

# Guidance on IPP3A(5) – Archiving in the public interest



Guidance for GLAM sector

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## IPP3A(5): Archiving in the public interest

This exception applies to the Gallery, Library, Archives, and Museum (GLAM) sector.

Agencies indirectly collecting personal information have an exception from notification if:

- the collection of the information is 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, and
- compliance is likely to seriously impair the agency's achievement of this purpose.

### What is considered 'archiving in the public interest'?

The term 'public interest' is not fixed or defined, as it's likely that the interpretation of it will change over time. Some general criteria used by the GLAM sector for what may be considered archiving in the public interest include:

- **Purpose** – the purpose for archiving is to enable research; long-term accountability; discovery and availability of personal and community identity, memory and history; educational use; to establish and maintain rights, obligations and precedents.
- **Activities** – the organisation undertakes activities to obtain, preserve, assess, arrange, describe, communicate, promote, distribute, and provide access to records of enduring value.
- **Enduring value** – the archiving relates to records that have been selected for permanent preservation; assessment of records and activities designed to secure their permanent preservation, such as safekeeping, preparation for transfer, arrangement and description of selected records.
- **Transparency** – the organisation is open about the nature of its archiving of personal information, how it manages the information, and how those whose information it is can contact the organisation. Examples of this could include –



displaying information about archiving on its website, including archiving in relevant policies, privacy notices, or online catalogues and guidance.

- **Standards** – the organisation adheres to relevant sector standards for archiving activities and has internal policies and procedures for these.
- **Access** – the organisation provides some form of public access to archives that are permitted to be viewed publicly, or otherwise to a limited audience with a public interest purpose. For example, academic researchers, regulators or official investigators. Are the archives used for purposes other than the organisation’s own commercial gain or private interest?

Some agencies and organisations will have specific legislative requirements to do activities that result in archiving in the public interest. For example, some of the mandatory obligations for public offices and local authorities in the Public Records Act 2005 . However, there are many organisations that may also carry out archiving in the public interest that don’t have a statutory obligation to do so.

Section 24 of the Privacy Act 2020 states that “An action taken by an agency does not breach IPPs 1 to 5, 7 to 10, or 13 if the action is authorised or required by or under New Zealand law.” Public offices and local authorities should continue to fulfil requirements under the Public Records Act with regard to processes for records becoming archives. IPP3A does not remove the requirement to follow those processes.

It’s important to note the difference between archiving in the public interest and keeping records for business purposes. Sometimes agencies use the term ‘archiving’ to refer to transferring records to offsite storage or moving data out of a system for retention purposes. Movement of information from one storage environment to another within an agency is not considered archiving in the public interest. As there is no indirect collection of personal information, IPP3A is not relevant to this scenario.

Each agency will need to make its own assessment about whether its activities meet the definition of ‘archiving in the public interest’ before relying on this exception.



## What is considered likely to ‘seriously impair’ an agency’s achievement of this purpose?

The time, resources and administrative burden that would be associated with the notification requirements of IPP3A for the GLAM sector are considered the most likely to seriously impair their purpose. These institutions play a unique role in preserving and promoting New Zealand’s cultural heritage and identity. This exception is to ensure that the purpose and activities of these institutions is not impacted to a point where they cannot achieve them.

### Appraisal and accessioning processes

Collection of information in the GLAM sector most often happens through appraisal and accessioning processes.

**Appraisal** is the process of evaluating the context, activities and content involved in the creation of documentary materials in order to decide what to keep and for how long, including whether it is of enduring value for public interest and should be archived.

**Accessioning** is the process of formally taking intellectual and physical receipt of materials that have been appraised as being of enduring value for public interest and should be archived.

Together, these activities constitute what is commonly known in the GLAM sector as “collecting”. For the avoidance of doubt, the IPP3A(5) exception applies to both appraisal and accessioning processes.

### Independent researchers

Subject to provisions in section 27 of the Privacy Act for personal or domestic affairs, researchers are agencies under [section 8](#) of the Privacy Act and required to comply with its principles.



Section 27 of the Privacy Act states that IPPs 1 to 3A and 4(b) do not apply to an agency if that agency –

- is an individual; and
- is collecting personal information solely for the purposes of, or in connection with, the individual’s personal or domestic affairs.

