



PRIVACY MANAGEMENT PLAN P3.0116.4

PRIVACY MANAGEMENT PLAN

DIRECTORATE: Customer and Corporate Strategy
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CONTENTS

PART 1 - INTRODUCTION	1
1. Background	1
2. Objectives	2
3. Scope	3
PART 2 - POLICY STATEMENT	3
A. PERSONAL INFORMATION	3
4. What is "Personal Information"?	3
5. What is not "Personal Information"?	3
6. Policy on Electoral Rolls	4
7. Personal Information held by Council	4
8. Applications for Suppression in Relation to General Information (not Public Registers).....	5
9. Caution as to Unsolicited Information.....	6
B. PUBLIC REGISTERS.....	6
10. Public Registers	6
11. Public Registers, the PPIPA and the HRIPA.....	7
12. Effect on Section 6 of the GIPA Act.....	8
13. Where Some Information in the Public Register has been Published	8
14. Disclosure of Personal Information Contained in Public Registers	9
15. Purposes of Public Registers	9
16. Applications for Access to own Records on a Public Register	11
17. Applications for Suppression in Relation to a Public Register	11
18. Other Registers	11

C. INFORMATION PROTECTION PRINCIPLES.....	12
19. Collection	12
20. Storage	12
21. Access and Accuracy	12
22. Use.....	12
23. Disclosure	13
D. THE HEALTH PRIVACY PRINCIPLES.....	13
24. Collection	14
25. Storage	15
26. Access and Accuracy	15
27. Use.....	15
28. Identifiers and Anonymity	15
29. Transferrals and Linkage	15
E. EXEMPTIONS.....	16
30. General	16
31. Privacy Code of Practice for Local Government	16
F. IMPLEMENTATION OF THE PRIVACY MANAGEMENT PLAN.....	18
32. Training Seminars/Induction.....	18
33. Responsibilities of the Privacy Contact Officer	19
34. Distribution of Information to the Public.....	20
G. INTERNAL REVIEW.....	20
35. Informal Resolution	20
36. How Does the Process of Internal Review Operate?	20
37. What Happens After an Internal Review?.....	21
H. OTHER RELEVANT MATTERS	21
38. Contracts with Consultants and Other Private Contractors	21
39. Confidentiality	22
40. Misuse of Personal or Health Information	22
41. Regular Review of the Collection, Storage and Use of Personal or Health Information.....	22
42. Regular Review of Privacy Management Plan.....	22
43. Further Information	22

44. Notifiable Data Breaches Scheme23

45. Mandatory Data Breach Notification Scheme.....23

46. Related Materials 24

I. APPENDICES.....25

PART 1 - INTRODUCTION

1. Background

- 1.1 The *Privacy and Personal Information Protection Act 1998* (PPIPA) requires all councils to prepare a Privacy Management Plan, outlining their policies and practices to ensure compliance with the requirements of that Act and the *Health Records and Information Privacy Act 2002* (HRIPA).
- 1.2 The PPIPA provides for the protection of personal information and for the protection of the privacy of individuals. Section 33 of the PPIPA requires all councils to prepare a Privacy Management Plan (Plan) to deal with:
- The devising of policies and practices to ensure compliance by Council with the requirements of the PPIPA and the HRIPA.
 - The dissemination of those policies and practices to persons within Council.
 - The procedures that Council proposes for internal review of privacy complaints.
 - The procedures and practices used by Council to ensure compliance with the obligations and responsibilities for the mandatory notification of data breach scheme.
 - Such other matters as are considered relevant by Council in relation to privacy and the protection of personal information held by it.

This Plan has been prepared for the purpose of section 33 of the PPIPA.

- 1.3 The PPIPA provides for the protection of personal information by means of 12 Information Protection Principles. Those principles are:

Principle 1 - Collection of personal information for lawful purposes
Principle 2 - Collection of personal information directly from individual
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 - Council 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.

- 1.4 HRIPA additionally provides for the protection of health information by means of the Health Privacy Principles set out in this Plan.
- 1.5 The Information Protection Principles are modified by the Privacy Code of

Practice for Local Government (Privacy Code) made by the Attorney General. To date, there has been no Health Records and Information Privacy Code of Practice made for Local Government.

- 1.6 The Privacy Code has been developed to enable Local Government to fulfill its statutory duties and functions under the *Local Government Act 1993* (LGA) in a manner that seeks to comply with the PPIPA.

2. Objectives

- 2.1 The object of this Plan is to inform:

- The community about how their personal information will be used, stored and accessed after it is collected by Council.
- Council staff of their obligations in relation to handling personal information and when they can and cannot disclose, use or collect it.

- 2.2 This Plan outlines how Council will incorporate the 12 Information Protection Principles into its everyday functions. It should be read in conjunction with the Privacy Code.

