



PRIVACY MANAGEMENT PLAN 2013

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1. Introduction

Waverley Council respects the privacy of its residents, ratepayers, employees and the people who use its services and has, therefore, adopted this Privacy Management Plan.

The purpose of this Privacy Management Plan is to ensure compliance with the Privacy and Personal Information Protection Act 1998 (PPIPA), and the health privacy principles under the Health Records and Information Privacy Act 2002 (HRIPA). **The Privacy Management Plan** is also in place to ensure that the privacy of individuals is respected through the appropriate management and protection of personal and health information held by Council.

This Plan aims to provide an overall framework to direct strategies and practices which will enable compliance with our legal obligations in relation to the collection, use, management and storage of personal and health information. This document works with other Council guidelines including Council's *Code of Conduct for Councillors*, *Code of Conduct for Staff, Delegates and Volunteers*, and Council's *Guide to Our Privacy Obligations* to provide best practice guidelines for the organisation. Systematic reviews and updates will be conducted as legislative, functional or procedural changes take place, or when deficiencies are identified in relation to Council's management of privacy issues.

Personal information is defined in the PPIPA as information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Personal information includes things such as an individual's fingerprints, retina prints, body samples or genetic characteristics.

Personal information is regulated by the 12 Information Protection Principles (IPPs) as set out in the Privacy and Personal Information Protection Act.

Personal information does **not** include information about an individual that is contained in a publicly available publication. Once it is contained in a publicly available publication, personal information ceases to be covered by the PPIPA.

Where Council is requested to provide access to information or make a disclosure and the information has already been published, Council will rely on the provisions of the relevant Act that authorises Council to hold that information and not the PPIPA (for example, the Government Information (Public Access) Act 2009).

Council considers the following to be publicly available publications:

- An advertisement containing personal information in a local, city or national newspaper.
- Personal information on the internet.
- Books or magazines that are printed and broadly distributed to the general public.
- Council business papers or that part that is available to the general public.
- Personal information that may be part of a public display on view to the general public.

Information published in this way ceases to be covered by the PPIPA. However, Council's decision to publish in this way must be in accordance with the PPIPA.

Health information is defined in the HRIPA as personal information that is information or an opinion about the physical or mental health or a disability (at any time) of an individual, or an individual's express wishes about the future provision of health services to him or her, or a health service provided or to be provided to an individual.

Health information is regulated by the 15 Health Privacy Principles (HPPs) as set out in the Health Records and Information Privacy Act.

Electoral Rolls

The Electoral Roll is a publicly available publication. Council will provide open access to the Electoral Roll in Council's library. Council will refer any requests for copies of the Electoral Roll to the State Electoral Commissioner.

1.1 Application of this Plan

The PPIPA and this Plan apply, wherever practicable, to:

- Councillors.
- Council employees.
- Consultants and contractors engaged by Council.
- Council Committees (including those which may be established under section 355 of the Local Government Act 1993).
- Council owned businesses.

Council will ensure that all such parties are made aware that they must comply with the PPIPA, the Code of Practice for Local Government, any other applicable Privacy Code of Practice, and this Plan.

1.2 Personal and health information held by Council

We hold personal information concerning Councillors such as:

- Personal contact information.
- Complaints and disciplinary matters.
- Pecuniary interest returns.
- Entitlements to fees, expenses and facilities.

We hold personal and health information concerning our customers, ratepayers and residents such as:

- Property ownership and rates records.
- Applications for parking permits and the use of Council facilities.
- Community service utilisation.
- Library lending records.
- Burial and cremation records.
- Applications for various approvals such as the removal or trimming of trees.
- Service requests and / or complaints.
- Development and other land use applications and submissions.
- CCTV footage.

We hold personal and health information concerning our current and former employees such as:

- Recruitment material.
- Leave and payroll data.
- Personal contact information.
- Performance management plans.
- Disciplinary matters.
- Disclosure of interest returns and Protected Disclosure investigations.
- Wage and salary entitlements.
- Pre-employment medical information.
- Health information such as medical certificates and Worker's Compensation claims.

1.3 Legislation affecting Council's management of personal and health information

Council will only collect personal information for a lawful purpose as part of its proper functions. The Local Government Act governs Council's major obligations and functions. Section 22 of the Local Government Act provides other functions under other Acts. Some of those Acts are as follows:

- Community Land Development Act 1989
- Companion Animals Act 1998 **
- Conveyancing Act 1919
- Environmental Planning & Assessment Act 1979
- Fire Brigades Act 1989
- Fluoridation of Public Water Supplies Act 1957
- Flood Act 1989
- Impounding Act 1993
- Library Act 1939
- Protection of the Environment Operations Act 1997
- Public Health Act 1991
- Recreation Vehicles Act 1983
- Roads Act 1993
- Rural Fires Act 1997
- State Emergency Service Act 1989
- State Records Act 1998
- Strata Schemes (Freehold Development) Act 1973
- Strata Schemes (Leasehold Development) Act 1986
- Swimming Pools Act 1992

This list is not exhaustive.

