

# Privacy Management Plan

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## 1. Purpose

Section 33 of the *Privacy and Personal Information Protection Act 1998* ("PIIP Act") requires that all NSW councils prepare, implement and periodically review a Privacy Management Plan ("Plan"). The Plan must outline all policies, procedures and practices adopted by AlburyCity Council (Council) to ensure compliance with the PIIP Act, the *Health Records and Information Privacy Act 2002* ("HRIP Act") and the *Privacy Code of Practice for Local Government 2000* ("Privacy Code")

The purpose of this Plan is to outline to the community and Council staff, the principles, procedures and guidelines that are followed by Council in order to achieve and maintain compliance in relation to

- the collection, use, storage, security and destruction of personal and health information, and
- the access to, and disclosure of, personal and/or health information to a person or persons

## 2. Objective

The Plan is intended to provide specific guidance and instruction to the Community and Council staff on

- the manner in which personal and health information is collected, stored, secured, used, accessed, disclosed and destroyed by Council
- how members of the community may access, amend and update any personal or health information collected and stored by Council
- the steps to be taken in the event that an individual believes that Council has breached its obligations under the PIIP Act and/or the HRIP Act in relation to that individual's personal or health information
- the processes and procedures followed by Council in relation to any identified breaches of personal or health information
- how Council policies and procedures are developed and implemented in accordance with relevant legislation and guidelines issued by the Information and Privacy Commissioners NSW
- how Council disseminates these policies and procedures within Council and trains employees in their use
- the internal and external review processes and procedures in relation to the management of personal and health information
- anything else Council considers relevant to the Plan in relation to privacy and the management of the personal and health information it holds

The Plan supports Council's Privacy Management Policy and procedures.

### 3. Scope

The Plan applies to all Council officials including (but not limited to)

- Councillors
- Council employees, including all permanent or temporary full time, part time or casual staff
- contractors and consultants
- volunteers
- Council owned business
- Council committees
- any individual working for and on behalf of Council in whatever capacity

Council will take reasonable steps to ensure that all such parties are made aware that they must comply with the PPIP Act, the HRIP Act, any other applicable Privacy Code of Practice and this Plan

### 4. Legislative framework

The protection of personal and health information is governed by a number of NSW and Federal Acts of Parliament that Council is subject to and includes

- *Privacy and Personal Information Protection Act 1998* (PIIP Act)
- *Privacy and Personal Information Protection Regulation 2014* (PIIP Regs)
- *Health Records and Information Privacy Act 2002* (HRIP Act)
- *Health Records and Information Privacy Regulation 2017* (HRIP Regs)
- *Government Information (Public Access) Act 2009* (GIPA Act)
- *Government Information (Public Access) Regulation 2009* (GIPA Regs)
- *State Records Act 1998* (SR Act)
- *Privacy (Tax File Number) Rule 2015 – s17 Privacy Act (Cth) 1988* (Privacy Tax Rule)
- *Privacy Code of Practice for Local Government 2000* (Privacy Code)
- Guide to Making Privacy Management Plans (IPC, August 2012)
- Privacy Management Plans – Checklist (IPC, June 2014)
- *Public Interest Disclosures Act 1994* (PID Act)
- *Local Government Act 1993* (LG Act)

These Acts of State and Federal Parliament contain specific provisions that describe the manner in which personal and health information is to be handled by Council

## 5. Related policies and procedures

The Plan should be read in conjunction with Council's policies and procedures relevant to the protection of personal and health information and include

- AlburyCity Access to Personnel and Personal Information Policy
- AlburyCity Code of Conduct
- AlburyCity Code of Meeting Practice
- AlburyCity Complaints Management Policy
- AlburyCity Contractor IT Access Policy
- AlburyCity Corruption Control Policy
- AlburyCity Data Backup Policy
- AlburyCity Disciplinary Procedure
- AlburyCity Employee or Independent Contractor Policy and Procedure
- AlburyCity Gathering Information Policy
- AlburyCity Information Release to Members of the Public Procedure
- AlburyCity Internal Investigation Policy and Procedure
- AlburyCity Internal Reporting – Public Interest Disclosure Policy and Procedure
- AlburyCity IT Acceptable Use Policy
- AlburyCity IT Password Policy
- AlburyCity Legislative Compliance Policy and Procedure
- AlburyCity Non AlburyCity Computer Policy
- AlburyCity Physical Security of IT Systems Policy
- AlburyCity Privacy Management Policy
- AlburyCity Privacy Statement
- AlburyCity Public Access to information Policy and Procedure
- AlburyCity Recording and Webcasting of Public Meetings and Forums Procedure
- AlburyCity Records Management Policy
- AlburyCity Records Management Business Rules
- AlburyCity Records Management Procedure
- AlburyCity Recruitment and Selection Policy and Procedure
- AlburyCity Reward and Recognition Framework Policy and Procedures
- AlburyCity Risk Management Policy
- AlburyCity Secure Disposal of Data Policy
- AlburyCity Security Awareness Policy
- Albury City Staff Exit Policy

- AlburyCity Volunteer Policy and Procedure
- AlburyCity Website Privacy Statement
- Albury City Workplace Surveillance Policy and Procedure

## 6. Definitions

**Collection** (of personal information) the way in which the Council acquires personal or health information, which can include a written or online form, a verbal conversation, a voice recording, email, letter, photograph or video

**Council Staff** (also known as *Public Sector Officials* or *Council Officials*) includes Councillors; Council employees including all permanent or temporary full-time, part-time and casual staff, consultants; volunteers; contractors; administrators, delegates and internal or external members of Council committees

**Disclosure** (of personal or health information) occurs when Council makes known to an individual or entity personal or health information not previously known to them

**Express consent** means consent that is clearly and unmistakably communicated and is given with precise knowledge of the kind (and possibly the exact contents) of information to which the consent relates

**Impracticable** means impossible in practice. (For example, it is impracticable to obtain consent from an individual if they have died, the age/volume of information is such that it would be impossible to track them down, there are no current contact details or there is insufficient information to obtain current contact details.)

**Law enforcement** means activities or actions undertaken in response to any known or suspected breach of criminal law and/or enforcement of that law under any criminal law, Act or statute

**Privacy principles** means the Information Protection Principles set out in Division 1 of Part 2 of the PPIP Act and Health Privacy Principles set out in Schedule 1 of the HRIP Act. The privacy principles set out the minimum standards for all NSW public sector agencies when handling personal and health information. Within these principles lawful exemptions are provided

**Public register** means a register of personal information that is required by law to be, or is made, publicly available or open to, public inspection (whether or not on payment of a fee)

**Privacy obligations** means the privacy principles and any exemptions to those principles that apply to Council as a local government agency

**Transborder data flow** means the movement of information from one jurisdiction to another. Borders may be local, state, federal or international and include geographical and political borders.

**Transborder Consent** means express consent (as defined above) that includes the following knowledge

- a) that the information will likely be sent to a person(s) or body(s) outside NSW jurisdiction
- b) that the person(s) or body(s) might not be bound by privacy principles that could be enforced by the individual

## Part 1 Personal and health information

### 1. What is personal information?

1.1 Section 4, Part 1 of the PPIP Act defines personal information as

*"...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."*

1.2 Personal information may be stored on a database and does not necessarily have to be recorded in a material form

1.3 Personal information includes information such as

- fingerprints, retina prints, body samples or genetic characteristics
- gender, ethnicity, sexual preference, family circumstances
- financial information, employment details, certain business information
- geophysical location, home address, email address
- photographs, drawings, video and/or audio recordings
- referee comments about an individual's career, performance and attitude
- information arising from participation in activities such as hobbies, clubs, sports, interests
- information about an individual's tastes or preferences as revealed by their online internet browsing history or online purchases

1.3 With regard to 'health information', only health information that is contained in a public register under section 56A, Part 6 Public Registers of the PPIP Act is considered to be "personal information" for the purposes of the PPIP Act

1.4 Health information that is not contained on a public register is excluded from the definition of 'personal information' under the PPIP Act

### 2. What is not personal information?

2.1 The PPIP Act specifically excludes the following information from the definition of what constitutes 'personal information' for the purposes of the Act

- a) information about an individual who has been dead more than 30 years
- b) information about an individual that is contained in a publicly available publication
- c) information about a witness who is included in a witness protection program
- d) information about an individual arising out of a warrant issued under the Telecommunications (Interception) Act 1979
- e) information about an individual that is contained in a public interest disclosure within the meaning of the Public Interest Disclosures Act 1994, or that has been collected in the course of an investigation arising out of a public interest disclosure



- f) information about an individual arising out of, or in connection with, an authorised operation within the meaning of the Law Enforcement (Controlled Operations) Act 1997
- g) information about an individual arising out of a Royal Commission or Special Commission of Inquiry
- h) information about an individual arising out of a complaint made under Part 8A of the Police Act 1990
- i) information about an individual that is contained in Cabinet information or Executive Council information under the Government Information (Public Access) Act 2009
- j) information or an opinion about an individual's suitability for appointment or employment as a public sector official,
- k) information about an individual that is obtained under Chapter 8 (Adoption information) of the Adoption Act 2000
- l) information about an individual that is of a class, or is contained in a document of a class, prescribed by section 5 of the Privacy and Personal Information Protection Regulation 2014

2.2 Section 4A of the PPIP Act specifically excludes from the definition of 'personal information' any health information defined under section 6 (a) to (e) of the HRIP Act

### **3. Personal information collected and held by Council**

3.1 For personal information to be considered 'held' by Council, the information must

- be in Council's possession or control of, or
- be in the possession or control of a person employed or engaged by Council during the course of employment or engagement, or
- be contained in a State record in respect of which Council is responsible under the *State Records Act 1998*

3.2 Information collected and held by Council may include

(a) Councillors

- personal contact information
- complaints and disciplinary matters
- pecuniary interest returns and conflict of interest declarations
- entitlements to fees, expenses and facilities
- CCTV footage
- bank account details
- tax file numbers and superannuation information

- (b) Customers, ratepayers and residents
- rates records
  - development applications and related submissions
  - library lending records
  - library special needs statements
  - leases, licences and agreements
  - waste services records
  - customer requests
  - tree removal requests, including for requests for health reasons
  - fitness testing records
  - burial and cremation records
  - financial records
  - donation, grant and sponsorship applications
  - photos of vehicle registration plates
  - responses to clean up notices regarding health issues
  - youth health information for excursions
  - golf club records – membership, financial agreements, member fitness medical records
  - child care information, immunisation, illness and accident records
  - community service utilisation e.g. community transport
  - age and disability support records including health records
  - submissions and information collected as part of Council's community engagement and consultation activities
  - public access forum applications
  - CCTV footage
- (c) Employees, volunteers, contractors, consultants
- personal contact information
  - recruitment material, including referee checks and qualifications
  - pre-employment medical information
  - bank account details
  - wage and salary entitlements
  - tax file numbers and superannuation information
  - leave and payroll data
  - employee immunisation records and medical certificates

- disclosure of interest returns
- workers compensation claims and investigations
- public interest disclosure investigations
- performance management plans
- disciplinary matters
- CCTV footage

## 4. What is health information?

4.1 Health information is defined by the HRIP Act as

*"...means...*

*(a) Personal information that is information or an opinion about:*

- (i) the physical or mental health or a disability (at any time) of an individual, or*
- (ii) an individual's express wishes about the future provision of health services to him or her, or*
- (iii) a health service provided, or to be provided, to an individual, or*

*(b) other personal information collected to provide, or in providing, a health service, or*

*(c) other personal information about an individual collected in connection with the donation, or intended donation, of an individual's body parts, organs or body substances, or*

*(d) other personal information that is genetic information about an individual arising from a health service provided to the individual in a form that is or could be predictive of the health (at any time) of the individual or of a genetic relative of the individual, or*

*(e) healthcare identifiers..."*

4.2 Health records may include (but is not limited to) medical records, maternal and child health records, medical test results, immunisation history, psychological reports, information about medical appointments, referral letters, pharmaceutical scripts and so on

## 5. Health information collected by Council

5.1 Although Council does not directly provide a health service, Council holds some health information (for example, medical certificates in support of employee personal leave, information relating to workers compensation claims, old immunisation certificates). As such Council is required to comply with the Health Privacy Principles