- 2.3 Nothing in this Plan is to:

- Affect any matter of interpretation of a Code or the Information Protection Principles and the Health Privacy Principles as they apply to Council.
- Affect any obligation at law cast on Council by way of representation or holding out in any manner whatsoever.
- Create, extend or lessen any obligation at law which Council may have.

- 2.4 This Plan is designed to introduce policies and procedures to maximise compliance with the PPIPA and the HRIPA.

- 2.5 Where Council has the benefit of an exemption, it will nevertheless describe procedures for compliance in this Plan. By doing so, it is not to be bound in a manner other than that prescribed by any applicable Code.

- 2.6 Council collects, stores and uses a broad range of information. A significant part of that information is personal information. This Plan applies to that part of Council's information that is personal information.

- 2.7 It may mean in practice that any information that is not personal information will receive treatment of a higher standard; namely treatment accorded to personal information where the information cannot be meaningfully or practicably separated.

3. Scope

3.1 This Plan (and the PPIPA and HRIPA) apply to:

- Councillors;
- Council employees;
- Consultants and contractors of Council;
- Volunteers;
- Council owned businesses;
- Council committees (including community members of those committees which may be established under section 355 of the LGA);
- Anyone working for and on behalf of Council in whatever capacity.

Council will ensure that all such parties are made aware that they must comply with the PPIPA, the HRIPA, any other applicable Code and this Plan.

PART 2 - POLICY STATEMENT

A. PERSONAL INFORMATION

4. What is "Personal Information"?

4.1 "Personal information" is defined in section 4 of the PPIPA as follows:

"Information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. This information can be on a database and does not necessarily have to be recorded in a material form."

5. What is not "Personal Information"?

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

5.2 Section 4A of the PPIPA also specifically excludes "health information", as defined by section 6 of the HRIPA, from the definition of "personal information", but includes "health information" in the PPIPA's consideration of public registers (discussed below). "Health information" is considered in Part D of this Plan.

5.3 Where Council is requested to provide access or make a disclosure and that information has already been published, then Council will rely on the provisions of the relevant Act that authorises Council to hold that information and not the PPIPA (for example, section 8 of the *Government Information (Public Access) Act 2009* (GIPA Act)).

5.4 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 distributed broadly to the general public;
- Council business papers or that part that is available to the general public;
- Personal information that may be a part of a public display on view to the general public.

Information published in this way ceases to be covered by the PPIPA.

Council's decision to publish in this way must be in accordance with the PPIPA.

6. Policy on Electoral Rolls

6.1 The Electoral Roll is a publicly available publication. Council will refer any requests for copies of the Electoral Roll to the State Electoral Commissioner.

7. Personal Information held by Council

7.1 Council holds personal information concerning Councillors, such as:

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

7.2 Council holds personal information concerning its customers, ratepayers and residents, such as:

- Rates records
- Development applications and related submissions
- Library lending records
- Library special needs statements
- Leases, licences and agreements
- Waste services records
- Customer requests
- Tree removal requests, including for requests for health reasons
- Fitness testing records
- Burial and cremation records
- Financial records
- Donation, grant and sponsorship applications
- Photos of vehicle registration plates
- Responses to clean up notices regarding health issues

- Health records information for excursions
- Child care information, immunisation, illness and accident records
- Community service utilisation e.g. Community Transport
- Age and disability support records including health records
- Submissions and information collected as part of Council's community engagement and consultation activities
- Public access forum applications
- CCTV footage.

7.3 Council holds personal information concerning its employees, volunteers and contractors, such as:

- Recruitment material
- Leave and payroll data
- Personal contact information
- Performance management plans
- Disciplinary matters
- Disclosure of interest returns
- Wage and salary entitlements
- Bank account details
- Pre-employment medical information
- Employee immunisation records and medical certificates
- Volunteers' medical information
- Workers' compensation investigations
- Public interest disclosure investigations
- Next of kin
- Education
- Secondary employment
- Conflicts of interest.

8. Applications for Suppression in Relation to General Information (not Public Registers)

8.1 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 the personal safety of the person or their family at risk.

8.2 Section 739 of the LGA relates to 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 favour of suppression.

- 8.3 For more information regarding disclosure of information (other than public registers), see the discussion of IPPs 11 and 12 in part C of this Plan. For information regarding suppression of information on public registers, see part B of this Plan.

9. Caution as to Unsolicited Information

- 9.1 Where an individual, a group or committee not established by Council, gives Council unsolicited personal or health information, then that information should be still treated in accordance with this Plan, any Code, the HRIPA and the PPIPA for the purposes of IPPs 5-12 and HPPs 5-15 which relate to storage, access, use and disclosure of information.
- 9.2 For the purposes of section 10 of the HRIPA, Council is not considered to have “collected” health information if the receipt of the information by Council is unsolicited. Section 4(5) of the PPIPA also provides that personal information is not “collected” by Council if it is unsolicited.

