

## Privacy Policy

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### **SCOPE**

This policy is applicable to Councillors, Council staff and contracted service providers.

Other stakeholders may be impacted by this policy, and include residents, ratepayers and other members of the community, whose personal information and health records are collected by Council.

Where conflict exists, neither this policy nor the *Privacy and Data Protection Act 2014* (the "Act") prevail over any existing legislation.

### **PURPOSE**

The Act requires that all organisations within the Victorian Public Sector, including councils, collect, disseminate and use any personal information in accordance with the prescribed IPPs.

The purpose of this policy is to guide and support the management of personal and health information collected by Council with regard to its obligations under all relevant legislation.

### **POLICY STATEMENT**

Council is required to collect certain personal or health information relating to residents and ratepayers for statutory purposes in accordance with the *Local Government Act 2020*, the *Health Records Act 2002* and other acts and regulations. The kind of information collected includes but is not limited to:

- names
- addresses, phone numbers and email addresses
- health information such as maternal health records, medical certificates
- property details, banking information
- building plans

The information is collected in the course of Council's business, in carrying out its statutory functions and providing services to the community.

In certain circumstances, collected information may be shared with a third party contractor. Council will ensure that all third party contractors agree to abide by this policy and obligations under appropriate legislation.

The responsible handling of personal and health information ('information') is a key aspect of democratic governance. Indigo Shire Council is committed to ensuring that information received by the Council is collected and handled in a responsible manner. Council's privacy practices will comply with the Health Records Act 2001 and the Privacy & Data Protection Act 2014, and the Information Privacy Principles that are contained within.

## **POLICY DETAILS**

Council:

- is mindful of the need to balance the public interest in the free flow of information with the public interest in protecting the privacy of personal and health information.
- implements the Information Privacy Principles ("IPPs") in the Privacy and Data Protection Act 2014 (Vic) ("the Act") and the Health Privacy Principles ("HPPs") in the Health Records Act 2001 (Vic) (jointly the "Privacy Principles").

Commits to Section 20 of the Privacy & Data Protection Act (2014) which states that: "an organisation must not do and act, or engage in a practice, that contravenes an Information Privacy Principle in respect of personal information collected, held, managed, used, disclosed or transferred by it".

Personal and health information will be collected in accordance with the Information Privacy Principles (IPPs) contained within Schedule 1 of the Act. The Information Privacy Principles may be accessed at <https://ovic.vic.gov.au/privacy/information-privacy-principles-full-text/>

### **Privacy Officer**

Council's Senior Governance Advisor is the Privacy Officer. The Privacy Officer will assist Council in complying with its obligations under the Act and is authorised to provide advice and receive complaints and requests for access and correction.

### **Information Privacy Principles – Council's Obligations**

All information collected by Council will be managed in accordance with each IPP, as listed in the next section. All councillors, employees and contractors must meet these obligations.

#### **Principle 1 - Collection**

Information will only be collected when it is necessary for specific and legitimate Council functions and activities. This information will be collected by fair and lawful means and in an unobtrusive manner.

When collecting information, Council will advise the following:

- Why it is collecting the information
- How that information can be accessed
- The purpose for which the information is collected
- With whom the Council shares this information
- Any relevant laws
- The consequences for the individual if all or part of the information is not collected.

Information about a person will be collected only from that individual. However, in some circumstances, it may be necessary to collect information about a person from someone else. All reasonable steps will be taken to ensure that the individual is informed of their rights relating to the information collected.

Council employees should have a clear purpose for collecting each piece of information. Collecting information just because it may be useful in the future is not an appropriate practice under this policy.

Documents that collect information that is being used for a specific purpose must include a privacy statement. Council's privacy statements will be included on the relevant document where information is requested (includes but is not limited to forms, website and correspondence requesting personal or health information).

Privacy statements should be provided to an individual prior to the collection of the information, and every time personal or health information is collected from an individual.

An example privacy statement is provided in Appendix 1.

## Principle 2 - Use and Disclosure

Information about an individual will not be used or disclosed for a purpose other than the primary purpose for which it was collected, unless one of the following conditions specified in the Act applies:

- It is for a related purpose that the individual would reasonably expect
- Where Council has the consent of the individual to do so
- If, as defined in the Health Records Act, the individual is incapable of giving consent
- As required, or permitted by the Act or any other legislation such as the *Planning and Environment Act 1997*. It will do this strictly in accordance with the public availability requirements of those Acts, and consideration of these principles.

## Principle 3 - Data Quality

Reasonable steps will be taken to ensure that the information collected, its use and / or disclosures is accurate, complete and up-to-date.

Council is responsible for the quality of the information it holds for the period of time the information is held.

Council will under section 39 of the *Freedom of Information Act 1982* assist any person who seeks amend a personal record where it is inaccurate, incomplete, out of date, or where it would give a misleading impression.

