

# **ATTACHMENTS TO VARIOUS REPORTS FINANCE & ADMINISTRATION COMMITTEE**

**MONDAY 18 MARCH 2013**

---

**ATTACHMENT TO FAC 6A – 03/2013**  
**REVIEW PRIVACY MANAGEMENT PLAN 2013**  
**AND POLICY**

**ATTACHMENT 1**

*Draft Privacy Management Policy*

<b>POLICY NAME</b>	<i>DRAFT</i> Privacy Management Policy
<b>DIRECTORATE</b>	Corporate Services - Governance

## PURPOSE

Section 33 of the *Privacy and Personal Information Protection Act 1998* (PIIP Act) requires all NSW government agencies to prepare a privacy management plan setting out how the agency complies, or proposes to comply with the requirements of the Act.

Council respects the privacy of its residents, customers and employees and has prepared its Privacy Management Policy and Privacy Management Plan to meet the intent of, and in accordance with the requirements of the PIIP Act *and the Health Records and Information Privacy Act 2002 (HRIP Act)*. The policy and plan provide for the protection of personal information *and health information* ~~and the protection of the privacy of individuals in accordance with the Acts.~~

## SCOPE

Councillors, all staff, *consultants and contractors to Council, Council owned businesses* and members of Council committees should be aware of the general provisions of the PIIP Act *and the Information Protection Principles, the HRIP Act and the Health Privacy Principles*, the Public Register provisions, the Privacy Code of Practice for Local Government, this policy, *the AlburyCity Privacy Management Plan* and any other applicable information.

## CONTENT

Council collects, stores and uses a broad range of information of which a significant part is considered personal. This policy applies to that part of Council's information that is personal information.

~~*“Personal information means information or an opinion about an individual (including information or an opinion forming part of a database 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 is essentially any information or opinion about a person where that person's identity is apparent or can be reasonably ascertained including a person's name, address, information about family life, sexual preferences, financial information, or a photograph.*

*Health information is a more specific type of personal information and can include, among other things, information about a person's physical or mental health such as a psychological report, a blood test or X-ray, or even information about a medical appointment.*

Personal information does not include information about an individual that is contained in a publicly available publication. Personal information, once it is contained in this format, ceases to be covered by the PIIP Act *or the HRIP Act*.

## AUTHORISATION

<b>Status</b>	<b>Committee</b>	Finance & Administration Committee, 20 September 2010 Finance and Administration Committee, 12 December 2011 <b>Finance and Administration Committee, 18 March 2013</b>
	<b>Manex</b>	30 November 2011
	<b>Council</b>	Minutes from Finance and Administration Committee ratified on 27 September 2010. Minutes from Finance and Administration Committee ratified on 19 December 2011
<b>Owner</b>	Corporate Services – Governance.	
<b>Compliance</b>	Mandatory	
<b>History</b>	Implemented under delegated authority in 2005 as a Privacy Management Plan. Changed to the current Privacy Management Policy after review in 2010 to reflect the GIPA Act 2009. <b>Revised to incorporate the requirements of the <i>Health Records and Information Privacy Act 2002</i>, and further references to the <i>Government Information (Public Access) Act 2009</i>. February 2013 as requested by the Division of Local Government.</b>	
<b>Other</b>	This document relates to the Privacy Management Plan, the AlburyCity Publication Guide, and the Public Access to Information Policy and Procedure. This policy is included in the AlburyCity Public Policy and Procedures Register.	
<b>Last issued</b>	<del>December 2014</del>	<b>Review</b> September 2015 or as required by legislation.
<b>TRIM REFERENCE:</b> <del>DOC11/70740</del> <b>DOC13/14769</b>		

**ATTACHMENT TO FAC 6A – 03/2013**  
**REVIEW PRIVACY MANAGEMENT PLAN 2013**  
**AND POLICY**

**ATTACHMENT 2**

*Draft Privacy Management Plan*

*DRAFT*

## **Privacy Management Plan**

**(TRIM DOC13/14770)**

Prepared by  
Governance – Public Information Officer

Review January 2013  
Insert the date the Plan was approved by Council

---

**CONTENTS**

**PURPOSE**..... 1

**SCOPE**..... 1

**DEFINITIONS**..... 1

    The difference between privacy and confidentiality ..... 1

    What is personal and health information?..... 2

    What is not personal information? ..... 2

**REFERENCES**..... 3

**PART A – OVERVIEW**..... 3

    1. Information Protection Principles ..... 3

    2. Unsolicited Information ..... 4

    3. Contractors and Consultants ..... 4

    4. Council Officer Training ..... 4

    5. Role of the Public Information Officer ..... 4

    6. Misuse of Personal or Health Information..... 4

    7. Public Registers ..... 5

    8. Public Registers and the PPIP Act and the HRIP Act..... 5

    9. Disclosure of Personal Information Contained in the Public Registers ..... 6

    10. Applications for Access to Own Records on a Public Register ..... 6

    11. Applications for Suppression in Relation to a Public Register ..... 6

    12. Other Registers ..... 7

**PART B - THE INFORMATION PROTECTION PRINCIPLES**..... 7

**PART C – THE HEALTH PRIVACY PRINCIPLES** ..... 7

**PART D – REVIEW OF CERTAIN CONDUCT** ..... 8

    Internal Review Process..... 8

    How does the process of Internal Review operate?..... 8

    What happens after an Internal Review? ..... 9

**PART E – POLICIES AND PROCEDURES**..... 10

    Related AlburyCity Public Policies and Procedures ..... 10

    Related Internal Policies and Procedures..... 10

**APPENDIX 1 – PUBLIC REGISTERS AND PURPOSES**..... 11

    1. The Registers..... 11

    2. Secondary Purpose of all Public Registers..... 12

    3. Other Purposes ..... 12

**APPENDIX 2 – INFORMATION PROTECTION PRINCIPLES** ..... 13

    Information Protection Principle 1 - Collection of personal information for lawful purposes (Section 8) ..... 13

    Information Protection Principle 2 - Collection of personal information directly from individual (Section 9) ..... 14

    Information Protection Principle 3 - Requirements when collecting personal information (Section 10)..... 16

    Information Protection Principle 4 - Other requirements relating to collection of personal information (Section 11) ..... 17

---

Information Protection Principle 5 - Retention and security of personal information (Section 12).....18

Information Protection Principle 6 - Information about personal information held by agencies (Section 13).....19

Information Protection Principle 7 - Access to personal information held by agencies (Section 14).....20

Information Protection Principle 8 - Alteration of personal information (Section 15).....21

Information Protection Principle 9 - Agency must check accuracy of personal information before use (Section 16).....23

Information Protection Principle 10 - Limits on use of personal information (Section 17)23

Information Protection Principle 11 - Limits on disclosure of personal information (Section 18).....25

Information Protection Principle 12 - Special restrictions on disclosure of personal information (Section 19) .....27

**APPENDIX 3 – HEALTH PRIVACY PRINCIPLES .....28**

## **PURPOSE**

AlburyCity Council has a privacy management plan so as stakeholders and staff will know how Council manages personal information. In accordance with Council is required to have a plan under section 33 of the *Privacy and Personal Information Protection Act 1998* (PIIP Act). ~~this plan addresses particular matters that affect personal information collected and held by Council.~~

This plan explains how Council manages personal information in line with the PIIP Act and health information under the *Health Records and Information Privacy Act 2002* (HRIP Act).