B. PUBLIC REGISTERS

10. Public Registers

- 10.1 A public register is defined in section 3 of the PPIPA:
- “...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).”
- 10.2 A distinction needs to be drawn between ‘public registers’ within the meaning of Part 6 of the PPIPA and ‘non-public registers’. A ‘non-public register’ is a register, but not a ‘public register’ for the purposes of the PPIPA. For example, the register might not be publicly available or it may not contain personal information.
- 10.3 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.
- 10.4 Disclosure in relation to all other personal information must comply with the Information Protection Principles as outlined in part B of this Plan and the Privacy Code, where it includes personal information that is not published.
- 10.5 Council holds the following public registers under the LGA:***

Section 53	Land Register
Section 113	Records of Approvals
Section 602	Rates Record.
Code of Conduct	Register of 'Disclosures by Councillors and Designated Persons' Returns

***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 and Assessment Act 1979*:

- Section 4.58 - Register of consents and approvals
- Section 6.26(8)-(10) - Record of building certificates.

Council holds the following public register under the *Protection of the Environment (Operations) Act 1997*:

- Sections 308-309 - Public register of licences held.

Council holds the following public register under the *Impounding Act 1993*:

- Sections 30- 31 - Record of impounding.

10.6 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 the following sections.

11. Public Registers, the PPIPA and the HRIPA

11.1 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).

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

11.3 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 it 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.

- 11.4 Section 57(2) provides that in order to ensure compliance with section 57(1), a council may require any person who applies to inspect personal information contained in the public register to give particulars in the form of a statutory declaration as to the proposed use of that information (form at Appendix 1 may be used as a guide).
- 11.5 Councils also need 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).
- 11.6 If the stated purpose of the applicant does not conform with the purpose for which the public register is kept, access to the information sought will not be given.
- 11.7 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.

12. Effect on Section 6 of the GIPA Act

- 12.1 Section 57 of the PPIPA prevails over clause 1(3) of Schedule 1 of the *Government Information (Public Access) Regulation 2009* (GIPA Regulation) to the extent of any inconsistency. Therefore:
1. If a register is listed in Schedule 1 of the GIPA Regulation, access must not be given except in accordance with section 57(1) of the PPIPA.
 2. If a register is not listed in Schedule 1 of the GIPA Regulation, access must not be given except:
 - if it is allowed under section 57(1) of the PPIPA, and
 - there is no overriding public interest against disclosure of the information under section 6 of the GIPA Act.

Note: Both 1 and 2 are amended with regard to specific public registers in the Privacy Code.

13. Where Some Information in the Public Register has been Published

- 13.1 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.
- 13.2 For example, the Register of Consents and Approvals held by Council under section 4.58 of the *Environmental Planning and Assessment Act 1979* requires Council to advertise or publish applications for development consent.

- 13.3 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.
- 13.4 Council may hold a register under the *Contaminated Land Management Act 1997* 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 it on the internet. This may constitute a publication of the information and therefore the PPIPA will not apply.
- 13.5 Registers should not be published on the internet.

14. Disclosure of Personal Information Contained in Public Registers

- 14.1 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 or the Act under which the register is kept.
- 14.2 In the following section, by way of guidance only, what might be called the "primary" purpose (or "the purpose of the register") has been specified for each identified register. In some cases, a "secondary purpose" has also been specified, by way of guidance as to what might constitute "a purpose relating to the purpose of the register".

15. Purposes of Public Registers

Purposes of public registers under the *Local Government Act 1993*

- 15.1 Section 53 – Land Register – The primary purpose is to identify all land vested in Council, or under its control. The secondary purpose includes a consideration of public accountability as to the land held by Council. Third party access is therefore a secondary purpose.
- 15.2 Section 113 – Records of Approvals – The primary purpose is to identify all approvals granted under the LGA.
- 15.3 Section 602 – Rates Record – The primary purpose is to record the value of a parcel of land and record rate liability in respect of that land. The secondary purpose includes recording the owner or lessee of each parcel of land. For example, a disclosure on a section 603 (of the LGA) rating certificate that a previous owner was a pensioner is considered to be allowed, because the secondary purpose is "a purpose relating to the purpose of the register".

15.4 Code of Conduct – Register of ‘Disclosures by Councillors and Designated Persons’ Returns – The primary purpose of this register is to determine whether or not a Councillor or a designated person has a specified interest in a matter with which Council is likely to be concerned. There is a corresponding public accountability purpose and third party access is a secondary purpose.

Purposes of public registers under the *Environmental Planning and Assessment Act 1979*

15.5 Section 4.58 – Register of consents and approvals – The primary purpose is to identify applications for development consent and other approvals, confirm determinations on appeal and identify applications for complying development certificates.

15.6 Section 6.26(8)-(10) – Record of building certificates – The primary purpose is to identify all building certificates.

Purposes of public registers under the *Protection of the Environment (Operations) Act 1997*

15.7 Sections 308-309 – Public register of licences held – The primary purpose is to identify all licences granted under the Act.

