

COUNCIL POLICY

Information Privacy	Adopted By Council:	18/10/11	
	Date/s Revised:	23/03/16, 28/03/2019, 24/08/2022, <u>07/25</u>	
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	*(may be subject to legislative changes)		
	Document No:	CP010	
	Directorate:	<u>Executive</u> CEO	
	Responsible Officer:	HR & Governance Coordinator	

PURPOSE

The purpose of this policy is to outline Council's approach to the management of its information collection, data-bases and other records containing personal details so as to protect the privacy of individual details contained in such records. Council has developed this policy to comply with the *Privacy and Data Protection Act 2014*, the *Health Records Act 2001* and the *Freedom of Information Act 1982*.

CONTEXT

Council's information privacy management will be in accordance with the information privacy principles and the health privacy principles as outlined in the above legislation. There may be circumstances where a provision made by or under the *Privacy and Data Protection Act 2014* (Act), relating to an information privacy principle, is inconsistent with a provision made by or under any other Act. In this case, that other provision prevails to the extent of the inconsistency. For example, the *Planning and Environment Act 1987* requires that material submitted with a Planning Permit application, including personal information, will be made available for public viewing and copies may be made available for interested parties for the purpose of enabling consideration and review as part of a planning permit process.

DEFINITIONS

Personal Information: means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion

Sensitive information: information or an opinion about an individual's—
(a) racial or ethnic origin; or
(b) political opinions; or
(c) membership of a political association; or
(d) religious beliefs or affiliations; or
(e) philosophical beliefs; or
(f) membership of a professional or trade association; or
(g) membership of a trade union; or
(h) sexual preferences or practices; or
(i) criminal record—
that is also personal information;
and includes health information as defined in the *Health Records Act 2001* (Vic).

POLICY

Information will be managed in accordance with the following:

1. Collection of information

Council will only collect personal information:

- By fair, lawful and unobtrusive means
- Which is relevant and necessary for Council's functions and activities
- With consent where the personal information is sensitive information

Where consent is required, it will be voluntary, informed and accepted only where it is evident there is capacity to provide it.

At the time when information is collected (or as soon as practicable thereafter), Council will advise how it handles the personal information. Where Council has provided this advice previously, it may not do so again unless information handling practices change.

Personal information will only be obtained from third parties where it is not reasonable or practical to obtain it directly.

All forms which request personal information must contain the Council logo and Council's Privacy Statement, and be approved by Council's Privacy Officer before being made available for use. ~~All forms must be included in Council's Central Document Control Register, which is subject to Audit.~~

2. Security and retention

Council will endeavour to ensure that the personal information it collects, uses and discloses is accurate, complete and up to date. Council will make any necessary correction at the time it becomes apparent.

Council will take reasonable steps to ensure that the personal information it holds is protected from misuse and loss, and from unauthorized access, modification and disclosure via any means including cyber threat.

Retention of information will be in accordance with the *Public Records Act 1973* or other Acts requiring retention of records for other periods.

3. Use, disclosure and transfer

Council will generally only use and disclose personal information for the purpose for which it was collected (primary purpose). Information will only be used for a related secondary purpose where such use or disclosure would be within the individual's reasonable expectation.

In some circumstances, Council may use or disclose personal information for the following purposes:

- Where disclosure is required for research and statistical analysis or for reasons of public health or safety; or
- Where disclosure is required to reduce a serious and imminent threat to life, safety or public health; or
- Disclosure regarding suspected unlawful activity to the appropriate authorities; or
- Where disclosure is required by law; or

- Where disclosure is required for court or legal proceedings; or
- Where the authority of the individual has been obtained to transfer information to a health service.

Council will only share relevant data-bases, as appropriate, with other ~~E~~councils and other levels of government with a legitimate need to access data to use in performing their statutory functions.

Personal information will only be transferred outside Victoria in the following circumstances:

- Where consent is granted to do so; or
- If Council reasonably believed the receiving organisation is subject to similar privacy laws such as those operating in Victoria; or
- The transfer is necessary for Council to fulfil its contractual obligations with the individual; or
- Council has taken steps to ensure that the information transferred will be held in accordance with the privacy laws in Victoria; or
- The transfer is for the individual and it is not practicable to obtain consent from that individual.

Where disclosure is requested under the *Freedom of Information Act 1982*, Council will comply with the requirements set out under this Act.

4. Privacy Officer and complaints

Council will appoint a Privacy Officer to be responsible for day to day decision making on privacy related matters. The Privacy Officer will also be the initial point of contact for public complaints relating to Council's information privacy management. Complaints should be made in writing and addressed to the:

Privacy Officer
Borough of Queenscliffe
PO Box 93, (50 Learmonth Street)
Queenscliff Vic 3223

General enquiries can be made by phoning the Privacy Officer on (03) 5258 1377 or via email: privacy@queenscliffe.vic.gov.au.

Complaints may also be made to the Information Commissioner (where the complaint relates to the *Privacy and Data Protection Act*) or to the Health Complaints Commissioner (where the complaint relates to the *Health Records Act*). Note: The Commissioners may decline to hear a complaint if it is not first made to Council.

5. Access

Council will provide reasonable access to the personal information it holds, except when:

- Providing access would pose a serious threat to the life of any individual; or
- Access may interfere with another person's privacy rights; or
- The request is frivolous or vexatious; or
- The personal information relates to existing or anticipated legal proceedings; or
- Access is contrary to another law or denial of access is authorised by another law; or
- The information is commercially sensitive.

Where a request for a physical copy of personal information is made, the request must be in writing in the form prescribed by Council from time to time. The person that the personal information is being provided to must be positively identified that they are entitled to access the information. Suitable identification could include driver's license, passport or solicitor's letter.

If a child, or any other person, is incapable of making a request for access (for example, by reason of disability), the request may be made by an authorised representative of that person. However, access will not be granted to the representative if Council believes that it would prejudice the health or safety of the individual. Suitable identification such as letter from solicitor or confirmation of Power of Attorney will need to be provided.

~~Fees may be charged for accessing personal information and if~~ information is withheld, applicants will be advised of the reason(s) in writing as soon as practicable. ~~Refer to the 'User Fees and Charges Schedule' in Council's Budget.~~

6. Information Privacy Training

~~Regular information privacy training will be conducted for relevant staff. An Information Privacy awareness program (at least yearly)~~ to outline this policy and Council's legislative obligations and requirements, ~~is provided~~ to ensure Council and its employees treat Information Privacy in an appropriate way.

CONTINUOUS IMPROVEMENT

This policy will be reviewed on a continuous basis, but as a minimum every ~~three~~ four years from the date of adoption.

REFERENCES

Privacy and Data Protection Act 2014

Health Records Act 2001

Freedom of Information Act 1982

Public Records Act 1973

Victorian Charter of Human Rights and Responsibilities Act 2006

Cyber Incident Response Plan (internal Council plan)

END