It also gives Council officers guidance on compliance with the requirements of the PIIP Act and the HRIP Act with respect to the protection of personal information and the privacy of individuals. ~~It these matters, and sets out activities and procedures that have been or will be adopted by Council to minimise or eliminate the risk of non-compliance relating to the protection of the personal and health information Council holds.~~

This plan supports AlburyCity's Privacy Management Policy.

## **SCOPE**

Councillors, all staff, consultants and contractors to Council, Council owned businesses and members of Council committees should be aware of the general provisions of the PIIP Act and the Information Protection Principles, the HRIP Act and the Health Privacy Principles, the Public Register provisions, the Privacy Code of Practice for Local Government (Privacy Code), this plan and any other applicable information.

## **DEFINITIONS**

### **The difference between privacy and confidentiality**

Privacy should not be equated with restrictions on the disclosure of information (confidentiality). The concepts of "privacy" and "confidentiality" may sound the same, but they should not be confused.

Information privacy is designed to promote effective practices in the collection and use of personal and health information, which will assure clients, staff, members of the public and others that public sector agencies take a responsible and fair approach to their handling of information. Legislation governing "privacy" addresses the use of personal information about individuals, whether or not that information is publicly available. In other words, if an individual has provided his or her personal details to a person in return for a particular service (for example, legal advice), privacy laws may prevent those personal details being used by the recipient for any unrelated purpose (such as the direct marketing of unrelated products).

The common law governing breach of confidence addresses trade secrets and other information which has been conveyed in confidence and which is not readily available to the public. Where Council incurs obligations of confidentiality which relate to personal information, either under specific legislation or the general law, Council will restrict access to such information to those officers as

relevant to Council's proper and lawful function. An obligation of confidentiality exists for all employees, whether express or implied, as a matter of law.

### **What is personal and health information?**

In section 4 of the PPIP Act -

- *“Personal information means information or an opinion about an individual (including information or an opinion forming part of a database 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 such things as an individual's fingerprints, retina prints, body samples or genetic characteristics.”*

Personal information is essentially any information or opinion about a person where that person's identity is apparent or can be reasonably ascertained. ~~any information or opinion about an identifiable person.~~ This could be written records about a person, including a person's name, address, information about family life, sexual preferences, financial information, or a photograph. ~~or image of a person.~~

Health information is a more specific type of personal information and is defined in section 6 of the HRIP Act. Health information can include, among other things, information about a person's physical or mental health such as a psychological report, a blood test or X-ray, or even information about a medical appointment.

### **What is not personal information?**

Personal information does not include “information about an individual that is contained in a publicly available publication”. Personal information, once it is contained in this format, ceases to be covered by the PPIP Act.

Section 4A of the PPIP Act also specifically excludes “health information”, as defined by section 6 of the HRIP Act, from the definition of “personal information”, but includes “health information” in the PPIP Act's consideration of public registers (see section 6 of this plan - Public Registers and the PPIP Act and the HRIP Act).

Where Council is requested to provide access or make a disclosure and that 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 PPIP Act (for example, section 8 of *the Government Information (Public Access) Act 2009* (GIPA Act)).

Council considers the following information to be publicly available:

- 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; and

- 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 PPIP Act.

## REFERENCES

*Government Information (Public Access) Act 2009*

*Government Information (Public Access) Regulation 2009*

*Guidelines on A Guide to Making Privacy Management Plans (Privacy NSW, May 2009 August 2012)*

*Health Records and Information Privacy Act 2002*

*Health Records and Information Privacy Regulation 2006*

*Model Privacy Management Plan for Local Government (Division of Local Government January 2013)*

*Privacy Code of Practice for Local Government*

*Privacy and Personal Information Protection Act 1998*

*Privacy and Personal Information Protection Regulation 2009*

*Public Interest Disclosures Act 1994*

## PART A – OVERVIEW

### 1. Information Protection Principles

To comply with protections provided by the PPIP Act and the HRIP Act, Council is committed to upholding the 12 Information Protection Principles and the 15 Health Privacy Principles in relation to its handling of personal information.

These principles regulate the collection, storage, use and disclosure of personal and health information. They also give members of the public a right to request access to their personal or health information or to ask for amendments to that information to ensure it is accurate.

Even though Council does not directly provide a health service, Council holds some health information, for example in relation to employees and their sick leave or worker's compensation, and therefore must comply with the Health and Privacy Principles.

The only exceptions to these principles are those listed under the Privacy Code of Practice for Local Government which has been developed to enable local government to fulfil its statutory duties and functions under the *Local Government Act 1993* in a manner that seeks to comply with the PPIP Act. This relates to modification of the provisions of *Part 6 Public Registers* of the PPIP Act (see Item 7 below).

The Information Protection Principles and the Health Privacy Principles are listed in Part B and Part C of this document and described in Appendix 2 and 3.

## **2. Unsolicited Information**

Where an individual, a group or committee, not established by Council, gives Council unsolicited personal information, then that information will still be treated in accordance with this plan and the related policy.

## **3. Contractors and Consultants**

Anyone engaged by Council as a private contractor or consultant that involves the collection of personal information must agree to be bound by this plan and the related policy.

## **4. Council Officer Training**

During induction, all employees are made aware that personal information is held in their personnel files including information on their individual work performance or competency.

Councillors, all staff of Council including staff of Council businesses, and members of Council committees are to 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.

## **5. Role of the Public Information Officer**

In order to ensure compliance with Information Protection Principle 1, forms, rates notices, application forms of whatsoever nature, or written requests by which personal information is collected by Council will be referred to the Public Information Officer prior to adoption or use.

