

Policy

Privacy statement and privacy management plan

Responsible Manager (Title)	Director Corporate & Governance		
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Community Plan Linkage	Leadership – We will have a strong, accountable and representative government		

1 Purpose

This policy outlines Council’s approach to collecting and managing personal information and the requirements under the Privacy and Personal Information Protection Act 1998 (PPIP Act) and the Health Records and Information Privacy Act 2002 (HRIP Act).

2 Definitions

- Council – Clarence Valley Council
- CCTV – Closed Circuit Television
- PPIP Act – Privacy and Personal Information Protection Act 1998
- HRIP Act – Health Records and Information Privacy Act 2002
- IPP – Information Protection Principles
- HPP – Health Privacy Principles
- GIPA Act – Government Information (Public Access) Act 2009
- IPC – Information and Privacy Commission

3 Background/legislative requirements

The PPIP Act and the HRIP Act protect personal information and protect individuals’ privacy. Section 33 PPIP Act requires all Councils to prepare a Privacy Management Plan.

The NSW privacy laws set out privacy principles that guide the handling of personal information (including health information).

These privacy principles include:

- 12 Information Protection Principles (IPPs), and
- 15 Health Privacy Principles (HPPs).

Plain language summaries of the IPPs and HPPs are available from the NSW Information & Privacy Commission’s website.

This Plan also incorporates the modifying effects of the Privacy Code of Practice for Local Government in applying the 'public register' provisions of Part 6 of the PPIP Act. Council has also prepared Privacy Management Procedures which sets out guidelines for staff on compliance with the PPIP Act and the HRIP Act.

Legislation that is relevant to this Plan includes:

- Local Government (General) Regulation 2009
- Local Government Act 1993
- Privacy and Personal Information Protection Act 1998
- Privacy and Personal Information Protection Regulation 2019
- Public Interest Disclosures Act 1994
- Health Records and Information Privacy Act 2002
- Health Records and Information Privacy Regulation 2017
- Government Information (Public Access) Act 2009
- State Records Act 1998

4 Policy statement

Council collects and manages personal information while performing its activities, functions, and duties. Privacy is important to us, and Council takes all reasonable and appropriate steps to protect the privacy of individuals as required by law.

This privacy statement provides information about collecting personal or health information and how the Council may use that information.

4.1 Collection of Personal Information

Council will only collect personal information for a lawful purpose. Council will collect only as much information as is reasonably necessary to carry out the function for which the information is required.

In addition to requesting information directly from you, Council may also obtain information from other government agencies and third parties. Any personal data obtained from a third party is treated the same as if you provided it.

In addition, if it is health information, Council will advise the person from whom it is collecting the information:

- that the information is being collected by Clarence Valley Council and provide contact details for Council,
- that they can request access to the information,
- of the types of persons or organisations to whom Council usually discloses information of this kind,
- if any law requires the information to be collected by Council, and
- the main consequences (if any) for the person if all or part of the information is not provided. (Health Principle 4)

Anyone engaged by Council as a private contractor or consultant that involves collecting personal information must agree to be bound not to collect personal information by any unlawful means.

4.2 Use of information

We may use your personal information to provide or improve our services to you, confirm your right to the information you have requested from us, or inform you about additional services that may be of interest to you

or to which you may be entitled. We may also use your personal information to provide you with notices, newsletters, and updates.

Information collected by the Council will not be provided to a third party such as another individual, customer or contractor, or a government department or service provider, without your prior knowledge or consent unless there is a statutory or legal requirement or where it would reasonably expect for this to occur. For example, for Council to meet its service provision responsibilities.

Council may use personal information for a purpose other than for which it was collected in the following circumstances:

- where the use is in pursuance of Council's lawful and proper functions, and Council is satisfied that the personal information is reasonably necessary for the exercise of its functions; or
- where personal information is used to confer an award, prize, benefit or similar form of individual recognition upon a particular person.

An example is the Rates Record that Council holds under Section 602 of the LGA, which may also be used to:

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

4.2.1 Exemption

Council is exempt from compliance with Principle 10 in the following circumstances:

- in situations where compliance is reasonably likely to affect Council's conduct of an investigation detrimentally,
- where Council is required to use personal information, it holds to investigate a complaint properly,
- if the use is for law enforcement purposes or the investigation of financial fraud, or
- if the information is to be supplied to the Office of Local Government or the Premier's Office.

4.3 Accuracy of your personal information

Reasonable care is taken to ensure that the personal information collected, used, or disclosed is accurate, complete, and current.

It is essential that the information Council holds about individuals is accurate to perform our functions and meet the needs of all residents. We welcome members of the public to propose amendments to their personal information.

If a person suspects that the personal information that Council holds is incorrect, incomplete, or out of date, they have the right to amend that information (including corrections, deletions, or additions) under IPP 8 and HPP 8.