Purposes of the public register under the *Impounding Act 1993*

15.8 Sections 30-31 – Record of impounding – The primary purpose is to identify any impounding action by Council.

Secondary purpose of all public registers

15.9 Due to the general emphasis (to be found in the LGA and elsewhere) on Local Government processes and information being open and accountable, 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 allowable under section 57 of the PPIPA.

15.10 However, requests for access, copying or the sale of the whole or a substantial part of a public register held by Council will not necessarily fit within this purpose. Council should be guided by the Privacy Code 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

15.11 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 concerning public registers.

16. Applications for Access to own Records on a Public Register

16.1 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.

17. Applications for Suppression in Relation to a Public Register

17.1 An application for suppression in relation to a public register will be dealt with under PPIPA, rather than section 739 of the LGA.

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

17.3 If Council is satisfied that the safety or well-being of any person would be affected by not suppressing the personal information as requested, 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, in accordance with section 58(2) of the PPIPA ("well-being" is defined in the Macquarie Dictionary as "the good or satisfactory condition of existence; welfare").

17.4 When in doubt, Council will err in favour of suppression.

17.5 Any information that is removed from, or not placed on, that aspect of a public register to be made public may 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.

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

18. Other Registers

18.1 Council may have other registers that are not public registers. The Information Protection Principles, this Plan, any applicable Codes and the PPIPA apply to those registers or databases.

C. INFORMATION PROTECTION PRINCIPLES

There are legal obligations that local councils must abide by when they collect, store, use or disclose personal information, known as Information Protection Principles (IPPs). The IPPs are set out below.

19. Collection

- IPP 1. Lawful – Only collect personal information for a lawful purpose, which is directly related to the agency’s activities and necessary for that purpose.
- IPP 2. Direct – Only collect personal information directly from the person concerned, unless they have authorised collection from someone else, or if the person is under the age of 16 and the information has been provided by a parent or guardian.
- IPP 3. Open – Inform the person as to why you are collecting personal information, what you will do with it and who else might see it. Tell the person how they can view and correct their personal information, if the information is required by law or voluntary, and any consequences that may apply if they decide not to provide their information.
- IPP 4. Relevant – Ensure that the personal information is relevant, accurate, complete, up-to-date and not excessive and that the collection does not unreasonably intrude into the personal affairs of the individual.

20. Storage

- IPP 5. Secure – Store personal information securely, keep it no longer than necessary and dispose of it appropriately. It should also be protected from unauthorised access, use, modification or disclosure.

21. Access and Accuracy

- IPP 6. Transparent – Explain to the person what personal information about them is being stored, why it is being used and any rights they have to access it.
- IPP 7. Accessible – Allow people to access their personal information without unreasonable delay or expense.
- IPP 8. Correct – Allow people to update, correct or amend their personal information where necessary.

22. Use

- IPP 9. Accurate – Make sure the personal information is relevant, accurate, up to date and complete before using it.

IPP 10. Limited – Only use personal information for the purpose it was collected unless the person has given their consent, or the purpose of use is directly related to the purpose for which it was collected, or to prevent or lessen a serious or imminent threat to any person’s health or safety.

23. Disclosure

IPP 11. Restricted – Only disclose personal information with a person’s consent or if the person was told at the time that it would be disclosed, if disclosure is directly related to the purpose for which the information was collected and there is no reason to believe the person would object, or the person has been made aware that information of that kind is usually disclosed, or if disclosure is necessary to prevent a serious and imminent threat to any person’s health or safety.

IPP 12. Safeguarded – An agency cannot disclose sensitive personal information without a person’s consent, for example, information about ethnic or racial origin, political opinions, religious or philosophical beliefs, sexual activities or trade union membership. It can only disclose sensitive information without consent in order to deal with a serious and imminent threat to any person’s health or safety.

D. THE HEALTH PRIVACY PRINCIPLES

In 2002, most references to ‘health information’ were taken out of the PPIPA and separate legislation was enacted. The HRIPA was enacted to deal with this specific type of personal information. On and from September 2004, various agencies and organisations, including local 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 a 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. Local councils will often hold health information by reason of their role in elder care, childcare and various types of community health support services. It is therefore very important for councils to be familiar with the 15 Health Protection Principles (HPPs).

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

- Tree pruning/removal application 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 or dietary requirements (eg allergies for catering purposes)
- Seniors bus outings where information may be collected on special medical needs
- Councils 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 (eg history of illness, allergies, asthma, diabetes, epilepsy etc)
- Physical exercise classes
- Some councils run podiatry services
- Information may be collected through a healthy community program
- Children's immunisation records
- Family counsellor/youth support workers records.

HPPs 1-4 concern the collection of health information, HPP 5 concerns the storage of health information, HPPs 6-9 concern the access and accuracy of health information, HPP 10 concerns the use of health information, HPP 11 concerns the disclosure of health information, HPPs 12-13 concern the identifiers and anonymity of the persons to which health information relate, HPPs 14-15 concern the transferral of health information and the linkage to health records across more than one organisation.