Additionally, the exercise by Council of its functions under the Local Government Act may also be modified by the provisions of other Acts. Some of those Acts are as follows:

- Coastal Protection Act 1979
- Environmental Offences and Penalties Act 1989
- Government Information (Public Access) Act 2009
- Heritage Act 1977
- State Emergency and Rescue Management Act 1989
- Unclaimed Money Act 1995
- Unhealthy Building Land Act 1990.

The circumstances under which Council may collect information, including personal information, are varied and numerous. Council will not collect any more personal information than is reasonably necessary for it to fulfil its proper functions.

Anyone engaged by Council as a private contractor or consultant that involves the collection of personal information must agree to be bound not to collect personal information by any unlawful means. This will include debt recovery actions undertaken by Council, or by commercial agents acting on behalf of Council.

****Companion Animals Act**

Collection of information under the Companion Animals Act and Council's use of the Companion Animals Register should be guided by the Director General's *'Guidelines on the Exercise of Functions Under the Companion Animals Act'*, which has been developed with the PPIPA in mind.

1.4 Taped recordings of Council Meetings

Council uses information collected by tape recording the proceedings of Council and Committee meetings mainly to ensure the accuracy of minutes. Keeping accurate minutes is a requirement under the Local Government Act 1993.

The types of information collected at Council and Committee meetings could include:

- The identities of any speakers and personal opinions held by them that they express in the meeting – this includes Councillors, staff and members of the public who address the meeting.
- Information or opinions about other people – this is where a speaker talks about a third party whose identity is apparent or is reasonably ascertainable.

The tape recording of meetings must therefore comply with the Information Protection Principles of the PPIP Act. The Information Principles relating to the collection, use and disclosure of personal information are particularly relevant. The Information Principle relating to the retention and disposal of personal information is also relevant.

If the tape recording includes personal information about any person's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities, it is clear that disclosure can only be on the basis that such disclosure is necessary to prevent a serious or imminent threat to the life or health of any person, or is made with the express consent of the person.

Tape recordings of Council and Committee meetings are kept for a period of three months in accordance with Council's Code of Meeting Practice, which states:

"The recordings are to be kept for a period of three months and managed in accordance with the provisions of the Privacy and Personal Information Protection Act 1998, after which time they are to be destroyed."

Reasons for longer retention of a record can include legal requirements, administrative need, government directives, or if the recording is the subject of a Government Information (Public Access) request or any other statutory access request.

1.5 Councillors' Access to Information

Councillors have a right to access Council information that is reasonably necessary for exercising the functions of their civic office, including those which extend beyond decision making at formal meetings. Any information or service that is publicly available should also be available to Councillors, and any information that is given to a particular Councillor in the pursuit of their civic duties should also be available to any other Councillor who requests it.

When making a request for information, Councillors are to draft the request carefully and precisely detail the information and / or the nature of the information being sought.

The Government Information (Public Access) Act 2009 (GIPA Act) was enacted to promote openness, accountability and transparency. It is designed to make government agencies, including Councils, more proactive in providing information to the public. This includes being proactive in providing information to Councillors.

Council is required to comply with the spirit and intent of the GIPA Act, and applicable common law and the Model Code of Conduct, so as to provide open access to Council's documents, other than where public interest considerations against disclosure outweigh the public interest considerations on favour of disclosure. For example, there may be occasions where the release of personal information or information identifying a person would be contrary to the Privacy and Personal Information Protection Act 1998. It is expected that the General Manager will act in accordance with the relevant law when providing information to Councillors.

1.6 Applications for suppression in relation to general information (not Public Registers)

Under section 739 of the Local Government Act 1993 (LGA) a person can make an application to suppress certain material that is available for public inspection in circumstances where the material discloses, or would disclose, the person's place of living if the person considers that the disclosure would place their personal safety or the safety of their family at risk.

Section 739 of the LGA relates to all publicly available material other than public registers. As such, it limits disclosure in those circumstances where an application for suppression is successful. An application for suppression must be verified by statutory declaration and otherwise meet the requirements of section 739. When in doubt, Council will err in the favour of suppression.

An application for suppression should be made in writing and be addressed to Council's General Manager, and it must outline the reasons for the request.

