

Information Privacy Guidelines

Information Privacy Act 2000
Health Records Act 2001

INFORMATION PRIVACY GUIDELINES

Table of Contents

COMPLIANCE PURPOSE	4
Other Bodies Bound by Act	4
PRINCIPLE 1 - COLLECTION	5
Guidelines (for Principle 1).....	5
What should Council staff do to avoid asking irrelevant questions?.....	5
Unnecessary recording of information	5
Giving people full information about the collection	6
When is collecting personal/health information intrusive?	6
Forms	6
Definition of Personal Information	6
Definition of Health Information	7
Does Council only have to tell a person the main reason for collecting the information?.	7
PRINCIPLE 2 - USE AND DISCLOSURE	7
Guidelines (for Principle 2)	7
What is a use?	7
What is a disclosure ?	7
An employee's use or disclosure is treated as that of Council	8
PRINCIPLE 3 - DATA QUALITY	8
Guidelines (for Principle 3).....	8
PRINCIPLE 4 - DATA SECURITY	8
Guidelines (for Principle 4)	9
Security	9
PRINCIPLE 5 - OPENNESS	9
Guidelines (for Principle 5)	9
Council will maintain record setting out	9
Internal access	10
Complaints	10

PRINCIPLE 6 - ACCESS AND CORRECTION	10
Guidelines (for Principle 6)	10
 PRINCIPLE 7 - UNIQUE IDENTIFIERS	 11
Guidelines (for Principle 7)	11
 PRINCIPLE 8 - ANONYMITY	
Guidelines (for Principle 8)	11
 PRINCIPLE 9 - TRANSBORDER DATA FLOWS	 11
Guidelines (for Principle 9)	12
 PRINCIPLE 10 - SENSITIVE INFORMATION	 12
Guidelines (for Principle 10)	12
 PRINCIPLE 10A (HPP) - CLOSURE OF THE PRACTICE OF A HEALTH SERVICE PROVIDER	 13
 PRINCIPLE 11 (HPP) - MAKING INFORMATION AVAILABLE TO ANOTHER HEALTH SERVICE PROVIDER	 13
 ADMINISTRATION AT COUNCIL	 13
Positions.....	13
Charges	13

INFORMATION PRIVACY GUIDELINES

COMPLIANCE PURPOSE

This Council complies with the Victorian Government Information Privacy Act No. 98/2000 and Health Records Act 2001 (Vic).

The main purpose of these Acts are:

- To establish a regime for the responsible collection, storage, handling and disclosure of personal/health information;
- To provide individuals with rights of access to information about themselves which is held by the organisation;
- To provide individuals with the right to request an organisation to correct and amend information about themselves held by the organisation, including information held by contracted service providers.

Council **must** conform with the privacy principles contained in the Acts, listed as follows:

Principle 1 -	Collection
Principle 2 -	Use and Disclosure
Principle 3 -	Data Quality
Principle 4 -	Data Security
Principle 5 -	Openness
Principle 6 -	Access and Correction
Principle 7 -	Unique Identifiers
Principle 8 -	Anonymity
Principle 9 -	Trans-border Data Flows
Principle 10-	Sensitive Information
Principle 10A (HPP)	Closure of the practice of a Health Service provider
Principle 11(HPP)	Making information available to another health service provider

Other Bodies Bound by Act

Council provides some services through third party contractors. Where a contractor breaches the IPPs the council will be held responsible, unless the contractor has agreed to be bound by the IPPs in an enforceable contract with the Council.

Contracted service providers including subcontractors to them, are to be alerted to Council's Information Privacy Policy on the basis that compliance with Information Privacy Policies is a requirement in any new contract and compliance is sought in all existing contracts

PRINCIPLE 1- COLLECTION

Council will only collect personal/health information that is necessary for specific and legitimate functions and activities. This information will be collected by fair and lawful means and not in an unreasonably intrusive way.

Council will provide details of:

- why it is collecting personal information;
- how that information can be accessed;
- the purpose for which the information is collected;
- with whom the Council shares this information;
- any relevant laws; and
- the consequences for the individual if all or part of the information is not collected.

Under normal circumstances Council will collect personal/health information about an individual only from that individual. However, if Council collects personal information about an individual from someone else, Council will take all reasonable steps to ensure that individual is informed of his or her rights relating to the information collected.

GUIDELINES (for Principle 1)

Council staff should have a clear purpose for collecting each piece of personal/health information. This purpose should be decided before collecting the information. Collecting information with no identifiable purpose is not acceptable.

Currently, Council provides a wide range of services to the community within a broad legislative environment. Council holds personal/health information for the purposes of enabling subsequent contact, ascertaining correct property ownership within Councils' boundaries and allocating rate liability and further, undertaking specific client functions within various service environments.

