



Mildura Rural City Council

Privacy and Data Protection Policy

Policy – CP017

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Manager Corporate Administration	SMT	Council	24 July 2019	2019/0152
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1. The Purpose of this Policy is

To ensure Council complies with the provisions of the *Privacy and Data Protection Act 2014* (the Act) and the *Health Records Act 2001*, in relation to the collection, management and disclosure of personal, sensitive and health information.

2. Policy Statement

This policy has been developed in order to:

- Establish a regime for the responsible collection, management and disclosure of personal information;
- Provide individuals with right of access to information about themselves which is held by Council; and
- Provide individuals with the right to request correction and amendment of information about themselves held by Council, including information held by contracted service providers.

Council will provide Information Privacy training to all new staff as part of the Corporate Induction Program, and refresher training where applicable.

3. Scope of the Policy

This policy covers all personal and health information collected by Councillors, Council employees, members of committees, contractors and sub-contractors. This includes information collected in any format including correspondence, in person, over the phone, and over the Internet.

This policy applies to all Councillors, Council employees, members of committees, contractors and sub-contractors of Mildura Rural City Council.

4. Privacy Principles

The *Privacy and Data Protection Act 2014* contains ten Information Privacy Principles (IPP's) and the *Health Records Act 2001* contains eleven Health Privacy Principles (HPP's). These principles establish standards for the handling of personal, sensitive and health information including collection, use, disclosure, storage, security, accessibility and disposal.

4.1 Collection (IPP 1 / HPP 1)

Council will only collect personal information that is necessary to carry out legitimate and specific Council functions and activities including, but not limited to:

- Direct contact in order to provide services requested.
- Contact by Council or contracted service providers where it is necessary to resolve issues relating to council services or functions.
- To confirm your attendance and/or advise you of any changes to meeting details where you have made a submission for consideration.
- To facilitate the collection of Council fees and charges.
- To enable payment for Council provided goods and services.
- To supply you with material concerning Council initiatives and programs where you have supplied personal information to Council for this purpose.
- To enable Council to undertake its Civic Compliance duties and law enforcement functions.
- To aid community safety. For example, Council collects images via closed circuit television (CCTV) cameras which are located throughout the municipality. Footage and photographs of incidents will only be made available in accordance with the CCTV Governance Framework 2018-2022.
- To record/receive ideas, questions, complaints and compliments from members of the public.

Council will advise individuals, where possible, of the purposes for which their personal information is being collected and of those third parties to whom the information may be disclosed.

Personal and health information will only be collected by fair and lawful means, and not in an unreasonably intrusive way.

Where it is reasonable and practicable to do so, Council will collect personal and health information directly from the individual. If information is collected about an individual from someone else, Council will take reasonable steps to ensure that the individual is made aware of the information that has been collected about them.

4.2 Use and Disclosure of Information (IPP 2 / HPP 2)

Council will take all necessary measures to prevent unauthorised access to, or disclosure of personal information.

Council will not use or disclose information about an individual other than for the primary purpose for which it was collected unless one of the following applies:

- It is for a related (secondary) purpose that the individual would reasonably expect;
- Where Council has the consent of the individual to do so;
- If the use or disclosure is necessary for research, or the compilation/analysis of statistics, in the public interest, other than for publication in a form that identifies any particular individual;
- If the use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare;
- If the use or disclosure is necessary to lessen or prevent a serious threat to public health, public safety or public welfare;
- If Council has reason to suspect that unlawful activity has been, is being or may be engaged in;
- The use or disclosure is required or authorised by or under law;
- The use or disclosure is reasonably necessary for use by or behalf of a law enforcement agency;
- As required or permitted by the *Privacy and Data Protection Act 2014* or any other legislation.

4.3 Data Quality (IPP 3 / HPP 3)

Council will take reasonable steps to ensure that all personal information collected, used or disclosed is accurate, complete and up to date.

4.4 Data Security and Retention (IPP 4 / IPP 4)

Council will take all necessary measures to prevent misuse, loss, unauthorised access, modification or disclosure of all personal and health information. This applies regardless of the format in which the information is held.

Personal and health information will be managed confidentially and stored securely.

Council will monitor and implement reasonable and appropriate technological advances or management processes, to provide an up to date ongoing safeguard for personal information.

Personal and health information will be de-identified, archived or destroyed in accordance with the *Public Records Act 1973* and the 'Retention and Disposal Authority for Records of Local Government Functions PROS 09/05'.