1.7 Caution as to unsolicited information

Where an individual, group or committee not established by Council gives Council unsolicited personal or health information, then that information should still be treated in accordance with this Plan, the Codes, the HRIPA and the PPIPA in relation to storage, access, use and disclosure of information.

For the purposes of section 10 of the HRIPA, Council is not considered to have "collected" health information if receipt of that information is unsolicited by Council.

Section 4(5) of the PPIPA also provides that personal information is not "collected" by Council if it is not solicited.

2. Public Registers

In addition to the Information Protection Principles (IPPs), there are special rules for personal information held on public registers. These rules override any other law.

The rules in Part 6 of the PPIPA Act contain specific provisions which regulate when NSW public sector agencies can disclose personal information contained in public registers, and when an individual can ask for their personal information to be suppressed from a public register.

2.1 What is a public register?

Under the PPIPA a public register means a register of personal information that is required by law to be, or is made, publicly available or open to public inspection, whether or not on payment of a fee.

A register can be described as an official or formal list recording names, events or transactions.

Not every register of information held by Council will be considered to be a 'public register' as defined above. For example, a register held by Council might not be publicly available or it may not contain personal information.

Disclosure in relation to public registers must comply with Part 6 of the PPIPA and the Privacy Code. Personal information cannot be accessed by a person about another person unless the personal information is contained in a public register. Where personal information is contained in a public register, then Part 6 of the PPIPA applies to determine whether access to that information will be given to another person.

Disclosure in relation to all other personal information must comply with the Information Protection Principles and the Privacy Code where it includes personal information that is not published.

Members of the public may enquire only in accordance with the primary purpose of any of these registers. The primary purpose for each of these public registers is set out in part 2.4 of this Plan.

2.2 Public Registers, the PPIPA and the HRIPA

A public register generally confers specific rights or privileges, a benefit, or status which would not otherwise exist. It may be required by law to be made publicly available or open to public inspection, or it is simply made publicly available or open to public inspection (whether or not payment is required).

Despite the exclusion of "health information" from the definition of "personal information" under section 4A of the PPIPA, section 56A of the PPIPA includes "health information" as "personal information" on public registers.

Section 57 of the PPIPA requires very stringent controls over the disclosure of personal information contained in a public register. It provides broadly that where Council is responsible for keeping a public register, it will not disclose any personal information kept in that register unless Council is satisfied that the information is to be used for a purpose relating to the purpose of the register or the Act under which the register is kept.

Council also needs to consider the Privacy Code of Practice for Local Government which has the effect of modifying the application of Part 6 of the PPIPA (the “public register” provisions).

If the stated purpose of the applicant does not conform with the purpose for which the public register is kept, access will not be given to the information sought.

Where personal information is contained in a publicly available publication, that information will not be regarded as personal information covered by the PPIPA or as health information for the purposes of part 6 of the PPIPA.

2.3 Public registers held by Council

Council holds the following public registers under the Local Government Act ***:

- Register of Delegations
- Land Register – Section 53
- Record of Approvals – Section 113
- Register of Pecuniary Interests – Sections 449 and 450A
- Register of Voting on Planning Matters – Section 375A
- Register of Current Declarations of Disclosures of Political Donations – Section 328A

*** Note – this is purely indicative. Council may, by virtue of its own practice, hold other public registers to which the PPIPA applies.

Council holds the following public registers under the Environmental Planning & Assessment Act:

- Register of Consents and Approvals – Section 100
- Record of Building Certificates – Section 149G
- Register of Modification of Development Consent – Clause 121 of the Environmental Planning & Assessment Regulation 2000

Council holds the following public register under the Protection of the Environment Operations Act:

- Public Register of Licences Held – Sections 308 and 309

Council holds the following public registers under the Government Information (Public Access) Act:

- Record of Open Access Information – Section 6(5)
- Disclosure Log of Access Applications – Section 25
- Register of Government Contracts – Section 27

Council holds the following public register under the Public Health (Skin Penetration) Regulation 2000:

- Register of Skin Penetration Premises

Council holds the following public register under the Impounding Act:

- Record of Impounding

2.4 Purposes of public registers

Act / Regulation	Section / Clause		Primary Purpose
Environmental Planning & Assessment Act	100	Register of Consents and Approvals	To identify applications for development consent and other approvals, confirm determinations on appeal, and identify applications for complying development certificates.
	149G	Record of Building Certificates	To identify all Building Certificates
Environmental Planning & Assessment Regulation 2000	121	Register of Modification of Development Consent	To identify modifications to development consents under Section 96 of the Environmental Planning & Assessment Act
Government Information (Public Access) Act	6(5)	Record of Open Access Information	To make government information that is open access information publicly available unless there is an overriding public interest against disclosure of the information.
	25	Disclosure Log of Access Applications	To record details about access applications received by Council where Council has decided to provide access to some or all of the information applied for that it considers may be of interest to other members of the public.
Government Information (Public Access) Act	27	Register of Government Contracts	To record information about each government contract Council has entered into that has (or is likely to have) a value of \$150,000 or more (Class 1 Contracts).
Impounding Act	30 & 31	Record of Impounding	To identify any impounding action undertaken by Council.

