

POLICY:-	
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PROCEDURES/GUIDELINES:-	
Date procedure / guideline was developed:	N/A
Procedure/guideline reference number:	N/A

RESPONSIBILITY:-	
Draft Policy developed by:	Director of Finance and Administration
Committee/s (if any) consulted in the development of this Policy:	N/A
Responsibility for implementation:	Manager Legal, Records and Governance
Responsibility for review of Policy:	Director of Finance and Administration

1. APPLICATION

Government agencies are required to comply with the Information Protection Principles in the *Privacy and Personal Information Protection Act 1998* (PPIPA). These principles regulate the collection, storage, use and disclosure of personal information held by government agencies.

This policy applies to all personal information collected, maintained and/or used by Council.

2. DEFINITIONS

Personal Information

This applies to personal information held by or collected by Council. Personal information means information directly related to the personal affairs of an individual that enables or could enable the person to be identified. This includes personal information relating to both clients of Council and Council staff. For example, Council holds personal information on its ratepayers (names and addresses) in order to carry out its functions (planning and property services). It may also request personal or health information in order to employ staff or to provide welfare and other community services. For the purposes of this policy, personal information includes health information where relevant.

Sensitive Information

Sensitive information includes information or opinion about an individual's racial or ethnic origin, political opinions, trade union membership, philosophical or religious beliefs, sexual preferences or criminal record.

Health Information

This is information about:-

- The physical, mental or psychological health of an individual; or
- A disability of an individual; or
- An individual's expressed wishes about the future provision of health services to him or her; or
- A health service provided, or to be provided, to an individual that is also personal information; or
- Other personal information collected to provide, or in providing, a health service to an individual.

3. LEGISLATIVE PERSPECTIVE

The *Privacy and Personal Information Protection Act 1998 (PPIPA)* provides for the protection of personal information and for the protection of the privacy of individuals. Section 33 of the PPIPA requires all Councils to prepare a Privacy Management Plan to deal with:-

- The devising of policies and practices to ensure compliance by Council with the requirements of the PPIPA;
- The dissemination of those policies and practices to persons within Council;
- The procedures that Council proposes for internal review of privacy complaints;
- Such other matters as are considered relevant by Council in relation to privacy and the protection of personal information held by it.

The *Health Records and Information Privacy Act 2002 (HRIPA)* regulates the collection and handling of people's health information by NSW public and private sector organisations. It applies to organisations that are health service providers or that collect, hold or use health information. The Upper Lachlan Shire Council falls under this Act.

4. PRINCIPLES

Information Protection Principles

The 12 Information Protection Principles create a set of legal obligations that describe what NSW government agencies (including local Councils) must do when they handle personal information. The principles cover the collection, storage, access and accuracy, use and disclosure of personal information.

The Upper Lachlan Shire Council believes that the responsible handling of personal information, including health information, is a key aspect of democratic governance, and is strongly committed to protecting an individual's right to privacy.

Council will apply the following general principles; based on the 12 Information Protection Principles and the 15 Health Privacy Principles (modifications and exceptions to the following general principles are set out in detail in Council's Privacy Management Plan).

4.1 Collection

- (a) Council will only collect personal or health information for a *lawful* purpose;
- (b) Council will only collect personal or health information if it is a *direct* relation to Council's activities and necessary for that purpose;
- (c) Council will ensure that the personal or health information is *relevant*, not excessive, accurate and up to date;
- (d) Council will ensure that the collection does not unreasonably intrude into the personal affairs of the individual;
- (e) Council will only collect personal or health information directly from the person concerned, unless it is unreasonable or impracticable to do so;
- (f) Council will be *open* and inform the person as to why it is collecting personal or health information about them, what it will do with the health information, and who else might see it;
- (g) Council will tell the individual how they can see and correct their personal or health information, and any consequences, if they decide not to provide their information to Council;
- (h) If Council collects personal or health information about a person from someone else, it will still take reasonable steps to ensure that the individual has been notified as set out in 4.1 (g) above.

4.2 Storage

- (a) Council will ensure that personal information is stored *securely*, not kept any longer than necessary, and disposed of appropriately;
- (b) Personal information will be protected from unauthorised access, use, modification or disclosure.

4.3 Access and Accuracy

- (a) Council will be *transparent* and explain to the individual what personal about them is being stored, why it is being used and any rights they have to access it;
- (b) Council will allow *accessibility* to people of their personal information without unreasonable delay or expense;
- (c) Council will allow people to update, *correct* or amend their personal information where necessary;

- (d) Council will ensure that the personal or health information is relevant and accurate before using it.