## Principle 4 - Data Security

Reasonable steps will be taken to protect all personal and health information Council holds from misuse, loss, unauthorised access, modification or disclosure. Information that is stored electronically will be password protected and will be accessible only to the roles that require the information to perform their core function.

Staff, Councillors and contractors must not access or circulate any information held by Council (whether in hard or electronic copy), unless that information is directly relevant and required to perform their core function.

Hard copies of information are to be held in a secure location when not in use.

When the information is no longer needed, Council will take reasonable steps to lawfully and responsibly destroy or permanently de-identify it.

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## Principle 5 - Openness

Council is committed to the Transparency Principles outlined in the *Local Government Act 2020*, and this commitment is articulated in its Transparency Policy.

The Privacy policy will be made publicly available to communicate how personal and health information is handled at Indigo Shire.

Council will, to the extent possible, provide individuals with general information on the types of information Council holds, and for what purposes and how it collects, holds, uses and discloses that information.

### *Internal access*

The circumstances in which Council employees are entitled to have access to personal and health information held in particular classes of records will be determined by function and delegations.

## Principle 6 - Access and Correction

On request, access will be provided to information about an individual except in specific circumstances as outlined within the Act and the *Freedom of Information Act 1982*.

To access personal or health information, a request may be forwarded in writing to Council's Freedom of Information Officer. The applicant must provide their name and contact details for processing purposes.

Access is to be provided free of charge, unless it is sought via a valid request under the *Freedom of Information Act 1982*.

Council will provide the applicant support to submit a valid request where required.

Where information is held about an individual and the individual is able to establish that information is incorrect, Council will take reasonable steps to correct the information as soon as practicable but within **30 days** of the request. If, however, access or correction is denied, Council will provide reasons.

In the event that Council and an individual disagree about the veracity of the information, Council will take reasonable steps to record a statement relating to the disputed information if requested by the individual.

## Principle 7 - Unique identifiers

Unique identifying numbers will not be assigned, adopted, used, disclosed or required from individuals except for the course of conducting normal Council business or if required by law. Council will only use or disclose unique identifiers assigned to individuals by other organisations if the individual consents to the use and disclosure or the conditions for use and disclosure set out in the Act are satisfied.

## Principle 8 - Anonymity

Individuals may, where it is lawful and practicable, take up the option of not identifying themselves when entering into transactions with Council.

When individuals waive the option of anonymity, the collection still needs to be necessary to the organisation's functions or activities.

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## Principle 9 –Trans-border Data Flows

Personal and health information may be transferred outside of Victoria only if that data transfer corresponds with the reasons and conditions outlined in the Act.

This includes information stored on “cloud” services which are hosted outside Victoria.

## Principle 10 - Sensitive Information

An individual’s sensitive information will not be collected except in circumstances specified under the Acts or in circumstances whereby such information is both directly pertinent and necessary to the specific, proper and legitimate functions of one or more of Council’s activities.

## Principle 10 and 11 – Health Records Act

If Council’s Health Services were to be transferred or closed, Council will take reasonable steps to notify recipients of health services and notify them of the options to transfer their information to the new health service provider or a health service provider nominated by themselves or retain their own health records.

With consent from an individual, Council will provide a copy or written summary of their health information to a specified health service provider, on payment of a fee not exceeding the prescribed maximum fee and subject to the regulations.

## Complaints

Individuals may send written complaints directly to Council about a breach or perceived breach of privacy. A response to any complaint about privacy will be made as soon as possible (but no later than five business days). Council will investigate the matter, and will seek to resolve it within 30 days of receiving the complaint. A written response will be provided to the individual.

All complaints should be directed to Council’s Privacy Officer by email [info@indigoshire.vic.gov.au](mailto:info@indigoshire.vic.gov.au) or by post to: Privacy Officer - Indigo Shire Council, PO Box 28 Beechworth VIC 3747.

If an individual feels that their complaint has not been resolved to their satisfaction, they may lodge a further complaint with the Information Commissioner.

Please note the Commissioner may decline to hear the complaint if the individual has not first made a complaint to Council.

## **RELATED POLICIES AND DIRECTIVES**

- Public Transparency Policy
- Freedom of Information Procedure
- Records Management

## **RELATED LEGISLATION AND OTHER DOCUMENTS**

- *Local Government Act 2020*
- *Privacy and Data Protection Act 2014*
- *Freedom of Information Act 1982*

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- *Health Records Act 2001*
- *Charter of Human Rights & Responsibilities Act 2006*
- *Public Records Act 1973*

## **RISK MANAGEMENT**

Breaches of the relevant legislation are possible, and the consequences, with the consequences of investigation / report to authority and prosecution and moderate fines. Under the Council's Risk Management Policy this constitutes a Medium Risk.