Act / Regulation	Section / Clause		Primary Purpose
Local Government Act	53	Land Register	To identify all land vested in Council or under the control of Council. The secondary purpose includes a consideration of public accountability as to the land held by Council. Third party access is, therefore, a secondary purpose.
	113	Record of Approvals	To identify all approvals granted under the Local Government Act.
	328A	Register of Current Declarations of Disclosures of Political Donations	To record current declarations of political donations lodged with the Election Funding Authority by, or on behalf, of Councillors (including in their capacity as candidates for election as Councillors).
	375A	Register of Voting on Planning Matters	To record the names of Councillors who supported, and those who opposed (or are taken to have opposed) planning decisions made at Council or Committee Meetings. Each decision recorded is to be described in the register in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
	449 & 450A	Register of Pecuniary Interests	To determine whether or not a Councillor, a member of a Council Committee or a designated person has a pecuniary interest in any matter with which Council is likely to be concerned. There is a corresponding public accountability purpose, and third party access is a secondary purpose.
Local Government Act	–	Register of Delegations	To identify any and all activities delegated by Council or the General Manager and the staff member to whom they have been delegated.
Protection of the Environment Operations Act	308 & 309	Public Register of Licences Held	To identify all licences granted under the Protection of the Environment Operations Act.
Public Health (Skin Penetration) Regulation 2000	–	Register of Skin Penetration Premises	To identify premises used for the purpose of skin penetration.

Secondary purpose of all Public Registers

Council aims to be open and accountable and it is considered that a secondary purpose for which all Public Registers are held by Council includes the provision of access to members of the public. Therefore, disclosure of specific records from Public Registers would normally be considered to be permissible under section 57 of the PPIPA.

However, requests for access, copying or sale of the whole or a substantial part of a Public Register held by Council will not necessarily fit in within this purpose. Council should be guided by the Privacy Code of Practice for Local Government in this respect.

Where Council officers have doubt as to the intended use of the information, an applicant may be requested to provide a statutory declaration so that Council may satisfy itself as to the intended use of the information.

Council will make its assessment as to the minimum amount of personal information that is required to be disclosed with regard to any request.

Other purposes

Persons or organisations who apply to Council to have access to the information contained in any Public Register for a purpose not related to the purpose of the register may be given access at the discretion of Council, but only in accordance with the Privacy Code of Practice for Local Government concerning Public Registers.

2.5 Disclosure of personal information contained in public registers

That part of a public register that is not published in a publicly available publication will be treated as a “public register”, and the following procedure for disclosure will apply.

For example, the Register of Consents and Approvals held by Council under section 100 of the Environmental Planning & Assessment Act requires Council to advertise or publish applications for development consent.

When Council publishes the address of the property, it may identify the owner. The personal information that has not been published, and any applications not advertised or that have been rejected or withdrawn (and hence also not published), will be treated as a public register under PPIPA.

Council may hold a register under the Contaminated Land Management Act on behalf of the Environment Protection Authority. This is not to be considered a public register of Council as the statute does not place any obligations on Council to make this register publicly available as a register of contaminated land. Furthermore, the legislation foreshadows that the Environment Protection Authority may indeed post this list or register on the internet. This may constitute a publication of the information and, therefore, the PPIPA will not apply.

Registers should not be published on the internet.

A person seeking a disclosure concerning someone else's personal information from a Public Register must satisfy Council that the intended use of the information is for a purpose relating to the purpose of the register of the Act under which the register is kept.

Persons or organisations who apply to Council to have access to the information contained in any Public Register for a purpose not related to the purpose of the register may be given access at the discretion of Council, but only in accordance with the Privacy Code of Practice for Local Government concerning public registers.

2.6 Personal information in Development Applications

Council receives and holds a significant amount of personal information collected during the ordinary course of its functions. A key example is the information required to be provided to Council by applicants who lodge Development Applications (DAs), and by those who wish to comment on those applications.

The Government Information (Public Access) Act 2009 and the Regulation made under that Act (GIPA Regulation) place requirements on Council to publish the information held about DAs on our website and to make the information publicly available in other ways, such as making it available for inspection and copying at Council's Customer Service Centre. This requirement covers personal information submitted to, and subsequently held by, Council as part of the DA process.

