

Information Paper 2 of 5

Adding a new rule 3A to the Biometric Processing Privacy Code 2020

We are proposing to add a new rule 3A to the Biometric Processing Privacy Code, as set out in the draft code accompanying this information paper.

- [Amendment No 1 to the Biometric Processing Privacy Code 2025](#) (opens to PDF).
- [Biometric Processing Privacy Code 2025 with changes marked up](#) (opens to PDF).

Other information papers available:

- [General Information Paper](#) (opens to PDF).
- [CRPC Information Paper](#) (opens to PDF).
- [HIPC Information Paper](#) (opens to PDF).
- [TIPC Information Paper](#) (opens to PDF).

The BPPC applies to biometric information collected for biometric processing

- 1.1. The BPPC recently came into force on 3 November 2025. Agencies who already used biometrics on 3 November have a nine-month grace period to move to the new set of rules by 3 August 2026. These agencies are still subject to the IPPs (which will include the new IPP3A from 1 May 2026).



- 1.2. The BPPC replaces IPPs 1-13 and applies to all agencies – businesses, government agencies, NGOs – that collect biometric information for biometric processing. It applies to biometric information and to the activity of biometric processing by a biometric system. It defines what is meant by biometric information, biometric processing, and biometric systems. [We have also developed guidance on complying with the BPPC.](#)
- 1.3. Other agencies that have started using biometrics since 3 November 2025 or are considering new uses of biometrics are subject to the BPPC.
- 1.4. The development of the BPPC was the result of engagement with a wide range of stakeholders over a number of years. We acknowledge significant stakeholder engagement and interest in the development of the BPPC.
- 1.5. We were not able to consider how to include IPP3A when we developed the BPPC. Codes of practice can only implement the IPPs. IPP3A is established by the Privacy Amendment Act which became law on 3 September 2025, after the BPPC was issued on 21 July 2025.
- 1.6. Because the BPPC replaces the other 13 IPPs, we also think it is important to include a rule 3A which implements IPP3A in the context of this code. If the BPPC did not include a rule 3A, the general requirements and exceptions under IPP3A would apply, and we think this would be more confusing and harder for agencies to comply with.
- 1.7. By adding rule 3A into the BPPC, we can ensure the exceptions are fit for purpose in the biometric processing context. We are proposing to implement the intent of IPP3A while aligning to the existing BPPC requirements, particularly under rules 2 and 3. This should make it as easy as possible for agencies that are meeting their rule 3 responsibilities to comply with notification requirements under the new rule 3A too.
- 1.8. [Table 1 in the general information paper](#) (opens to PDF) outlines the exceptions we are proposing to bring over from IPP3A into the BPPC.



- 1.9. The table below outlines issues that are more specific to the BPPC, including how we are proposing to incorporate some of the existing exceptions in other rules. We are keen to hear from stakeholders on these specific exceptions, as well as the wider exceptions in [Table 1 in the general information paper](#) (opens to PDF).

Proposed approach to issues under the BPPC

Issue	Proposed approach
No notification required where an individual has already been made aware of the indirect collection – IPP3A(3)	We are proposing rule 3A would bring in the general exception under IPP3A(3) which applies where an individual has already been made aware of the specific indirect collection. We think this is consistent, clear, and balanced; and is likely to be a commonly relied upon exception.
No prejudice to the individual – IPP3A(4)(a)	We do not propose to include this exception in the BPPC as the equivalent exception in IPP3 was not carried through into rule 3 of the BPPC
Information is publicly available – IPP3A(4)(b)	We do not propose to include this exception in the BPPC as the equivalent exception in IPP3 was not carried through into rule 3 of the BPPC.
Non-compliance is necessary – IPP3A(4)(c)	We propose to include this exception in the BPPC as it is consistent with IPP3A and rule 3.
Compliance would prejudice the purposes of collection – IPP3A(4)(d)	We propose to include this exception in the BPPC as it is consistent with IPP3A and rule 3.



