of information obtained or created in accordance with the Act – which is known as **protected information**. It is an offence to use or disclose protected information unless authorised. This factsheet sets out the provisions of the Act as amended by the [Security Legislation Amendment \(Critical Infrastructure Protection\) Act 2022](#).

What is Protected Information?

Protected information is information obtained in the course of exercising powers, or performing duties or functions under the Act. Importantly, the phrase “protected information” under the Act is different from the PROTECTED security classification under the Australian Government’s Protective Security Policy Framework (PSPF).

Protected information under the Act expressly includes:

- records or the fact that an asset is privately declared under section 51 of the Act to be a critical infrastructure asset or *under section 52B of the Act to be a system of national significance (as amended),
- records or the fact that the Minister has:
 - given a Ministerial authorisation; or
 - revoked a Ministerial authorisation
- records or the fact that the Secretary of the Department of Home Affairs (the Department) has:
 - given a direction or request under sections 35AK, 35AQ and 35AX (Part 3A which sets up a regime for government assistance measures), or
 - revoked such a direction or request; and
- information that is, or is included in, a report under sections 30BC or 30BD (Part 2B which relates to mandatory cyber security reporting) or *sections 30AC or 30AG (Part 2A – Critical infrastructure risk management programs) of the Act.

The full definition can be found in section 5 of the Act.

There may be situations in which information is protected information for the purposes of the Act, and has a PROTECTED security classification. But it is important to note that these are entirely separate operational and legal frameworks. For further information on the PSPF, visit www.protectivesecurity.gov.au/

Unauthorised use of protected information

Unauthorised use or disclosure of protected information attracts an offence that is punishable by imprisonment for 2 years or 120 penalty units, or both.

Why is information protected?

Information provided by critical infrastructure owners and operators to the government in accordance with the Act may be commercial in confidence or sensitive information relating to specific security procedures or systems used by the asset.

It is essential that this information is protected to ensure the protection of commercial information and to prevent malicious use of the information to exploit a security risk.

As a result, the unauthorised use or disclosure of protected information may pose risks to Australia’s national security, Australia’s most critical assets and the community who relies on the products and services provided by such assets.

In those circumstances, and many others, those with access to protected information (including the Government) must ensure that the information is handled relative to the risks associated with that information being known or used by adversaries to either these entities or Australia.

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Exceptions, authorised use and disclosure of protected information

The protected information framework is intended to allow a responsible entity to share protected information when it deems it is necessary within the parameters of the framework.

Each disclosure will depend on the circumstances of that disclosure and it is a matter for each responsible entity to satisfy itself that the disclosure is permitted under the exemptions to the general prohibition in section 45.

As long as the entity can identify a relevant purpose under one of the exceptions in Part 4 and where required discloses to one of the specified entities, an entity is authorised to disclose that information.

Performance of functions or duties

An entity may make a record, use or disclose protected information for the purposes of exercising the entity's powers, or performing functions or duties, under the Act (see subsection 41(a) of the Act).

For example, an entity may disclose information to contractors, consultants and local government bodies, where they need to adopt and maintain, comply with, review or update a critical infrastructure risk management program in accordance with your obligations under s30AC-AF of the SOCI Act (as amended).

Compliance purposes

An entity may make a record, use or disclose protected information for the purposes of ensuring compliance with the Act (see subsection 41(b) of the Act).

Secondary use and disclosure

An entity may make a record of, use or disclose protected information if the information was obtained in accordance with the authorised disclosure provisions in the Act (sections 41-43D), and the secondary use or disclosure was for the purposes for which the information was disclosed in the first instance (see section 44 of the Act).

For example if the Secretary of the Department discloses protected information relating to a critical water asset to a State Minister responsible for water for the purpose of the State Minister discharging his or her duty as the Minister responsible for that sector, then the State Minister may further disclose the information to other persons for that purpose. That may include officers in a local council, where the local council has responsibilities in relation to the critical water asset, as long as the disclosure to the local council is for the purpose of the State Minister exercising or performing his or her functions or duties.