To request to amend the Council's information, you may need to supply additional information to assure Council that the proposed amendment is factually correct and appropriate. Council will not charge a fee to process an application to amend a record and seek to notify any routine recipients once the change(s) have been made.

Council will accept that the information it holds is relevant, accurate, up-to-date, complete and not misleading unless it:

- is advised to the contrary,
- has information that suggests otherwise, or

- judges that the information has not been updated for some time and may therefore be wise to make contact to confirm the personal information is correct.

4.4 Where Council is not prepared to amend

In some instances, the Council may refuse to amend the personal information. As an alternative, Council may attach a statement (also known as an addendum) from the individual to accompany the information, in accordance with IPP 8 and HPP 8.

4.5 Access to Personal Information

Individuals can request access to their information without unreasonable delay or expense (IPP 7 and HPP 7).

If you wish to access the Council's personal information about you, please contact Council in writing. If you require assistance in doing this, please contact the Privacy Officer, who will be able to assist you.

If an application for access to personal information is particularly complex, it may be referred to as an application under the Government Information (Public Access) Act 2009 (the GIPA Act).

Members of staff wishing to exercise their right to access consented personal information (that may not be directly accessible to them) should also apply in writing or direct their inquiries to the Manager Corporate and Governance, who will handle the application.

4.6 Limits on disclosure of personal information

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

However, Council may disclose personal information to another person or body where the disclosure:

(a) is made to a public sector agency or public utility on the 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 to exercise that agency's function/s.

(b) relates to personal information which has been collected about an individual, and the disclosure is to confer upon that person an award, prize, benefit, or similar form of personal recognition,

(c) is directly related to the purpose for which the information was collected, and the individual concerned is reasonably likely to have been aware 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 to assess or review the delivery of a program to which the original collection relates),

(d) is necessary to prevent or lessen a serious or imminent threat to the life or health of the individual concerned or another person,

- (e) is made to a law enforcement agency in connection with proceedings for an offence or law enforcement purposes or to ascertain the whereabouts of a missing person,
- (f) is authorised by subpoena, search warrant or another statutory instrument,
- (g) is reasonably necessary for the protection of public revenue,
- (h) is necessary to investigate an offence,
- (i) is necessary to enable Council to investigate a complaint,
- (j) is to an investigative agency,
- (k) is to the Office of Local Government,
- (l) is to the Premier's Office
- (m) is for research purposes, or
- (n) in the case of health information, if the disclosure is reasonably necessary for
 - i. the funding, management, planning or evaluation of health services,
 - ii. the training of employees or volunteers, or
 - iii. research, or the compilation or analysis of statistics, in the public interest, and either
 - A. that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained, and it is impracticable to seek the consent of the individual, or
 - B. reasonable steps are taken to de-identify the information, and the information is not published in a generally available publication. (Health Principle 10)
- (o) if the disclosure of health information is to provide information to an immediate family member for compassionate reasons and:
 - i. the disclosure is limited to the extent reasonable for those compassionate reasons,
 - ii. the individual is incapable of giving consent,
 - iii. the disclosure is not contrary to any wish expressed by the individual (and not withdrawn) of which Council is aware or could make itself aware by taking reasonable steps, and
 - iv. if the immediate family member is under 18, Council reasonably believes that the family member has sufficient maturity to receive the information. (Health Principle 11)

Where A potential employer requests council, 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 job 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 they have applied.

Before the Council gives health information to another person or organisation, it will do everything reasonably necessary to prevent unauthorised use or disclosure of the information. (Health Principle 5)

This Principle does not apply to the information held on Public Registers.

4.7 Special restrictions on disclosure of personal information

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 orientation unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

The Privacy Code makes provision for Council to depart from this Principle, in relation to s19(2) above, where a potential employer requests council outside New South Wales to provide personal information. In these circumstances, Council 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 does not permit Council to give an opinion as to that person's suitability for a particular job 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 they have applied.

In addition, Council may disclose the personal information set out in Principle 12 to another person or body where the disclosure:

- is to another agency that is conducting a lawful investigation,
- is necessary to investigate an offence,
- is to the Department of Local Government,
- is to the Premier's Department, or
- is for research purposes.

4.8 Instances in which Clarence Valley Council may not be able to provide access

There are some instances where Council may not be able to provide access to certain information. These are set out in the GIPA Act (overriding public interest against disclosure).

If you are seeking access to information that relates to another person, your application must be made under the GIPA Act.

5 Implementation

5.1 Personal Information

5.1.1 What is personal information?

Personal information is defined in s.4 PPIP Act to mean: "*information or an opinion (including information or an opinion forming part of a database and 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.*"

It includes a person's name, address, and phone number and can also include such things as vehicle registration (if personalised) and email address. It also provides information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health, or sexual orientation.

Health information is 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 them,
- other personal information collected in connection with the donation of human tissue,
- genetic information that is or could be predictive of the health of an individual or their relatives or descendants, or
- the physical or mental health or a disability (at any time) of an individual.