## 6. Unsolicited information

6.1 Unsolicited information is personal or health information received by Council in circumstances where Council has not asked for, or required, the information to be provided. It includes gratuitous or irrelevant information received

- 6.2 Unsolicited information is not considered to be information collected by Council however the retention, use, storage, destruction and disclosure of the information will be in accordance with the provisions of the PPIP Act, the HRIP Act and the principles outlined in this Plan

## 7. Publicly available information

- 7.1 Where Council is requested to provide access to, or make a disclosure of, information that has already been published, Council will rely on the provisions of the relevant Act that authorises Council to hold that information and not the PPIP Act (for example, Section 8 of the GIPA Act)

- 7.2 For the purposes of this Plan, publicly available information refers to information or an opinion about an individual, or group of individuals, that is accessible to the general public in any form. It includes information that

- has been published or broadcast for public consumption
- is openly available on request to the public
- is openly accessible on-line or otherwise to the public
- is available to the public by subscription or purchase
- could be lawfully seen or heard by any casual observer
- is lawfully made available at a meeting open to the public, or
- is obtained by visiting any place or attending any event that is open to the public

- 7.3 Health information about an individual, or group of individuals, that has been lawfully made accessible to the general public in any form is considered by Council to be 'publicly available information'

- 7.4 Council views the following information to be publicly available

- an advertisement containing personal or health information in a local, city or national newspaper (regardless of whether the newspaper is in digital, audio or paper media)
- personal or health information freely accessible on the internet or on mobile data applications
- books or magazines that are printed and distributed to the general public, regardless of the type of media
- Council business papers in whole or part that are made available to the general public
- personal or health information that may be part of a public display on view to the general public

## 8. Suppression of information available for public inspection (not held in public registers)

- 8.1 Certain material that is made available (or is to be made available) by Council for public inspection may be suppressed under *section 739 Protection of privacy* of the LG Act. An application for suppression may be made in circumstances where

- a) the material discloses or would disclose a person's place of living, and
  - b) the person concerned considers that the disclosure would place the personal health of themselves or their family at risk
- 8.2 Section 739 of the LG Act, however, only applies to material that is publicly available and does not apply to information on a public register
- 8.3 Requests for suppression should be made in writing to the Chief Executive Officer and be supported by
- a) information regarding the particulars of the risk, and
  - b) a statutory declaration by the person(s) making the request or other authorised person
- 8.4 Requests for suppression may be granted if Council is satisfied that disclosing, or continuing to disclose, the information would place a person or their family members at risk. For more information see section 739 of the LG Act
- 8.5 In cases of doubt, Council will err in favour of suppression of the information

## **9. Mandatory proactive release of information under section 6 of the GIPA Act**

- 9.1 Section 6 of the GIPA Act requires that certain government information held by Council must be made publicly available unless there is an overriding public interest against disclosure of the information
- 9.2 At least one of the ways in which this information is made available must be free of charge
- 9.3 Section 18 of the GIPA Act requires that Council provide open access to those documents listed under Schedule 1 of the Government Information (Public Access) Regulations 2009 (GIPA Regs)
- 9.4 In the event of any inconsistencies that exist between the PPIP Act and the GIPA Act, section 57 of the PPIP Act will prevail over clause 1(3) of Schedule 1 of the GIPA Regs

In other words

- (a) If a register is listed in Schedule 1 of the GIPA Regs, access must not be given except in accordance with section 57(1) of the PPIP Act
- (b) If a register is not listed in Schedule 1 of the GIPA Regs, access must not be given except if
  - i. it is allowed under section 57(1) of the PPIP Act; and
  - ii. there is no overriding public interest against disclosure of the information under section 6 of the GIPA Act.

*(Note: Both 1 and 2 are amended with regard to specific public registers in the Privacy Code)*

## Part 2 Public and non-public registers

### 1. What is a public register?

- 1.1 A public register is defined under section 3 of the PPIP Act as “a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee)”
- 1.2 Public registers generally confer specific rights, privileges, benefits or status in relation to access of certain information by the public which would otherwise not exist

### 2. Purpose of public registers

- 2.1 Council is required by law to maintain a number of public registers and to make them available for public inspection. Some of these registers contain personal information as defined in the PPIP Act, the HRIP Act and the GIPA Act
- 2.2 Council may, by virtue of its own practice, hold other public registers to which the PPIP Act, the HRIP Act and the GIPA Act may apply

### 3. Public registers maintained by Council

- 3.1 Table 1 sets out the primary and secondary purpose(s) of public registers maintained by Council

Public Register	Act	Purpose
Land Register	LG Act	<p><b>Primary</b> Identify all land vested in Council, or under its control.</p> <p><b>Secondary</b> Consideration of public accountability as to the land held by Council. Third party access in accordance with GIPA Act</p>
Record of Approvals	LG Act	<p><b>Primary</b> Identify all approvals granted under the LG Act</p> <p><b>Secondary</b> Third party access in accordance with GIPA Act</p>
Register of and Tabling of Returns	LG Act	<p><b>Primary</b> Determine whether or not a Council official has a pecuniary interest in any matter with which the council is likely to be concerned.</p> <p><b>Secondary</b> Public accountability Third party access to pecuniary interest returns in accordance with GIPA Act</p>
Register of consents and certificates	EPA Act 1979	<p><b>Primary</b> Identify applications for development consent and other approvals, confirm determinations on appeal and identify applications for complying development certificates</p> <p><b>Secondary</b> Third party access in accordance with GIPA Act</p>

<b>Public Register</b>	<b>Act</b>	<b>Purpose</b>
Record of building certificates	EPA Act 1979	<p><b>Primary</b> Identify all building certificates</p> <p><b>Secondary</b> Third party access in accordance with GIPA Act</p>
Public register of licences	Protection of the Environment Operations Act 1997	<p><b>Primary</b> Identify all licences granted under the Act and in accordance with section 308</p> <p><b>Secondary</b> Third party access in accordance with GIPA Act</p>
Record of impounding	Impounding Act 1993	<p><b>Primary</b> Identify any impounding action by council in accordance with section 30 &amp; 31 of the Act</p> <p><b>Secondary</b> Third party access in accordance with GIPA Act</p>

**Table 1. Public registers maintained by Council**

#### **4. Secondary purpose of all public registers**

4.1 Due to the general emphasis on local government processes and information being open and accountable in accordance with the provisions of the LG Act and the GIPA Act, a secondary purpose for which all public registers are held by Council includes the provision of access to information by members of the public. Accordingly, disclosure of specific records on public registers would normally be considered permissible under section 57 of the PPIP Act

#### **5. Other purposes of public registers**

5.1 Persons or organisations who apply to Council to access information contained in any public register for a purpose not related to the primary purpose of the register, may be given access at the discretion of Council

5.2 Any access to information held on a public register under clause 5.1 above must be in accordance with the Privacy Code and any other relevant privacy code of practice applicable to the access

#### **6. Disclosure of personal information contained in public registers**

6.1 Section 57 of the PPIP Act requires Council to ensure that disclosure of personal information in a public register is consistent with, and related to, the purpose for which the register exists.

6.2 In line with this requirement (and in accordance with section 2 of the Privacy Code) Council applies specific rules governing disclosure of personal information on public registers, namely

- a) Council will not disclose personal information kept in a public register to third parties unless Council is satisfied that the information is to be used for a purpose relating to the purpose of the register, or an Act under which the register is kept
- b) the Privacy Code allows disclosure of single items or one page in a public register

without explanation. However, such a disclosure may only occur when the person seeking the information attends Council in person

- c) Council may require that any person who applies for more than one record or page from a public register does so by completing a Statutory Declaration. Any such declaration must describe the intended use of the information requested and be witnessed by an authorised person such as a Justice of the Peace, lawyer or notary public
- d) if the stated purpose of the applicant does not conform with the purpose for which the public register is kept, access to the information will not be granted
- e) individuals wishing to inspect Council's pecuniary interest register, or any public register on which Council records declarations made by Councillors or Designated Officers, may do so without explanation

6.3 The primary purpose and secondary purpose(s) of public registers maintained by Council is set out at Table 1 under section 3, Part 2 of this Plan. These purposes should guide any determination of what constitutes a purpose related to the primary purpose for which the public register is kept

## **7. Applications for access to own records on a public register**

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

## **8. Suppression of information in relation to a public register**

8.1 An application for suppression in relation to a Public Register will be dealt with under section 58 of the PPIP Act

8.2 A person about whom personal information is contained (or proposed to be contained) in a Public Register, may request Council to

- a) have the information removed from, or not placed on the register as publicly available, and
- b) not disclosed to the public

8.3 Requests to suppress information must be submitted in writing to the Chief Executive Officer and should include the reasons for the request. Council may require supporting documentation be provided where appropriate

8.4 If Council is satisfied that the safety or well-being of any person would be affected by not suppressing the personal information as requested, Council will suppress the information in accordance with the request unless Council is of the opinion that the public interest in maintaining public access to the information outweighs any individual interest in suppressing the information

8.5 When in doubt, AlburyCity will err in favour of suppression of the information.

8.6 Information removed from, or not placed on, a public register may still be retained by Council and used in the exercise of Council functions, but will not be disclosed to other parties



## 9. What are non-public registers?

- 9.1 Non-public registers are registers that are not publicly available and/or may not contain personal information
- 9.2 The Information Protection Principles, this Plan, the Privacy Code and PPIP Act apply to the use and disclosure of information in non-public registers held by Council
- 9.3 Table 2 below sets out the non- public register(s) held by Council

Non-public register	Act	Purpose
Record of rates and charges	LG Act	<p><b>Primary</b> Record the value of a parcel of land and record rate liability in respect of that land.</p> <p><b>Secondary</b> The secondary purpose includes recording the owner or lessee of each parcel of land. The rates record will also be used by Council to notify relevant land owners of development applications and other matters where Council is required or wishes to consult its local community.</p> <p><b>Access and Disclosure</b> Public access to the rates record will only be granted where the purpose of the access is to obtain information necessary for a statutory purpose such as the service of a notice under the <i>Dividing Fences Act 1991</i>, or where there is an overriding public interest in favour of disclosure.</p>

**Table 2. Non-public registers maintained by Council**

## **Part 3 Privacy Principles**

### **1. Information protection and health privacy principles (Privacy Principles)**

- 1.1 This section contains a general summary of how Council must manage personal and health information under the PPIP Act and HRIP Act and other relevant laws
- 1.2 PPIP Act provides for the protection of personal information by means of twelve (12) Information Protection Principles (IPPs) and HRIP Act provides for the protection of health information by means of fifteen (15) Health Privacy Principles (HPPs)
- 1.3 IPPs are attached at Appendix 1 of this Plan
- 1.4 HPPs are attached at Appendix 2 of this Plan

### **2. Compliance with Privacy Principles**

- 2.1 The way in which Council complies with the Information Protection Principles (IPPs) prescribed under the PPIP Act and Health Privacy Principles (HPPs) prescribed under the HRIP Act is set out in sections 3 to 16 of Part 3 of this Plan

### **3. Collection of information for lawful purposes (IPP 1 & HPP 1)**

- 3.1 Council will only collect personal information and/or health information for a lawful purpose as part of its proper functions and activities as governed by the LG Act, guidelines issued by the Office of Local Government (OLG) and the IPC, and relevant state and federal legislation
- 3.2 The compilation or referral or registers and/or rolls are the primary means by which Council collects personal and/or health information about, or from, an individual. For example, information received by Council from the Land Titles Office
- 3.3 Other means include forms that customers complete and lodge with Council for the purposes of development consent, companion animal registration, applications for specific inspections or certifications, or applications in respect of tree preservation orders
- 3.4 Council will not collect any more information than is reasonably necessary to fulfil its proper functions
- 3.5 Such personal and health information may include names, residential address, phone numbers, email addresses, signatures, medical certificates, photographs and video footage (CCTV)
- 3.6 Council staff, and anyone engaged by Council (including consultants and contractors), who undertake the collection of personal and/or health information for any reason, must not collect such information by any unlawful means. This includes any debt recovery actions undertaken by an external service provider on behalf of Council
- 3.7 Where Council requires an individual to provide their personal information (whether this be by submission of a form or written request application) the individual must be provided with a copy of, or link to, Council's 'AlburyCity Privacy Statement'