The Public Information Officer will also provide advice as to:

- Whether the personal 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 information is reasonably necessary for the specified purpose.
- Any further concerns of a legal nature will be referred to Council's legal advisers.

## **6. Misuse of Personal or Health Information**

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 on a case-by-case basis.

Parts 8 of the PPIP Act and the HRIP Act contain offences for certain conduct of public sector officials and other persons. For example, there are offences relating to:

- Corrupt disclosure and use of personal and health information by public sector officials
- Inappropriately offering to supply personal or health information that has been disclosed unlawfully.

To minimise the risk of Council officers committing an offence, Council has a program of targeted training.

## **7. Public Registers**

*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).*

Disclosure in relation to public registers must comply with *Part 6 Public Registers* of the PPIP Act **and the Privacy Code**. Council will not give personal information to 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 PPIP Act 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 as outlined in Appendix 2 of this Plan and the Privacy Code where it includes personal information that is not published.

### **Purpose of public registers**

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 Appendix 1.

## **8. Public Registers and the PPIP Act **and the HRIP Act****

Section 57 of the PPIP Act requires stringent controls over the disclosure of personal information contained in a public register. Section 57 provides 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 reason directly relating to the purpose of the register or the Act under which it is kept.

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 intended use of any information obtained for inspection.

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.

Where personal information is contained in a publicly available publication, the information will not be regarded as personal information or health information.

## **9. Disclosure of Personal Information Contained in the Public Registers**

In Appendix 1 of this plan (Public Registers and Purposes), 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”.

Under sections 14 and 54 of the *Government Information (Public Access) Act 2009* (GIPA Act) Council must take such steps (if any) as are reasonably practical to consult with a person before providing access to personal information relating to the person in response to an access application.

Council will fulfil its obligations under the GIPA Act and ensure everyone is entitled to inspect free of charge the listed documents in the Act at Schedule 5 – Government Information (Public Access) Regulation 2009, and; other documents and files held by Council unless disclosure is, on balance, contrary to the public interest. Copies of those documents are available at reasonable cost in accordance with the schedule of fees and charges.

## **10. 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.

## **11. Applications for Suppression in Relation to a Public Register**

An application for suppression in relation to a public register will be dealt with under the PPIP Act **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 request Council under section 58 of the PPIP Act to have the information removed from, or not placed on the register.

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.

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 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 addressed to the General Manager and must outline the reasons for the request. Council may require supporting documentation where appropriate.

## **12. Other Registers**

Council may have other registers that are not public registers. This plan and the associated Acts and Codes also apply to those registers or databases.

### **PART B - THE INFORMATION PROTECTION PRINCIPLES**

Council will apply the 12 Information Protection Principles as set out in Part 2, Division 1 of the *Privacy & Personal Information Protection Act*:

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

See Appendix 2 for explanatory notes on the Information Protection Principles.

### **PART C – THE HEALTH PRIVACY PRINCIPLES**

In 2002, most references to 'health information' were taken out of the PPIP Act and separate legislation was enacted. The HRIP Act 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 HRIP Act 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; or
- genetic information that is or could be predictive of the health of an individual or their relatives or descendants.

The Health Privacy Principles are:

- Health Privacy Principle 1 - Purposes of collection of health information
- Health Privacy Principle 2 - Information must be relevant, not excessive, accurate and not intrusive
- Health Privacy Principle 3 - Collection to be from the individual concerned
- Health Privacy Principle 4 - Individual to be made aware of certain matters
- Health Privacy Principle 5 - Retention and Security
- Health Privacy Principle 6 - Information about health information held by organisations
- Health Privacy Principle 7 - Access to health information
- Health Privacy Principle 8 - Amendment of health information
- Health Privacy Principle 9 - Accuracy
- Health Privacy Principle 10 – Limits on Use
- Health Privacy Principle 11 – Limits on Disclosure
- Health Privacy Principle 12 - Identifiers
- Health Privacy Principle 13 – Anonymity
- Health Privacy Principle 14 – Trans-border Data Flow
- Health Privacy Principle 15 – Linkage of health records

See Appendix 2 for explanatory notes on the Health Privacy Principles.

## **PART D – REVIEW OF CERTAIN CONDUCT**

### **Internal Review Process**

#### **How does the process of Internal Review operate?**

Under section 53 of the PPIP Act a person (the applicant) who is aggrieved by the conduct of 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.

The application is to be in writing and addressed to:

The General Manager  
AlburyCity  
PO Box 323  
Albury NSW 2640

The Public Officer (Director Corporate Services) 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.

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.

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.

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.

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

The 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.

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

### **What happens after an Internal Review?**

If the complainant remains unsatisfied, an appeal may be made to the Administrative Decisions Tribunal which hears the matter afresh and may impose its own decision and can make a range of orders including an award of damages for a breach of an information protection principle or a health privacy principle.

~~Where a person who has requested information is aggrieved by the conduct of Council, for example, in the following circumstances:~~

- ~~a. — Contravention of a privacy principle that applies to Council,~~
  - ~~b. — Contravention of a code of practice that applies to Council,~~
  - ~~c. — Disclosure of personal information kept on a public register,~~
- ~~the person (applicant) is entitled to apply for an Internal Review.~~

~~The application must be lodged six months from the time the applicant first became aware of the conduct (the subject of the application).~~

~~Applications will be dealt with by the Public Information Officer who will consider any relevant material submitted by either the applicant, or the Privacy Commissioner. In circumstances where the Public Information Officer is involved in any matter relating to the application, the application will be dealt with by the Director Corporate Services.~~

~~The review will be completed as soon as reasonably practicable within 60 days from receipt of the application for review. Following completion of the review, Council may do one or more of the following:~~

- a. ~~take no further action on the matter,~~
- b. ~~make a formal apology to the applicant,~~
- c. ~~take appropriate remedial action,~~
- d. ~~provide undertakings that the conduct will not occur again, or~~
- e. ~~implement administrative measures to ensure that the conduct will not occur again.~~

~~As soon as practicable within 14 days of the completion of the review, Council will notify the applicant in writing of:~~

- i. ~~the findings and the reasons for those findings,~~
- ii. ~~any proposed action to be taken, and~~
- iii. ~~the right of the applicant to have those findings and the Council's proposed action, reviewed by the Appeals Tribunal.~~

## **PART E – POLICIES AND PROCEDURES**

### **Related AlburyCity Public Policies and Procedures**

Child Protection Policy and Procedure  
Code of Conduct  
Code of Meeting Practice  
Complaints Management Policy  
Employee or Independent Contractors Policy  
Entry to Private Property Policy  
Equal Employment Opportunity Policy  
Internal Reporting – Public Interest Disclosure Policy and Procedure  
Occupational Health, Safety and Rehabilitation Policy  
Public Interest Disclosure Policy and Procedure  
Public Access to Information Policy and Procedure  
Recruitment and Selection Policy and Procedure  
Risk Management Policy  
Volunteer Policy and Procedure.