5.1.2 What is NOT personal information?

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 the Council to hold that information and not the PPIP Act (for example, section 8 of the Government Information (Public Access) Act 2009 (GIPA Act)).

There are some kinds of information that are not personal information, such as:

- Information about someone dead for more than 30 years
- Information about someone that is contained in a publicly available publication, and
- Information or an opinion about a person's suitability for employment as a public sector official.

Council considers the following to be publicly available publications:

- An advertisement contains personal information in a local, city or national newspaper.
- Personal information on the Internet.
- Books or magazines printed and distributed broadly to the general public.
- Council Business papers or that part available to the general public.
- Personal information that may be a part of a public display to the general public.

Information published in this way ceases to be covered by the PPIP Act. Council's decision to post in this way must be in accordance with PPIP Act.

5.2 Application of this plan

The PPIP Act, HRIP Act and this Plan apply, wherever practicable, to:

- Councillors
- Council employees
- Consultants and Contractors of Council
- Council owned businesses
- Volunteers
- Members of Council committees (including community members of s.355 and Advisory committees)

Council will ensure that all parties are made aware that they must comply with the PPIP Act, the HRIP Act, and any other Privacy Code of Practice and this Plan.

5.3 Personal information held by Council

Council holds personal information concerning Councillors, such as:

- Personal contact information,
- Complaints and disciplinary matters,

- Pecuniary interest returns, and
- Entitlements to fees, expenses, and facilities.
- Photos and images from official engagements/activities/events.

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

- Rates records,
- Contact information such as names and residential/ mailing addresses of individuals
- Property ownership details and information regarding concessions
- Information regarding contact made with Council, including requests, inquiries, or complaints requests for access to information made under the PPIP Act and the Government Information (Public Access) Act (GIPA Act),
- Development applications and submissions
- Library lending records
- Financial information (e.g., debt recovery or financial hardship applications)
- Burial and cremation records
- Closed Circuit Television (CCTV) footage
- Donation, grant, and sponsorship applications
- Submissions and information collected through Council's community engagement and consultation activities include entries to competitions from children
- Public access forum applications
- Enforcing regulations and legislation
- Site inspections and audits
- Recording, investigating, and managing complaints and allegations
- Consultation with the community, businesses, and other stakeholders, and
- Photos and images from community events/activities

Council holds personal and health information concerning its current and former employees and contractors, including:

- Recruitment material
- Personal contact information
- Disciplinary matters
- Pecuniary interest returns
- Wage and salary entitlements
- Health information (such as medical certificates and workers' compensation claims)
- Pre-employment medical information
- Workers' compensation investigations
- Public interest disclosure investigations
- Leave and payroll data (including supporting medical certificates)
- COVID-19 vaccination status
- Performance management plans
- Disclosure of interest returns, and
- Incident reports (WHS, workers compensation)

5.4 How Clarence Valley Council collects personal information

Personal information may be collected by Council in writing, via email, through online or physical forms, through supporting documents, over the phone, or in person at Council's Customer Service Centres in the following ways:

- Incident reports
- Medical assessment reports
- Submissions
- Council forms
- Application forms to receive a service
- CCTV footage
- Public registers
- Financial transaction records
- Contracts
- Over the phone
- Counter enquiries, and
- Online services.

Council may also engage contractors or third parties to perform work on behalf of the council that requires them to collect personal information. In these instances, Council includes clauses in its contracts that require contracted service providers to comply with the same privacy obligations as Council.

5.5 Direct and indirect collection

Council will usually collect information directly from an individual; however, information may need to be collected from others in some instances. For example, where the data is provided by a parent or guardian of a person under the age of 16, if the individual has authorised collection from another source, or there are circumstances to justify collection from an alternative source (IPP 2 & HPP 3).

Council occasionally will indirectly collect personal information about an individual when an award, prize, benefit, or similar form of personal recognition is intended to be conferred upon that person. The Privacy Code of Practice for Local Government makes a provision for this so that Council can depart from the requirement of IPP 2 to collect information directly from an individual. In these circumstances, Council only collects necessary information.

In instances where personal information is received that Council has not directly asked for, it is considered unsolicited information. Such information is not deemed to have been 'collected' by Council, and therefore the ordinary Collection privacy principles do not apply. However, the retention, use and disclosure privacy principles will still apply to any such information in Council's possession.

Where an individual, a group or a committee not established by Council, gives Council unsolicited personal or health information, then that information should still be treated following this Plan, the Codes, the HRIP Act and the PPIP Act for the purposes of IPPs 5-12 and HPPs 5-15 which relate to storage, access, use and disclosure of information.

Note that for the purposes of s.10 of the HRIP Act, Council is not considered to have "collected" health information if the receipt of the information by the Council is unsolicited.