- 3.8 Any new, amended, or alternative forms, notices or application requests through which personal and/or health information is, or will be, collected by Council will be referred to the Public Information Officer for consideration and review prior to adoption or use to ensure compliance with all Privacy Principles and this Plan
- 3.9 In the event that any doubt exists as to a form or document's compliance with the Privacy Principles, the opinion of the Public Information Officer will be sought. In the event that concerns are of a legal nature, the matter may be referred to Council's legal advisor.
- 3.10 The Public Information Officer may also provide advice on
- whether the collection of the personal or health information is for a lawful purpose
  - whether the lawful purpose is directly related to a function or activity of Council
  - whether or not the collection of the personal or health information is reasonably necessary for the lawful purpose
- 3.11 **Exemption(s) from IPP 1:** There are no exemptions for IPP 1 under the Privacy Code or PPIP Act
- 3.12 **Exemption(s) from HPP 1:** There are no exemptions for HPP 1 under the HRIP Act

#### **4. Collection of information directly from an individual (IPP 2 & HPP 3)**

- 4.1 Personal Information will be collected directly from the individual, unless
- a) that person authorises in writing the collection of the information from another person, or
  - b) in the case of a person under the age of 16 years, the information is being provided by a parent or guardian of the person, or
  - c) in the case of a person over the age of 16 years and who is subject to a lawful guardianship order, the information is being provided by the guardian of the person and satisfactory evidence of guardianship has been provided to Council
- 4.2 Health information will be collected
- a) directly from the person concerned, unless it is unreasonable or impracticable to do so, and
  - b) in accordance with any guidelines issued by the Privacy Commissioner for the purposes of this clause
- 4.3 Collection of information may occur via phone, written correspondence to Council, email, facsimile, electronic and paper based forms, video or data recordings, mobile applications or in person
- 4.4 Personal and/or health information will only be collected by Council in circumstances where
- a) the collection of the information is relevant and necessary for the proper exercise of Council's functions
  - b) the collection of the information is required by law
  - c) the collection of the information is reasonable, appropriate and justifiable

- d) the collection of the information is lawful

4.5 **Exemption(s) for IPP 2:** Compliance with IPP 2 is subject to certain exemptions under the PPIP Act and the Privacy Code. If one of these exemptions apply, Council need not comply with the provisions of IPP2. The exemptions will only be relied upon in very obvious and limited circumstances and legal advice should normally be obtained. The exemptions include

- a) Privacy Code where *“Council may depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.”*
- b) section 23(2) of the PPIP Act where the information concerned is collected in connection with proceedings (whether or not actually commenced) before any court or tribunal
- c) section 24(6)(a) of the PPIP Act where Council is collecting information in connection with the investigating or otherwise handling of a complaint or other matter that could be referred or made to an investigative agency or that has been referred from or made by an investigative agency. Where council is
- d) section 25(a) of the PPIP Act where Council is lawfully authorised or required to not comply with this principle under an Act or any other law. This includes where information is collected from other public sector agencies under a statute or law
- e) section 25(b) of the PPIP Act where non-compliance is ‘necessarily implied’ or ‘reasonably contemplated’ under any Act or law.
- f) section 26(1) of the PPIP Act where compliance would prejudice the interests of the individual to whom the information relates
- g) section 27A of the PPIP Act where
  - i. the collection is for the purposes of providing the information to another public sector agency or the collection by Council is from another public sector agency, and
  - ii. the collection is reasonably necessary for Council to deal with, or respond to correspondence from a Minister or member of Parliament; or to enable inquiries to be referred between Council and other public sector agencies; or to enable the auditing of the accounts or performance of Council
- h) section 27B of the PPIP Act where
  - i. the collection is reasonably necessary for the purpose of research, or the compilation or analysis of statistics, in the public interest, and
  - ii. it is unreasonable or impracticable for the information to be collected directly from the individual to whom the information relates

4.6 **Exemption(s) from HPP 3:** There are no exemptions from HPP3

## 5. Requirements when collecting information (IPP 3 & 4 and HPP 2 & 4)

- 5.1 Before personal or health information is collected by Council, or as soon as practicable after collection, Council will provide individual(s) with a copy of Council's Privacy Statement (however titled) and will take reasonable steps to ensure that the individual to whom the information relates is aware
- a) that the information is being collected
  - b) the purposes for which the information is being collected
  - c) the persons to whom (or types of persons to whom) the organisation may disclose the information
  - d) whether the supply/provision of information from the individual is required by law or is voluntary, and
  - e) any consequences for the individual if all or any of the information is not provided or supplied
  - f) the department, section or location within Council where the information will be held or stored
  - g) the existence of any right to access and/or correct the information
  - h) Council's address and contact information
- 5.2 Council will ensure that any personal or health information collected about individuals will be relevant to the purposes for which it is collected, not excessive, accurate, up to date and complete. Sections 8, 9 and 10 of Part 3 of this plan provide specific guidance and advice in relation to how Council will ensure accuracy, relevancy and legitimate purpose requirements are to be met.
- 5.3 Council will ensure that the collection of any personal or health information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates by complying with clauses 3.4 and 4.10 of this Plan.
- 5.4 Where Council collects health information about an individual from a third party, Council will take reasonable steps to ensure that the individual is aware of the matters discussed in section 5.1 of this Part unless
- a) making the individual aware would pose a serious threat to life or health of any individual or
  - b) the collection is made in accordance with guidelines issued by the Privacy Commissioner
- 5.5 **Closed Circuit Television (CCTV):** Council may use public place video surveillance in accordance with the *NSW Government policy statement and guidelines for the establishment and implementation of closed circuit televisions (CCTV) in public places*. CCTV cameras are usually located in (but not limited to) the following locations
- foyers and stairwells of Council Administration Building located at 553 Kiewa Street, Albury
  - Council depots located at Wodonga Place and Lavington
  - Murray Art Museum Albury

- Library Museum
- Lavington Library
- Council Filtration Plant
- Albury Airport
- various street locations within the CBD of Albury

5.6 The use of CCTV and other forms of surveillance (for example Computer surveillance) by Council is subject to the provisions of the *Workplace Surveillance Act 2005*. Council ensures compliance with these provisions by

- a) strictly limiting and monitoring access to any CCTV footage held by Council. Access to CCTV will not be granted without the prior written authorisation of the relevant Executive (however titled)
- b) Council officers responsible for the custody, storage and security of any CCTV must be provided with written authorisation from the relevant Executive (however titled) before providing access to any CCTV and maintain a diary record or log of each occasion when access to any footage is provided
- c) maintaining a register of all camera's utilised by Council
- d) requiring executive approval for access to any material obtained through CCTV or other form of surveillance
- e) notifying Council staff of any surveillance (other than authorised covert surveillance conducted in the workplace. Notification includes
  - i. the type of surveillance
  - ii. how the surveillance will be carried out
  - iii. when the surveillance will start and finish (if applicable)
  - iv. whether the surveillance will be continuous or intermittent
  - v. whether the surveillance will be ongoing or for a limited period
- f) using signage to notify all individuals (Council staff and members of the public) who enter Council premises that CCTV are in use and that they may be incidentally filmed during their attendance
- g) implementation of an internal investigation procedure that that strictly controls how any covert surveillance may be undertaken. Covert surveillance may not be undertaken without a covert surveillance authority being issued to Council by a magistrate and the express written authorisation of the Chief Executive Officer
- h) restricting where CCTV may be placed to ensure that no CCTV surveillance is undertaken in any prohibited area (for example toilets, change rooms and so on)
- i) any Council officer found to be accessing, storing, using or disclosing CCTV footage outside of Council policies and procedures or in breach of the *Workplace Surveillance Act* may be subject to disciplinary action

5.7 **Exemption(s) for IPP 3:** Compliance with IPP 3 is subject to certain exemptions under the PPIP Act and the Privacy Code. If one of these exemptions apply Council need not comply with

IPP 3. The exemptions will be relied upon only in very obvious and limited circumstances and legal advice should normally be obtained. The exemptions include

- a) Privacy Code where *“Council may depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.”*
- b) section 23(3) of PPIP Act – where information is collected for law enforcement purposes. Note that protections provided by any other law in relation to the rights of accused persons or persons suspected of having committed an offence are not removed or amended by this exemption.
- c) section 24(6)(a) of PPIP Act – where Council is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency or that has been referred from or made by an investigative agency
- d) section 25 of PPIP Act – where Council is lawfully, authorised, permitted or required to not comply with IPP3
- e) section 26 of PPIP Act – where the collection of information by Council would prejudice the interests of the individual to whom the information relates, or if the individual to whom the information relates has provided their express consent to Council to not comply with IPP3
- f) section 27A of the PPIP Act where
  - i. the collection is for the purposes of providing the information to another public sector agency or the collection by Council is from another public sector agency, and
  - ii. the collection is reasonably necessary for Council to deal with, or respond to correspondence from a Minister or member of Parliament; or to enable inquiries to be referred between Council and other public sector agencies; or to enable the auditing of the accounts or performance of Council
- g) section 27B of the PPIP Act where
  - i. the collection is reasonably necessary for the purpose of research, or the compilation or analysis of statistics, in the public interest, and
  - ii. it is unreasonable or impracticable for the information to be collected directly from the individual to whom the information relates.

5.8 **Exemption(s) from IPP 4:** There are no exemptions for IPP4 under the Privacy Code or PPIP Act.

5.9 **Exemption(s) from HPP 2:** There are no exemptions for HPP 2 under the HRIP Act.

5.10 **Exemption(s) for HPP 4:** Non-compliance with HPP4 is permitted if

- a) the person to whom the information relates has expressly consented to Council not complying, or
- b) Council is lawfully authorised, required or permitted to not comply under an Act or any other law, or

- c) compliance would prejudice the interests of the individual to whom the information relates or
  - d) the information is collected for law enforcement purposes or
  - e) compliance might detrimentally effect (or prevent the proper exercise of) Council's complaint handling functions or any of its investigative functions in relation to a matter that could be referred or made to an investigative agency, or that has been referred from an investigative agency (See HPP 4 - (7) for more information)
- 5.11 If the health or personal information relates to a minor, a person subject to a guardianship order, or a person who Council reasonably believes incapable of understanding the matters discussed in section 5.1 of this Part, Council will take reasonable steps to ensure any authorised representative of the individual is aware of those matters
- 5.12 In accordance with section 5.1 of this Part, a Privacy Statement has been published on Council's website, intranet site, as a publicly available handout, and included on Council forms where personal or health information of individuals is collected

## **6. Retention, destruction and security of information (IPP 5 and HPP 5)**

- 6.1 Personal and health information collected by Council will be retained for no longer than as required by
- a) *'General retention and disposal authority: local government records ("GA39") and/or*
  - b) *General retention and disposal authority: administrative records ("GA28") and/or*
  - c) *General retention and disposal authority: audio visual programs and recordings ("GDA11")*
  - d) *General retention and disposal authority: original or source records that have been copied (GA45)*
  - e) *General retention and disposal authority: source records that have been migrated ("GA48") and/or*
  - f) *General retention and disposal authority: video/visual surveillance records created by NSW public offices ("GDA8")*

as issued and updated from time to time by NSW State Archives and Records

- 6.2 Disposal and destruction of documents will be in accordance with the relevant authority document issued by NSW State Archives and Records
- 6.3 Council will undertake reasonable security safeguards to ensure that all personal and health information of individuals is secured and stored in a manner that will protect the information against loss, misuse, unauthorised access, use, disclosure, modification or destruction. Such safeguards shall include (but is not limited to) restricted access to information, password protection for IT accounts, electronic swipe cards for physical security and authorisation protocols and procedures for access approvals
- 6.4 Council will implement, monitor and maintain specific policies and procedures (however titled) relevant to the safeguarding and security of personal and health information (for a full list of



relevant policies and procedures refer section 5. *Related Policies and Procedures* on page 2 of this Plan)