### **Related Internal Policies and Procedures**

Access to Personnel and Personal Information Policy  
Attendance Records Procedure  
Gathering Information Policy  
Grievance and Dispute Policy and Procedure  
Internal Investigation Policy and Procedure  
Proactive Release of Information Procedure  
Return to Work Policy  
Reward and Recognition Framework Policy and Procedures  
Salary Packaging Policy and Procedure  
Staff Exit Policy

Trainee Program Policy  
Training and Development Policy and Procedure  
Workplace Surveillance Policy and Procedure

## **APPENDIX 1 – PUBLIC REGISTERS AND PURPOSES**

### **1. The Registers**

Members of the public may enquire only in accordance with the primary purpose of any of the following registers:

a. Under the *Local Government Act 1993 (LGA)*

*Section 53 – Council’s 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.

*Section 113 - Records of approvals* – The primary purpose is to identify all approvals granted under the LGA.

*Section 450A – Register and tabling of returns (pecuniary interests)* – The primary purpose of this register is to determine whether or not a Councillor or a member of a council committee has a pecuniary interest in any matter with which the council is likely to be concerned. There is a corresponding public accountability purpose and third party access is a secondary purpose.

*Section 602 - Record of rates and charges* - 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, that a disclosure on a section 603 (of the Local Government Act) 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”.

Council will not release the names and addresses of owners to any commercial valuation enquiries. Exceptions will be permitted for adjoining property owners for fencing purposes under the *Dividing Fences Act 1991*. For fencing purposes an Informal Access to Information must be completed for Council to supply information to the applicant/adjoining owner.

b. Under the *Environmental Planning and Assessment Act 1979*

*Section 100 – Register of consents and certificates* – The primary purpose is to identify applications for development consent and other approvals, confirm determinations on appeal and identify applications for complying development certificates.

*Section 149G – Record of building certificates – The primary purpose is to identify all building certificates.*

- c. *Under the Protection of the Environment Operations Act 1997*

*Section 308 – Public register – The primary purpose is to identify all licences granted under the Act.*

- d. *Under the Impounding Act 1993*

*Section 30 & 31 – The primary purpose is to identify any impounding action by Council.*

## **2. Secondary Purpose of all Public Registers**

Due to the general emphasis (to be found in the *Local Government Act* and the *Government Information (Public Access) Act 2009*) 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 PPIP Act.

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 will 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 information requested from a public register, 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. Contact the Public Information Officer for more information.

## **3. Other Purposes**

Persons or organisations who apply to Council to access 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.

## **APPENDIX 2 – INFORMATION PROTECTION PRINCIPLES**

### **Information Protection Principle 1 - Collection of personal information for lawful purposes (Section 8)**

#### **Section 8**

~~(1) A public sector agency must not collect personal information unless:~~

~~(a) the information is collected for a lawful purpose that is directly related to a function or activity of the agency; and~~

~~(b) the collection of the information is reasonably necessary for that purpose.~~

~~(2) A public sector agency must not collect personal information by any unlawful means.~~

#### **The Privacy Code of Practice for Local Government**

~~There is no intention to depart from this principle otherwise than is permitted by the PPIP Act or any other Privacy Code of Practice which may apply to Council from time to time.~~

**The Code makes no provision to depart from the requirements of this principle.**

#### **Council Policy**

Council will only collect personal information for a lawful purpose **directly related to** as part of its proper functions **and activities**. 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:

- *Companion Animals Act 1998*
- *Community Land Development Act 1989*
- *Conveyancing Act 1919*
- *Environmental Planning and Assessment Act 1979*
- *Fire Brigades Act 1989*
- *Fluoridation of Public Water Supplies Act 1957*
- *Food Act 1989*
- *Impounding Act 1993*
- *Library Act 1939*
- *Protection of the Environment Operations Act 1997*
- *Public Health Act 1991*
- *Government Information (Public Access) Act 2009*
- *Public Interest Disclosures Act 1994*
- *Recreation Vehicles Act 1983*
- *Roads Act 1993*

- *Rural Fires Act 1997*
- *State Emergency Service Act 1989*
- *Strata Schemes (Freehold Development ) Act 1973*
- *Strata Schemes (Leasehold Development ) Act 1986, and*
- *Swimming Pools Act 1992. and*
- *Public Health Act 1991.*

The list is not exhaustive.

Additionally, the exercise by Council of its functions under the LGA may also be modified by the provisions of other Acts. Some of those Acts follow:

- *Coastal Protection Act 1979*
- *Environmental Offences and Penalties Act 1989*
- *Heritage Act 1977*
- *State Emergency and Rescue Management Act 1989*
- *Unclaimed Money Act 1995*
- *Unhealthy Building Land Act 1990.*

Collection of information under the *Companion Animals Act 1998* and Council's use of the Companion Animals Register should be guided by the Director General's guidelines, which have been developed with the PPIP Act in mind.

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.

### **Information Protection Principle 2 - Collection of personal information directly from individual (Section 9)**

#### **Section 9**

A public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless:

- (a) the individual has authorised collection of the information from someone else, or
- (b) in the case of information relating to a person who is under the age of 16 years the information has been provided by a parent or guardian of the person.

#### **The Privacy Code of Practice for Local Government**

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

### **Council Policy**

The compilation or referral of registers and rolls are the major means by which the Council collects personal information. For example, the information the Council receives from the Land Titles Office would fit within section 9(a) above.

Other means include forms that customers may complete and lodge with Council for development consent, companion animal registration, applications for specific inspections or certifications or applications in respect of tree preservation orders.

In relation to petitions, the Council will treat the personal information contained in petitions in accordance with the PPIP Act.

Where Council or a Councillor requests or requires information from individuals or groups, that information will be treated in accordance with the PPIP Act.

Council regards all information concerning its customers as information protected by PPIP Act. Council will therefore collect all personal information directly from its customers except as provided in section 9 or under other statutory exemptions or Codes of Practice. Council may collect personal information from other public sector agencies in respect of specific statutory obligations where it is authorised by law to do so.