S.4(5) of the PPIP Act also provides that personal information is not "collected" by Council if it is unsolicited.

5.6 CCTV Cameras/Footage

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. If it does so, Council will comply with the provisions of the Workplace Surveillance Act.

Council is exempt from IPP 4 (excessive, intrusive collection) concerning collecting individual data by using a CCTV camera that the Council has installed to film in a public place. Council endeavours to position CCTV cameras, so no other landowners are filmed (unless it is not reasonably practicable to avoid filming the other land when filming the public place).

5.7 Information collected from websites

Council may, from time to time, collect personal information via third party websites that provide services on behalf of the Council. Examples include, but are not limited to:

- Online survey websites; Council may use online survey websites to conduct surveys and community consultations. Some surveys may collect names and contact details of respondents, usually voluntarily, if a respondent wishes to be contacted about survey findings.
- On-line applications; Council may utilise online software applications to assist Council in interacting with its customers efficiently. Examples could include booking to attend Council Library Events, applying for grants, booking facilities and assets through Bookable, etc. Whilst these applications may be accessed from Council's website; users must familiarise themselves with that provider's Privacy Policy

Council enters into appropriate agreements with such online application providers to ensure that any personal information collected through these channels is appropriately stored and dealt with. Council ensures that the provider has an appropriate Privacy policy which becomes part of any agreement. Customers re-directed to a third-party website should familiarise themselves with that provider's Privacy Policy.

5.8 Storage of Personal Information

Council takes reasonable steps to store personal information securely and only keeps it as long as is necessary for our services, activities, and functions. When the time comes to dispose of the information we have collected, it will be disposed of safely and appropriately (IPP 5 & HPP 5).

Council may comply with Principle 5 via any or all of the following policies and protocols:

- Policy on Access to Council Documents
- Information Management Policy
- Protocol on Disposal of Council Records
- Protocol on Access to Personnel Records
- General Records Disposal Schedule for Local Government.

Personal information is stored electronically, in physical files, and in Cloud storage through third-party hosting services. Council implements reasonable security safeguards to protect this information from being accessed, used, modified, or shared by unauthorised persons.

The following applies to the information Council holds:

- Only Council employees can access personal information
- Employees will make every effort to ensure personal information is accurate before using it
- Employees will use personal information only for the purpose for which it was collected
- Employees will not disclose personal information about a person to anyone without the consent of the person it concerns unless they are required or permitted to by law.

Electronic information is stored on secure information systems. Networks will be secure and require individual logins. New systems are assessed for compliance with the PPIP Act and HRIP Act. Hard copy files and sensitive information are securely stored when not being used.

In practice, Council has IT security requirements, including passwords, set out in Council's Information and Communication Technology policy. Council's Information Management Policy will manage Paper-based and electronic records.

5.9 Applications for suppression of general information (not public registers)

Under s.739 of the Local Government Act (LGA), a person can make an application to suppress specific material that is available for public inspection in circumstances where the material discloses their place of living if the person considers that the disclosure would place their safety or their family at risk.

Similarly, a person about whom personal information is contained (or proposed to be included) in a public register may request Council under section 58 of the PPIP Act to remove the information from or not placed on the register.

Council will suppress the information in accordance with the request unless Council believes that the public interest in maintaining public access to the information outweighs any individual claim to hide the information, in accordance with section 58(2) of the PPIP Act.

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

Any information removed from or not placed on a public register 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 Director Corporate & Governance and must outline the reasons for the request. The Council may require supporting documentation where appropriate.

5.10 Public registers

What is a public register?

A public register is defined in section 3 of the PPIP Act: "...*public register means a register of personal information required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).*"

Section 57 of the PPIP Act sets out very stringent controls over disclosing personal information contained in a public register. It provides that where Council is responsible for keeping a public register, it will not disclose any personal information held in that register unless it is satisfied that the information is to be used for a purpose relating to the register or the Act under which the register is kept.

A distinction needs to be drawn between "public registers" within the meaning of Part 6 of the PPIP Act and "non-public registers". A "non-public register" is a register, but it is not a "public register" for the purposes of the PPIP Act. For example, the register might not be publicly available, or it may not contain personal information.

Disclosure about public registers must comply with Part 6 of the PPIP Act and the Privacy Code. A person cannot access personal information about another person unless the personal information is contained in a public register. Where personal information is collected 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.

Accordingly, Council will permit public access to one entry or one page of a public register without requiring the applicant to state their purpose for access. However, more extensive access will not be granted unless the

applicant furnishes Council with a statutory declaration as to the proposed use of the information to be obtained from the register and that use conforms with the purpose for which the register is kept.

Disclosure about all other personal information must comply with the Information Protection Principles outlined in this Plan and the Privacy Code, including personal information that is not published.

The Council holds the following public registers:

Records of Approvals (s113 LGA) – the primary purpose is to identify all approvals granted under the Local Government Act.