- 6.5 Council staff are required to undertake training in relation to Council's records management and IT security policies and procedures and ensure they understand their obligations in relation to the safety, security, use, access, storage and destruction of all records held by Council, including personal and health information
- 6.6 Council staff will be provided access to information according to the duties of the position which they undertake. Access to information not relevant to their position will be restricted and will require the written approval of the relevant Executive/Service Leader (however titled) responsible for the supervision of the individual concerned
- 6.7 Individuals who breach any policy or procedure designed to safeguard personal and health information held by Council may be subject to disciplinary or other action as appropriate and/or may be subject to penalties under the PPIP Act, HRIP Act or Crimes Act 1900
- 6.8 If it is necessary for personal or health information to be given to a person or persons in connection with the provision of a service to the Council (for example consultants and contractors), all reasonable steps will be undertaken by Council to prevent the unauthorised use or disclosure of the information by such person or persons. Reasonable steps may include (but is not limited to) training as appropriate, provision of relevant Council policies and procedures, restrictions on access, direct supervision, appropriate terms in contractual agreements and so on
- 6.9 **Exemption(s) from IPP 5:** There are no exemptions for IPP4 under the Privacy Code or PPIP Act.
- 6.10 **Exemption(s) for HPP 5:** Non-compliance with HPP 5 is permitted under the following circumstances
  - a) Council is lawfully authorised or required to not comply with HPP5, or
  - b) non-compliance is permitted under an Act or any other law

## **7. Transparency and access (IPP 6 & 7 and HPP 6 & 7)**

- 7.1 Council will take reasonable steps to enable any person to ascertain
  - a) whether Council holds personal and/or health information, and
  - b) whether Council holds any personal and/or health information relating to that person, and
  - c) the nature of the information held, and
  - d) the purposes for which the information is used, and
  - e) the person's entitlement to gain access to the information held
- 7.2 As a matter of practicality, not every item of personal information, however insignificant, will be capable of ascertainment.
- 7.3 Individuals who request access to their personal and/or health information held by Council should be provided access without excessive delay or expense.

- 7.4 Under section 20(5) of the PPIP Act, access to personal information is subject to any applicable conditions or limitations contained in the GIPA Act.
- 7.5 Individual's may access their personal and/or health information by either
- a) making an application in writing to access their personal or health information under either the PPIP Act or HRIP Act (as appropriate) by writing to the Public Information Officer and submitting the request by
    - In person** at Customer Service located at 553 Kiewa Street, Albury NSW 2640
    - By Post** PO Box 343, Albury NSW 2640
    - By Email** [info@alburycity.nsw.gov.au](mailto:info@alburycity.nsw.gov.au)
  - b) making an application in writing to access their personal or health information under the GIPA Act by completing an 'Informal Access to Information Request Form' (located on AlburyCity website and intranet) and submit the form by
    - In person** at Customer Service located at 553 Kiewa Street, Albury NSW 2640
    - By Post** PO Box 343, Albury NSW 2640
    - By Email** [info@alburycity.nsw.gov.au](mailto:info@alburycity.nsw.gov.au)
- 7.6 Access to information applications under the PPIP Act or HRIP Act should include the following information
- name, address and contact details of person making the application (including email address, phone number and so on)
  - particulars of information required (including nature of information, relevant date/time period, type of record – for example paper and/or digital)
  - the type of access sought (for example view access, paper copies, electronic copies)
  - supporting documentation where required (for example third party authorisation)
  - individuals may also be required to provide proof of identity before any information will be released.
- 7.7 Access to information applications under the GIPA Act are typically handled under the informal access provisions of the GIPA Act. In certain limited circumstances, individuals may be requested to lodge a Formal Access to Information Request lodged if the initial request is unable to be dealt with through the informal access process.
- 7.8 In responding to requests, Council will undertake a search for records relevant to the request and may seek additional information from the Applicant to assist the search.
- 7.9 Applicant's may be requested to pay a fee in accordance with the provisions of 66B of the PPIP Act for information relating to
- b) a copy of their health information
  - c) an opportunity to inspect and take notes of the health information
  - d) amending health information at the request of the applicant

- 7.10 Requests to access personal information may also be subject to fees payable under the GIPA Act (for example records relating to suitability or employment as a public sector employee, performance appraisals and so on).
- 7.11 **Exemption(s) for IPP 6 and IPP 7:** Compliance with IPPs 6 and 7 is subject to certain exemptions under the PPIP Act and the Privacy Code. The exemptions will be relied upon only in very obvious and limited circumstances and legal advice should normally be obtained. The exemptions include
- a) IPP 6 & 7 - Section 24(6)(a) of the PPIP Act in circumstances where Council is investigating or handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency
  - b) IPP 6 & 7 - Section 25 of the PPIP Act where non-compliance is lawfully authorised, permitted or required under an Act or any other law
  - c) the provisions of the GIPA Act that impose conditions or limitations with respect to IPP 6 and/or 7 apply and may modify or amend Council's compliance obligations for these principles.
- 7.12 **Exemption(s) for HPP 6 & 7:** Non-Compliance with HPP 6 and HPP 7 is permitted under the following circumstances
- a) Council is lawfully authorised or required to not comply
  - b) non-compliance is permitted under an Act or any other law

## **8. Alteration, modification, or amendment of information (IPP 8 and HPP 8)**

- 8.1 Council will, at the request of a person, allow appropriate amendments (including corrections, deletions or additions) to be made to the personal and/or health information held by Council.
- 8.2 Alterations to information held should ensure that the information is accurate, relevant, up to date, complete, not misleading and appropriate to the purpose for which the information was collected
- 8.3 Requests for alterations must be made in writing (as set out at clause 7.5 of this Part) and accompanied by satisfactory supporting evidence. Council may, at any time, request additional evidence or information in determining the request
- 8.4 There is no fee applicable to a request for an alteration to personal or health information held by Council
- 8.5 Where requested, and provided that it is reasonably practicable, amendments to personal information will be notified by Council to ordinary recipients of that information
- 8.6 In circumstances where Council is not prepared to amend personal information in accordance with a request, the Council must (at the request of the person concerned) attach to the relevant (unamended) record any statement provided by the person requesting the amendment of the record. The statement should be attached in such a way that it can be easily read in conjunction with the unamended record

- 8.7 Changes of information relating to the legal name of the person, residential address and/or other minor amendments require appropriate supporting documentation and identification verification
- 8.8 Where there are complaints that are, or could be, the subject of a staff complaint or grievance, they will be referred to the Service Leader, Human Resources (however titled) in the first instance and treated in accordance with Council's Complaints Management Policy
- 8.9 Any alterations to personal information that are, or could be, the subject of a customer complaint or grievance will be referred to the Public Information Officer, who will make a recommendation in relation to the matter
- 8.10 Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIP Act that may affect the application of IPP8
- 8.11 **Exemptions from IPP 8:** There are no exemptions for Council to not comply with IPP8 (see subclause 4, section 15 of the PPIP Act)
- 8.12 **Exemption(s) for HPP 8:** Non-compliance with HPP 8 is permitted under the following circumstances
- a) Council is lawfully authorised or required to not comply
  - b) non-compliance is permitted, necessarily implied or reasonably contemplated under an Act or any other law

## 9. Accuracy of information check before use (IPP 9 and HPP 9)

- 9.1 Council will take all reasonable steps necessary to ensure personal and health information is accurate, relevant, complete, not misleading and up to date before using the information
- 9.2 In undertaking checks, Council will take into account the age of the information, its significance, the likelihood of change and the particular function for which the information was collected
- 9.3 The more significant the information, the greater the necessity that checks for accuracy and currency are undertaken prior to its use. For example, employee records should be updated when there is any change of circumstance or when the employee's contact details change
- 9.4 In checking the accuracy of information before use Council may
- cross reference information from multiple sources/systems to verify consistency, reliability and uniformity of the information
  - request verification of the information from an originating source
  - request verification of the information from the individual/organisation to whom the information relates
  - request verification of the information from a trusted source – for example a statutory/regulatory authority (where appropriate)
  - consider if the information is credible, reasonable, unbiased and supported by reliable evidence

- determine if there is any conflict of interest relevant to the originating source of the information
- take steps to verify if the source of the information is a primary or secondary source
- take steps to verify that the information has not been altered, tampered with, or amended in any unauthorised manner since collection of the information. For example, comparing the information with an original/source document.
- review the audit history of electronic information to determine when, where, how and by whom information was accessed, amended, altered, added or updated.

9.5 Checks for accuracy of information must be undertaken in the following circumstances

- whenever critical, sensitive or personal information is determined to be incomplete, partial or misleading
- whenever critical, sensitive or personal information is to be collected, accessed, used or disclosed
- whenever critical information necessary for the functions of Council is to be updated, altered, or amended (for example contact details of employees, property owner information following sale of rateable land and so on)
- whenever information is to be relied upon for decision making by Council
- whenever information is to be transferred from one storage system to another (for example when hard copy records are transferred to a digital electronic storage system)
- whenever information is to be used for a purpose other than the primary purpose for which it is collected
- whenever information held by Council is to be transferred to another jurisdiction, agency or entity
- whenever information is required by law (for example under subpoena or statutory reporting)
- whenever system alerts for information review are triggered (for example, information held in AlburyCity IT systems such as Civica and HPE Content Manager (TRIM) include automatic alerts in relation to expiry of information, destruction dates of information, creation dates of information and collection dates of information.

9.6 Procedures for maintaining, reviewing and ensuring the accuracy of information held by Council are detailed in Council's *Records Management Business Rules, Records Management Policy* and *Records Management Procedures*.

9.7 **Exemption(s) from IPP 9:** There are no exemptions for IPP9 under the Privacy Code or PPIP Act

9.8 **Exemption(s) from HPP 9:** There are no exemptions for HPP 9 under the HRIP Act

## 10. Limits on use of personal and health information (IPP 10 and HPP 10)

- 10.1 Personal and health information collected by Council will only be used for the purpose(s) for which it is collected (the primary purpose) and not for any other purpose(s) (secondary purpose) unless
- a) the individual to whom the information relates has expressly consented to the use of the personal or health information for that secondary purpose, or
  - b) the secondary purpose is directly related to the primary purpose, and the individual would reasonably expect that Council would use the personal or health information for the secondary purpose, or
  - c) the use of the personal or health information is necessary to lessen or prevent a serious and imminent threat to the life, health or safety of a person; or a serious threat to public health or safety
- 10.2 The Privacy Code makes provision that Council may use personal information for a secondary purpose in circumstances where
- a) the use is in pursuance of Council's lawful and proper function(s) and Council is satisfied that the personal information is reasonably necessary for the exercise of such function(s). For example, Council rates records held under section 602 of the Local Government Act 1993 may also be used to notify neighbours of a proposed development, evaluate a road opening, or evaluate a tree preservation order
  - b) the information is to be used for the purpose of conferring upon a particular individual an award, prize, benefit or similar form of personal recognition
- 10.3 In addition to 10.1 above, health information collected by Council may be used for a secondary purpose in circumstances where
- a) the use of the health information is necessary for the funding, management planning or evaluation of health services and is in accordance with the provisions of HPP 10 (1)(d)
  - b) the information is reasonably necessary for the training of employees of Council or other persons working with Council (such as consultants and/or contractors) as prescribed by HPP 10 (1)(e)
  - c) the use of the information is reasonably necessary for research, is in the public interest and is in accordance with the provisions of HPP 10 (1)(f)
  - d) the use is related to a law enforcement agency ascertaining the whereabouts of a missing person
  - e) the use is necessary for the purposes of an investigation into, or reporting of, suspected unlawful activity, unsatisfactory professional conduct, professional misconduct, or conduct subject to disciplinary action as prescribed by HPP 10(1)(h)
  - f) the use is necessary for the purposes of Council investigating or handling a complaint or other matter that could be referred or made to an investigative

agency, or that has been referred to Council from or made by an investigative agency

10.4 Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIP Act that may affect the application of IPP10

10.5 **Exemption(s) from IPP 10:** Permitted non-compliance with IPP 10 exists under