What should Council staff do to avoid asking irrelevant questions?

- Staff should check forms and interview questions and work out how they are necessary for, or directly related to, the purpose of collection;
- Staff should generally only ask for information about relevant people - they should not ask for information about a whole group of people if they only need information about some members of the group;
- Staff should clearly understand IPPs 1-2, and the range of questions they can ask.

Unnecessary recording of information

Sometimes, Council staff get personal/health information that is not necessary for or related to any purpose of Council. This includes:

- when people send information to Council without Council asking for it; or
- when Council asks for some information, but people give it more information than it asked for.

As soon as practical after it receives personal/health information, Council will decide whether it is relevant to what Council does. If information is not relevant, Council will not keep it in its records. If records are destroyed they will be done in line with procedures re. disposing of confidential information. Council will also give consideration to the Public Records Act which takes precedence over the Information Privacy Act and Health Records Act.

Giving people full information about the collection

Collectors should tell the person giving the personal/health information:

- who is collecting the information (if this is not obvious from the circumstances);
- why they are collecting the information (so long as this does not involve mentioning information about someone else illegally);
- whether the information is likely to be passed on to others, who that organisation is and the secondary purpose for which it is likely to be used; and
- what things might happen (good or bad) if the person does or does not give the information.

When is collecting personal/health information intrusive?

Collecting personal/health information will be intrusive if it involves:

- asking questions about sensitive personal affairs;
- ways of collecting personal/health information that require physically touching people, observing their bodily functions, or that invade their private property;
- repeatedly and unnecessarily asking for the same personal/health information.

Staff should think carefully before they use an intrusive method of collecting personal information. The Act requires the least intrusive method, based on the importance of its purpose of collection and other circumstances.

Forms

A privacy note should be included on forms used to capture and collect personal/health information.

Definition of Personal Information

"personal information" means;

information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which schedule 2 of the Information Privacy Act 2000 applies (ie. health information, which is regulated by the Health Records Act 2001).

For example, "personal information" includes:

- name, age, weight, height;
- income, purchases and spending habits;
- blood type, DNA code, fingerprints;
- marital status and religion;
- education;
- home address and phone number.
- employee details

"Personal Information" is information directly related to the personal affairs of an individual that enables or could enable the person to be identified. This includes personal information relating to both clients of Council and Council staff.

While the definition of personal information is broad, the Act excludes certain types of information from the definition. The most significant exceptions relate to health information (such as the physical, mental or psychological health of an individual) and personal information that is contained in a document that is a generally available publication.

Definition of Health Information

Under the Health Records Act *health information means* information or an opinion about:

- the physical, mental or psychological health of an individual; or
 - a disability of an individual; or
 - an individual's expressed wishes about the future provision of health services to him or her; or
 - a health service provided, or to be provided, to an individual that is also personal information;
- or

Other personal information collected to provide or in providing, a health service, or

Other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances, or

Other personal information that is genetic information about an individual in a form which is or could be predictive of the health (at any time) of the individual or of any of his or her descendants.

Does Council only have to tell a person the main reason for collecting the information?

Normally, the purpose of collection depends on the reason Council is collecting the personal/health information at the time it collects the information. However, sometimes Council knows the information will also be used for other purposes. The Council will stipulate the purpose in broad enough terms to include all potential uses

It will often be necessary to look carefully at the facts and context in which information is being used to determine whether it falls within the definition of personal/health information or not.

PRINCIPLE 2 -USE AND DISCLOSURE

Council will not use or disclose personal/health information for a purpose other than the primary purpose or a directly related secondary purpose except for those conditions specified in the Act or where the use or disclosure is specifically authorised under an Act. In any other circumstance Council will contact the individual to gain consent.

GUIDELINES (for Principle 2)

What is a use?

Use is interpreted broadly. It relates to managing personal/health information within the course of Council business. This includes:

- searching records for any reason;
- using personal/health information in a record to make a decision;
- inserting personal/health information into a data base

What is a disclosure?

Disclosure may be interpreted as, a release, publication or revelation of personal information by the council. A disclosure can occur both within a Council and Council.

For example,

- providing personal/health information to a third party whom the Council has contracted to work for it
- providing a record containing personal/health information to a member of the public
- leaving personal/health information on a whiteboard in the Council that other officers may see
- setting up a computer logon which allows someone outside Council to access personal/health information, there is a disclosure each time the outside person accesses the information using that means.

Further, disclosure takes place when members of the public access registers that Councils are required by law to make public (whilst the act of inserting the information into the register may be considered a use).

An employee's use or disclosure is treated as that of Council

If Council's employee uses or discloses personal/Health information in the course of their duties, Council is treated as having used or disclosed that personal/health information.