4.5 Openness (IPP 5 / HPP 5)

This policy details Council's management of personal, sensitive and health information and is publically available for viewing on Council's website.

On request, Council will take reasonable steps to let a person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

4.6 Access and Correction (IPP 6 / HPP 6)

Requests for access to and correction of documents containing personal information are managed in accordance with the requirements of the *Freedom of Information Act 1982* (FOIA).

Under the FOIA, a person is entitled to seek correction or amendment of a document containing personal affairs information, where they believe the information is inaccurate, incomplete, out of date, or would give a misleading impression.

Requests made under the FOIA must:

- be made in writing and addressed to the:

Freedom of Information Officer
Mildura Rural City Council
PO Box 105
MILDURA VIC 3502
Email: mrcc@mildura.vic.gov.au

- specify an address to which a decision notice can be sent to the person making the request
- detail the particulars of the matters in respect of which the applicant believes the personal affairs information is defective
- specify the amendments the person making the request wishes to be made.

There is no application fee for a request for amendment of personal information made under the FOIA.

Where a person makes such a request for amendment, Council will take reasonable steps to notify the person of the decision as soon as practicable, but no later than 30 days after receiving the request.

4.7 Unique Identifiers (IPP 7 / HPP 7)

A unique identifier is a number or code that is assigned to an individual to identify that individual for the purposes of the operations of the Council, but does not consist only of the individual's name.

Council will not:

- assign unique identifiers unless necessary to carry out the Council's functions efficiently;
- adopt a unique identifier that has been assigned by another organisation unless necessary to carry out the Council's functions efficiently, or with the consent of the individual or it is under an out-sourcing arrangement;
- use or disclose a unique identifier assigned by another organisation unless necessary to fulfil the Council's obligations to that organisation or with the consent of the individual;
- require an individual to provide a unique identifier in order to obtain a service unless required or authorised by law or in connection with the purpose for which the unique identifier was assigned.

4.8 Anonymity (IPP 8 / HHP 8)

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

However, as anonymity may limit Council's ability to process a complaint or other matter, Council reserves the right to take no action on any matter if an individual chooses not to supply relevant personal information necessary for Council to perform its functions.

4.9 Transborder Data Flows (IPP 9 / HPP 9)

Council may transfer personal, sensitive or health information to an individual or organisation outside Victoria only in the following instances:

- The individual has provided consent;
- If the disclosure is authorised by law;
- If the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request;
- Where Council has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Information Privacy Principles;
- If the recipient of the information is subject to law binding scheme or contract with similar principles as the *Privacy and Data Protection Act 2014*.
- Or, if all of the following circumstances apply:
 - a) The transfer is for the benefit of the individual; and
 - b) It is impracticable to obtain the consent of the individual to that transfer; and
 - c) If it were practicable to obtain that consent, the individual would be likely to give it.

4.10 Sensitive Information (IPP 10)

Subject to exclusions contained within the Act. Council will not collect sensitive information about an individual unless:

- the individual has consented; or
- the collection is required under law; or
- the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
 - a) is physically or legally incapable of giving consent to the collection; or
 - b) physically cannot communicate consent to the collection; or
- the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

4.11 Transfer or Closure of Health Service Provider's Practice (HPP 10)

Health information relating to a discontinued health service provided by Council will be managed in accordance with the *Health Records Act 2001*.

4.12 Making Information Available to Another Health Service Provider (HPP 11)

If an individual:

- requests Council to make health information relating to the individual available to another health service provider; or
- authorises another health care service provider to request Council to make health information relating to the individual available to the requesting health service provider,

Council will provide a copy or written summary of that health information as soon as practicable following payment of a fee not exceeding the prescribed maximum fee and subject to the regulations.

5. Privacy Collection Statement

A general statement outlining Council's position on the handling of personal, sensitive or health information will be used at all points of collection and on all outgoing correspondence that may request personal, sensitive or health information.

Forms collecting information that will be used for a specific purpose will include a privacy collection statement detailing the purpose of collection.

6. Public Registers

The following public registers are currently maintained by Council which may include personal information.