Where Council anticipates that it may otherwise need to collect personal information indirectly it will first obtain the authorisation of each individual under section 9 (a) of the PPIP Act.

### **Existing Statutory Exemptions under the Act**

Compliance with Information Protection Principle 2 is also subject to certain exemptions under the PPIP Act. If one of those exemptions applies Council need not comply. The statutory exemption will be relied upon only in very obvious and limited circumstances and legal advice should normally be obtained.

The relevant statutory exemptions follow:

Section 23(2) of the PPIP Act permits non-compliance with Information Protection Principle 2 if the information concerned is collected in connection with proceedings (whether or not actually commenced) before any court or tribunal.

Section 24(4) of the PPIP Act permits non-compliance with Information Protection Principle 2 if:

- (i) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency; and
- (ii) if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.

Section 25(a) of the PPIP Act permits non-compliance with Information Protection Principle 2 where the agency is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIP Act permits non-compliance with Information Protection Principle 2 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

Section 26(1) of the PPIP Act permits non-compliance with Information Protection Principle 2 if compliance would prejudice the interests of the individual concerned.

### **Investigative Functions**

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIP Act that may affect the application of Information Protection Principle 2.

### **Information Protection Principle 3 - Requirements when collecting personal information (Section 10)**

#### **Section 10—**

~~If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:~~

- ~~(a) the fact that the information is being collected;~~
- ~~(b) the purposes for which the information is being collected;~~
- ~~(c) the intended recipients of the information;~~
- ~~(d) whether the supply of the information by the individual is required by law or is voluntary and any consequences for the individual if the information (or any part of it) is not provided;~~
- ~~(e) the existence of any right of access to, and correction of, the information; and~~
- ~~(f) the name and address of the agency that is collecting the information and the agency that is to hold the information.~~

### **The Privacy Code of Practice for Local Government**

~~Council may depart from this principle where indirect collection of personal information is reasonably necessary when~~ **The Code makes provision for Council to depart from this principle where personal information is collected about an individual for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition without prior or subsequent notification. is intended to be conferred upon the person to whom the information relates.**

### **Council Policy**

Where Council proposes to collect personal information directly from the person, it will inform that person that the personal information is being collected, what is done with that information and who the intended recipients will be.

Council will inform persons if the information is required by law or voluntarily given. Council will also inform individuals which department or section within Council holds their personal information, and of the right to access and correct that information.

#### **Existing Statutory Exemptions under the Act**

Section 23(3) permits non-compliance with Information Protection Principle 3 where information is collected for law enforcement purposes. Law enforcement means a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person.

#### **Disclosure of information of research purposes**

The disclosure of personal information for research purposes will be allowed only in accordance with any applicable Direction made by the Privacy Commissioner under section 41 of PPIP Act or any Research Code of Practice made by the Attorney General as may be in force for the time being

#### **Information Protection Principle 4 - Other requirements relating to collection of personal information (Section 11)**

##### **Section 11**

~~If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:~~

- ~~(a) the information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and~~
- ~~(b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.~~

#### **The Privacy Code of Practice for Local Government**

~~There is no intention to depart from this principle otherwise than is permitted by the PPIP Act or any other Privacy Code of Practice which may apply to Council from time to time.~~

The Code makes no provision to depart from this principle.

#### **Council Policy**

Council will seek to ensure that no personal information is collected which is not directly relevant to its proper functions.

Council may use public place video surveillance in accordance with *NSW Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television in Public Places*. Council will comply with the provisions of the *Work Place Surveillance Act 2005*.

Continuous work place surveillance by camera with digital recording is conducted on an ongoing basis at the following locations:

- The foyer and stair wells of the AlburyCity Administration Building at 553 Kiewa St Albury
- AlburyCity Wodonga Place and Lavington depots
- LibraryMuseum, and
- Albury Airport.

### **Information Protection Principle 5 - Retention and security of personal information (Section 12)**

#### **Section 12**

A public sector agency that holds personal information must ensure:

- (a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and
- (b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and
- (c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and
- (d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.

#### **The Privacy Code of Practice for Local Government**

There is no intention to depart from this principle otherwise than is permitted by the PPIP Act or any other Privacy Code of Practice which may apply to Council from time to time.

The Code makes no provision to depart from this principle.

#### **Council Policy**

Council stores personal information securely, keeps it no longer than necessary, and destroys the information appropriately.

Council may comply with this principle by using any or all of the following or similar documents:

- Information Management - Blogging and Social Networking Policy,
- Information Management - Contractor IT Access Policy,
- Information Management – Secure Disposal of Data Policy,
- Information Management - Security Awareness Policy,
- Records Management Policy and Procedure,
- Records Management Business Rules; and
- General Records Disposal Schedule for Local Government (GA39).

**~~Research or Access to a Deposited Record~~**

~~Documents that may have research value may be kept longer than is required by 12(a) of the PPIP Act.~~

**Disclosure of Information for Research Purposes**

The disclosure of personal information for research purposes will be allowed only in accordance with any applicable Direction made by the Privacy Commissioner under section 41 of PPIP Act or any Research Code of Practice made by the Attorney General as may be in force for the time being.

**Information Protection Principle 6 - Information about personal information held by agencies (Section 13)**

**~~Section 13-~~**

~~A public sector agency that holds personal information must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:~~

- ~~(a) whether the agency holds personal information, and~~
- ~~(b) whether the agency holds personal information relating to that person, and~~
- ~~(c) if the agency holds personal information relating to that person:
  - ~~(i) the nature of that information, and~~
  - ~~(ii) the main purposes for which the information is used, and~~
  - ~~(iii) that person's entitlement to gain access to the information.~~~~

**The Privacy Code of Practice for Local Government**

~~There is no intention to depart from this principle otherwise than is permitted by the PPIP Act or any other Privacy Code of Practice which may apply to Council from time to time.~~

**This Code makes no provision to depart from this principle.**

**Council Policy**

Section 13 of the PPIP Act requires a council to take reasonable steps to enable a person to determine whether the council holds personal information about them. If Council holds any information about a person, upon request it will advise them the nature of that information, the main purposes for which it is held, and that person's entitlement to access. As a matter of practicality, not every item of personal information, however insignificant, will be capable of ascertainment.

Information Protection Principle 6 is modified by section 20(5) of the PPIP Act. Council must consider the relevant provisions of the *Government Information (Public Access) Act 2009* (GIPA Act).

