

PRIVACY POLICY

1.0 Purpose

The City of Ballarat (Council) views the protection of an individual's privacy as an integral part of its commitment towards accountability and integrity in all its activities and programs. The purpose of this policy is to outline Council's commitment to protecting an individual's right to privacy and the management of personal information as required by the *Privacy and Data Protection Act 2014* as well as health information as required by the *Health Records Act 2001*. It is also a requirement under Information Privacy Principle 5 of the *Privacy and Data Protection Act 2014* for Council to make this Privacy and Health Records Policy available to the public.

This policy has been designed to create transparency around:

- Council's main functions and the types of personal information it collects to fulfil those functions;
- How Council uses and shares the personal information it collects, including which third parties the information may be shared with and any legislation that authorises or permits the organisation to collect and handle the personal information;
- How the information is stored and kept secure;
- How individuals can contact Council's Privacy Officer and make a privacy complaint.

2.0 Scope

The policy applies to all personal and health information which is collected, used and disclosed by any area of Council. All employees (whether full-time, part-time or casual), Councillors, contractors and volunteers engaged by Council are required to adhere to this policy.

The object of this policy is to ensure that when personal and health information is collected it is stored appropriately, and that an individual's privacy is maintained in accordance with the *Privacy and Data Protection Act 2014*, the *Health Records Act 2001* and other applicable legislation.

The policy covers all personal and health information held by Council and includes information it has collected:

- About the individual, through any of Council's public access interfaces;
- From the individual, as well as information about the individual collected from third parties; and
- About the individual, regardless of format. This includes information collected on forms, in person, in correspondence, over the telephone, via Closed Circuit Television (CCTV) or via our various web sites.

3.0 Policy Statement

3.1 Types of information Council collects

3.1.1 Personal Information

Personal Information is 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, but does not include information of a kind to which the *Health Records Act 2001* applies.

Personal information includes for example:

- Name;
- Address;
- telephone number;
- date of birth;
- age;
- sex; or
- marital status.

3.1.2 Health Information

Health information is any information or opinion about an individual's physical, mental, or psychological health, health services, disabilities, organ donation, and genetic information, as well as any personal information supplied for the purpose of obtaining a health service.

Health information includes for example:

- record of injury or disability;
- immunisation records;
- maternal and child health records;
- Workcover records; or
- fitness charts (e.g. Gyms).

3.1.3 Sensitive Information

Sensitive information is personal information or an opinion about an individual's:

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

3.2 Management of Personal Information

Unless required under specific legislation related to a particular service, it is the policy of Council that personal information is managed in accordance with the 10 Information Privacy Principles (IPPs) as stipulated in Schedule 1 of the *Privacy and Data Protection Act 2014*. Council manages health information in accordance with the 11 Health Privacy Principles (HPP's) as stipulated in Schedule 1 of the *Health Records Act 2001*.

While the IPP's and HPP's are strongly aligned, HPP10 and HPP11 have some key differences and are therefore listed separately below.

Several Departments within Council collect health information including – Maternal and Child Health, Children's Services, Immunisation, Ballarat Aquatic & Lifestyle Centre, Active Ageing, and People & Performance.

3.2.1 IPP 1- Collection of Personal Information

Council will only collect personal information that is necessary for the functions or activities of Council.

If Council is required to collect personal information, it will only be collected by lawful and fair means and not in an unreasonably intrusive way. If it is reasonable and practicable to do so, personal information will be collected directly from an individual, however there are situations where Council may need to collect an individual's information from someone else.

When collecting personal information, Council will take reasonable steps to advise the individuals concerned of what information is being collected, for what purpose, whether the law requires the collection of the information and the main consequences, if any, of not providing the information. If Council are collecting information in hard copy or online, the notice will be provided in a form similar to below:

Your personal information is being collected by City of Ballarat for the purpose of [insert purpose ie. processing your application for a planning permit]. Your information will be stored in [insert relevant database ie. Councils database or CDIS] and used to identify you when communicating with Council and for the delivery of services and information. For further information on how your personal information is handled, refer to Council's Privacy Policy at www.ballarat.vic.gov.au

Photographs and CCTV are at times taken on Council's premises and in public places. The photographs or video footage may be used by Council for publicity or for enforcement purposes.