Issue	Proposed approach
Compliance is not reasonably practicable in the circumstances – IPP3A(4)(e)	<p>We are not proposing to include the IPP3A ‘not reasonably practicable’ exception in BPPC rule 3A. This is because the same exception has not been incorporated into rule 3 of the BPPC, to reflect the sensitivity of biometric information. We think that where an agency is indirectly collecting biometric information, this is best supported by the 3A(3) requirement which requires steps to make the individual concerned aware.</p> <p>We further believe there could be regulatory confusion if rule 3A includes a ‘not reasonably practicable’ exception where rule 3 does not, and that agencies which are meeting their rule 3 obligations will also be able to comply with rule 3A.</p>
Serious threat to health or safety – IPP3A(4)(f)	<p>We propose to include this exception in the BPPC. We can see use cases where this exception might be relevant (e.g. to prevent notification to an individual whose biometric information is shared where that person may cause harm to another person or public health).</p>
De-identified or statistical and research purposes – IPP3A(4)(g)	<p>We are proposing to include this exception, but to narrow it to the use of statistical or research purposes that will not be published in a form that could reasonably be expected to identify the individual concerned.</p> <p>This is narrower than IPP3A(4)(g), which includes an exception where the information will not be used in a form in which the individual concerned is identified. This is because biometric information relating to a particular individual will identify them.</p>



Issue	Proposed approach
Public interest archiving – IPP3A(5)	<p>We are proposing to include an exception based on IPP3A(5) into the BPPC. This exception relates largely to the GLAM¹ sector but applies more broadly to agencies that collect personal information for the purpose of determining whether the information is of enduring value for general public interest and should be archived for public reference, study, or exhibition.</p> <p>We believe there are potential use-cases for biometric processing in the GLAM and archiving in the public interest context. For example, where agencies are using biometric processing in working with archived images or recordings of people.</p>
Security and defence – IPP3A(6)	<p>We are proposing to include this exception because the BPPC is not sector-specific but applies to biometric information collected for biometric processing across all sectors, and we could see hypothetical use cases where this exception would be relevant. However, as intelligence and security agencies are excluded from IPP3A and from the BPPC, we are interested in hearing from stakeholders on whether there are use-cases and whether this exception is needed.</p>
Disclosure of trade secret or prejudice commercial position – IPP3A(7)	<p>We propose to include this exception in the BPPC. Similar to our proposed approach for IPP3A(6), given the BPPC is not sector-specific, we are keen to hear how IPP3A(7) could apply in the BPPC context.</p>

¹ Galleries, Libraries, Archives, and Museums.



Issue	Proposed approach
Conspicuous notice – rule 3(3)(b)	<p>In the biometrics context, a sufficiently clear and detailed conspicuous notice for rule 3 purposes may also satisfy the requirements of the IPP3A(3) exception we propose to include. We are proposing to align this rule 3A exception with the existing language under rule 3(3)(b). We believe it is important to explicitly state that the clear and conspicuous communication needs to tell the individual which agencies would indirectly collect biometric information to fit within this exception.</p>
Timing of notification	<p>We are proposing to align the timing to existing requirements in BPPC rule 3.</p>
Notice of alternatives – rule 3(c)	<p>We think that it makes sense to include the requirement to notify individuals of any alternatives available to them if the agency indirectly collecting their biometric information will conduct biometric processing of that biometric information. This requirement does not mean that an agency needs to provide an alternative. It only requires them to advise the individual whether or not there is an alternative available. To exercise any alternative options to the processing of biometric information indirectly collected, the person needs to know about it.</p>
Information rule 3A will apply to – rule 3A(10)	<p>The BPPC provides a staggered commencement date, depending on whether an agency was undertaking biometric processing on 3 November 2025. This approach has been followed for the amendment, which means the new rule 3A, and the information it relates to, will also apply at different times, depending on when the BPPC applies to that agency's activity.</p>



Questions on proposed rule 3A for the BPPC

B1. Do you agree with our proposed approach to exceptions as set out above?

We are keen to hear from stakeholders to understand if what we have proposed meets the intent of IPP3A and is workable and is consistent with existing exceptions under the BPPC. You can comment on one, a few, or all points we have identified, as well as points you think we may have missed. If you disagree with a proposed approach, it would be useful if you can provide detail or evidence, such as describing a specific situation, about why you disagree. This will help us to consider whether we need to make changes to what we are proposing to incorporate into the BPPC.

B2. Are there tikanga Māori perspectives that we should consider?

Section 21(c) of the Privacy Act requires the Privacy Commissioner to take account of cultural perspectives on privacy. We are aware of the sensitive nature of biometric information. We are particularly interested in hearing about potential interactions with what we are suggesting and tikanga Māori perspectives.

B3. Are there other cultural perspectives that we should consider?

We are also interested in hearing other cultural perspectives on what we are proposing and how these may be considered when incorporating IPP3A into the BPPC.