- a) section 23(4) of the PPIP Act which allows Council to use personal information in circumstances where it is reasonably necessary for law enforcement purposes or for the protection of public revenue
- b) section 24(2) of the PPIP Act (as authorised by Section 26(a)) where the secondary use of the information is reasonably necessary in order to enable Council to exercise its complaint handling functions or any of its investigative functions
- c) section 25 of the PPIP Act where use of the personal information is lawfully authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law
- d) section 27A of the PPIP Act where
  - i. collection is for the purposes of providing the information to another public sector agency or collected by Council from another public sector agency, and
  - ii. collection is necessary for Council to deal with, or respond to correspondence from a Minister or Member of Parliament; or to enable inquiries to be referred between Council and other public sector agencies; or to enable the auditing of the accounts or performance of Council.
- e) section 27B of the PPIP Act where
  - i. the use of the information is reasonably necessary for the purpose of research, or the compilation or analysis of statistics, in the public interest, and
  - ii. the purpose cannot be served by using information that does not identify the individual, or from using information from which the individual's identity cannot be reasonably ascertained, and it is impractical for Council to seek the consent of the individual for the use or disclosure, or
  - iii. reasonable steps are taken to de-identify the information before use, and (where the information could reasonably be expected to identify individuals) the information is not published in a publicly available publication
  - iv. the use of the information for (i) and (ii) above must always be in accordance with guidelines, if any, issued by the Privacy Commissioner
- f) section 28(3) of the PPIP Act where the disclosure is
  - i. by Council to another public sector agency (or vice versa) under the administration of the same Minister and the purpose is that of informing that Minister about any matter within the administration, or
  - ii. by another public sector agency to Council (or vice versa) under the administration of the Premier if the disclosure is for the purposes of informing the Premier about any matter

10.6 **Exemption(s) from HPP 10** - permitted non-compliance with HPP 10 exists in circumstances where

- a) Council is lawfully authorised or required to not comply
- b) non-compliance is permitted, necessarily implied, or reasonably contemplated under an Act or any other law
- c) the use is for the purposes of a disclosure by Council to another public sector agency under the administration of the Minister for Local Government (for example, the Office of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister's (or Premier's) administration (HPP 10(4)).
- d) the use is necessary for the purposes of Council investigating or handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred to Council from or made by an investigative agency as per HPP 10(5)

## **11. Restrictions and limits on disclosure of personal and health information (IPP 11, HPP 11)**

11.1 Council will only disclose personal and/or health information in circumstances where

- a) the individual has expressly consented to the disclosure, or
- b) the individual was informed at the time of collection that Council would be disclosing the information to specific recipients, or
- c) the disclosure is for a related purpose(s) and Council has no reason to believe that the person would object to the disclosure
- d) the disclosure is for a related purpose(s) and it is likely that the person would reasonably expect that Council would disclose the information for the related purpose, or
- e) the disclosure is necessary in order to deal with a serious and imminent threat to a person(s) life, health, and safety; or to public health and safety

11.2 Related purposes may include (but are not limited to)

- a) disclosure of information for the delivery of a service by another person or agency that supplements a service(s) provided by Council, or
- b) disclosure of information to a third party for the purposes of assessment or review of the delivery of a program or service to which the original collection of information relates

11.3 Third party's (such as Contractors and Consultants) are subject to AlburyCity's Contractor IT Access Policy and must comply with the following

- a) access to Council records must be in accordance with any restrictions imposed by Council
- b) utilisation of Council system's must not contravene any Council policy, procedure, Code of Conduct and/or relevant legislation



- c) Council reserves the right to monitor and examine all records stored in, or transmitted by, Council computers, and network or communication devices.
  - d) passwords and account logon's must not be shared with any other person
- 11.4 Where Council is conducting an investigation, any disclosure of information will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIP Act.
- 11.5 In addition to 9.1 above, health information collected by Council may be also be disclosed for a secondary purpose in circumstances where
- a) the information is genetic information and the disclosure is to a genetic relative of the individual
  - b) the disclosure is necessary for the funding, management planning or evaluation of health services as prescribed by (HPP 11 (1)(d), or
  - c) the disclosure is necessary for the training of employees of Council or other persons working with Council (such as consultants and/or contractors) as prescribed by HPP 11 (1)(e), or
  - d) the disclosure is reasonably necessary for research, is in the public interest and is in accordance with the provisions of HPP 11 (1)(f), or
  - e) the disclosure is reasonably necessary to provide information to an immediate family member of the individual for compassionate reasons as prescribed by HPP 11 (1)(g)
  - f) the disclosure is related to a law enforcement agency, or an organisation authorised by the HRIP Regulations, ascertaining the whereabouts of a missing person, or
  - g) the disclosure is necessary for the purposes of a Council investigation into, or reporting of, suspected unlawful activity, unsatisfactory professional conduct, professional misconduct, or conduct subject to disciplinary action, or
  - h) the disclosure is reasonably necessary for the exercise of law enforcement where there are reasonable grounds to believe that an offence may have been, or may be, committed, or
  - i) the disclosure is necessary for the purposes of Council investigating or handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred to Council from or made by an investigative agency
- 11.6 If personal or health information is disclosed to a person or body that is a public sector agency in accordance, that person or agency must not use, or disclose, the information for any purpose other than the purpose for which the information was provided
- 11.7 **Exemptions for IPP 11:** Permitted non-compliance with IPP 11 exists under
- b) section 23(5) (a) of the PPIP Act where disclosure is made to a law enforcement agency in connection with proceedings for an offence or for law enforcement purposes. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

- c) section 23(5) (b) of the PPIP Act where disclosure is made to a law enforcement agency for the purpose of ascertaining the whereabouts of a person reported to be missing. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement
- d) section 23(5)(c) of the PPIP Act where disclosure is authorised by subpoena, search warrant, or other statutory instrument
- e) section 23(5)(d) of the PPIP Act where disclosure
  - i. is reasonably necessary for the protection of public revenue (for example a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement, or
  - ii. is reasonably necessary to investigate an offence where there are reasonable grounds to believe an offence has been committed
- f) section 23(6A) of the PPIP Act where
  - i. Council is disclosing the information to another public sector agency or is receiving information from another public sector agency, and
  - ii. the disclosure is reasonably necessary for law enforcement purposes
- g) section 23(7) of the PPIP Act where the disclosure of the information concerned is reasonably necessary for the purposes of law enforcement in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed
- h) section 24(6)(a) of the PPIP Act where
  - i. compliance may detrimentally affect Council's complaint handling or investigative functions
  - ii. the information is disclosed to another investigative agency
  - iii. non-compliance is reasonably necessary to assist another public sector agency that is an investigative agency in exercising its investigative functions
  - iv. the information is disclosed to a complainant and the disclosure is reasonably necessary for reporting the progress of an investigation into the complaint or providing the complainant with advice as to the outcome of their complaint or any action taken as a result of the complaint
  - v. Council is handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred to Council from an investigative agency
- i) section 25 of the PPIP Act where non-compliance is lawfully authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law
- j) section 26(2) of the PPIP Act where an individual expressly consents to Council not complying with IPP11

- k) section 27A of the PPIP Act where
  - i. the disclosure is for the purposes of providing the information to another public sector agency or the disclosure to Council is from another public sector agency, and
  - ii. the disclosure is reasonably necessary for Council to deal with, or respond to correspondence from a Minister or member of Parliament; or to enable inquiries to be referred between Council and other public sector agencies; or to enable the auditing of the accounts or performance of Council
- l) Section 27B of the PPIP Act where
  - i. the disclosure of the information is reasonably necessary for the purpose of research, or the compilation or analysis of statistics, in the public interest, and
  - ii. the purpose cannot be served by disclosing information that does not identify the individual, or from disclosing information from which the individual's identity cannot be reasonably ascertained, and it is impractical for Council to seek the consent of the individual for the disclosure of the information, or
  - iii. reasonable steps are taken to de-identify the information before disclosure, and (where the information could reasonably be expected to identify individuals) the information is not published in a publicly available publication
  - iv. the disclosure of information under (i) and (ii) above must always be in accordance with guidelines, if any, issued by the Privacy Commissioner
- m) Section 28(3) of the PPIP Act where the disclosure is
  - i. by Council to another public sector agency (or vice versa) under the administration of the same Minister and the purpose is that of informing that Minister about any matter within the administration, or
  - ii. by another public sector agency to Council (or vice versa) under the administration of the Premier if the disclosure is for the purposes of informing the Premier about any matter

11.8 The Privacy Code also makes provision that Council may use personal information for a secondary purpose in circumstances where

- a) the disclosure is to a public sector agency or public utilities and
  - i. the agency has approached Council in writing, and
  - 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 for the exercise of that agency's function(s), or
- b) the information collected about an individual is to be disclosed for the purpose of conferring upon that person an award, prize, benefit or similar form of personal recognition, or
- c) Council is requested by a potential employer to verify
  - i. that a current or former Council staff works, or has worked, for Council,

- ii. the duration of the employment with Council
- iii. the position(s) undertaken by the employee during any period of employment

11.9 The Privacy Code provisions do not permit, or authorise, Council to provide any information or opinion as to a person's suitability for a particular position, or about their performance or conduct during any period of service. Such personal information may only be provided to third parties with the express consent of the individual concerned

11.10 **Exemptions for HPP 11:** Non-compliance is permitted under the following circumstances

- a) Council is lawfully authorised or required to not comply
- e) non-compliance is permitted, necessarily implied or reasonably contemplated under an Act or any other law
- f) the use is for the purposes of a disclosure by Council to another public sector agency under the administration of the Minister for Local Government (for example, the Office of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister's (or Premier's) administration (HPP 10(4))
- g) the use is necessary for the purposes of Council investigating or handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred to Council from or made by an investigative agency as per HPP 10(6)

## 12. Special restrictions on disclosure (IPP 12)

12.1 Council will not disclose information relating to individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership or sexual activities unless disclosure is necessary to prevent a serious and imminent threat to the life or health of the individual concerned or another person

12.2 Council will not disclose the personal information outlined in 12.1 to any person or body who is in a jurisdiction outside New South Wales or to a Commonwealth unless such transborder disclosure is permitted under section 15 of this Part

12.3 **Exemptions for IPP 12:** Non-compliance with IPP 12 is permitted where

- a) Section 27A of the PPIP Act - where the disclosure is for the purposes of providing the information to another public sector agency or the disclosure to Council is from another public sector agency, and
  - i. the disclosure is reasonably necessary for Council to deal with, or respond to correspondence from a Minister or member of Parliament; or
  - ii. to enable inquiries to be referred between Council and other public sector agencies; or
  - iii. to enable the auditing of the accounts or performance of Council
- b) Section 27B of the PPIP Act - where the disclosure of the information is reasonably necessary for the purpose of research, or the compilation or analysis of statistics, in the public interest, and

- i. the research purpose cannot be served by disclosing information that does not identify the individual, or from disclosing information from which the individual's identity cannot be reasonably ascertained, and it is impractical for Council to seek the consent of the individual for the disclosure of the information, or
  - ii. reasonable steps are taken to de-identify the information before disclosure, and (where the information could reasonably be expected to identify individuals) the information is not published in a publicly available publication
  - iii. the disclosure of information under (i) and (ii) above must always be in accordance with guidelines, if any, issued by the Privacy Commissioner
- b) Section 28(3) of the PPIP Act where the disclosure is
  - i. by Council to another public sector agency (or vice versa) under the administration of the same Minister and the purpose is that of informing that Minister about any matter within the administration, or
  - ii. by another public sector agency to Council (or vice versa) under the administration of the Premier if the disclosure is for the purposes of informing the Premier about any matter

### **13. Identifiers (HPP 12)**

- 13.1 Council will only assign health identifiers to individuals if the assignment of identifiers is reasonably necessary to enable the Council to carry out any of its functions efficiently

### **14. Anonymity (HPP 13)**

- 14.1 Wherever it is lawful and practicable, Council will provide individuals the opportunity to not identify themselves when entering into health information related transactions with Council, or when receiving health services from Council (if any)