The HPPs are set out below.

24. Collection

- HPP 1. Lawful – Only collect health information for a lawful purpose that is directly related to the agency or organisation's activities and necessary for that purpose.
- HPP 2. Relevant – Ensure the health information is relevant, accurate, , up-to-date and not excessive, and that the collection does not unreasonably intrude into the personal affairs of a person.
- HPP 3. Direct – Only collect health information directly from the person concerned, unless it is unreasonable or impracticable to do so. Health information is to be collected in accordance with any guidelines issued by the Privacy Commissioner for the purposes of this clause.

HPP 4. Open – Inform a person as to why you are collecting health information, what you will do with it, and who else may see it. Tell the person how they can view and correct their health information and any consequences that will occur if they decide not to provide their information to you. If you collect health information about a person from a third party you must still take reasonable steps to notify the person that this has occurred.

25. Storage

HPP 5. Secure – Ensure the health information is stored securely, not kept any longer than necessary, and disposed of appropriately. Health information should be protected from unauthorised access, use or disclosure.

26. Access and Accuracy

HPP 6. Transparent – Explain to the person what health information is being stored, the reasons it is being used and any rights they have to access it.

HPP 7. Accessible – Allow a person to access their health information without unreasonable delay or expense.

HPP 8. Correct – Allow a person to update, correct or amend their personal information where necessary.

HPP 9. Accurate – Ensure that the health information is relevant and accurate before using it.

27. Use

HPP 10. Limited – Only use health information for the purpose for which it was collected or for a directly related purpose, which a person would expect. Otherwise, you would generally need their consent to use the health information for a secondary purpose.

HPP 11. Limited – Only disclose health information for the purpose for which it was collected, or for a directly related purpose that a person would expect. Otherwise, you would generally need their consent. (Note: see HPP 10).

28. Identifiers and Anonymity

HPP 12. Not identified – Only identify people by using unique identifiers if it is reasonably necessary to carry out your functions efficiently.

HPP 13. Anonymous – Give the person the option of receiving services from you anonymously, where this is lawful and practicable.

29. Transferrals and Linkage

HPP 14. Controlled – Only transfer health information outside NSW in accordance with HPP 14.

Council will not transfer health information out of NSW without the individual's consent unless:

- Council is unable to obtain consent, it is of benefit to the individual and that they would likely give it.
- It is necessary for a contract with a third party.
- It is to help prevent a serious and imminent threat to life, health or safety of individuals.
- It is permitted by an Act or other law.
- The recipient is subject to protection laws similar to the HRIPA.

HPP 15. Authorised – Only use health records linkage systems if the person has provided or expressed their consent.

E. EXEMPTIONS

30. General

30.1 Exemptions from compliance with the PPIPA and HRIPA that apply directly to Council include where:

- Information is collected in connection with proceedings (whether commenced or not) before any Court or Tribunal.
- Information is collected for law enforcement purposes.
- Information is used for a purpose reasonably necessary for law enforcement purposes or to protect the public revenue.
- Council is authorised or required by a subpoena or search warrant or other statutory instrument.
- Council is investigating a complaint that may be referred or made to an investigative agency.
- Council is permitted by a law or Act not to comply.
- Compliance would prejudice the interests of the individual to whom the information relates.
- The individual to whom the information relates has given express consent to Council not to comply.

31. Privacy Code of Practice for Local Government

31.1 The Privacy Code of Practice for Local Government is made under the PPIPA and modifies the operation of specified IPPs for local government. The Privacy Code may be accessed at the Information and Privacy Commission website at:

https://www.ipc.nsw.gov.au/sites/default/files/2020-01/Privacy_Code_of_Practice_for_Local_Government_20_December_2019.pdf

31.2 Specific modifications include:

IPPs 2, 3, 10 and 11:

Council may depart from these IPPs where the collection, use or disclosure of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be, or may be, conferred upon the person to whom the information relates.

IPP 10:

Council may use personal information for a purpose other than the purpose for which it was collected where the use is in pursuance of Council's lawful and proper function/s and Council is satisfied that the personal information is reasonably necessary for the exercise of such function/s.

IPP 11:

Council may depart from this IPP in the following circumstances:

1. Council may disclose personal information to public sector agencies or public utilities on condition that:
 - i. The agency has approached Council in writing.
 - ii. Council is satisfied that the information is to be used by that agency for the proper and lawful function/s of that agency, and
 - iii. Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's function/s.
2. Where Council is requested by a potential employer, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

31.3 The Privacy Code of Practice also modifies the application of section 57 of the PPIPA to the extent that:

1. Council may allow any person to:
 - i. Inspect a publicly available copy of a public register in Council premises, and
 - ii. Copy a single entry or a page of the register.

without requiring the person to provide a reason for accessing the register and without determining that the proposed use of the register is consistent with the purpose of the register or the Act under which the register is kept.