Publishing DA information on Council's website facilitates greater accessibility to government information which affects people at local and community levels. This contributes to transparent decision-making and enables public participation in decisions that affect individuals and the community. However, documents associated with DAs are likely to contain a significant amount of personal information.

Council is accordingly required to balance the disclosure requirements of the GIPA Act and the privacy provisions of the PPIP Act.

In addition to information about the subject property, the information associated with DAs is likely to contain a significant amount of personal information. Information submitted with, or generated in conjunction with, a DA might typically include:

- Names and addresses of the applicants, owners and people who lodge submissions.
- Personal and business contact details.
- Signatures of DA applicants and people making submissions.
- Photographs of property and people.
- Financial details of the applicant.
- Other personal information included to support an application or to give weight to an objection.

The Information Commissioner considers that Council should endeavour to disclose as much information pertaining to DAs on our website as possible.

However, the Information Commissioner is of the view that it is not in the public interest to disclose the following information on Council's website:

- Personal contact details of an individual including personal phone / mobile numbers and email addresses.
- Signatures on Development Applications, submissions or objection letters.

- Personal financial information (e.g. credit card details).
- Health and medical information.
- Photos depicting people.

Disclosure of DA information aims to promote public awareness about proposed developments, and it enables interested or potentially affected parties to make submissions in relation to the proposed development. Publishing the name and address of the DA applicant, the address of the subject site and a description of the work to be done informs members of the public about the proposed development and enables them to voice an opinion. Publishing the outcome of a DA provides members of the public with information about Council's decision-making process and the factors that influenced the decision.

2.7 Applications for suppression in relation to a public register

An application for suppression in relation to a public register will be dealt with under PPIPA rather than section 739 of the Local Government Act.

A person about whom personal information is contained (or proposed to be contained) in a public register may submit a request to Council under section 58 of the PPIPA to have the information removed from, or not placed on, the register.

If Council is satisfied that the safety or wellbeing of any person would be affected by not suppressing the information, Council will suppress the information in accordance with the request unless Council is of the opinion that the public interest in maintaining public access to the information outweighs any individual interest in suppressing the information. When in doubt, Council will err in favour of suppression.

Any information that is removed from, or not placed on, that aspect of a public register to be made public may still be kept on the register for other purposes. That is, the information may still be used for Council functions, but it cannot be disclosed to other parties.

An application for suppression should be made in writing and addressed to the General Manager, and must outline the reasons for the request. Council may require supporting documentation where appropriate.

2.8 Applications for access to own records on a public register

A person wishing to have access to a public register to confirm their own details needs only to prove their identity to Council before having access to their own personal information.

2.9 Other registers

Council may have other registers that are not public registers. The Information Protection Principles, this Plan, any applicable Code, and the Act apply to the use and disclosure of information in those registers or databases.

3. The Information Protection and the Health Privacy Principles

The 12 Information Protection Principles and the 15 Health Privacy Principles are the key to the Privacy and Personal Information Act 1998 (PPIP Act) and the Health Records and Information Privacy Act 2002 (HRIP Act). These are legal obligations which Council must abide by when it collects, stores, uses and discloses personal and health information.

3.1 The 12 Information Protection Principles

The Privacy and Personal Information Protection Act 1998 provides for the protection of personal information by means of 12 Information Protection Principles. Those principles are as follows:

- Principle 1 – Collection of personal information for lawful purposes.
- Principle 2 – Collection of personal information directly from the individual concerned.
- Principle 3 – Requirements when collecting personal information.
- Principle 4 – Other requirements relating to collection of personal information.
- Principle 5 – Retention and security of personal information.
- Principle 6 – Information about personal information held by agencies.
- Principle 7 – Access to personal information held by agencies.
- Principle 8 – Alteration of personal information.
- Principle 9 – Agency must check accuracy of personal information before use.
- Principle 10 – Limits on use of personal information.
- Principle 11 – Limits on disclosure of personal information.
- Principle 12 – Special restrictions on disclosure of personal information.

These principles are modified by the Privacy Code of Practice for Local Government made by the Attorney General.

3.2 The 15 Health Privacy Principles

The Health Records and Information Privacy Act 2002 provides for the protection of health information by means of 15 Health Privacy Principles. Those principles are as follows:

- Principle 1 – Purposes of collection of health information.
- Principle 2 – Information must be relevant, not excessive, accurate and not intrusive.
- Principle 3 – Collection to be from individual concerned.
- Principle 4 – Individual to be made aware of certain matters.
- Principle 5 – Retention and security.
- Principle 6 – Information about health information held by organisations.
- Principle 7 – Access to health information.
- Principle 8 – Amendment of health information.
- Principle 9 – Accuracy.
- Principle 10 – Limits on use of health information.
- Principle 11 – Limits on disclosure of health information.
- Principle 12 – Identifiers.
- Principle 13 – Anonymity.
- Principle 14 – Transborder data flows and data flow to Commonwealth agencies.
- Principle 15 – Linkage of health records.