Rates Record (s602 LGA) – the primary purpose is to record the value of a parcel of land and record rate liability for that land. The secondary purpose includes recording the owner or lessee of each parcel of land.

Register of Pecuniary Interests (s449-450A LGA) – the primary purpose is to determine whether or not a Councillor or member of a Council committee has a financial interest in a matter with which Council is likely to be concerned. There is a corresponding public accountability purpose, and third-party access is a secondary purpose.

Land Register (s53 LGA) – the primary purpose is to identify all land vested in Council or under its control. The secondary purpose includes consideration of public accountability as to the land held by the Council. Third-party access is, therefore, a secondary purpose.

Register of Consents and Approvals (s100 EP&A Act) – the primary purpose is to identify applications for development consent and other approvals, confirm determinations on appeal and identify applications for complying development certificates.

Record of Building Certificates (s149G EP&A Act) – the primary purpose is to identify all building certificates. Contributions Register (s34 EP&A Act) – the primary purpose is to identify the s94 contributions or s94A levies imposed on development consents.

Register of Licences (s308 POEO Act) – the primary purpose is to identify licences granted under the Act.

Record of Impounding (ss30 & 31 Impounding Act) – the primary purpose is to identify any impounding action by Council.

5.11 Other registers

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

5.12 Transparency, Access, and Correction

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 has any information about a person, upon request, it will advise them on the nature of that information, the primary 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.

Under section 20(5) of the PPIP Act, Information Protection Principle 6 is subject to any applicable conditions or limitations contained in the Government Information (Public Access) Act 2009 ("GIPA Act"). Council must consider the relevant provisions of the GIPA Act.

Any person can apply to Council by completing the appropriate form and submitting it to Council. An example is in Appendix 1.

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 to assist Council in searching.

Council will ordinarily respond to applications of this kind within 28 days of the application being made. The fee structure is proportional to the Council's GIPA Act rate structure.

A person wishing to have access to a public register to confirm their details needs only to prove their identity to Council before having access to their personal information.

Council will take reasonable steps to enable a person to find out about the personal information it holds, the purposes for which it is used, and how a person may gain access to the information held by Council, as required by IPP 6 & HPP 6. This Plan helps to serve that purpose.

Individuals have a right to know:

- Whether Council holds information about them
- The nature of the information being held
- The primary purpose(s) for which it is being used
- How they can access their information, and
- How they can correct this information if it is not accurate

Persons whose personal information is held by Council may apply to Council to amend that information to ensure it is:

- accurate,
- relevant, having regard to the purpose for which it was collected, and
- up-to-date, and
- not misleading.

Council is exempt from complying with Principle 8 in situations where compliance is reasonably likely to detrimentally affect Council's conduct of an investigation.

If Council is not prepared to amend the personal information as requested, then Council may attach to the information any statement provided by the applicant.

Council will seek to notify, where reasonably practicable, the recipients of personal information of any amendment made to the information.

Note that for the purposes of s.10 of the HRIPA, Council is not considered to have "collected" health information if the receipt of the information by Council is unsolicited.

S.4(5) of the PPIP Act also provides that personal information is not "collected" by Council if it is unsolicited.

5.13 Complaints and Breaches

If you believe that there has been a breach of your privacy by the Council, you may make a complaint in writing to Council's Information Privacy Officer.

5.14 Additional Health Principles

Wherever it is lawful and practicable, Council will give individuals the opportunity not to identify themselves when entering into transactions with Council.

Council will not transfer health information either:

- interstate, or
- to a Commonwealth agency, except in compliance with Health Principle 14.

Council will not include health information about an individual in a health records linkage system except in compliance with Health Principle 15. For this principle's purposes, a health records linkage system is a computerised system designed to link health records for individuals held by different organisations to facilitate access to health records.

5.15 Data Breaches

While Council is committed to protecting the privacy of personal and health information, there is always some risk of a data breach. In a data breach, Council will respond according to the process below.

What is a data breach?

A data breach is if personal information is:

- lost
- accessed without authority, or
- disclosed without authority.

Some examples of data breaches include:

- accidental loss or theft of information or equipment on which information is stored (e.g., loss of a paper record, laptop, or USB stick)
- accidental or unauthorised disclosure of personal information (e.g., an email containing personal information is sent to the incorrect person)
- unauthorised access to information, or systems that hold information, by way of malicious behaviour, phishing attacks, or malware

Responding to a data breach

If you believe there has been a data breach involving Council, you will need to notify the Privacy Officer, who will assist in assessing and managing the breach and work to make sure it does not happen again.

All suspected or confirmed data breaches and 'near misses' must be reported immediately to the Privacy Officer.

To determine the nature of the breach, Council will consider:

- the type of information that was disclosed
- the number of individuals affected, and
- the risk of harm that could be caused to individuals and Council by the breach.