IPPs 5 to 12 do not apply to an agency if that agency –

- is an individual; and
- is holding personal information that was collected by a lawful means solely for the purposes of, or in connection with, the individual’s personal or domestic affairs.

However, the exemptions above don’t apply if the collection, use, or disclosure of the personal information would be highly offensive to a reasonable person.

When independent researchers access information in library and archive collections, and collect personal information by reading or making notes, they need to consider their obligations under the Privacy Act principles, including IPP3A.

It’s likely that any collection by an individual researcher solely for personal purposes such as family history research or personal interest would mean that section 27 applies and the principles, including notification under IPP 3A, do not apply unless the collection would be highly offensive to a reasonable person.

Research for a book, exhibition or academic submission would not be collection solely for personal purposes and the researcher would need to comply with the IPPs. In terms of notification of indirect collection, if the information they have accessed is publicly available, the IPP3A(4)(b) exception would likely apply.

## Examples

We’ve provided some common examples below that demonstrate when and how this exception may be relied on.



### Example One - Photographs

Jane Jones is a retired professional photographer with a large collection of photos that she wants to donate to an archive. The photos are of people participating in marathons across New Zealand, dating from the 1960s to 2000.

The archiving institution assesses her collection and decides that it should be archived to preserve personal and community identity, memory and history of these events. Given the large number of photos, having to find and notify individuals would seriously impair the archive's ability to collect and preserve Jane Jones' photo collection. Therefore, the archiving institution decides to rely on the IPP3A(5) exception.

### Example Two – Photographs

Sunnydale community archives hold a number of historical class photos from local schools. The schools discharge these photos to the community archives once they're no longer required by the school for administrative or reference purposes. The photos are then archived, digitised, and made available in Sunnydale community archives' online digital collections.

Although the class photos have the names of the individuals listed, Sunnydale community archives relies on the IPP3A(5) exception when it collects the photos from the schools and doesn't notify the individuals concerned. This is because they don't hold contact details for the individuals, or have a relationship with them, therefore it wouldn't be practical. If Sunnydale community archives did have to notify all the individuals in the class photos, this would take a significant amount of time and resource, which would seriously impair their ability to collect and preserve the photos.

Sunnydale community archives occasionally receives requests from individuals to remove their photo from their online digital collection. In these situations, the community archives decides it is in the individual's best interests to remove the photo, and that this outweighs the photo's value as historical information.



Although the community archives rely on the IPP3A(5) exception, both the archives and the local schools ensure that their public privacy statements outline what personal information they collect and what is transferred to archives or discharged to a local authority to meet their Public Records Act obligations. However, IPP3A only applies to the act of collecting the photos. Decisions about putting the digitised photos online, which is an act of disclosure, would not be covered by IPP3A and further risk assessment would be required for this under IPP11.

### Example Three – Oral Histories

Polly Potter is an oral historian at the National Library researching a nationally significant historical event. Over the course of her research, Polly interviews around 40 people; these include the family, friends, and colleagues of people who witnessed the event, as well as some first-hand accounts from people who are still alive.

At the beginning of each interview, Polly follows her standard process to ensure privacy safeguards are in place. This includes reading a privacy statement to the interviewee at the beginning of each interview, and treating the interview as a confidential conversation until the recording is archived and available for research or published by agreement from both parties.

In these interviews, 20 other people were mentioned, as the interviewees discussed the event, relevant themes, and their lives in the context of others. Neither Polly Potter nor the National Library have the knowledge or resources to find and contact the other 20 people mentioned in the interviews or find and contact their family members in the event they have passed. They rely on the IPP3A(5) exception, as notification would seriously impair their ability to collect and archive Polly Potter's recordings.

### Example Four – Organisational and personal records

Lodgings Library often acquires personal and organisational collections, such as the papers of authors, artists and other significant figures. Lodgings Library has recently acquired the records of an art dealer gallery. The records include information on



artists, vendors and purchasers relating to sales, financial information, and correspondence.

Lodgings Library know that the Privacy Act is concerned with personal information in any format. This means that all sorts of things can contain personal information, including notes, emails, recordings, photos and scans, whether they are in hard copy, electronic form, or can be shared verbally. Therefore, when collecting the personal and organisational records from the art dealer gallery, Lodgings Library considers its obligations under IPP3A. It decides to rely on IPP3A(5) and does not notify the individuals whose personal information is contained within the records, as notification would seriously impair its ability to collect and archive the records.