2. Council should not require any person to provide a reason for inspecting Council's Register of 'Disclosures by Councillors and Designated Persons' Returns or any register on which Council records returns of interests made by Councillors or designated persons under Part 4 of the Model Code of Conduct for Local Councils in NSW.
3. Council should not require the making of a statutory declaration as to the intended use of any information obtained from an inspection of Council's Register of 'Disclosures by Councillors and Designated Persons' Returns or any register on which Council records returns of interests made by Councillors or designated persons under Part 4 of the Model Code of Conduct for Local Councils in NSW.

31.4 The Privacy Code also requires Council to ensure that the provisions of section 6 of the GIPA Act and sections 4.58 and 6.26 of the *Environmental Planning and Assessment Act 1979* are complied with, where applicable. In brief, these sections deal with releasing open access information, and making Council's register of development consents and building information certificates available for inspection.

F. IMPLEMENTATION OF THE PRIVACY MANAGEMENT PLAN

32. Training Seminars/Induction

32.1 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.

32.2 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, the HRIPA and in particular, the 12 Information Protection Principles (IPPs), the 15 Health Privacy Principles (HPPs), the Public Register provisions, the Privacy Code of Practice for Local Government, this Plan and any other applicable Code of Practice.

32.3 Council will promote awareness of this plan and rights under PPIPA, HRIPA and this Plan to Council officials by:

- Providing an overview at inductions and including a copy of the plan in induction packs
- Publishing the plan on Council's internal and external websites
- Offering training sessions on a regular basis as required
- Providing specialised and on-the-job training to key groups

- Promoting the plan regularly through newsletters, 'all staff' emails, staff notice boards and initiatives such as Privacy Awareness Week.

33. Responsibilities of the Privacy Contact Officer

33.1 The Public Officer within Council is assigned the role of the Privacy Contact Officer unless the General Manager has directed otherwise.

33.2 In order to ensure compliance with the PPIPA and the HRIPA, the Privacy Contact Officer will ensure the relevant staff are made aware that 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, must comply with the PPIPA.

33.3 Interim measures to ensure compliance with IPP 3 in particular may include the creation of stamps or printed slips that contain the appropriate wording (see appendices 2 and 3).

33.4 The Privacy Contact Officer will ensure that relevant staff are made aware of the need to take precautions when working with computer screens in public areas or where a member of the public is present. Computer screens may require:

- Fast screen savers
- Facing computers away from the public
- Only allowing the records system to show one record at a time.

33.5 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.

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

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

33.7 Any further concerns of a legal nature will be referred to Council's solicitor. Should Council require, the Privacy Contact Officer may assign designated officers as Privacy Resource Officers, within the larger sections of Council. In this manner, Council may ensure that the IPPs are more broadly understood and that individual sections have a greater focus on the information protection principles and are directly applied to Council's day to day functions.

34. Distribution of Information to the Public

34.1 Council promotes public awareness of this Plan to the community by:

- Making it publicly available and publishing it on Council's website
- Writing the Plan in plain English
- Telling people about the Plan when they enquire about personal and health information
- Providing a link on Council's website to the Information and Privacy Commission website and distributing copies of literature available on that site
- Including privacy statements on application forms and invitations for community engagement
- Publishing a Privacy Handout advising how to access information on an individual's rights under the PPIPA, the HRIPA and this Plan.

G. INTERNAL REVIEW

35. Informal Resolution

35.1 Council encourages individuals to try to resolve privacy issues with Council informally before going through the formal review process.

35.2 People can contact Council by phone and speak to a Customer Relations Officer for advice and, if the issue is not resolved, they may be referred to the Privacy Contact Officer. People can also write a letter or email Council with their concerns and Council will respond providing advice on the best course of action.

36. How Does the Process of Internal Review Operate?

36.1 Under section 53 of the PPIPA, a person (the applicant) who is aggrieved by the conduct of a council is entitled to a review of that conduct. An application for internal review is to be made within **six months** of when the person first became aware of the conduct.

36.2 The application is to be in writing and addressed 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 and suitability qualified.

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

- 36.4 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 it proposes to take in relation to the application.
- 36.5 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. Council must provide the Privacy Commissioner with a draft of Council's internal review report to enable the Privacy Commissioner to make a submission.
- 36.6 Council may provide a copy of any submission by the Privacy Commissioner to the applicant.
- 36.7 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 where it departs from the draft review.
- 36.8 An internal review checklist has been prepared by the Office of the Privacy Commissioner NSW and can be accessed from its website at <http://www.ipc.nsw.gov.au>.
- 36.9 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.

37. What Happens After an Internal Review?

- 37.1 If the applicant is not satisfied with the findings of the internal review or the action taken by Council in relation to the application, or the internal review is not completed within 60 days of the lodgement, they have the right to seek an administrative review by the NSW Civil and Administrative Tribunal.
- 37.2 An application for external review can only be made after an internal review has been completed and must be made within 28 days from the date of the internal review decision.
- 37.3 An individual can also make a complaint directly to the Privacy Commissioner about an alleged breach of their privacy – <https://www.ipc.nsw.gov.au/privacy/citizens/make-complaint>.