**Any person can make application to Council by completing the appropriate form and submitting it to Council.**

Where Council receives an application or request by a person as to whether Council holds information about them, Council will undertake a search of its records to answer the enquiry. Council may ask the applicant to describe what dealings the applicant has had with Council in order to assist Council to conduct the search.

Council will ordinarily provide a response to applications of this kind within 28 days of the application being made. The fee structure is commensurate to that of the Council's GIPA Act rates structure.

### **Existing Statutory Exemptions under the Act**

Compliance with Information Protection Principle 6 is also subject to certain exemptions under the Act. If one of those exemptions applies Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) of the PPIP Act permits non-compliance with Information Protection Principle 6 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIP Act permits non-compliance with Information Protection Principle 6 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

### **Investigative Functions**

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIP Act that may affect the application of Information Protection Principle 6.

## **Information Protection Principle 7 - Access to personal information held by agencies (Section 14)**

### **Section 14-**

~~A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.~~

### **The Privacy Code of Practice for Local Government**

~~There is no intention to depart from this principle otherwise than is permitted by the PPIP Act or any other Privacy Code of Practice which may apply to Council from time to time.~~

**This Code makes no provision to depart from this principle.**

### **Council Policy**

Section 14 of the PPIP Act requires a council, at the request of any person, to give access to that person to personal information held about them.

Compliance with Information Protection Principle 7 does not allow disclosure of information about other people. If access to information that relates to someone else is sought, the application must be made under the GIPA Act, unless Information Protection Principles 11 and 12 or the Public Register provisions apply.

Where a person makes an application for access under the PPIP Act and it is involved or complex, it may be referred, with the written consent of the applicant, as an application under the GIPA Act. However use of the GIPA Act is to be a last resort. The applicant has the right to insist on being dealt with under the PPIP Act.

Customers wishing to exercise their right of access to their own personal information should apply in writing or direct their inquiries to the General Manager, who will make a determination.

Members of staff wishing to exercise their right of access to their personal information should apply in writing and direct their inquiries to the Group Leader, Human Resources, who will deal with the application.

In order to comply with the requirement to provide the requested information “without excessive delay or expense”, Council will ordinarily provide a response to applications of this kind within 20 days of the application being made, and Council will use a fee structure commensurate to that of the GIPA Act fee structure.

#### **Existing Statutory Exemptions under the Act**

Compliance with Information Protection Principle 8 is also subject to certain exemptions under the Act. If one of those exemptions applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

#### **Information Protection Principle 8 - Alteration of personal information (Section 15)**

**~~Section 15-~~**

- ~~(1) A public sector agency that holds personal information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:~~
- ~~(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.~~
- ~~(2) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.~~

- ~~(3) If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.~~
- ~~(4) This section, and any provision of a privacy code of practice that relates to the requirements, set out in this section, apply to public sector agencies despite section 25 of this Act and section 24 of the State Records Act 1998.~~
- ~~(5) The Privacy Commissioner's guidelines under section 36 may make provision for or with respect to requests under this section, including the way in which such a request should be made and the time within which such a request should be dealt with.~~
- ~~(6) In this section (and in any other provision of this Act in connection with the operation of this section), public sector agency includes a Minister and a Minister's personal staff.~~

### **The Privacy Code of Practice for Local Government**

~~There is no intention to depart from this principle otherwise than is permitted by the PPIP Act or any other Privacy Code of Practice which may apply to Council from time to time.~~

~~This Code makes no provision to depart from this principle.~~

### **Council Policy**

Section 15 of the PPIP Act allows a person to make an application to Council to amend personal information held about them so as to ensure the information is accurate, and, having regard to the purpose for which the information is collected, relevant to that purpose, up to date and not misleading.

Council wishes to have its information current, accurate and complete. Proposed amendments or changes to the personal information held by the Council are welcomed.

~~Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be referred to the Group Leader Human Resources in the first instance and treated in accordance with the "Complaints Management Policy."~~

~~Any alterations to personal information that are or could be the subject of a customer complaint or grievance will be referred to the General Manager, who will make a determination in relation to the matter.~~

### **Existing Statutory Exemptions under the Act**

Compliance with Information Protection Principle 8 is also subject to certain exemptions under the Act. If one of those exemptions applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

### **State Records Act**

The State Records Act does not allow for the deletion of records. However, as a result of section 20(4) of the PPIP Act, some deletions may be allowed in accordance with Information Protection Principle 8.

**Government Information (Public Access) Act 2009**

Nothing in the PPIP Act affects the operation of the *Government Information (Public Access) Act 2009*, and therefore applications to amend records under that Act remain in force as an alternative mechanism.

**Information Protection Principle 9 - Agency must check accuracy of personal information before use (Section 16)**

**Section 16 –**

~~A public sector agency that holds personal information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.~~

**The Privacy Code of Practice for Local Government**

There is no intention to depart from this principle otherwise than is permitted by the PPIP Act or any other Privacy Code of Practice which may apply to Council from time to time.

**Council Policy**

The steps taken to comply with section 16 will depend on the age of the information, its likelihood of change and the particular function for which the information was collected.

~~The more significant the information, the greater the necessity that Council checks to ensure that personal information is relevant and accurate before using it. its accuracy and currency be undertaken prior to its use.~~

**Information Protection Principle 10 - Limits on use of personal information (Section 17)**

**Section 17 –**

~~A public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected unless:~~

- ~~(a) the individual to whom the information relates has consented to the use of the information for that other purpose, or~~
- ~~(b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or~~
- ~~(c) the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.~~

### **The Privacy Code of Practice for Local Government**

The Code makes provision that Council may use personal information for a purpose other than the purpose for which it was created in the following circumstances:

- (i) 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; or
- (ii) where personal information is to be used for the purpose of conferring upon a particular person, an award, prize, benefit or similar form of personal recognition.

### **Council Policy**

Council will seek to ensure that information collected for one purpose will be used for that same purpose. Where Council may need to use personal information collected for one purpose for another purpose, it will first gain the consent of the individual concerned, unless an exemption applies.

### **Explanatory Note**

For example with respect to exemption (i) above, the Rates Record that Council holds under section 602 of the Local Government Act may also be used to:

- notify neighbours of a proposed development;
- evaluate a road opening; or
- evaluate a tree preservation order.

### **Existing Statutory Exemptions under the Act**

Compliance with Information Protection Principle 10 is also subject to certain exemptions under the Act. If one of those exemptions applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(4) of the PPIP Act permits Council not to comply with Information Protection Principle 10 where the use of the information for another purpose is reasonably necessary for law enforcement purposes or for the protection of the public revenue.