### **15. Transborder data flows and data flow to Commonwealth agencies (IPP 12, HPP 14)**

- 15.1 Council will not transfer personal or health information to any person or body outside NSW or to a Commonwealth agency unless
- a) the transborder transfer of information is first permitted under section 11 and/or section 12 of this Plan, and
  - b) the transfer is in accordance with the Information and Privacy Commission's factsheet *Guidance: transborder Disclosure Principle – the new section 19(2)*, and
  - c) transborder consent has been expressly given by the individual(s) concerned for the transfer of information from Council to another jurisdiction (see definitions), or
  - d) it is necessary for the performance, execution or conclusion of a contract between the person concerned and Council, or in the interest of the person between Council and a third person; or

- e) all of the following apply
  - i. it is for the benefit of the person concerned, and
  - ii. it is impractical to obtain the consent of the person to that transfer, and
  - iii. if consent could be obtained, the person would likely give it, or
- f) it is necessary to lessen or prevent a serious and imminent threat to the life, health or safety of an individual or other person; or a serious threat to public health or safety, or
- g) the transfer is authorised, permitted or required under an Act or any other law, or
- h) Council is satisfied that the recipient of the information is subject to a law, binding scheme or contract that upholds principles that are consistent with the HPPs, and
- i) Council has taken reasonable steps to ensure that the information will not be held, used, or disclosed by the recipient in any manner that is inconsistent with the HPPs,

**15.2 Exemptions to IPP 12:** Non-compliance with IPP 12 is permitted

- a) Section 23(6A) of the PPIP Act where
  - i. Council is providing the information to another public sector agency or is receiving information from another public sector agency, and
  - ii. the disclosure is reasonably necessary for law enforcement purposes
- b) section 23(7) of the PPIP Act where the disclosure of the information concerned is reasonably necessary for the purposes of law enforcement in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed
- c) section 25 of the PPIP Act where non-compliance by Council is lawfully authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law
- d) section 26(2) of the PPIP Act if the individual to whom the information relates has expressly consented to Council not complying with IPP 12
- e) section 27A of the PPIP Act - where the disclosure is for the purposes of providing the information to another public sector agency or the disclosure to Council is from another public sector agency, and
  - i. the disclosure is reasonably necessary for Council to deal with, or respond to correspondence from a Minister or member of Parliament; or
  - ii. to enable inquiries to be referred between Council and other public sector agencies; or
  - iii. to enable the auditing of the accounts or performance of Council
- f) section 27B of the PPIP Act - where the disclosure of the information is reasonably necessary for the purpose of research, or the compilation or analysis of statistics, in the public interest, and

- iii. the research purpose cannot be served by disclosing information that does not identify the individual, or from disclosing information from which the individual's identity cannot be reasonably ascertained, and it is impractical for Council to seek the consent of the individual for the disclosure of the information, or
  - iv. reasonable steps are taken to de-identify the information before disclosure, and (where the information could reasonably be expected to identify individuals) the information is not published in a publicly available publication
  - v. the disclosure of information under (i) and (ii) above must always be in accordance with guidelines, if any, issued by the Privacy Commissioner
- c) section 28(3) of the PPIP Act where the disclosure is
- i. by Council to another public sector agency (or vice versa) under the administration of the same Minister and the purpose is that of informing that Minister about any matter within the administration, or
  - ii. by another public sector agency to Council (or vice versa) under the administration of the Premier if the disclosure is for the purposes of informing the Premier about any matter

## **16. Linkage of health records (HPP 15)**

- 16.1 Council does not participate in a system to link health records across more than one organisation. In the event that this changes in the future, Council will ensure that no health records will be linked without the express consent of the individual(s) to whom the information relates

## Part 4 Implementation of the Plan

### 1. Training – Council staff (including employees, contractors, consultants and councillors)

- 1.1 Council staff receive training and information in relation to this Plan and their individual obligations and responsibilities under the PPIP Act and the HRIP Act as part of their induction to Council and whenever any changes to legislation or this Plan require additional training
- 1.2 Employees are also provided with specific information regarding what, if any, personal or health information is held by Council in relation to them and storage of such information on electronic and/or paper based files
- 1.3 Council Staff who require assistance with the understanding or, or application of, this Plan, the PPIP Act, the HRIP Act, the Privacy Code and/or related legislation may seek assistance by contacting the Public Information Officer, Human Resources

### 2. Distribution of information

- 2.1 This Plan, Council’s Website Privacy Statement and Privacy Statement, and related policies and procedures are distributed to Council Staff via
  - a) Council’s intranet site
  - b) Council’s electronic document management system at Corporate Management > Policies and Procedures
- 2.2 This Plan, Council’s Website Privacy Statement and Privacy Statement, and related policies and procedures are distributed to the community via
  - c) Council’s website
  - d) In person at the Customer Service Centre, 553 Kiewa Street Albury, and/or
  - e) Through a request for information via [info@alburycity.nsw.gov.au](mailto:info@alburycity.nsw.gov.au)
- 2.3 Additional information is prepared and circulated by Council via the intranet, website and in pamphlets developed by Council or the NSW Information Privacy Commission (“IPC”). Such information includes (but is not limited to)
  - a) fact sheets, knowledge updates, pamphlets and brochures circulated by the IPC
  - b) codes of practice and standard operating procedures (for example the CCTV Code of Practice and Standard Operating Procedure)
  - c) frequently asked questions (FAQs) developed by Council and posted on Council’s website and intranet
  - d) operations manuals and handbooks for staff
  - e) Council participation in educational programs such as the annual Privacy Awareness Week program
  - f) staff participation in conferences, seminars and guest speaker events sponsored by Council



## Part 5 Review of certain conduct - internal review process

### 1. Informal complaint resolution

- 1.1 In the first instance, individuals may seek resolution of a complaint regarding the conduct of Council, or Council staff, in relation to the manner in which their personal or health information is collected, stored, used, accessed, amended, disclosed or destroyed, via AlburyCity's informal complaint resolution process.
- 1.2 To lodge an informal complaint resolution request, an application should be made in writing addressed to

**The Public Officer**

AlburyCity  
PO Box 323  
ALBURY NSW 2640

Or via email to [info@alburycity.nsw.gov.au](mailto:info@alburycity.nsw.gov.au)

- 1.3 The informal complaints resolution process may involve a variety of actions including (but not limited to) formal or informal meetings, mediation and/or consultation with parties to the complaint.
- 1.4 At any point during the process, a complainant may elect to lodge a request for an internal review of their complaint.
- 1.5 If, at the conclusion of the informal process, the complainant is dissatisfied with the outcome of the process, they may lodge a request for an internal review of their complaint

### 2. Internal review

- 2.1 Under section 53 of the PPIP Act, any individual who is aggrieved by the conduct of Council, or Council staff, in relation to the manner in which their personal or health information is collected, stored, used, accessed, amended, disclosed or destroyed is entitled to apply for a review of that conduct
- 2.2 Applications for review must be made within six (6) months of
- the date that the individual became of the conduct, or
  - the date in which the individual became aware of their rights under privacy legislation
- 2.3 Applications for a review, must be made in writing and addressed to
- The Chief Executive Officer,  
AlburyCity  
PO Box 323  
ALBURY NSW 2640
- 2.4 The Chief Executive Officer has nominated the Public Officer (Service Leader, Human

- Resources) to act as Delegate for the purposes of the internal review process
- 2.5 Upon receipt of an application, the Public Officer will appoint a Reviewing Officer to conduct and undertake the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the application. The Reviewing Officer must be an employee of Council and be suitably qualified
  - 2.6 Resources and information for Reviewing Officers are available on the IPC website and include a *Checklist – Privacy internal review for agencies* to assist with the process
  - 2.7 Council will notify the Privacy Commissioner of the receipt of the application as soon as practicable and will keep the Commissioner informed of the progress of the application
  - 2.8 Prior to conclusion of the internal review, Council will forward to the Privacy Commissioner a final draft report of the internal review together with any findings and action (if any) that Council intends to take in relation to the application
  - 2.9 The Privacy Commissioner is entitled to make submissions in relation to the internal review and Council is required to consider any relevant material submitted by the Privacy Commissioner prior to finalisation of the review and report
  - 2.10 Council will notify the applicant of the outcome of the review within fourteen (14) days of the date of its determination
  - 2.11 Possible outcomes of a review may include a determination that one or more of the following occur
    - a) no further action be taken on the matter
    - b) a formal apology be made to the applicant
    - c) remedial action be taken as appropriate
    - d) undertakings be provided that the conduct will not occur again
    - e) implement administrative measures to ensure that the conduct will not occur again
  - 2.12 A copy of the final report should be provided to the Privacy Commissioner if the final report differs in any aspect from the final draft report provided
  - 2.13 Council may provide the applicant a copy of any submission by the Privacy Commissioner in relation to their application
  - 2.14 Internal reviews must be completed as soon as reasonably practicable in the circumstances
  - 2.15 If an internal review is not completed within sixty (60) days of lodgement of the application, the applicant is entitled to seek an external review by making an application to the Tribunal (NCAT) for an administrative review of the conduct concerned

### **3. External review rights following the outcome of an internal review**

- 3.1 Where an internal review process by Council has concluded and the applicant is unsatisfied with
  - a) the findings of the review, or
  - b) the action taken by Council in relation to the application, then

the applicant may apply to the NSW Civil and Administrative Tribunal for an administrative review of the conduct that was the subject of the application.

- 3.2 In undertaking the review, NCAT may impose its own decision in relation to the application and can make a range of orders including an award of damages for a breach of an information protection principle or a health privacy principle

#### **4. Complaint to Privacy Commissioner**

- 4.1 Under Section 45 of the PPIP Act, individuals may lodge a complaint directly with the Privacy Commissioner about the alleged violation of, or interference with, the privacy of an individual and where the conduct involves
- a) the contravention by Council or council staff of an information protection principle that applies to AlburyCity
  - b) the contravention by Council or council staff of a privacy code of practice that applies to AlburyCity
  - c) the disclosure by Council or council staff of personal information kept in a public register
- 4.2 Complaints may be lodged in writing or verbally, however individuals may be requested to put any verbal complaint in writing.
- 4.3 Complaints should be made within six (6) months of the complainant first becoming aware of the conduct or matter that is the subject of the complaint.
- 4.4 Complaints may be withdrawn, or amended, at any time.

## Part 6 Other relevant matters

### 1. Confidentiality

- 1.1 The obligation of confidentiality is additional to, and separate from, that of privacy. A duty to withhold information lies at the heart of both concepts. An obligation of confidentiality exists for all Council staff, whether express or implied as a matter of law
- 1.2 Information that may be confidential is also likely to have a separate, independent obligation attached to it in the form of privacy and, in that regard, a release will be required. In the case of privacy, the person to whom the information relates is required to provide the release

### 2. Prevention of misuse of information

- 2.1 Council has implemented a wide range of measures designed to prevent and protect personal or health information from misuse through inappropriate or unlawful collection, access, use, storage, disclosure or destruction.
- 2.2 These steps include (but are not limited to)
  - a) restriction of access to information to authorised individuals. Restriction includes strict limitations on who may access, alter, amend, update, create, store or disclose records held by council. Limitations are enforced through a variety of mechanisms including formal delegations, restricted access to systems, and physical barriers to information (secure storage)
  - b) full audit history recorded for all electronic and digital files that detail when a record was created, accessed, amended, transferred, updated or destroyed and by whom
  - c) regular internal and external audits of information management systems and processes with oversight by Council's Audit Risk and Improvement Committee
  - d) ongoing training of staff in relation to their responsibilities and obligations in relation to information management, privacy and confidentiality
  - e) implementation of policies, procedures, systems and processes designed to ensure that personal and/or health information is collected, accessed, used, stored, updated, disclosed and/or destroyed appropriately
  - f) implementation of policies, procedures and processes designed to initiate prompt and appropriate action in relation to any known or suspected misuse of personal or health information collected by Council
  - g) implementation of specific security measures (for example firewalls, encryption, password protection, secure offsite storage, and security access passes) designed to mitigate any risk of misuse of information held by Council
- 3.3 Staff found to have engaged in any behaviour or conduct involving the misuse of personal or health information may be subject to disciplinary action up to, and including, termination of employment