H. OTHER RELEVANT MATTERS

38. Contracts with Consultants and Other Private Contractors

- 38.1 It is necessary to have procedures consistent with this Plan to protect Council in any dealings with private contractors.

39. Confidentiality

39.1 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 to whom that information relates.

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

39.3 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.

40. Misuse of Personal or Health Information

40.1 Section 664 of the LGA 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.

41. Regular Review of the Collection, Storage and Use of Personal or Health Information

41.1 The information practices relating to the collection, storage and use of personal or health information will be reviewed by Council every three 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.

42. Regular Review of Privacy Management Plan

42.1 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.

43. Further Information

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

All communication should be addressed to:

The Privacy Contact Officer

Camden Council

70 Central Ave, Oran Park

PO Box 183, Camden NSW 2570

Phone: 02 4654 7777

Email: mail@camden.nsw.gov.au Website: www.camden.nsw.gov.au

Monday to Friday – 8.30 am to 5.00 pm

Information and Privacy Commission

Level 15, McKell Building

2-24 Rawson Place

Haymarket NSW 2000

GPO Box 7011

Sydney NSW 2001

Phone: 1800 472 679

Email: ipcinfo@ipc.nsw.gov.au

Web: www.ipc.nsw.gov.au

NSW Civil and Administrative Tribunal (NCAT)

Level 10, John Maddison Tower

86-90 Goulburn Street

Sydney NSW 2000

PO Box K1026

Haymarket NSW 1240

Phone: 1300 006 228

44. Notifiable Data Breaches Scheme

44.1 As a tax file number (TFN) recipient, Council is subject to the requirements of the Notifiable Data Breaches Scheme, which is part of the federal *Privacy Act 1988*. Council's obligations under the Scheme are limited to TFN information.

45. Mandatory Data Breach Notification Scheme

45.1 As a public sector agency, Council is subject to the requirements of the Mandatory Notification of Data Breach (MNDB) Scheme under the PPIPA. Council's obligations under the MNDB Scheme are set out in Council's Data Breach Policy, including how Council has prepared for a data breach, the procedures for containing, assessing, notifying and managing eligible data breaches, and the roles and responsibilities of Council staff.

46. Related Materials

46.1 Related Legislation

- *Data Sharing (Government Sector) Act 2015*
- *Dividing Fences Act 1991*
- *Environmental Planning and Assessment Act 1997*
- *Government Information (Public Access) Act 2009*
- *Health Records and Information Privacy Act 2002*
- *Impounding Act 1993*
- *Local Government Act 1993*
- *Privacy Act 1988 (Commonwealth)*
- *Privacy and Personal Information Protection Act 1998*
- *Privacy Code of Practice for Local Government*
- *Protection of the Environment (Operations) Act 1997*
- *State Records Act 1998*

46.2 Related Policies, Procedures and Other Guidance Material

- Access to Information Policy
- Agency Information Guide
- Clean Desk Policy
- Code of Conduct
- Data Breach Policy
- Open Data Policy
- Records and Information Management Policy

I. APPENDICES

Appendix 1

**STATUTORY DECLARATION FOR ACCESS UNDER SECTION 57 OF THE PRIVACY AND
PERSONAL INFORMATION PROTECTION ACT 1998 TO A PUBLIC REGISTER HELD BY
COUNCIL**

**STATUTORY DECLARATION
OATHS ACT 1900, NINTH SCHEDULE**

I,(name of declarant) of.....(residence), do hereby
solemnly declare and affirm that:

I am.....(relationship (if any) to person inquired about)

I seek to know whether is on the public register of
.....

The purpose for which I seek this information is

The purpose for which the information is required is to
[the facts to be stated according to the declarant's knowledge, belief, or information, severally]

And I make this solemn declaration, as to the matter (or matters) aforesaid, according to the law
in this behalf made – and subject to the punishment by law provided for any wilfully false
statement in any such declaration.

Declared at: on
[place] [date]

.....
[signature of declarant]

in the presence of an authorised witness, who states:

I, , a
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person
who made it: [*please cross out any text that does not apply]

1. *I saw the face of the person OR *I did not see the face of the person because the person
was wearing a face covering, but I am satisfied that the person had a special justification
for not removing the covering, and
2. *I have known the person for at least 12 months OR *I have confirmed the person's identity
using an identification document and the document I relied on was
..... [describe identification document relied on]

.....
[signature of authorised witness]

.....
[date]

** Applicant to describe the relevant public register

Appendix 2

PRIVACY NOTIFICATION FORM – SECTION 10 (POST-COLLECTION)

(Addressed to the person from whom information has been collected.)

The personal information that Council has collected from you is personal information for the purposes of the *Privacy and Personal Information Protection Act 1998* (“the Act”).