An employee may still be acting "in the course of their duties" if they use or disclose personal/health information in good faith, not realising that what they are doing is unauthorised or prohibited.

An employee is *not* acting "in the course of their duties" if they use or disclose personal/health information knowing that the use or disclosure is unauthorised or prohibited. These acts are not treated as those of Council.

PRINCIPLE 3 -DATA QUALITY

Council will take reasonable steps to make sure that the personal/health information it collects, uses or discloses, is accurate, complete and up-to-date.

GUIDELINES (for Principle 3)

Council is responsible for the quality of the personal/health information it holds. Council is required to take all reasonable steps to ensure that the personal/health information it holds is accurate and, given the purpose of the information, is relevant, up to date, complete and not misleading. It is therefore the responsibility of Council to ensure that the personal/health information it holds is of high quality.

These are continuing obligations. Council will take reasonable steps to ensure the quality of the personal/health information it holds is accurate, complete and up-to-date throughout the period it holds the information (and not just when the information is collected).

PRINCIPLE 4 -DATA SECURITY

Council will take reasonable steps to protect all personal/health information it holds from misuse, loss, unauthorised access, modification or disclosure.

Council will take reasonable steps to lawfully and responsibly destroy or permanently *de-identify* personal/health information when it is no longer needed for any purpose.

GUIDELINES (for Principle 4)

Council policy relates to the security of personal/health information which is accessible to all staff. This includes physical, computer and communications security and gives practical advice on situations that regularly arise in particular areas of the organisation is available from the Privacy Officer.

Security

Filing cabinets, safes, compactuses containing records of personal/health information should not be left unlocked. All paper records containing personal/health information should be held on official council files and recorded on council records management system. Files should have security classifications reflecting the importance or sensitivity of the records held on them. Storage and access arrangements will reflect the security classification. Movements of files will be recorded on council records management system.

A clean desk policy, under which all papers are required to be securely stored at the end of the working day rather than left on the desk, is encouraged. This reduces the risk of personal/health information being left lying around and being seen or taken by unauthorised persons. Irrelevant personal/health information, or unrelated personal/health information about third parties, should not be included in any files. If such information is kept, there is a risk that it may be wrongly disclosed or used.

PRINCIPLE 5 - OPENNESS

Council will make publicly available its policies relating to the management of personal/health information.

Council will on request, take reasonable steps to provide individuals with general information on the types of personal/health information it holds and for what purposes and how it collects, holds, uses and discloses that information.

GUIDELINES (for Principle 5)

Council will maintain a record setting out:

- (a) the nature of the records of personal/health information kept by or on behalf Council;
- (b) the purpose for which each type of record is kept;
- (c) the classes of individuals about whom records are kept;
- (d) the period for which each type of record is kept;
- (e) the persons who are entitled to have access to personal/health information contained in the records and the conditions under which they are entitled to have that access; and
- (f) the steps that should be taken by persons wishing to obtain access to that information.

This principle reflects the fact that, in order to be able to exercise their other rights in relation to the personal/health information that Council hold about them, people must be able easily to find out:

- the existence of personal/health information systems that affect them;
- the nature and extent of those systems;
- the main purposes and uses of those systems; and
- how to gain access to personal/health information held in them.

Internal access

Consideration will be given to which Council staff, by position or function, are entitled to have access to personal/health information held in particular classes of records.

Complaints

Council encourages individuals to send written complaints directly to the Privacy Officer about a breach, or perceived breach, of privacy in the first instance. Alternatively, complaints can be directed to the Privacy Commissioner, although the Privacy Commissioner can decline a complaint if the complainant has not complained directly to the Council.

PRINCIPLE 6 -ACCESS AND CORRECTION

Council will provide access to information held by Council about an individual on request except in specific circumstances as outlined within the Act.

Where Council holds personal/health information about an individual and the individual is able to establish that information is incorrect, council will take reasonable steps to correct information as soon as practicable but within 45 days of the request. If, however, Council denies access or correction, council will provide reasons.

In the event that Council and an individual disagree about the veracity of personal/health information held by Council, council will take reasonable steps to record a statement relating to the disputed information if requested by the individual.

GUIDELINES (for Principle 6)

Where Council has possession or control of a record that contains personal/health information, the individual concerned shall be entitled to have access to that record, except to the extent that Council is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of the State that provides for access by persons to documents (for example FOI).

If Council possesses or controls a record that contains personal/health information, it shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:

- (a) is accurate; and
- (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.

Access to personal/health information held by council must be requested in writing from Council's Information Privacy Officer, and must be adequate to identify the identity of the applicant.