4.4 Use

- (a) Council will make sure that the personal information is relevant, *accurate*, up to date and complete before using it;
- (b) Council will *limit* use of personal information for the purpose it was collected unless the person has given their consent, or the purpose of use is directly related to the purpose for which it was collected, or to prevent or lessen a serious or imminent threat to any person's health or safety.

4.5 Disclosure

- (a) Council will generally only disclose personal information for the purpose for which it was collected, *restricted* to or for a directly related purpose that the individual would expect;
- (b) Council cannot disclose sensitive personal information without a person's consent, for example, information about ethnic or racial origin. Personal information is *safeguarded* by Council.
- (c) Should Council wish to disclose personal or health information for a purpose other than for which it was collected, it will seek the consent of the individual where reasonably practicable.

4.6 Transfers and Linkages

- (a) Council will only transfer health information outside NSW in accordance with Council's Privacy Management Plan;
- (b) Council will seek the express consent of individuals to participate in any system that links health records across more than one organisation;
- (c) Council will only include health information about individuals, or disclose their identifier for the purpose of the health records linkage system, if the individual has expressly consented to this.

5. RESPONSIBILITIES

5.1 General Manager

The General Manager is responsible to:-

- (a) Implement the *Privacy Code of Practice for Local Government*;
- (b) Ensure that Council has adopted and implemented a Privacy Management Plan;
- (c) Delegate the duties of Privacy Contact Officer to a suitably qualified Council Officer;
- (d) Ensure that all Council employees, delegates and volunteers comply with Council's Privacy Policy and Privacy Management Plan;
- (e) Receive complaints relating to privacy matters and direct them to Council's Privacy Contact Officer.

5.2 Privacy Contact Officer

The Privacy Contact Officer is designated as the Manager Legal, Records and Governance. The Privacy Contact Officer will:-

- (a) Review all complaints received by Council in respect of the protection and obligations arising for Council under the *Privacy and Personal Information Protection Act 1998*;
- (b) Ensure that Council's Privacy Policy and Privacy Management Plan are reviewed and updated as required, but not less than every three years;
- (c) Respond to questions or written communications concerning the application of this Code.

5.3 Councillors and Employees

All Councillors and employees will abide by the provisions of this policy and the Privacy Management Plan and relevant privacy legislation.

6. MAKING A COMPLAINT

Complainants may seek advice from, or make a complaint to the NSW Civil and Administrative Tribunal.

NSW Civil and Administrative Tribunal (NCAT)
PO Box K1026
HAYMARKET NSW 1240
Telephone: 1300 555 727
Email: aeod@ncat.nsw.gov.au

Complainants may seek advice from, or make a complaint to the Information and Privacy Commission. Information about how to make a complaint is available on the website which can be found at <https://www.ipc.nsw.gov.au>

Information and Privacy Commission NSW
GPO Box 7011
SYDNEY NSW 2001
Telephone: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au

7. PRIVACY MANAGEMENT PLAN

Council is required to have a Privacy Management Plan. The Plan outlines processes in more detail than is contained in this policy, and takes precedence over it.

8. NON-COMPLIANCE WITH THIS POLICY

Failure to comply with the terms of this policy may result in disciplinary procedures and/or dismissal.

Individuals may also be prosecuted for breaches of the *Privacy and Personal Information Protection Act 1998*.

9. REVIEW

This policy will be reviewed every three years to ensure that Council is optimising its compliance measures whereby personal information is collected, stored, used and disseminated.

10. ASSOCIATED LEGISLATION, COUNCIL POLICIES & DOCUMENTS

1. *Privacy and Personal Information Protection Act 1998;*
2. *Health Records and Information Privacy Act 2002;*
3. *Anti Discrimination Act 1977;*
4. *Environmental Planning and Assessment (EPA) Act 1979;*
5. *Fair Work Act 2009;*
6. *Government Information (Public Access) Act 2009 and Regulations;*
7. *Government Information (Public Access) Amendment Act 2012;*
8. *Independent Commission against Corruption Act 1988;*
9. *Industrial Relations Act 1996;*
10. *Local Government Act 1993;*
11. *Local Government (General) Regulations 2005;*
12. *Public Interest Disclosures Act 1994;*
13. *State Records Act 1998;*
14. *Work Health and Safety Act 2011 and Regulations;*
15. *Local Government (State) Award 2020;*
16. *Government Information (Public Access) Policy;*
17. *Privacy Management Plan;*
18. *Records Management Policy;*
19. *Code of Conduct;*
20. *Complaints Management Policy;*
21. *Grievance Policy;*
22. *Disciplinary Policy;*
23. *Customer Service Charter;*
24. *Public Interest Disclosures and Internal Reporting Policy;*
25. *Fraud and Corruption Prevention Policy; and*
26. *Any other relevant legislation and guidelines as applicable.*

11. VARIATION

Council reserves the right to vary or revoke this policy.