3.3 Table of Information Protection Principles and Health Privacy Principles

The following table sets out the Privacy and Health Protection Principles contained in the PPIPA and HRIPA respectively:

INFORMATION PROTECTION PRINCIPLES			
Privacy and Personal Information Protection Act 1998		Health Records and Information Privacy Act 2002	
Collection			
1	Lawful – Personal information must be collected for a lawful purpose that is directly related to the agency’s functions or activities and be necessary for that purpose.	1	Lawful – Health information must be collected for a lawful purpose that is directly related to the agency’s functions or activities and be necessary for that purpose.
2	Direct – Personal information must be collected directly from the individual, unless that person consents otherwise. Parents or guardians may give consent for minors.	2	Relevant – Health information must be relevant, accurate, complete and up to date. The collection should not unreasonably intrude into the individual’s personal affairs.
3	Open – An individual must be informed that the personal information is being collected, why it is being collected and who will be storing and using it. The agency should also inform the person how they can view and correct the information.	3	Direct – Health information must be collected directly from the person concerned unless it is unreasonable to do so.
4	Relevant – Personal information must be relevant, accurate, up to date, complete and not excessive. The collection should not unreasonably intrude into the individual’s personal affairs.	4	Open – The person concerned must be informed why health information is being collected about them, what will be done with it and who might see it. The agency should also inform the person how they can view and correct their health information and any consequences if they do not provide their information. If health information is collected about a person from someone else, reasonable steps must be taken to ensure that the person has been notified as above.
Storage			
5	Secure – Personal information must be stored securely, not kept any longer than as required by the General Retention and Disposal Authority for Local Government Records issued by the State Records Authority of NSW, and be disposed of appropriately. It should be protected from unauthorised access, use or disclosure.	5	Secure – Health information must be stored securely, not kept any longer than as required by the General Retention and Disposal Authority for Local Government Records issued by the State Records Authority of NSW, and be disposed of appropriately. It should be protected from unauthorised access, use or disclosure.

INFORMATION PROTECTION PRINCIPLES

Privacy and Personal Information Protection Act 1998

Health Records and Information Privacy Act 2002

Access and Accuracy

6	Transparent – Enough detail must be given about what personal information is stored, why it is stored, and what rights an individual has to access it.	6	Transparent – Enough detail must be given about what health information is stored, why it is stored, and what rights an individual has to access it.
7	Accessible – An individual must be allowed to access their personal information without unreasonable delay or expense.	7	Accessible – An individual must be allowed to access their health information without unreasonable delay or expense.
8	Correct – An individual must be allowed to update, correct or amend their personal information where requested.	8	Correct – An individual must be allowed to update, correct or amend their health information where requested.
		9	Accurate – An agency must ensure that health information is accurate before using it.

Use

9	Accurate – An agency must ensure that personal information is accurate before using it.		
10	Limited – An agency may only use personal information for the purpose for which it was collected, for a directly related purpose, or for a purpose which the individual has given consent. It may also be used without consent in order to deal with a serious and imminent threat to any person's life, health or safety.	10	Limited – An agency may only use health information for the purpose for which it was collected, for a directly related purpose that the person would expect. Otherwise, consent is required. Secondary purposes include where there is a serious and imminent threat to any person's life, health or safety, for the management of a health service, for training, research, or to locate a missing person. Additionally, a secondary purpose includes investigation of suspected unlawful activity, and to exercise complaint handling or investigative functions.