*Law enforcement purposes* mean a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person. *Protection of the public revenue* means a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty.

Section 24 (4) of the PPIP Act permits non-compliance with Information Protection Principle 10 if:

- (i) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency; and
- (ii) if the use is reasonably necessary in order to enable the Council to exercise its complaint handling or investigative functions.

Where any of the above seek to use personal information collected for one purpose, that body or person will be required to obtain the written consent of those persons in accordance with section 17 (2) to the use of the information for another purpose.

**Information Protection Principle 11 - Limits on disclosure of personal information (Section 18)**

**Section 18-**

- ~~(1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:~~
- ~~(a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or~~
  - ~~(b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or~~
  - ~~(c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.~~
- ~~(2) If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.~~

**The Privacy Code of Practice for Local Government**

~~There is no intention to depart from this principle otherwise than is permitted by the PPIP Act or any other Privacy Code of Practice which may apply to Council from time to time, and in the circumstances described below:~~

**The Code makes provision for Council to depart from this principle in the circumstances described below:**

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 personal information which has been collected about an individual is to be disclosed for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition.
3. 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.
4. ~~A disclosure of personal information for research purposes will be allowed under section 41 Direction made by the Privacy Commissioner (whenever such a direction exists) until such time as a Research Code of Practice is made by the Attorney General.~~

### **Council Policy**

Council will not disclose the information to another person or other body, unless the disclosure is directly related to the purpose for which the information was collected or where the Council has no reason to believe that the individual concerned would object to the disclosure.

Council may disclose personal information to another person or other body where this disclosure is directly related to the purpose for which the personal information was collected and the individual concerned is reasonably likely to have been aware, (or has been made aware in accordance with section 10), of the intended recipients of that information. "Directly related" can mean the disclosure to another person or agency to deliver a service which supplements that of Council or disclosure to a consultant for the purpose of assessing or reviewing the delivery of a program to which the original collection relates.

Council may disclose personal information to another person or other body where this disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

### **Existing Statutory Exemptions under the Act**

Compliance with IPP 11 is also subject to certain exemptions under the Act. If one of those exemptions applies Council need not comply. The statutory exemptions will be relied upon only in limited circumstance and legal advice should normally be obtained.

It is anticipated that a disclosure of personal information for research purposes will be allowed under section 41 Direction made by the Privacy Commissioner until such time as a Research Code of Practice is made by the Attorney General.

**Information Protection Principle 12 - Special restrictions on disclosure of personal information (Section 19)**

**Section 19-**

- ~~(1) A public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.~~
- ~~(2) A public sector agency that holds personal information must not disclose the information to any person or body who is in a jurisdiction outside New South Wales unless:~~
- ~~(a) a relevant privacy law that applies to the personal information concerned is in force in the that jurisdiction, or~~
  - ~~(b) the disclosure is permitted under a privacy code of practice.~~

~~(Note: S.19, items (3) to (5) not included in this table).~~

**The Privacy Code of Practice for Local Government**

~~There is no intention to depart from this principle otherwise than is permitted by the PPIP Act, or any other Privacy Code of Practice which may apply to Council from time to time except in the circumstances described below:~~

**The Code makes provision for Council to depart from this principle in the circumstances described below:**

For the purposes of s.19(2) only, where Council is requested by a potential employer outside New South Wales, 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.

~~A disclosure of personal information for research purposes will be allowed under a section 41 Direction made by the Privacy Commissioner (whenever such a direction exists) until such time as a Research Code of Practice is made by the Attorney General.~~

**Council Policy**

**Council will not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.**

### **Existing Statutory Exemptions under the Act**

Compliance with IPP12 is also subject to certain exemptions under the Act. If one of those exemptions applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

### **APPENDIX 3 – HEALTH PRIVACY PRINCIPLES**

In 2002, most references to ‘health information’ were taken out of the PPIP Act and separate legislation was enacted. The HRIP Act was enacted to deal with this specific type of personal information. From September 2004, various agencies and organisations, including local councils were expected to comply with the HRIP Act 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; or
- 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 HRIP Act. Local councils will often hold health information by reason of their role in elder care, child care and various types of community health support services. It is therefore very important for councils to be familiar with the 15 Health Protection Principles (“HPP”) set down in Schedule 1 to the HRIP Act. Each of these HPPs is considered below. 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 residents 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, e.g. 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, for example, history of illness, allergies, asthma, diabetes, epilepsy;
- Physical exercise classes;
- Some councils run podiatry services;
- Information may be collected through a healthy community program;

- Children's immunization records; and
- Family counsellor/youth support workers records.

**Council Policy on Collection of Health Information (HPP 1 to 4)**

Council will only collect health information for a lawful purpose that is directly related to Council's activities and is necessary for that purpose (HPP 1).

Council will ensure that the health information is relevant, accurate, up to date and not excessive and that the collection is not unnecessarily intrusive into the personal affairs of the individual (HPP 2).

Council will only collect health information directly from the individual that the information concerns, unless it is unreasonable or impractical for Council to do so. (HPP 3). Council will tell the person why the health information is being collected, what will be done with it, who else might see it and what the consequences are if the person decides not to provide it. Council will also tell the person how he or she can see and correct the health information. If Council collects health information about a person from someone else, Council will take reasonable steps to ensure that the subject of the information is aware of the above points (HPP 4).

**Council Policy on Storage of Health Information (HPP 5)**

Council will store health information securely and protect health information from unauthorised access, use or disclosure. Health information will not be kept for any longer than is necessary and will be disposed of appropriately (HPP 5).

**Council Policy on Access and Accuracy of Health Information (HPP 6 to HPP 9)**

Council will provide details about what health information Council is holding about an individual and with information about why Council is storing that information and what rights of access the individual has (HPP 6).

Council will allow the individual to access his or her health information without reasonable delay or expense (HPP 7).

Council will allow the individual to update, correct or amend his or her health information where necessary (HPP 8).

Council will make sure that the health information is relevant and accurate before using it (HPP 9).

**Council Policy on Use of Health Information (HPP 10)**

Council will only use the health information for the purpose for which it was collected or for a directly related purpose that the individual to whom the information relates would expect. Otherwise, Council will obtain the individual's consent (HPP 10).

**Council Policy on Disclosure of Health Information (HPP 11)**

Council will only disclose health information under the following circumstances:

- With the consent of the individual to whom the information relates; or
- For the purpose for which the health information was collected or a directly related purpose that the individual to whom it relates would expect; or
- If an exemption applies (HPP 11).