Good faith and in purported compliance

If an entity makes a record of, uses or discloses protected information but does so in good faith and in purported compliance with sections 41-43D of the Act or a notification provision (see subsection 46(3) of the Act), then the entity has not committed an offence under section 45 of the Act.

With the consent of the entity

An entity may use or disclose protected information with the express or implied consent of the entity to which the protected information relates (see subsection 46(4)(c) of the Act).

To the entity

An entity may disclose protected information if it is to the entity to which the protected information relates (see subsection 46(4)(a) of the Act).

Required or authorised by law

The offence provision for the unauthorised use or disclosure of protected information does not apply if the making of the record, use or disclosure is required or authorised under:

- a Commonwealth law or
- a law of a State or Territory and is specified in a rule made under the Act (see subsection 46(1) of the Act).

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To a Government entity

An entity may also disclose protected information if it relates to themselves, and is for the purposes of enabling or assisting a second entity to exercise their powers or perform their functions or duties. The second entity must be a State or Territory Government entity with regulation or oversight responsibilities relating to the first entity, or specified Commonwealth Government entities (subsection 43E(1) of the Act (as amended)).

With the Secretary's consent*

An entity may seek the consent of the Secretary (or specified delegates) of the Department to disclose certain protected information that relates to the requesting entity (subsection 43E(2) of the Act (as amended)).

By the Secretary

The Secretary of the Department (or specified delegates) has additional powers to disclose protected information to certain persons for certain reasons. This includes:

- to the following persons, for the purposes of enabling or assisting the following persons to exercise his or her powers or perform his or her functions or duties:
 - a specified Commonwealth Minister (including their staff and Department)
 - a Minister of a State or Territory (including their staff and Department) who has responsibility for the regulation or oversight of the relevant critical infrastructure sector to which the protected information relates (see section 42 of the Act).
- to various other Government bodies, including an enforcement body and the Inspector-General of Intelligence and Security, in certain circumstances (see sections 43 to 43B of the Act).
- for the purpose of developing or assessing proposed amendments to the Act, the Rules or to create Rules (see section 42A of the Act (as amended)).

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Frequently Asked Questions (FAQs)

Subject to the commencement of the Security Legislation Amendment (Critical Infrastructure Protection) Act 2022

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1. *Can an entity disclose protected information to its State or Territory regulator?*

Yes, if:

- the entity to which the information would be disclosed to has responsibility for the regulation or oversight of the relevant critical infrastructure sector to which the protected information relates, and
- the information is disclosed for the purpose of enabling or assisting the regulator to exercise their powers or perform their functions or duties.

If the disclosure does not fall within the above circumstance, the entity may seek the consent of the Secretary of the Department to disclose protected information that relates to the requesting entity.

2. *Can my entity disclose protected information to its State or Territory Department, Minister or Cabinet?*

Yes, see the answer to Question 1.

3. *Can my entity disclose protected information to an external entity, such as a parent company or subsidiary?*

Yes, an entity may disclose protected information to a secondary entity (including a parent company) if the information is disclosed to the entity in accordance with section 41-43B, and the entity is disclosing the protected information for the same purpose for which the information was originally disclosed to that entity (see section 44 of the Act).

If the entity is disclosing protected information about itself, then the protected information can be disclosed to another entity with implied or express consent of appropriate persons in the entity.

4. *Can my regulator disclose protected information about or in relation to my entity to a State or Territory Government Department, Minister or Cabinet?*

Yes, a State or Territory regulator may be able to disclose protected information to a secondary entity (including its State or Territory Government Department, Minister or Cabinet) if for the same purpose to which the information was originally disclosed to that regulator (or if consistent with the consent of the entity to whom the information relates).

5. *Can an entity obtain protected information that relates to that entity from the Department of Home Affairs?*

Yes, the Secretary of the Department may disclose protected information to an entity to which the information relates.

6. *Can my State or Territory regulator obtain protected information that relates to an entity from the Department of Home Affairs?*

Yes, the Secretary of the Department may disclose protected information (including information about an entity) to a specified State or Territory body if for the purpose of enabling or assisting the regulator to exercise their powers or perform their functions or duties.

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