Disclosure

11	Restricted – An agency may only disclose personal information with the individual's consent or if the individual was told at the time of collection that it would do so. The agency may also disclose information if it is for a related purpose and it considers that the individual would not object. Personal information may also be used without the	11	Limited – An agency may only disclose health information for the purpose which it was collected or a directly related purpose that the person would expect. Otherwise, consent is generally required. Secondary purposes include where there is a serious and imminent threat to any person's life, health or safety, for the management of a
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Privacy and Personal Information Protection Act 1998		Health Records and Information Privacy Act 2002	
	individual's consent in order to deal with a serious and imminent threat to any person's life, health or safety.		health service, for training, research, or to locate a missing person. Additionally, a secondary purpose includes investigation of suspected unlawful activity, and to exercise complaint handling or investigative functions.
12	Safeguarded – The agency cannot disclose an individual's sensitive personal information without their consent. For example, information about ethnic or racial origin, political opinions, religious or philosophical beliefs, health or sexual activities, or trade union membership. It may only disclose sensitive information without consent in order to prevent a serious and imminent threat to any person's life or health.		
Identifiers and Anonymity			
		12	Not identified – Individuals should only be identified by using unique identifiers if it is reasonably necessary to carry out the agency's functions.
		13	Anonymous – Individuals must be given the opportunity of receiving services from an agency anonymously where this is lawful and practicable.
Transferrals and Linkage			
		14	Controlled – Health information must only be transferred outside NSW if Council reasonably believes that the recipient is subject to laws or obligations substantially similar to those imposed by the HRIPA or consent has been given, or transfer is under a contract between Council and the individual, or transfer will benefit the individual, or to lessen a serious threat to an individual's health and welfare, or steps have been taken to ensure that the information will not be handled inconsistently with the HRIPA or transfer is not permitted or required under any other law.

INFORMATION PROTECTION PRINCIPLES	
Privacy and Personal Information Protection Act 1998	Health Records and Information Privacy Act 2002
	<p>15 Authorised – Individuals must expressly consent to participate in any system that links health records across more than one organisation. Health information or the disclosure of their identifier for the purpose of the health records linkage system should only be included if the person has given express consent.</p>

3.4 Health Privacy Principles

In 2002, most references to 'health information' were taken out of the Privacy and Personal Information Protection Act and separate legislation was enacted. The Health Records and Information Privacy Act (HRIPA) was enacted to deal with this specific type of personal information. On and from September 2004, various agencies and organisations, including Councils, were expected to comply with the HRIPA in their collection and management of health information.

Health information includes personal information that is information or an opinion about the physical or mental health or disability of an individual. Health information also includes personal information that is information or an opinion about:

- A health service provided, or to be provided, to an individual.
- An individual's express wishes about the future provision of health services to him or her.
- Other personal information collected in connection with the donation of human tissue.
- Genetic information that is, or could be, predictive of the health of an individual or their relatives or descendants.

Health information is defined in section 6 of the HRIPA. Council will often hold health information by reason of their role in care of the elderly, child care and various types of community health support services.

The following is a non exhaustive list of examples of the types of health information and circumstances in which Council may collect health information in exercising its functions:

- Tree pruning / removal applications where residents approach Council for a reconsideration or reassessment of a tree pruning / removal application on medical grounds.
- Issuing of clean up orders which may include recording information about a resident's health, GP professional contact details or involvement with mental health services.
- Volunteer programs where volunteers are asked to disclose health conditions which may preclude them from some types of volunteer work.

- Meals on Wheels programs where residents may be asked for medical dietary requirements for catering purposes (e.g. allergies).
- Seniors' bus outings where information may be collected on special medical needs.
- Council may provide respite and social support services collecting information that is consistent with the client intake and referral record system.
- Information on families for the purposes of children's services (e.g. history of allergies, illness, asthma, diabetes, epilepsy, etc).
- Physical exercise classes.
- Information may be collected through a health community program.
- Some Councils run podiatry services.
- Children's immunisation records.
- Family counsellor / youth support worker's records.

4. Implementation of the Privacy Management Plan

4.1 Training Seminars / Induction

During induction, all employees should be made aware that the performance management system has the potential to include personal information on their individual work performance or competency.

Councillors, all staff of Council including staff of Council businesses, and members of Council Committees should be acquainted with the general provisions of the PPIPA and HRIPA, in particular, the 12 Information Protection Principles (IPPs) and the 15 Health Privacy Principles (HPPs), the Public Register provisions, the Privacy Code of Practice for Local Government, this Privacy Management Plan, and any other applicable Code of Practice.

4.2 Role of the Privacy Contact Officer

Council's Public Officer will be assigned the role of the Privacy Contact Officer unless the General Manager has directed otherwise.

In order to ensure compliance with the PPIPA, the Privacy Contact Officer will review all contracts and agreements with consultants and other contractors, rates notices, application forms of whatsoever nature, and other written requests by which personal information is collected by Council to ensure that Council is in compliance with the PPIPA.

The Privacy Contact Officer will ensure our public areas have special provisions for working with computer screens. Computers placed in public areas may require:

- Fast screen savers
- Screens positioned so that they face away from the public
- The record system configured to only display one record at a time.

Council's electronic databases should also be reviewed to ensure that they contain procedures and protocols to check the accuracy and currency of personal and health information.