### 3. Penalties for misuse of personal or health information

- 3.1 Under section 664 of the LG Act, it is an offence for anyone to disclose information except in accordance with the provisions of that section. Whether or not a particular disclosure is made with lawful excuse is a matter that requires legal opinion from case to case
- 3.2 Penalties for misuse of information also exist under the PPIP Act and the HRIP Act as follows
- a) section 62(1) of the PPIP Act and section 68(1) of the HRIP Act – under which corrupt disclosure and use of personal information may attract a maximum penalty of 100 penalty units or imprisonment for 2 years or both
  - b) section 62(2) of the PPIP Act and section 68(2) of the HRIP Act– under which inducing or attempting to induce a public sector official to disclose personal information may attract a maximum penalty of 100 penalty units or imprisonment for 2 years or both
  - c) section 63(1) of the PPIP Act and section 69(1) of the HRIP Act – where it is an offence to offer to supply personal information and attracts a maximum penalty of 100 penalty units or 2 years imprisonment or both
  - d) individuals convicted under section 62 or section 63(1) of the PPIP Act may be subject to confiscation of money or other benefit alleged to have been obtained in connection with any offence
  - e) section 70(1) of the HRIP Act where it is an offence to threaten, intimidate, misrepresent, persuade or attempt to persuade an individual to refrain from requesting access to their health information, make a complaint to the Privacy Commissioner or NCAT, or not make an application under Part 5 of the PPIP Act
  - f) section 70(2) where it is an offence to use threat, intimidation, and false representation or require another person to provide consent in relation to health information, or to do, without consent, any act which requires consent. Maximum penalty units for such offences are 100 penalty points
- 3.3 Section 308H of the Crimes Act 1900 makes an offence any act where a person causes unauthorised access to or modification of restricted data (which includes personal and health information) held in a computer in circumstances where they know the access or modification is unauthorised and intent to cause the access or modification
- 3.4 In addition to the above, any staff who fail to comply with, or act in breach of, any part or requirement of this Plan, policy, procedure or legislation may be subject to disciplinary action under the *AlburyCity Code of Conduct*

### 4. Regular and ongoing review of the *AlburyCity Privacy Management Plan*

- 4.1 Review of this Plan will be undertaken in the following circumstances
- a) as scheduled and in accordance with Council's *Policy and Procedure Development and Management Policy*
  - b) upon notification of any relevant direction, guide or instruction from the Privacy

Commissioner that necessitates an update to the Plan

- c) upon any change of, or introduction of, any Act or law which necessitates a review of the Plan
  - d) upon any change to related policies, procedures and/or processes
  - e) at any time at the discretion of the Public Officer
- 4.2 Following review and amendment of the Plan, a draft copy will be provided to the Privacy Commissioner for review and comment

## 5. Access to Privacy Management Plan

- 5.1 Council's Privacy Management Plan is freely available on the AlburyCity website located at <https://www.alburycity.nsw.gov.au/>
- 5.2 Copies may also be obtained by attending in person at AlburyCity Council customer service centre located at 553 Kiewa Street, Albury NSW 2640 or by emailing [info@alburycity.nsw.gov.au](mailto:info@alburycity.nsw.gov.au).
- 5.3 Relevant policies and procedures including (but not limited to) AlburyCity's *Privacy Statement*, *Privacy Policy*, *Website Privacy Statement*, *Records Management Policy* etcetera may be accessed free of charge via the AlburyCity website located at <https://www.alburycity.nsw.gov.au/> or by sending an email to [info@alburycity.nsw.gov.au](mailto:info@alburycity.nsw.gov.au)

## 6. Further information

Further information and assistance in relation to this Plan, the PPIP Act, HRIP Act, Privacy Code, and/or the management of personal and health information by Council may be obtained by contacting

### 1. Public Information Officer

Office Location AlburyCity Council, 553 Kiewa Street, Albury, NSW, 2640  
Postal Address PO Box 323, Albury NSW 2640  
Email [info@alburycity.nsw.gov.au](mailto:info@alburycity.nsw.gov.au)

### 2. Information Privacy Commission

Office location Level 17, 201 Elizabeth Street, Sydney, NSW, 2000  
Postal address GPO Box 7011, Sydney NSW 2001  
Email [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)

### 3. NSW Civil and Administrative Tribunal (NCAT)

#### Administrative and Equal Opportunity Division and Occupation Division

Office location Level 10, John Maddison Tower, 86-90 Goulburn Street, Sydney, NSW, 2000  
Postal address PO Box K1026, Haymarket, NSW, 1240 or DX 11539 Sydney Downtown  
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## 7. Authorisation

<b>Owner</b>		<b>Service</b>	Executive – People & Culture
		<b>Responsible Officer</b>	Public Information Officer
<b>Authorisation</b>		Executive Leadership Team	
<b>Review Date</b>		February 2021	
<b>Register</b>		Public Policy and Procedure Register	
<b>Record of Amendments</b>		June 2016	Modified in accordance with Privacy and Personal Information Protection Act 1998, Health Records and Information Privacy Act 2002 and Privacy Code of Practice for Local Government 2000 (NSW)
		February 2020	Review of Privacy Management Plan

## **APPENDIX I – Information Privacy Principles (IPPs)**

### **Privacy and Personal Information Protection Act 1998 - Part 2 - Division 1 Principles (Sections 8 – 19)**

#### **IPP 1 – Collection of personal information for lawful purposes (Section 8 PPIP Act)**

- (1) *A public sector agency must not collect personal information unless:*
- (a) *the information is collected for a lawful purpose that is directly related to a function or activity of the agency, and*
  - (b) *the collection of the information is reasonably necessary for that purpose.*
- (2) *A public sector agency must not collect personal information by any unlawful means.*

#### **IPP 2 – Collection of personal information directly from individual (Section 9 PPIP Act)**

*A public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless:*

- (a) *the individual has authorised collection of the information from someone else, or*
- (b) *in the case of information relating to a person who is under the age of 16 years—the information has been provided by a parent or guardian of the person.*

#### **IPP 3 – Requirements when collecting personal information (Section 10 PPIP Act)**

*If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:*

- (a) *the fact that the information is being collected,*
- (b) *the purposes for which the information is being collected,*
- (c) *the intended recipients of the information,*
- (d) *whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,*
- (e) *the existence of any right of access to, and correction of, the information,*
- (f) *the name and address of the agency that is collecting the information and the agency that is to hold the information.*

#### **IPP 4 – Other requirements relating to collection of personal information (Section 11 PPIP Act)**

*If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:*

- (a) *The information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and*
- (b) *The collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.*



**IPP 5 – Retention and security of personal information (Section 12 PPIP Act)**

*A public sector agency that holds personal information must ensure:*

- (a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and*
- (b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and*
- (c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and*
- (d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.*

**IPP 6 – Information about personal information held by agencies (Section 13 PPIP Act)**

*A public sector agency that holds personal information must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:*

- (a) whether the agency holds personal information; and*
- (b) whether the agency holds personal information relating to that person, and*
- (c) if the agency holds personal information relating to that person:*
  - (i) the nature of that information, and*
  - (ii) the main purposes for which the information is used, and*
  - (iii) that person's entitlement to gain access to the information.*

**IPP 7 – Access to personal information held by agencies (Section 14 PPIP Act)**

*A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.*

**IPP 8 – Alteration of personal information (Section 15 PPIP Act)**

- (1) A public sector agency that holds personal information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:*
  - (a) is accurate, and*
  - (b) having regard to 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.*
- (2) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.*

- (3) *If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.*
- (4) *This section, and any provision of a privacy code of practice that relates to the requirements set out in this section, apply to public sector agencies despite section 25 of this Act and section 21 of the State Records Act 1998.*
- (5) *The Privacy Commissioner's guidelines under section 36 may make provision for or with respect to requests under this section, including the way in which such a request should be made and the time within which such a request should be dealt with.*
- (6) *In this section (and in any other provision of this Act in connection with the operation of this section), **public sector agency** includes a Minister and a Minister's personal staff.*

**IPP 9 – Agency must check accuracy of personal information before use (Section 16 PPIP Act)**

*A public sector agency that holds personal information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.*

**IPP 10 – Limits on use of personal information (Section 17 PPIP Act)**

*A public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected unless:*

- (a) *the individual to whom the information relates has consented to the use of the information for that other purpose, or*
- (b) *the other purpose for which the information is used is directly related to the purpose for which the information was collected, or*
- (c) *the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.*

**IPP 11 – Limits on disclosure of personal information (Section 18 PPIP Act)**

- (1) *A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:*
  - (a) *the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or*
  - (b) *the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or*
  - (c) *the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.*
- (2) *If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given*

to it.

**IPP 12 – Special restriction on disclosure of personal information (Section 19 PPIP Act)**

- (1) *A public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership or sexual activities unless the disclosure is necessary to prevent a serious and imminent threat to the life or health of the individual concerned or another person.*
- (2) *A public sector agency that holds personal information must not disclose the information to any other person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency unless:*
  - (a) *a relevant privacy law that applies to the personal information concerned is in force in that jurisdiction or applies to that Commonwealth agency, or*
  - (b) *the disclosure is permitted under a privacy code of practice.*
- (3) *For the purpose of subsection (2), a **relevant privacy law** means a law that is determined by the Privacy Commissioner, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned.*
- (4) *The Privacy Commissioner is to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales and to Commonwealth agencies.*
- (5) *Subsection(2) does not apply:*
  - (a) *until after the first anniversary of the commencement of this section, or*
  - (b) *until a code referred to in subsection (4) is made,*

*whichever is the later.*

## **APPENDIX II - Health Privacy Principles (HPPs)**

### **Health Records and Information Privacy Act 2002 – Schedule 1**

#### **HPP 1 - Purpose of collection of health information**

- (1) *An organisation must not collect health information unless:*
- (a) *the information is collected for lawful purpose that is directly related to a function or activity of the organisation, and*
  - (b) *the collection of the information is reasonably necessary for that purpose.*
- (2) *An organisation must not collect health information by any unlawful means.*

#### **HPP 2 - Information must be relevant, not excessive, accurate and not intrusive**

*An organisation that collects health information from an individual must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:*

- (a) *the information collected is relevant to that purpose, is not excessive and is accurate, up to date and complete, and*
- (b) *the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.*

#### **HPP 3 - Collection to be from individual concerned**

- (1) *An organisation must collect health information about an individual only from that individual, unless it is unreasonable or impracticable to do so.*
- (2) *Health information is to be collected in accordance with any guidelines issued by the Privacy Commissioner for the purposes of this clause.*

#### **HPP 4 - Individual to be made aware of certain matters**

- (1) *An organisation that collects health information about an individual from the individual must, at or before the time that it collects the information (or if that is not practicable, as soon as practicable after that time), take steps that are reasonable in the circumstances to ensure that the individual is aware of the following:*
- (a) *the identity of the organisation and how to contact it,*
  - (b) *the fact that the individual is able to request access to the information,*
  - (c) *the purpose for which the information is collected,*
  - (d) *the persons to whom (or the types of persons to whom) the organisation usually discloses information of that kind,*
  - (e) *any law that requires the particular information to be collected,*
  - (f) *the main consequences (if any) for the individual if all or part of the information is not provided.*
- (2) *If an organisation collects health information about an individual from someone else, it must take any steps that are reasonable in the circumstances to ensure that the individual is generally aware of the matters listed in subclause (1) except to the extent that:*
- (a) *making the individual aware of the matters would pose a serious threat to the life or health of any individual, or*

- (b) the collection is made in accordance with guidelines issued under subclause*
- (3) The Privacy Commissioner may issue guidelines setting out circumstances in which an organisation is not required to comply with subclause (2).*
- (4) An organisation is not required to comply with a requirement of this clause if:*
  - (a) the individual to whom the information relates has expressly consented to the organisation not complying with it, or*
  - (b) the organisation is lawfully authorised or required not to comply with it, or*
  - (c) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998), or*
  - (d) compliance by the organisation would, in the circumstances, prejudice the interests of the individual to whom the information relates, or*
  - (e) the information concerned is collected for law enforcement purposes, or*
  - (f) the organisation is an investigative agency and compliance might detrimentally affect (or prevent the proper exercise of) its complaint handling functions or any of its investigative functions.*
- (5) If the organisation reasonably believes that the individual is incapable of understanding the general nature of the matters listed in subclause (1), the organisation must take steps that are reasonable in the circumstances to ensure that any authorised representative of the individual is aware of those matters.*
- (6) Subclause (4) (e) does not remove any protection provided by any other law in relation to the rights of accused persons or persons suspected of having committed an offence.*
- (7) The exemption provided by subclause (4)(f) extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.*

#### **HPP 5 - Retention and security**

- (1) An organisation that holds health information must ensure that:*
    - (a) the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and*
    - (b) the information is disposed of securely and in accordance with any requirements for the retention and disposal of health information, and*
    - (c) the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and*
    - (d) if it is necessary for the information to be given to a person in connection with the provision of a service to the organisation, everything reasonably within the power of the organisation is done to prevent unauthorised use or disclosure of the information.*
- Note:** *Division 2 (Retention of health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.*

- (2) An organisation is not required to comply with a requirement of this clause if:
- (a) The organisation is lawfully authorised or required not to comply with it, or
  - (b) Non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).
- (3) An investigative agency is not required to comply with subclause (1) (a).

