

# MANAGEMENT POLICY & PROCEDURE



<b>Privacy and Data Protection</b>	Document No:	MPP-005
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## 1 Purpose

The purpose of this policy is to outline how Surf Coast Shire Council demonstrates its commitment to protecting people's right to privacy and ensuring the responsible handling of personal information.

## 2 Scope

This procedure supports the implementation of requirements under the Privacy and Data Protection Act (PDP Act) for Council to ensure that all requests and decisions related to Privacy and Data Protection are undertaken in a consistent, fair and transparent manner.

## 3 Application

This procedure applies to all Council employees, Councillors and contractors, specifically those persons responsible for receiving, managing and using personal and health information of individuals in carrying out Council business.

## 4 Definitions

Health information	Information or opinion about the physical, mental, psychological health of an individual, disability of an individual or a health service provided or to be provided to an individual, but does not include information about an individual who has been deceased for more than 30 years.
HPPs	Health Privacy Principles. A set of principles that are similar to the IPPs but specifically refer to the handling of health information.
IPPs	Information Privacy Principles. A set of principles that regulate the handling of personal information.
Personal information	Information or opinion, whether true or not and whether recorded in material form or not, about a living individual whose identity is apparent, or can reasonably be ascertained from the information or opinion.
Sensitive Information	Information or opinion about an individual's ethnic origins, religious beliefs, political opinions or association, philosophical beliefs, membership or professional association or trade union, sexual preferences or practices and criminal record.

## 5 Policy

Council is committed to complying with its obligations under the *Privacy and Data Protection Act 2014* (Victoria) (PDP Act), the *Health Records Act 2001* and federal privacy legislation. In particular, Council will comply with the Information Privacy Principles (IPPs) contained in the PDP Act.

## **6 Procedure**

Council must comply with the Privacy and Data Protection Act 2014 (Vic) and the Health Records Act 2001 (Vic). These laws govern the handling of personal information and health information in accordance with the 10 information privacy principles and 11 health privacy principles.

Council views the responsible handling of Personal and Health Information as a key aspect of democratic governance and health service provision and is committed to protecting an individual's right to privacy.

While personal information is usually handled by Council staff, Council may outsource some of its functions to third parties. This may require the contractor to collect, use or disclose certain personal information (eg waste collection). Third party contractors must comply with Council procedures and the Act at all times.

Significant penalties apply for privacy breaches but a breach can cause enormous reputational damage to Council. It is therefore essential that all staff are aware of the privacy laws and their obligations under those laws.

Types of information held by Council include:

### **6.1 Personal Information**

Whilst providing services to the community, Council holds certain personal information that is necessary for its functions. For example:

- name, address, property, bank account and other financial details of ratepayers for undertaking its rating and valuation services, town planning and building statutory functions and other property related services and enforcement activities.
- name, address and contact details of individuals who contact the Council with respect to requests or complaints related to Council services.

### **6.2 Sensitive Information**

Council holds sensitive information that is necessary for its functions. For example:

- individuals receiving Council services related to maternal and child health, youth, aged and disability services, and counselling programs.
- personal information of employees, volunteers and contract service providers, relevant to their employment or contract with the Council.
- information pertaining to criminal records.

### **6.3 Health Information**

Council may hold health information that is necessary for its functions. For example:

- information or opinion about the physical, mental, psychological health of an individual.
- disability of an individual or a health service provided or to be provided to an individual, but does not include information about an individual who has been deceased for more than 30 years.
- information about the immunisation status of school-based individuals.

### **6.4 Information Privacy Principles (IPPs)**

#### **IPP 1 - Collection**

Council will collect personal information lawfully and fairly and only collect personal information that is necessary for its functions and activities, including:

- direct from the individual via an application form or correspondence, or in response to a request from Council.
- from third parties, such as contracted service providers, health service providers or the individuals authorised representatives or legal advisers
- from publicly available sources of information
- when legally required to do so.

As far as practicable, Council will collect personal information about an individual direct from that individual. It will also inform the individual of the purpose(s) for which the information is collected, whom it will be disclosed to and how he/she is able to gain access to the information.

Council will not collect sensitive or health related information unless:

- the individual has consented
- it is required by law
- it is necessary to prevent or lessen a serious and imminent threat to the life, health or safety of an individual or the public
- it is necessary for the establishment, exercise or defence of a legal claim
- it is necessary for research, compilation and analysis of statistics relevant to government funded community programs.

Council will take reasonable steps to maintain the confidentiality of any personal information provided in confidence about an individual, by another person or a health service provider, in relation to the provision of care or health services to the individual.

Upon collection Council will inform the individual:

- why the information is being collected,
- to whom the information will may be disclosed and why,
- any law that requires Council to collect the information,
- the consequences for the individual if all or part of the information is not collected, and
- the fact that he/she is able to gain access to the information.

If Council collects personal information about an individual from someone else, it will take reasonable steps to ensure that the individual is made aware of this.

Council will only collect personal information about a child under the age of 18 with the written consent of the child's parent or guardian.