Scheduled training, regular review of the policy, and the continuation of the Privacy Officer role residing in a full time officer's position, the control effectiveness will be strong and the residual risk is therefore low.

## **REVIEW**

The policy should be reviewed every two years.

The policy will be reviewed in line with Council's Community Engagement Policy.

Other trigger points that require an earlier review period of the policy or associated document/s include (but are not limited to):

- change in legislation which has a bearing on the document
- change in senior management
- change in Council's position on a particular subject area
- recommendation from a governance body (eg Audit and Risk Committee recommendation, Internal or External Audit Recommendation, integrity agency)
- quality assurance due to continuous improvement initiatives, and/or
- changes in Council's agreed service levels.

## **COMMUNICATION**

### *Councillors and Employees*

This policy will be publically available on Council's website. It will also be available to Councillors and employees via the intranet and in the electronic library (TRIM). For existing Councillors and employees, a two yearly sign-off and participation in any scheduled training will be required. For new Councillors and employees, training and policy acknowledgement will be incorporated into the Induction package.

### *Contractors & Third Parties*

Contractors and third parties will be provided with a copy of the policy as part of their Induction process. Existing contractors will be required to read the policy and sign an acknowledgement.

## DEFINITIONS

Primary Purpose	The initial reason that the information was collected. The reasons explained to the provider of information.
Personal Information	Means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which the Health Records Act 2001 applies.
Health Information	Means recorded information or opinion, whether true or not, about a readily identifiable individual (or an individual whose identity can be ascertained) that includes: <ul style="list-style-type: none"> <li>• The physical, mental or psychological health (at any time) of an individual;</li> <li>• The disability (at any time) of an individual;</li> <li>• An individual's expressed wishes about the future provision of health services to him or her;</li> <li>• A health service provided or to be provided to the individual;</li> <li>• Other personal and sensitive information collected (as considered by the PDPA) if the Council business unit is considered to be a 'health service provider' (e.g. Maternal and Child Health, Immunisation, Home and Community Care (HACC), etc.).</li> </ul>
Sensitive Information	Means information or an opinion about an individual's: <ul style="list-style-type: none"> <li>• Racial or ethnic origin; or</li> <li>• Political opinions; or</li> <li>• Membership of a political association; or</li> <li>• Religious beliefs or affiliations; or</li> <li>• Philosophical beliefs; or</li> <li>• Membership of a professional or trade association; or</li> <li>• Membership of a trade union; or</li> <li>• Sexual preference or practices; or</li> <li>• Criminal record</li> </ul>
Unreasonably intrusive	Collecting personal information would be regarded as intrusive if it involves: <ul style="list-style-type: none"> <li>• Asking questions about sensitive personal affairs</li> <li>• Physical touching, observing personal movements or invading private property</li> <li>• Repeatedly and unnecessarily asking for the same personal information</li> </ul>
Unique Identifiers	Means an identifier (usually a number) assigned by an organisation to an individual uniquely to identify that individual for the purposes of the operations of the organisation but does not include an identifier that consists only of the individual's name. E.g. tax file number.
Information Privacy Principles (IPP's)	A set of principles defined in the Privacy and Data Protection Act 2014 that regulate how organisations such as the Council collects, holds, manages, uses, discloses or transfers personal information.

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Health Privacy Principles (HPP's)	A set of principles defined in the Health Records Act 2001 (HRA) that regulate how a Council, when it is a health service provider collects, holds, manages, uses, discloses or transfers health information.
Public Register	Documents that are held by a Council and: <ul style="list-style-type: none"><li>• Are open to inspection by members of the public;</li><li>• Contain information that a person or body was required or permitted by legislation to give the Council under an Act or regulation; and</li><li>• Contain information that would be personal information if the document was not a generally available publication.</li></ul>

## VERSION CONTROL

Document name	Date approved / adopted
Privacy Policy	Adopted by Council 26 June 2018
Privacy Policy	Adopted by Council 28 June 2022



## Privacy Statement Template

The following template statement can be adapted for any specific purpose. It is to be included on any written / electronic form or correspondence where personal information is collected. The template is compliant with the requirements under Principal 1 of the Privacy & Data Protection Act and Council's Privacy Policy.

The personal information requested on this form is being collected by Indigo Shire Council for [insert purpose and any law that requires the particular information to be collected]. The personal information will be used solely by Council for that primary purpose or directly related purposes. Council may disclose this information to [list organisations and why, if applicable]. If this information is not collected [insert main consequences]. The individual may apply to the council for access to and/or amendment of the information. Requests for access and or correction should be made to Council's Privacy Officer".

More information on how to draft a privacy statement can be found at <https://www.cdpd.vic.gov.au/menu-privacy/privacy-organisations/privacy-organisations-collection-notices>.

Also see the Privacy Policy and Procedure on the Fridge.