Council will take the following steps to manage a data breach

Contain

Council will take immediate actions to contain the breach to minimise any resulting damage or harm.

Evaluate

To determine the following steps, the type of information involved in the breach will be assessed, including any risks associated with the breach. This will also include assessing what caused the breach, who has been impacted, and any foreseeable harm to the affected individuals/organisations.

Notify

Council will notify the individuals/organisations affected as soon as possible to enable them to take any steps needed to protect themselves and advise them of their rights to complain to the Privacy Commissioner.

Council may decide not to notify in some circumstances if notification is likely to cause more harm than it would alleviate.

Councils' default position is to voluntarily report data breaches to the Privacy Commissioner. See the NSW IPC website for more on data breach notification.

Act

Any additional action identified to mitigate risks or harm will be implemented.

Prevent

Council will identify steps it can take to prevent similar breaches from occurring.

5.16 Investigative Functions

Where Council is conducting an investigation, it will have regard to any appropriate direction of the Privacy Commissioner under section 41 of the PPIP Act that may affect the application of Information Protection Principle 6. The recommendations are made from time to time and are available on the IPC website.

5.17 Existing 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 usually 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.

5.18 Reporting matters

The Council will issue a statement to be included on its Web page and in its Annual Report concerning the nature of personal information it regularly collects, the purpose for which the personal information is used and an individual's right to access their personal information.

Both the PPIP and the HRIP Acts contain information concerning 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.

5.18.1 Offences can be found in s62-68 of the PPIP Act.

It is an offence for Council to:

- Intentionally disclosing or using personal information for any unauthorised purpose
- Offer to supply personal information that has been disclosed unlawfully
- Hinder the Privacy Commissioner or their employees from doing their job

5.18.2 Offences can be found in s68-70 of the HRIP Act.

It is an offence for Council to:

- Intentionally disclosing or using health information for any unauthorised purpose
- Offer to supply health information that has been disclosed unlawfully.

5.19 Supporting documentation- Privacy Management Procedures

Council has prepared Privacy Management Procedures for staff. These procedures detail how Council deals with personal information and health information it collects to ensure that it complies with the PPIP Act and the HRIP Act.

Council ensures that its staff know and understand this Plan through training and awareness activities. How it applies to the work they do, so they know what their privacy obligations are, how to manage personal information in their work, and what to do if they are unsure. Council takes steps to ensure that all Council staff are acquainted with the general provisions of the PPIP Act, the HRIP Act and in particular, the 12 IPPs, the 15 HPPs, the Public Register provisions, the Privacy Code of Practice for Local Government, this Plan, and any other applicable Privacy Code of Practice.

Some of the ways Council promotes awareness of privacy among employees are by:

- publishing this Plan on the Council's website
- communicating regularly with employees about privacy,
- including this Plan in Induction Programs,
- providing an online training module as part of its Induction Program
- offering training (in-person and online)
- promotional activities via Council's Intranet

When employees have questions about managing personal information under this Plan, they may consult their People Manager or the Privacy Officer.

5.20 Minimising risk through public awareness and staff training

To make members of the public aware of what personal and health information is being collected and what it is being used for, to who it is disclosed, and how it can be accessed or amended, Council will place and promote its Policy as open-access information on its web site.

This Policy and Council's Privacy Management Procedures, which further explain how staff deal with personal and health information in compliance with Council's policies and procedures and the Privacy legislation, are available on Council's staff intranet.

Front-line staff and regulatory staff who deal with the public and collect personal or health information will be provided with access to this Policy, the Privacy Management Procedures and online learning resources.

Gaining familiarity with the Policy and the Privacy Management Procedure is incorporated into Council's staff induction activities.

The Council's committees formed under Section 355 of the Local Government Act and its Advisory committees are informed of this Policy.

5.21 Promoting Privacy

Council reinforces compliance with the PPIP Act and HRIP Act by:

- Endorsing this Policy and making it publicly available
- Providing a copy of this Policy to relevant oversight bodies such as the Audit, Risk, and Improvement Committee
- Reporting on internal reviews to the IPC
- Identifying privacy issues when implementing new systems, services, and processes.

5.22 Employee awareness

Council ensures that its employees know and understand this Policy and its application to their work. Council promotes awareness of privacy obligations among employees by:

- Publishing Council's Policy on Council's intranet and website
- Providing advice to employees about Council's obligations under the PPIP Act and HRIP Act
- Ensuring Council forms and applications comply with privacy legislation
- Including this Policy in induction packs
- Providing Online training module on commencement and yearly refreshers
- Promoting the IPC's privacy resources and online training.

5.23 Public awareness

This Policy provides information to members of the public about how Council manages personal and health information. The Policy is publicly available as open access information under the GIPA Act. Council promotes public awareness of the Council's Privacy Management Plan by:

- Publishing the Policy on Council's website
- Providing copies of the Policy on request
- Informing external customers about the Policy when responding to personal and health information inquiries.