Where practicable, consent will be obtained through a photo release and permission form. When photographs are taken in a public space (e.g. during a community event) and obtaining the individual consent via the forms is not practicable, Council will use other methods to inform members of the public that photographs, or CCTV are being taken and how they will be used including signs or a public announcement. These methods will inform the individual that the footage may be taken, and the individual has the opportunity to approach and advise Council officers or the photographer that they do not want the photos or footage to be used.

3.2.2 IPP 2 – Use and Disclosure

Council will not use or disclose individual's personal information other than for the primary purpose for which it was collected unless one of the following apply:

- For a secondary purpose that the individual would reasonably expect;
- Where we have the individual's consent; or
- Law enforcement purposes and to protect safety.

In addition to the above, there are circumstances in which Council are able to disclose information to third parties without consent as legislated in:

- Child Information Sharing legislation;
- Family Violence Information Sharing legislation; and
- *Responsibilities under the Child, Youth and Families Act (2005).*

Council discloses personal information to external organisations such as Council's contracted service providers who perform various services for and on behalf of the Council. These contractors have agreed to be bound by the provisions of the *Privacy and Data Protection Act 2014*. Information provided to these contractors is limited to the information required by them to provide services to the individual on behalf of Council.

Personal information in applications for employment with Council will be supplied to agencies such as Victoria Police, as part of a background check. Such checks will only be carried out with the individuals written authorisation and the results will not be disclosed to third parties unless authorised by law.

Personal information provided by individuals as part of a public submission to a Council or committee meeting may be included with the published agenda papers and minutes of the meeting. The published agenda papers and minutes are displayed online and available in hardcopy format for an indefinite period.

Personal information may also be contained in Council's Public Registers. Under the *Local Government (General) Regulations 2015*, any person is entitled to inspect Council's Public Registers, or make a copy of them, upon payment of the relevant fee.

Council will ensure that an individual's personal information is not disclosed to other institutions and authorities outside Council except if required or authorised by law or where Council have the individual's consent.

3.2.3 IPP 3 – Data Quality

Council will take reasonable steps to make sure that the personal information it collects, uses or discloses, is accurate, complete and up-to-date.

3.2.4 IPP 4 – Data Security

Council will take all necessary steps to ensure that personal information is stored safely and securely to protect from misuse, loss, and unauthorised modification and disclosure.

Any personal information that an individual provides to Council, which is no longer necessary for Council's purposes, will be disposed of in accordance with the document disposal requirements of the *Public Records Act 1973*.

3.2.5 IPP 5 – Openness

On request, Council must inform an individual, in general terms, of what information it holds on the individual, for what purpose this information is held and how the information is collected, held, used and disclosed.

A copy of this Privacy and Health Records policy is available upon request by contacting a member of the Customer Service Team on 5320 5500 or via e-mail at info@ballarat.vic.gov.au. The policy may also be found on the City of Ballarat Website.

3.2.6 IPP 6 - Access and Correction

Requests for access to and correction of documents containing personal information are generally managed under the *Freedom of Information Act 1982*.

Requests under the *Freedom of Information Act 1982* must be made in writing stating as clearly and precisely as possible what information is required, and addressed to:

Safety, Risk and Compliance Services
City of Ballarat
PO Box 655
BALLARAT VIC 3353
Email: info@ballarat.vic.gov.au

Further information about submitting a request under the *Freedom of Information Act 1982* can be found on Council's website.

3.2.7 IPP 7 - Unique Identifiers

A unique identifier is a number or code that is assigned to someone's record to assist with identification (similar to a drivers licence number).

Council will only assign identifiers to records if it is necessary to enable Council to carry out a function efficiently. The only exception is Maternal Child Health clients who are assigned a unique identifier by the state-wide system – CDIS. This health record identifier does not nor cannot link to any Council identifier systems for purpose of any other Council business activity.

3.2.8 IPP 8 – Anonymity

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 so that it can perform its functions.

For some services such as Maternal and Child Health or Immunisation, individuals cannot remain anonymous as it is a legal requirement.