PRINCIPLE 7 -UNIQUE IDENTIFIERS

Council will not assign, adopt, use, disclose or require unique identifiers from individuals except for the course of conducting normal council business or if required by law. Council will only use or disclose unique identifiers assigned to individuals by other organisations if the individual consents to the use and disclosure or the conditions for use and disclosure set out in the Act are satisfied.

GUIDELINES (for Principle 7)

A unique identifier is a string of characters, usually a number, used to identify particular individuals. If the same identifier is used by different organisations, it can be a very effective tool for bringing together information about a single individual from a number of different sources.

- 1) Council shall not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable Council to carry out any one or more of its functions effectively;
- 2) Council shall not assign to an individual a unique identifier that, to Council's knowledge, has been assigned to that individual by another agency.
- 3) If Council assigns unique identifiers to individuals all reasonable steps should be taken to ensure that unique identifiers are assigned only to individuals whose identity is clearly established;
- 4) Council shall not require an individual to disclose any unique identifier assigned to that individual unless the disclosure is for one of the purposes in connection with which the unique identifier was assigned or for a purpose that is directly related to one of those purposes.

PRINCIPLE 8 - ANONYMITY

Council will, **where it is lawful and practicable**, give individuals the option of not identifying themselves when entering into transactions with Council.

GUIDELINES (for Principle 8)

Related to limitations on the collection of personal/health information is the idea that where possible people should be able to go about their business anonymously. People should have the option of not identifying themselves when entering transactions.

While the option of anonymity clearly does give people an opportunity to protect their privacy, a qualification like 'where possible' or 'where practicable' seems necessary to accommodate situations where the effectiveness of a system requires the collection of personal/health information.

PRINCIPLE 9 -TRANSBORDER DATA FLOWS

Council may transfer personal/health information outside of Victoria only if that data transfer conforms with the reasons and conditions outlined in the Acts.

GUIDELINES (for Principle 9)

Council may transfer personal/health information about an individual outside Victoria only if:

- (a) Council reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the Information Privacy Principles; or
- (b) the individual consents to the transfer; or
- (c) the transfer is necessary for the performance of a contract between the individual and council, or for the implementation of pre-contractual measures taken in response to the individual's request; or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between council and a third party; or
- (e) all of the following apply:
 - (i) the transfer is for the benefit of the individual;
 - (ii) it is impracticable to obtain the consent of the individual to that transfer;
 - (iii) if it were practicable to obtain such consent, the individual would be likely to give it; or
- (f) Council has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Information Privacy Principles.

PRINCIPLE 10 -SENSITIVE INFORMATION

Council will not collect sensitive information about an individual except for circumstances specified under the Act.

GUIDELINES (for Principle 10)

“Sensitive Information” means information or an opinion about an individual’s –

- (i) race or ethnic origin; or
- (ii) political opinions; or
- (iii) membership of a political association; or
- (iv) religious beliefs or affiliations; or
- (v) philosophical beliefs; or
- (vi) membership of a professional or trade association; or
- (vii) membership of a trade union; or
- (viii) sexual preferences or practices; or
- (ix) criminal record – that is also personal information (Schedule 1)

Council will not collect sensitive information about an individual unless:

- (a) the individual has consented; or
- (b) the collection is required by law; or

- (c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
 - (i) is physically or legally incapable of giving consent to the collection; or
 - (ii) physically cannot communicate consent to the collection; or
- (d) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

However, council may collect sensitive information about an individual if the collection:

- (i) is necessary for research, or the compilation or analysis of statistics, relevant to government funded targeted welfare or educational services; or
- (ii) is of information relating to an individual's racial or ethnic origin and is collected for the purpose of providing government funded targeted welfare or educational services; and
- (iii) there is no reasonably practicable alternative to collecting the information for that purpose; and
- (iv) it is impracticable for the organisation to seek the individual's consent to the collection.

PRINCIPLE 10A (HPP) - CLOSURE OF THE PRACTICE OF A HEALTH SERVICE PROVIDER

If Council discontinues its health services it will give notice of the closure to past service users.

PRINCIPLE 11 (HPP) - MAKING INFORMATION AVAILABLE TO ANOTHER HEALTH SERVICE PROVIDER

When Council acts as a health service provider, Council will make health information relating to an individual available to another health service provider if requested to do so by the individual.

ADMINISTRATION AT COUNCIL

Positions

Council has appointed an **Information Privacy Officer** to whom all enquiries/complaints about Personal/Health Privacy will be referred. This officer will also be the Health Records Officer.

Charges

While the Council sees the management of personal/health information in accordance with the Information Privacy Act and Health Records Act as part of its overall policy, the Information Privacy Officer will retain a discretion to apply normal copying charges where copies of information are requested.