**Council Policy on Identifiers and Anonymity of the Persons to which Health Information Relates (HPP 12 and 13)**

Council will only give an identification number to health information if it is reasonably necessary for Council to carry out its functions effectively (HPP 12).

Council will provide health services anonymously where it is lawful and practical (HPP 13).

**Council Policy on the Transfer of Health Information and Linkage of Health Records (HPP 14 and 15)**

Council will only transfer personal information out of New South Wales if all the requirements of Health Privacy Principle 14 are met.

Council will only include health information in a system to link health records across more than one organisation if the individual to whom the health information relates expressly consents to the link (HPP 15).

**AUTHORISATION**

<b>Status</b>	<b>Committee</b>	Finance & Administration Committee – Monday 12 December 2011
	<b>Manex</b>	30 November 2011
	<b>Council</b>	Adopted through Minutes of Finance & Administration Committee 19 December 2011
<b>Owner</b>	Corporate Services - Governance	
<b>Compliance</b>	Mandatory	
<b>History</b>	Implemented under delegated authority in 2005 as a Privacy Management Plan and after review in 2010 to reflect the GIPA Act 2009.	
<b>Register</b>	This document relates to the Privacy Management Policy. This procedure is included in the Public Policy and Procedures Register.	
<b>Last issued</b> December 2011		<b>Review</b> 2015 or as required by legislation.
<b>TRIM REFERENCE</b> <del>DOC11/70743</del> <b>DOC13/14770</b>		

**ATTACHMENT TO FAC 6B – 03/2013**

**MODEL CODE OF CONDUCT 2013  
COMMENCEMENT AND KEY RESOURCES**

**ATTACHMENT 1**

Division of Local Government Circular to Councils  
13-06; Model Code of Conduct  
2013 Commencement and Key Resources  
1 March 2013.

Circular No. 13-06  
Date 1 March 2013  
Doc ID. A313805

Contact Council Governance Team  
(02) 4428 4100

## MODEL CODE OF CONDUCT 2013 – COMMENCEMENT AND KEY RESOURCES

### Purpose

The purpose of this Circular is to:

- remind councils that the new Model Code Framework commences on 1 March 2013;
- promote the Model Code Summary as a simple guide to the standards of behaviour required by council officials; and
- inform councils of the availability of the Division of Local Government's Model Code of Conduct 2013 webpage, featuring key resources to support implementation of the new code.

### Issue

- The new Model Code of Conduct framework commences on 1 March 2013.
- To assist councils with the implementation of the new code the Division has developed a series of resources that are available on the Division's web site. These resources include:
  - FAQs on the implementation of the new framework
  - The Model Code of Conduct, Model Code summary and Model Code Procedures
  - Standalone versions of the Model Code targeted at different types of council officials containing only those standards relevant to those officials
  - Guides to Model Code procedures for general managers, Mayors and complaints coordinators, containing easy to understand summaries of their roles in the complaints management process
  - Guides to Model Code procedures for complainants and people the subject of investigation. The prescribed procedures require that persons being investigated be provided with information about the investigation process.
- Additional resources and information will be added to the webpage over time.
- The Model Code of Conduct 2013 webpage may be accessed from the Division's website at [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au) .

- A copy of the Model Code summary is attached to this Circular (Attachment A). Councils officials are encouraged to familiarise themselves with this and the new Model Code.

**Action**

General Managers should ensure that a copy of this Circular is tabled at the next council meeting, including the Model Code Summary. The assistance of General Managers in promoting the Model Code 2013 webpage and its resources to all council officials would be appreciated.

**Ross Woodward****Chief Executive, Local Government****A Division of the Department of Premier and Cabinet**

**ATTACHMENT TO FAC 6B – 03/2013**

**MODEL CODE OF CONDUCT 2013  
COMMENCEMENT AND KEY RESOURCES**

**ATTACHMENT 2**

Division of Local Government Summary  
Standards of Conduct for Council Officials



Premier & Cabinet  
Division of Local Government

## STANDARDS OF CONDUCT FOR COUNCIL OFFICIALS

### Council officials play a vital role in serving local communities

To do this effectively, you will want to uphold the highest standards of behaviour to ensure communities have trust and confidence in local government.

### What are the expected standards of behaviour?

The standards of behaviour are described in detail in the Model Code of Conduct. The Code is a legal document that all officials are obliged to understand and follow. The Model Code forms the basis of each council's code of conduct. Highlighted below are the expected standards of behaviour for all council officials.

#### You must:

- conduct yourself in a manner that will not bring council into disrepute
- act lawfully and honestly, and exercise due care
- treat others with respect and not harass or discriminate against them, or support others who do so
- consider issues consistently, promptly and fairly
- ensure development decisions are properly made and deal fairly with all parties involved
- disclose and appropriately manage conflicts of interests including, in the case of councillors, from reportable political donations
- use and secure information appropriately and not disclose confidential information
- use council resources ethically, effectively and efficiently.

In addition, staff must ensure the efficient and effective operation of council's organisation and implement decisions of council without delay.

#### You must not:

- accept money or gifts of value and avoid situations that may appear to secure favourable treatment
- make complaints improperly, take detrimental action in response to complaints, or disclose information about code of conduct matters.

In addition, councillors must not:

- direct or influence council staff in the exercise of their role
- participate in binding caucus votes, except for nominations.

## What happens if the standards are not met?

The small number of cases where a council official fails to follow the Code will be dealt with in accordance with the Model Code Procedures.

Breaches of these standards may be reported to the general manager or, in the case of a breach by the general manager, to the Mayor. Serious complaints that cannot be resolved informally may be investigated by an independent conduct reviewer.

### Councillors

Breaches by councillors may result in:

- censure
- requirement for training
- counselling
- requirement to apologise
- findings of inappropriate conduct being made public
- referral to the Division of Local Government for disciplinary action, including suspension for up to three months
- referral by the Division to the Pecuniary Interest and Disciplinary Tribunal for suspension for up to six months or disqualification from holding civic office.

### General managers

Breaches by general managers may result in:

- requirement for training
- counselling
- requirement to apologise
- findings of inappropriate conduct being made public
- other actions specified under the general manager's contract.

### Council staff

Breaches by council staff may result in disciplinary action, termination or, in the case of non-senior staff, other penalties permitted under the relevant industrial award.

### Delegates or council committee members

Breaches by delegates or council committee members may result in:

- censure
- requirement to apologise
- prosecution
- removal or restriction of delegations.