5.24 Confidentiality

The obligation of confidentiality is additional to and separate from that of privacy. Nevertheless, a duty to withhold information lies at the heart of both concepts. Confidentiality attaches to information per se, personal or health information to the person to whom that information relates.

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

The information that may be confidential is also likely to have a separate and independent obligation attached to it in privacy. In that regard, a release for confidentiality will not suffice for privacy purposes. Two different releases will be required, and the person to whom the information relates will be required to provide the release in the case of privacy.

5.25 Exemptions, directions, and codes of practice

5.25.1 Exemptions to the Information Protection Principles (IPPs)

Part 2, Division 3 of the PPIP Act contains exemptions that may permit Council not to comply with IPPs in certain situations. These include the following:

- Council is not required to comply with IPPs 2-3, 6-8, or 10-12 if lawfully authorised or required not to do so
- Council is not required to comply with IPP 2 if the information concerned is collected in relation to court or tribunal proceedings.

5.25.2 Exemptions to the Health Privacy Principles (HPPs)

Exemptions are located mainly in Schedule 1 to the HRIP Act and may permit Council not to comply with HPPs in certain situations. For example, Council is not required to comply with HPPs 4-8 and 10 if lawfully authorised or required not to do so.

5.25.3 Privacy codes of practice

A Privacy Code of Practice allows Council to modify the application of:

- an Information Protection Principle (IPP); or
- provisions that deal with public registers.

These Codes also specify how modifications will apply in particular situations.

5.25.4 Privacy Code of Practice for Local Government

This Code provides exemptions to IPP 2, 3, 10 and 11 as follows:

- Access to and copies of a single entry from a public register or de-identified multiple entries can be provided without the need for the applicant to give a reason or a statutory declaration on their purpose (IPP 2)
- Where it is reasonably necessary, Council may indirectly collect, use, or disclose personal information to confer an award, prize, or similar form of individual recognition on the person to whom the information relates (IPP 2, 3 and 11)
- In pursuance of the Council's lawful and proper functions, Council may use personal information for a purpose other than the purpose for which it was collected (IPP 10)
- Council may disclose personal information to public sector agencies or public utilities on the condition that:
 - i. the agency or public utility has made a written request to Council (an email will suffice).
 - ii. Council is satisfied that the personal information is to be used by that agency or public utility for their proper and lawful function(s); and
 - iii. Council is satisfied that the personal information is reasonably necessary to exercise that agency utility's function(s) (IPP11).

6 Appeal/objections process

6.1 Making a privacy complaint

To inquire how Council handles your personal information or raise a concern, please contact our Privacy Officers. The Council's Privacy Officers can be reached at:

Clarence Valley Council

Phone: 02 66430200

Email: council@clarence.nsw.gov.au

Mail: PO Box 23 Grafton NSW 2460

COUNCIL encourages informal resolution of privacy issues.

However, if you believe COUNCIL has breached the PPIP Act or HRIP Act about your personal information, you have the right to seek a formal process known as an 'internal review'.

6.2 Internal Review

An internal review under Part 5 of the PPIP Act is an internal investigation that the Council conducts into a privacy complaint. Council will assess the complaint and if it has complied with the privacy principles and then communicate the findings with the applicant.

Applications for an internal review must:

- be in writing (we recommend using the internal review application form developed by the NSW Information & Privacy Commission)
- be addressed to Council's Privacy Officer
- be made within six months of when you first became aware of the conduct, and
- be related to your personal information (including health information).

Upon receiving the application, the Privacy Officer will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the application and must be suitability qualified.

Council will complete the internal review as reasonably practicable in the circumstances. If the review is not completed within 60 days, you can seek an 'external review'.

The Council must notify the Privacy Commissioner of an internal review application as soon as practicable after its receipt, keep the Commissioner informed of the review's progress, and notify the Commissioner of the review's findings and the action it proposes to take. Council may also provide a copy of any submission by the Privacy Commissioner to the applicant.

Council will notify the applicant in writing within 14 days of completing the internal review of:

- the findings of the review
- actions proposed to be taken by Council (if any), and
- the right of the applicant to have their complaint reviewed by the NSW Civil and Administrative Tribunal ('external review').

A copy of the final review report should also be provided to the Privacy Commissioner, where it departs from the draft review report.

An internal review checklist has been prepared by the NSW Information & Privacy Commission and can be accessed from its website <http://www.ipc.nsw.gov.au>.

6.3 Role of the Privacy Commissioner

The Privacy Commissioner has an oversight role in how agencies handle privacy complaints and is entitled to make submissions to Council about internal reviews. Council is required to consider any relevant material submitted by the Privacy Commissioner. The Council must provide the Privacy Commissioner with a draft of the council's internal review report to enable the Privacy Commissioner to make a submission.