The intended recipients of the personal information are:

- Officers within Council;
- Data service providers engaged by Council from time to time;
- Any other agent of Council; and
- (Any other).

The supply of the information by you is/is not voluntary. If you cannot provide or do not wish to provide the information sought, Council may

Council has collected this personal information from you in order to

You may make application for access or amendment to information held by Council.

You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the Act.

Council* is to be regarded as the agency that holds the information.

Enquiries concerning this matter can be addressed to

Signed.....

Dated.....

*Please state who holds or controls the information if not Council

Appendix 3

PRIVACY NOTIFICATION FORM - SECTION 10 (PRE-COLLECTION)

(Addressed to the person from whom information is about to be collected or has been collected.)

The personal information that Council is collecting from you is personal information for the purposes of the *Privacy and Personal Information Protection Act 1998* ("the Act").

The intended recipients of the personal information are:

- Officers within Council;
- Data service providers engaged by Council from time to time;
- Any other agent of Council; and
- (Any other).

The supply of the information by you is / is not voluntary. If you cannot provide or do not wish to provide the information sought, Council may / will be unable to process your application.

Council is collecting this personal information from you in order to:

.....

You may make application for access or amendment to information held by Council.

You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the Act.

Council* is to be regarded as the agency that holds the information.

Enquiries concerning this matter can be addressed to

Signed.....

Dated.....

*Please state who holds or controls the information if not Council.

Appendix 4

APPLICATION UNDER SECTION 13 OF THE *PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998* -

TO DETERMINE WHETHER COUNCIL HOLDS PERSONAL INFORMATION ABOUT A PERSON

I, (name)

of (address),

hereby request the General Manager/Privacy Contact Officer of Council provide the following:

Does Council hold personal information about me? YES/NO

If so, what is the nature of that information?

.....
.....
.....

What is the main purpose for holding the information?

.....
.....
.....

Am I entitled to access the information? YES/NO

My address for response to this Application is:

.....
.....
.....

Note to applicants

Should you provide your address or any other contact details Council will not record those details for any other purpose other than to respond to your application.

As an applicant, you have a right of access to personal information concerning yourself that is held by Council under section 14 of the *Privacy and Personal Information Protection Act 1998* ("the Act"). There is a separate application form to gain access.

Council may refuse to process this application in part or in whole if:

- There is an exemption to section 13 of the Act; or
- A Code of Practice may restrict the operation of section 14 of the Act.

Appendix 5

**APPLICATION UNDER SECTION 14 OF THE PRIVACY AND PERSONAL INFORMATION
PROTECTION ACT 1998 –**

FOR ACCESS TO APPLICANT'S PERSONAL INFORMATION

I, (name).....

of (address),

hereby request that Council provide me with:

access to all personal information held concerning myself; or

access to the following personal information only.....

Note to applicants:

As an applicant, you have a right of access to your personal information held by Council under section 14 of the *Privacy and Personal Information Protection Act 1998* ("the Act").

You are entitled to have access without unreasonable delay or unreasonable cost.

However, Council may refuse to process your Application in part or in whole if:

- The correct application fee has not been paid;
- There is an exemption to section 14 of the Act; or
- A Code of Practice may restrict disclosure.

Enquiries concerning this application should be made to

Appendix 6

APPLICATION UNDER SECTION 15 OF THE *PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998* -

FOR ALTERATION OF APPLICANT'S PERSONAL INFORMATION

I, (name).....,

of (address),.....

hereby request the Council to alter personal information regarding myself in the following manner:

I propose the following changes:

.....

The reasons for the changes are as follows

.....

The documentary base/s for those changes is as shown on the attached documents:

.....

Note to Applicants:

You have a right to request appropriate amendments are made (whether by way of corrections, deletions or additions) to ensure that the personal information held by Council:

- (A) Is accurate, and
- (B) 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, is relevant, up to date, complete and not misleading.

If your personal information is amended, you are entitled under the *Privacy and Personal Information Protection Act 1998* ("the Act"), if it is reasonably practicable, to have recipients of that information notified of the amendments made by Council.

Council may refuse to process your application in part or in whole if:

- There is an exemption to section 15 of the Act; or
- A Code of Practice may restrict alteration.

Enquiries concerning this application should be made to

Approval and Review	
Responsible Branch	Legal and Governance
Responsible Manager	Manager Legal and Governance
Date Adopted	Executive Leadership Group – 23/11/2023
Version	4
EDMS Reference	18/95265
Date of Next Review	30/06/2024

Version Control				
Version	Date Adopted	Approved By	EDMS Ref.	Description
1	27/08/2013	Council	13/25633	Initial adoption of policy.
2	27/03/2018	Council	18/95265	Incorporation of the Privacy Principles from the Model Policy, minor amendments and formatting.
3	14/06/2022	Council	18/95265	Minor amendments.
4	23/11/2023	ELG	18/95265	Inclusion of Mandatory Data Breach Notification Scheme and update to related materials.



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