The Privacy Contact Officer should also provide opinions within Council as to:

- (i). Whether the personal or health information is collected for a lawful purpose.
- (ii). If that lawful purpose is directly related to a function of Council.
- (iii). Whether or not the collection of that personal or health information is reasonably necessary for the specified purpose.

Any further concerns of a legal nature will be referred to Council's solicitor.

Should it be required, Council's Privacy Contact Officer may assign designated officers as 'Privacy Resource Officers' within the departments of Council. In this manner, Council can ensure that the information protection principles are more broadly understood and that individual departments have a greater focus on the information protection principles and that they are directly applied to Council's day to day functions.

4.3 Distribution of information to the public

Council may prepare its own literature such as pamphlets on the PPIPA and HRIPA, or it may obtain and distribute copies of literature available from the Office of the Privacy Commissioner NSW.

Council may also publish public notices, newsletters or website bulletins explaining the key elements of the Act and the rights of persons about whom information is held.

Council's Privacy Contact Officer will ensure that from time to time our rates notices, forms and other documents include a notice which:

- (i). Mentions the commencement of the new PPIPA and HRIPA.
- (ii). States that Council holds personal and health information.
- (iii). Mentions that Council may use and disclose personal and health information in various circumstances.
- (iv). States that for further information Council's Privacy Contact Officer be contacted.

5. Internal Review

5.1 How does the process of Internal Review operate?

Under section 53 of the PPIPA, a person (the applicant) who is aggrieved by the conduct of Council is entitled to a review of the conduct. An application for internal review is to be made within **6 months** of the complainant first becoming aware of the conduct.

The complaint is to be in writing and addressed to Council's General Manager who will then refer the complaint to Council's Privacy Contact Officer. The Privacy Contact Officer will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the application. The Reviewing Officer must be an employee of Council and suitably qualified.

The review must be completed as soon as is reasonably practicable in the circumstances. If the review is not completed within **60 days** of lodgement of the complaint, the applicant is entitled to seek external review.

Council must notify the Privacy Commissioner of an application as soon as practicable after its receipt, keep the Commissioner informed of the progress of the application, and inform the Commissioner of the findings of the review and of the action Council proposes to take in relation to the application.

The Privacy Commissioner is entitled to make submissions in relation to internal reviews, and Council is required to consider any relevant material submitted by the Privacy Commissioner to make a submission.

Council may provide a copy of any submission made by the Privacy Commissioner to the applicant.

Council must notify the applicant of the outcome of the review within **14 days** of its determination. A copy of the final review should also be provided to the Privacy Commissioner.

An internal review checklist has been prepared by the Office of the Privacy Commissioner NSW and can be accessed from its website <http://www.ipc.nsw.gov.au>

The Privacy Commissioner must be notified of a complaint, briefed on progress, and notified of the outcome of an internal review under the PPIPA or HRIPA.

5.2 What happens after an Internal Review?

If the complainant is not satisfied with the internal review, he or she may appeal to the Administrative Decisions Tribunal. The Tribunal hears the matter afresh and may impose its own decision regarding the complaint. The Tribunal can make a range of orders, including an award of damages for a breach of an Information Protection Principle or a Health Privacy Principle.

6. Other Relevant Matters

6.1 Contracts with consultants and other private contractors

It is necessary to have specific provisions to protect Council in any dealings with consultants and private contractors.

6.2 Confidentiality

The obligation of confidentiality is additional to, and separate from, that of privacy. Nevertheless, a duty to withhold information lies at the heart of both concepts. Confidentiality attaches to information per se, personal or health information to the person whom that information relates.

An obligation of confidentiality exists for all employees, whether express or implied, as a matter of law.

Information which may be confidential is also likely to have a separate and independent obligation attaching to it in the form of privacy and in that regard, a release for the purposes of confidentiality will not suffice for privacy purposes. Two separate releases will be required and, in the case of privacy, the person to whom the information relates will be required to provide the release.

6.3 Misuse of personal or health information

Section 664 of the Local Government Act makes it an offence for anyone to disclose information except in accordance with that section. Whether or not a particular disclosure is made with lawful excuse is a matter that requires legal opinion from case to case.

6.4 Regular review of the collection, storage and use of personal or health information

The information practices relating to the collection, storage and use of personal or health information will be reviewed by Council every three (3) years. Any new program initiatives will be incorporated into the review process with a view to ascertaining whether or not those programs comply with the PPIPA.

6.5 Regular review of the Privacy Management Plan

When information practices are reviewed from time to time, the Privacy Management Plan will also be reviewed to ensure that the Plan is up to date.

6.6 Further information

For assistance in understanding the processes under the PPIPA and HRIPA, please contact Council or the Office of the Privacy Commissioner NSW.