6.4 External review

If the applicant disagrees with the outcome of an internal review or is not notified of an outcome within 60 days, they have a right to seek an external review. The applicant can appeal a decision to review the Council's conduct to the NSW Civil and Administrative Tribunal (NCAT). An appeal must be lodged with NCAT within 28 days of the Council's determination. NCAT may order Council to change its practices, apologise or take steps to remedy any damage. NCAT may also award compensation if warranted.

The contact details for NCAT are:

NSW Civil and Administrative Tribunal
Administrative and Equal Opportunity Division
Phone: 1300 006 228 Level 10, John Maddison Tower, 86-90 Goulburn Street, HAYMARKET NSW 1240 Mail:
PO Box K1026, SYDNEY NSW 2000

Alternative to Lodging an Internal Review

If a person does not want to apply for internal review with Council, they may contact the Privacy Commissioner directly, not as an external review mechanism, but as a complaint.

The contact details for the Privacy Commissioner are:

NSW Information and Privacy Commission

Phone: 1800 472 697

Email: ipcinfo@ipc.nsw.gov.au

Mail: PO Box 7011, SYDNEY NSW 2001

6.5 Annual reporting

Council must report on the number of reviews and complaints received in its Annual Report to demonstrate accountability and transparency.

6.6 Responsibilities of the Privacy Officer

To ensure compliance with the PPIP Act and the HRIP Act, the Privacy Officer will review all contracts and agreements with consultants and other contractors, rates notices, application forms, and other written requests. Council routinely collects personal information to ensure that Council complies with its collection obligations.

The Privacy Officer will also ensure Council in its public areas has special provisions for working with computer screens. Computer screens may require:

- fast screen savers.
- face the computers away from the public; or
- only allow the record system to show one record at a time.

Council's electronic databases should also be reviewed to ensure that they contain procedures and protocols to check the accuracy and currency of personal information.

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

- whether the personal information is collected for a lawful purpose
- if that lawful purpose is directly related to a function of the Council
- whether or not collecting that personal information is reasonably necessary for the specified purpose.

Any further concerns of a legal nature will be referred to Council's solicitor.

7 Related Documents

Other related policies, procedures and guidelines include:

- CVC Code of Conduct
- CVC Code of Meeting Practice
- CVC Councillors Access to Information & Interaction with Staff Policy
- Model Privacy Management Plan for Local Government 2013 (Division of Local Government)
- Privacy Governance Framework 2016 (NSW Information & Privacy Commission)
- Guide to Making Privacy Management Plans August 2012 (NSW Information & Privacy Commission)
- Privacy Code of Practice
- CVC Complaints Management Policy
- Council's Information and Communication Technology policy
- CVC Public Interest Disclosures Policy
- CVC Information Management Policy

- CCTV Code of Practice
- CVCL Risk Management Policy
- CVC Delegations Register
- CVC Debt Recovery - Ordinary Rates and Annual Charges
- CVC Debt Recovery – Water Billing Policy
- CVC Library Regional Library Circulation and Membership

8 Attachments

APPENDIX 1: Application under Section 13 of the Personal Information Protection Act 1998: To determine whether Council holds personal information about a person.

APPENDIX 2: Application under Section 15 of the Privacy and Personal Information Protection Act 1998 – For Alteration of Applicant’s Personal Information

Enquiries concerning the Privacy Management Plan should be made to Council’s Privacy Officer:

Director Corporate & Governance,
Clarence Valley Council
Locked Bag 23,
Grafton NSW 2460
Telephone: 02 6643 0200
Email: Council@clarence.nsw.gov.au
www.clarence.nsw.gov.au

Appendix 1

Application under Section 13 of the Privacy and Personal Information Protection Act 1998 – To determine whether Council holds Personal Information about a person.

Personal information held by Council

I, (name)..... of

(address),

request the General Manager of Council provides the following:

Does Council hold personal information about me?

If so, what is the nature of that information?

What is the primary purpose for keeping the information?

Am I entitled to access the information?

My address for response to this Application is:

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

Note to applicants:

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

As an applicant, you have a right to access personal information concerning yourself that the Council holds under section 14 of the Privacy and Personal Information Protection Act 1998 ("the Act").

There is a separate application form to gain access. Council may refuse to process this application in part or in whole if:

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

Appendix 2

An application under Section 15 of the Privacy and Personal Information Protection Act 1998 – For Alteration of Applicant’s Personal Information

Personal Information held by Council:

I, (name).....

of (address),

request Council to alter personal information regarding myself in the following manner: I propose the following changes:

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

The reasons for the changes are as follows:

.....
.....

The documentary basis for those changes is as shown in the attached documents:

.....
.....

Note to Applicants:

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

(a) is accurate, and

(b) regarding the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.

If Council is not prepared to amend the personal information requested by you, Council must take such steps as are reasonable to attach the information to Council records in such a manner as is capable of being read, any statement provided by you.

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

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

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