- Details of overseas or interstate travel (with the exception of interstate travel by land for less than 3 days), undertaken in an official capacity by any Councillor or member of Council staff.
- A document containing details of all leases involving land which were entered into by the Council as lessor, including the lessee and the terms and value of the lease.
- A register maintained under section 224(1A) of the *Local Government Act 1989* of Authorised Officers appointed under that section.
- A list of donations and grants made by Council in the previous 12 months, including the names and persons who, or bodies which, have received a donation or grant and the amount of each donation or grant.
- Campaign Donation Returns received from persons who were candidates in a Council election.
- A register of all applications for permits and all decisions and determinations relating to permits pursuant to section 49 of the *Planning & Environment Act 1987*.
- A register of dogs and cats registered in the municipality pursuant to section 18 of the *Domestic Animals Act 1994*.
- Submissions received from the public in accordance with section 223 of the *Local Government Act 1989*.
- A register of building permits pursuant to section 31 of the *Building Act 1993*.
- A register of occupancy permits and temporary approvals received by Council kept pursuant to section 74 of the *Building Act 1993*.
- A register of emergency orders, building notices and binding orders given to Council under part 8 of the *Building Act 1993*, as required under section 126 of the *Building Act 1993*.
- A register of applications for planning permits and all decisions and determinations relating to permits.

7. Complaints

Complaints regarding the management of personal, sensitive and health information should be directed to Council's Privacy Officer.

The complaint will be investigated as soon as possible (but no later than 30 business days) and a written response provided.

Alternatively, individuals may lodge a complaint with the Victorian Information Commissioner with respect to personal information, or the Health Services Commissioner for health information, about a Council act or practice that may be an interference with their privacy. However, the Commissioners may decline to entertain the complaint if the complainant has not first lodged the complaint with Council.

Office of the Victorian Information Commissioner

PO Box 24274 MELBOURNE VIC 3001

Phone: 1300 006 842

Email: enquiries@ovic.vic.gov.au

Office of the Health Complaints Commissioner

Level 26, 570 Bourke Street MELBOURNE VIC 3000

Phone: 1300 582 113

Email: hcc@hcc.vic.gov.au

8. Breaches

As soon as a privacy breach has been identified (or suspected), Council's Privacy Officer must be notified.

In the event that Council experiences a privacy breach or suspects that a privacy breach has occurred, the Privacy Officer will follow the procedure set out in the Privacy Breach Procedural Guidelines.

9. Staff Training and Awareness

All Council employees receive training to enhance their awareness about their obligations regarding the collection and management of personal information in the workplace.

All new staff are required to complete the training module 'Introduction to Privacy in the Victorian Public Sector' as part of their induction program and must agree to abide by the Employee Code of Conduct in respect to the 'Privacy and Information Systems' requirements.

10. Who is responsible for implementing this policy?

General Manager Corporate

11. Definitions

Health Information

Information or an opinion about:

- the physical, mental or psychological health of an individual;
- a disability of an individual;
- an individual’s expressed wishes about the future provision of health services;
- a health service provided to an individual;

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

Personal Information

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 be reasonably ascertained, but does not include information of a kind to which the *Health Records Act 2001* applies.

Health Privacy Principles (HPPs)

A set of principles that regulate the handling of personal health information as set out in the *Health Records Act 2001*.

Information Privacy Principles (IPPs)

A set of principles that regulate the handling of personal information as set out in the *Privacy and Data Protection Act 2014*.

Sensitive Information

Personal information or an opinion about an individual’s:

- race or ethnic origin; or
- political opinion; or
- membership of a political association; or
- religious beliefs or affiliations; or
- philosophical beliefs; or
- membership of a professional or trade association; or
- membership of a trade union; or
- sexual preferences or practice; or
- criminal record.

Privacy Officer

Manager Corporate Administration
Governance & Risk Coordinator

12. Legislation and other references

12.1 Legislation

If the Information Privacy Act conflicts with another Act, the other Act overrides the Information Privacy Act in so far as the inconsistency.

For further information related to this policy see:

- *Privacy and Data Protection Act 2014;*
- *Health Records Act 2001;*
- *Freedom of Information Act 1982;*
- *Victorian Charter of Human Rights and Responsibilities Act 2006;*
- *Public Records Act 1973;* and
- *Local Government Act 1989*

12.2 Documents

This Policy is implemented in conjunction with the following documents:

- Local Government Privacy Guide
- Privacy Breach Procedural Guidelines

13. Risk Assessment Reference

Risk Category	✓	Risk Category	✓
Asset Management Committees		Financial Sustainability	
Compliance – Legal & Regulatory	✓	Human Resource Management	
Contract Management		Leadership & Organisational Culture	✓
Contract Tendering & Procurement		Occupational Health & Safety	
Corporate Governance	✓	Organisational Risk Management	
Environmental Sustainability		Project Management	
		Public Image and Reputation	✓