3.2.9 IPP 9 - Trans-border Data Flows

Council may transfer personal information about individuals to an individual or organisation outside Victoria only in the following instances:

- Council reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the Information Privacy Principles; or
- The individual consents to the transfer; or
- The transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of precontractual measures taken in response to the individual's request; or
- All of the following apply—
 - the transfer is for the benefit of the individual;
 - it is impracticable to obtain the consent of the individual to that transfer;
 - if it were practicable to obtain that consent, the individual would be likely to give it; or
- The organisation 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 IPPs.

3.2.10 IPP 10 - Sensitive Information

Subject to exclusions contained within the *Privacy and Data Protection Act 2014*, 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—
 - (i) is physically or legally incapable of giving consent to the collection; or

- (ii) physically cannot communicate consent to the collection; or
- the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

In addition to the above, there are circumstances in which Council are able to collect information from third parties without consent as legislated in:

- Child Information Sharing legislation;
- Family Violence Information Sharing legislation; and
- *Responsibilities under the Child, Youth and Families Act (2005)*

3.2.11 HPP 10 – Transfer or closure of the practice of a health service provider

This principle applies if the practice or business of a health service provider (the provider) is to be:

- sold or otherwise transferred and the provider will not be providing health services in the new practice or business; or
- closed down.

If the above is to occur, Council will publish that the practice or business has been, or is about to be, sold, transferred or closed down, as the case may be. Council will also publish the manner in which it proposes to deal with the health information held by the practice or business about individuals who have received health services from the provider, including whether the provider proposes to retain the information or make it available for transfer to those individuals or their health service providers.

No earlier than 21 days after Council publishes the above information, Council must elect to retain or transfer information to either the health services provider, if any, who takes over the practice or business, or the individual or health service provider nominated by the individual.

Despite any other provisions of the Health Privacy Principles, a person who transfers health information in accordance with this principle does not, by doing so, contravene the Health Privacy Principles.

3.2.12 HPP 11 – Making information available to another health service provider

If an individual:

- a) requests a health service provider to make health information relating to the individual held by the provider available to another health service provider; or
- b) authorises another health service provider to request a health service provider to make health information relating to the individual held by that provider available to the requesting health service provider -

a health service provider to whom the request is made and who holds the information about the individual must, on payment of a fee not exceeding the prescribed maximum fee and subject to the regulations, provide a copy or written summary of that health information to that other health service provider.

Council must comply with the requirements of this Principle as soon as practicable.

4 Supporting documents and references

4.1 Legislation

Child Information Sharing legislation
Education and Care Services National Law Act 2010
Education and Care Services National Regulations
Family Violence Information Sharing legislation
Freedom of Information Act 1982
Health Records Act 2001
Local Government (General) Regulations 2015
Local Government Act 2020
National Quality Standard (ACECQA)
Privacy Act 1988
Privacy and Data Protection Act 2014
Public Records Act 1973
Responsibilities under the Child, Youth and Families Act (2005)

4.2 Definitions

Health Privacy Principles (HPP's)	A set of principles under the Health Records Act 2001 that regulates the handling of health information.
Information Privacy Principles (IPPs)	A set of principles under the Privacy and Data Protection Act 2014 that regulates the handling of personal information.
Primary purpose	Primary purpose is one for which the individual concerned would expect their information to be used. Using the information for this purpose would be within their reasonable expectations.
Secondary purpose	Secondary purpose may or may not be apparent to the individual concerned, or within their reasonable expectations. Collecting the information may be mandatory (because required by law) or optional. The main distinction is that the service could still be provided even if the secondary purpose were not served.
Public Registers	Public Registers are document's that Council is required to make publicly available pursuant to legislation. These registers: <ul style="list-style-type: none"> • Are open to inspection by members of the public; • contain information required or permitted by legislation; • May contain personal information.

5 Policy owner

The owner of this policy is the Chief Executive Officer. All enquiries regarding this policy should be initially directed to the Executive Manager Safety, Risk and Compliance Services.

6 Authorisation

Adopted by Executive Leadership Team on 11th May 2020.