#### **HPP 6 - Information about health information held by organisations**

- (1) An organisation that holds health information must take such steps as are, in the circumstances, reasonably to enable any individual to ascertain:
- (a) whether the organisation holds health information, and
  - (b) whether the organisation holds health information relating to that individual, and
  - (c) if the organisation holds health information relating to that individual:
    - (i) the nature of that information, and
    - (ii) the main purposes for which the information is used, and
    - (iii) that person's entitlement to request access to the information.
- (2) An organisation is not required to comply with a provision of this clause if:
- (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

#### **HPP 7 - Access to health information**

- (1) An organisation that holds health information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.

**Note:** Division 3 (Access to health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.

- (2) An organisation is not required to comply with a provision of this clause if:
- (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

#### **HPP 8 - Amendment of health information**

- (1) An organisation that holds health information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the health information:
- (a) is accurate, and
  - (b) having regard to 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.
- (2) If an organisation is not prepared to amend health information under subclause (1) in accordance with a request by the individual to whom the information relates, the organisation must, if so requested by the individual concerned, take such steps as are reasonable to attach

to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.

- (3) If health information is amended in accordance with this clause, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the organisation.

**Note:** Division 4 (Amendment of health information) of Part 4 contains provision applicable to private sector persons in connection with the matters dealt with in this clause.

Amendment of health information held by public sector agencies may also be able to be sought under the Privacy and Personal Information Protection Act 1998.

- (4) An organisation is not required to comply with a provision of this clause if:
- (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

### **HPP 9 - Accuracy**

An organisation that holds health information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.

### **HPP 10 - Limits on use of health information**

- (1) an organisation that holds health information must not use the information for a purpose (a **secondary purpose**) other than the purpose (the **primary purpose**) for which it was collected unless:

- (a) **Consent**  
the individual to whom the information relates has consented to the use of the information for that secondary purpose, or
- (b) **Direct relation**  
the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to use the information for the secondary purpose, or

**Note:** For example, if information is collected in order to provide a health service to the individual, the use of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.

- (c) **Serious threat to health or welfare**  
the use of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:
  - (i) a serious and imminent threat to the life, health or safety of the individual or another person, or
  - (ii) a serious threat to public health or public safety, or

(c1) **Genetic information**

the information is genetic information and the use of the information for the

secondary purpose:

- (i) *is reasonably believed by the organisation to be necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of a genetic relative of the individual to whom the genetic information relates, and*
- (ii) *is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

**(d) Management of health services**

*the use of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:*

- (i) *either:*
  - A. *that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or*
  - B. *reasonable steps are taken to de-identify the information, and*
- (ii) *if the information is in a form that could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) *the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

**(e) Training**

*the use of information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:*

- (i) *either:*
  - A. *that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or*
  - B. *reasonable steps are taken to de-identify the information, and*
- (ii) *if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) *the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

**(f) Research**

*the use of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:*

- (i) *either:*
  - A. *that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or*



- B. reasonable steps are taken to de-identify the information, and
- (ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and
- (iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or

(g) **Find missing person**

the use of the information for the secondary purpose is by a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or

(h) **Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline**

the organisation:

- (i) has reasonable grounds to suspect that:
  - A. unlawful activity has been or may be engaged in, or
  - B. a person has or may have engaged in conduct that may be unsatisfactory professional misconduct under the Health Practitioner Regulation National Law (NSW), or
  - C. an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and
- (ii) uses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or

(i) **Law enforcement**

the use of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or

(j) **Investigative agencies**

the use of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or

(k) **Prescribed circumstances**

the use of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.

(2) An organisation is not required to comply with a provision of this clause if:

- (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

- (3) *The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions.*
- (4) *Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:*
- (a) *to another public sector agency under the administration of the same Minister if the disclosure is for the purposes of informing that Minister about any matter within that administration, or*
  - (b) *to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.*
- (5) *The exemption provided by subclause (1)(j) extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.*

#### **HPP 11 - Limits on disclosure of health information**

- (1) *An organisation that holds health information must not disclose the information for a purpose (a **secondary purpose**) other than the purpose (the **primary purpose**) for which it was collected unless:*
- (a) **Consent**  
*the individual to whom the information relates has consented to the disclosure of the information for that secondary purpose, or*
  - (b) **Direct relation**  
*the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to disclose the information for the secondary purpose, or*  

**Note:** *For example, if information is collected in order to provide a health service to the individual, the disclosure of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.*
  - (c) **Serious threat to health or welfare**  
*the disclosure of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:*
    - (i) *a serious and imminent threat to the life, health or safety of the individual or another person, or*
    - (ii) *a serious threat to public health or public safety, or*
- (c1) **Genetic information**  
*the information is genetic information and the disclosure of the information for the secondary purpose:*
- (i) *is to a genetic relative of the individual to whom the genetic information relates, and*
  - (ii) *is reasonably believed by the organisation to be necessary to lessen or*

*prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of a genetic relative of the individual to whom the genetic information relates, and*

- (iii) is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

**(d) Management of health services**

*the disclosure of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:*

- (i) 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 for the organisation to seek the consent of the individual for the disclosure, or*
  - B. reasonable steps are taken to de-identify the information, and*
- (ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

**(e) Training**

*the disclosure of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:*

- (i) 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 for the organisation to seek the consent of the individual for the disclosure, or*
  - B. reasonable steps are taken to de-identify the information, and*

**(f) Research**

*the disclosure of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:*

- (i) 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 for the organisation to seek the consent of the individual for the disclosure, or*
  - B. reasonable steps are taken to de-identify the information, and*
- (ii) the disclosure will not be published in a form that identifies particular individuals or from which an individual's identity can reasonably be ascertained, and*

- (iii) *the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

**(g) Compassionate reasons**

*the disclosure of the information for the secondary purpose is to provide the information to an immediate family member of the individual for compassionate reasons and:*

- (i) *the disclosure is limited to the extent reasonable for those compassionate reasons, and*
- (ii) *the individual is incapable of giving consent to the disclosure of the information, and*
- (iii) *the disclosure is not contrary to any wish expressed by the individual (and not withdrawn) of which the organisation was aware or could make itself aware by taking reasonable steps, and*
- (iv) *if the immediate family member is under the age of 18 years, the organisation reasonably believes that the family member has sufficient maturity in the circumstances to receive the information, or*

**(h) Find missing person**

*the disclosure of the information for the secondary purpose is to a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or*

**(i) Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline**

*the organisation:*

- (i) *has reasonable grounds to suspect that:*
  - A. *unlawful activity has been or may be engaged in, or*
  - B. *a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under the Health Practitioner Regulation National Law (NSW), or*
  - C. *an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and*
- (ii) *discloses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or*

**(j) Law enforcement**

*the disclosure of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or*

**(k) Investigative agencies**

*the disclosure of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or*

(l) **Prescribed circumstances**

*the disclosure of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.*

- (2) *An organisation is not required to comply with a provision of this clause if:*
- (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or*
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998), or*
  - (c) the organisation is an investigative agency disclosing information to another investigative agency.*
- (3) *The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions.*
- (4) *Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:*
- (a) to another public sector agency under the administration of the same Minister if the disclosure is for the purposes of informing that Minister about any matter within that administration, or*
  - (b) to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.*
- (5) *If health information is disclosed in accordance with subclause (1), the person, body or organisation to whom it was disclosed must not use or disclose the information for a purpose other than the purpose for which the information was given to it.*
- (6) *The exemptions provided by subclauses (1)(k) and (2) extend to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.*

**HPP 12 - Identifiers**

- (1) *An organisation may only assign identifiers to individuals if the assignment of identifiers is reasonably necessary to enable the organisation to carry out any of its functions efficiently.*
- (2) *Subject to subclause (4), a private sector person may only adopt as its own identifier of an individual and identifier of an individual that has been assigned by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its capacity as agent or contractor) if:*
- (a) the individual has consented to the adoption of the same identifier, or*
  - (b) the use or disclosure of the identifier is required or authorised by or under law.*
- (3) *Subject to subclause (4), a private sector person may only use or disclose an identifier assigned to an individual by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its capacity as agent or contractor) if:*
- (a) the use or disclosure is required for the purpose for which it was assigned or for a*

*secondary purpose referred to in one or more paragraphs of HPP 10(1)(c)-(k) or 11(1)(c)-(l), or*

- (b) the individual has consented to the use or disclosure, or*
- (c) the disclosure is to the public sector agency that assigned the identifier to enable the public sector agency to identify the individual for its own purposes.*

*(4) If the use or disclosure of an identifier assigned to an individual by a public sector agency is necessary for a private sector person to fulfil its obligations to, or the requirements of, the public sector agency, a private sector person may either:*

- (a) adopt as its own identifier of an individual an identifier of the individual that has been assigned by the public sector agency, or*
- (b) use or disclose and identifier of the individual that has been assigned by the public sector agency.*

### **HPP 13 - Anonymity**

*Wherever it is lawful and practicable, individuals must be given the opportunity to not identify themselves when entering into transactions with or receiving health services from an organisation.*

### **HPP 14 - Transborder data flows and data flow to Commonwealth agencies**

*An organisation must not transfer health information about an individual to any person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency unless:*

- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract that effectively upholds principles for fair handling of the information that are substantially similar to the Health Privacy Principles, or*
- (b) the individual consents to the transfer, or*
- (c) the transfer is necessary for the performance of a contract concluded in the interest of the individual between the organisation and a third party, or*
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third part, or*
- (e) all of the following apply:*
  - (i) the transfer is for the benefit of the individual,*
  - (ii) it is impracticable to obtain the consent of the individual to that transfer,*
  - (iii) if it were practicable to obtain such consent, the individual would be likely to give it,*

*or*
- (f) the transfer is reasonably believed by the organisation to be necessary to lessen or prevent:*
  - (i) a serious and imminent threat to the life, health or safety of the individual or another person, or*
  - (ii) a serious threat to public health or public safety, or*
- (g) the organisation has taken reasonable steps to ensure that the information that it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Health Privacy Principles, or*
- (h) the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law.*

## HPP 15 - Linkage of health records

(1) An organisation must not:

- (a) include health information about an individual in a health records linkage system unless the individual has expressly consented to the information being so included, or
- (b) disclose an identifier of an individual to any person if the purpose of the disclosure is to include health information about the individual in a health records linkage system, unless the individual has expressly consented to the identifier being disclosed for that purpose.

(2) An organisation is not required to comply with a provision of this clause if:

- (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998), or
- (c) the inclusion of the health information about the individual in the health records information system (including an inclusion for which an identifier of the individual is to be disclosed) is a use of the information that complies with HPP 10(1) (f) or a disclosure of the information that complies with HPP 11(1) (f).

(3) In this clause:

**health record** means an ongoing record of health care for an individual.

**health records linkage system** means a computerised system that is designed to link health records for an individual held by different organisations for the purpose of facilitating access to health records, and includes a system or class of systems prescribed by the regulations as being a health records linkage system, but does not include a system or class of systems prescribed by the regulations as not being a health records linkage system.