

DRAFT BIOMETRICS PROCESSING PRIVACY CODE OPEN FOR CONSULTATION

The Privacy Commissioner (“PC”) has issued a draft Biometric Processing Code and is calling for submissions on the [draft Code](#). Submissions are due by **14 March 2025**. The Code is expected to be finalised in mid-2025.

What is Biometric Processing?

“Biometric processing”, in short, means the processing of “biometric information” (such as an individual’s face, eyes, fingerprints, voice) using a machine-based system (e.g. using software or algorithms), in order to identify the person, verify their identity, or categorise the person.

Biometric information is regarded as particularly sensitive personal information, such that a privacy breach (e.g. unlawful collection, loss, misuse) is likely to cause an individual serious harm. The PC’s view is that any privacy breaches concerning biometric information will almost always require mandatory notification to the PC and to the affected individuals.

The draft Code sets out more stringent standards by which the Information Privacy Principles (“IPPs”) in the Privacy Act 2020 will apply to biometric processing.

Who will the Code apply to?

The types of businesses we expect to be impacted by the Code are:

- Businesses who use facial recognition software (including via a third party agent) to comply with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, such as financial institutions, casinos, accounting firms and law firms;
- Retail businesses using crime intelligence software with facial recognition to identify shoplifters;
- Transport businesses using driver fatigue monitoring software and systems;
- Employers using fingerprint, face or eye-scans for employee clocking-in systems; and
- Businesses using fingerprint, face or eye-scans to verify an individual is authorised to enter a safety sensitive site or to access sensitive information.

The Code will not apply to businesses that manually process biometric information, or to health agencies where the Health Information Privacy Code applies to the biometric processing.

What are the key proposed changes in the Code?

Set out below is a table summarising the key additional requirements in the draft Code, compared with the current requirements already applicable in the Privacy Act 2020.

Privacy Act 2020	Code
<p>IPP 1: Purpose of collection of personal information</p> <p>Only collect personal information if it is for a lawful purpose connected with a function or activity of the organisation, and is necessary for that purpose.</p>	<p>Rule 1: Purpose of collection of biometric information</p> <p>In assessing whether the collection is necessary, the organisation must first undertake a proportionality assessment, that takes into account:</p> <ul style="list-style-type: none">● whether the biometric processing is effective;● whether there is a reasonable alternative with less privacy risk; and● the likely impacts on individuals, including the cultural impacts and effects on Māori. <p>Biometric information can only be collected if:</p> <ul style="list-style-type: none">● the outcome of the proportionality assessment is that the organisation believes, on reasonable grounds, that it is proportionate to the likely impacts on individuals; and● privacy safeguards are in place (e.g. encryption and not storing biometric information with an individual's other personal information).
<p>IPP 3: Collection of information from subject</p> <p>When an organisation collects personal information, it must take reasonable steps to ensure the individual is aware of certain matters including:</p> <ul style="list-style-type: none">● the purpose for which the information is being collected;● who will receive the information;● the consequences (if any) for the individual if the information is not provided; and● the individual's rights of access to, and correction of, the information. <p>The steps must be taken before the information is collected, or if that is not practicable, as soon as practicable afterwards.</p>	<p>Rule 3: Collection of information from individual</p> <p>Before, or at the time, biometric information is collected, the organisation must notify the individual:</p> <ul style="list-style-type: none">● each specific purpose(s) for which the information is being collected, specified with due particularity;● whether there is any alternative option to biometric processing that is available to the individual; and● a location, address or other method for the individual to obtain further information. <p>The organisation must also notify the individual before, or at the time of collection, or as soon as practicable afterwards:</p>

	<ul style="list-style-type: none"> ● whether the organisation's proportionality assessment is publicly available or available on request; ● a summary of the organisation's retention period for biometric information; and ● how the individual can raise a concern or make a complaint.
<p>IPP 10: Limits on the use of personal information</p> <p>An organisation that holds personal information in connection with one purpose can generally use it for any other directly related lawful purpose.</p>	<p>Rule 10: Limits on use of information</p> <p>An organisation that holds biometric information that was not collected in accordance with Rule 1, must not use that information for biometric processing, unless a proportionality assessment is first undertaken and privacy safeguards are in place.</p>

Submissions on the draft Code are due by **14 March 2025** and can be emailed to biometrics@privacy.org.nz. The PC is particularly interested in receiving feedback on:

- Should organisations assess whether using biometrics is proportionate, and be required to put in place privacy safeguards if they do use biometrics?
- Should people know about the use of biometrics beforehand, and should organisations have to provide additional information about the processing?
- Should there be limits on some uses of biometric information, like biometric emotion analysis and types of biometric categorisation?

Further information can be found at: <https://privacy.org.nz/news/consultations/>.

If you have any questions about the draft Code or would like assistance with making a submission, please get in contact with a member of the team.