However, in certain circumstances Council may exercise discretion in obtaining parental/guardian consent for the collection of young person's information where parental/guardian involvement may hinder the delivery of services to a young person. If a young person under the age of 18 years is living independently of their parents/guardian, permission to collect personal information may be provided.

## **IPP 2 Use and Disclosure**

Council will only use personal information for the primary purpose for which it was collected (for example, levying rates, billing, collection of debts, property valuation, town planning and building approvals, provision of family and counselling services, community services and waste management services, enforcement activities and asset management) and any related purpose the individual would reasonably expect the Council to use or disclose the information to, or where the individual has consented to the use or disclosure.

The information may be disclosed:

- to Council's contracted service providers who manage the services provided by Council, including, waste collection, meal preparation for aged and disability services, environmental health inspections and infrastructure maintenance. Council will also require these service providers to maintain the confidentiality of the information and comply with the Information Privacy Principles in all respects.
- to statutory bodies (e.g. VicRoads, Goulburn Murray-Water) for the purposes of targeted consultation processes on major projects that could affect residents.
- to individuals for the purpose of serving a notice to fence as required by the *Fences Act*.
- to the Victorian and Australian Electoral Commissions for the compilation of voter rolls
- to statutory bodies (e.g. Centrelink, Child Support) for purposes required by relevant legislation.
- to Victoria Police, Australian Federal Police, fire department(s) or State Emergency Service or other appropriate agencies for emergency or law enforcement purposes only.
- where appropriate under another Act, including *Freedom of Information Act 1982*.

- in public registers that need to be maintained in accordance with other Acts, as a release of information relevant for the purpose for which the registers exist.
- to an individual's authorised representatives, health service providers or legal advisers.
- to Council's professional advisers, including accountants, auditors and lawyers.
- to organisations assisting the Council to perform statistical analysis for improving the services being delivered to the community. However, where practicable and reasonable, steps will be taken to de-identify the information.
- to an immediate family member of the individual, for emergency reasons, or if it is necessary to provide the appropriate care or health service to the individual.
- to any recipient outside Victoria, only if they are governed by substantially similar privacy principles or the individual has consented to the transfer or would be likely to give it, if it was practicable to obtain that consent.
- when legally compelled to do so (eg under direction of a court order).

### **IPP 3 Data Quality**

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

### **IPP 4 Security**

Council will endeavour to maintain a secure system for storing personal information and will utilise appropriate technologies, security methods, operational policies and procedures to protect the information from unauthorised access, improper use, alteration, unlawful or accidental destruction and accidental loss.

Council will dispose of personal information where it is no longer necessary to fulfil the purposes for which the information was collected or as required by law. Retention of information will be considered in accordance with the *Health Records Act 2001* and the *Public Records Act 1973*.

### **IPP 5 Openness**

Council must make publicly available its policies relating to the management of personal information.

### **IPP 6 Access and Correction**

Council will provide individuals with access to their personal information on written request to the Privacy Officer, except in specific circumstances as outlined within the *Privacy and Data Protection Act 2014* and the *Freedom of Information Act 1982*.

If an individual is able to establish that the personal information is inaccurate, incomplete or out-of-date, the Council will take reasonable steps to correct the information.

If access or correction of the personal information needs to be denied, as required by law or relates to legal proceedings, or the release would pose a serious threat to the life or health of any person, or is classified as confidential information, the Council will give the individual the reasons for that decision as soon as practicable.

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

### **Requests for Information by Third Parties**

The *Privacy and Data Protection Act 2014* (Victoria) allows for the application of Information Privacy Principles (IPPs) to guide Council in considering disclosure of personal contact details with respect to ratepayer information

Under the IPPs, Council may disclose personal information for such a purpose as it is related to the facilitation of a statutory process and also that a ratepayer might reasonably expect disclosure to be made in this instance.

With respect to IPP 4 (data security), Council is required to take reasonable steps to protect such personal information from misuse. In this context, such requests must confirm the name and contact details of the organisation making the request.

A written assurance by the requesting body is required that the contact details will be used solely for the purpose of printing and mailing ratepayer letters and notifications as part of the reason for request, and that it will not be retained, copied or disseminated for unrelated purposes. The written assurance must also confirm that Council has informed name of company/person making request about the relevant IPPs.

A copy of the standard Council request to organisations is attached to this Policy, together with the Assurance letter to be completed by the requesting organisation.

#### **IPP 7 Unique Identifiers**

Council will only assign a unique identifier (ie a unique reference number) to identify a person if the assignment is reasonably necessary to carry out its functions effectively.

#### **IPP 8 Anonymity**

Where lawful and practicable, individuals may exercise the option of not identifying themselves when supplying information or entering into transactions with the Council.

#### **IPP 9 Trans Border Data Flows**

Council must only transfer personal information outside of Victoria if that data transfer conforms to the reasons and conditions outlined in the Acts.

#### **IPP 10 Sensitive Information**

Council will not collect sensitive information about you except in circumstances prescribed in the *Privacy and Data Protection Act 2014* (Victoria) or in circumstances where the information is both ethically pertinent and necessary to one of its functions.

### **7 Privacy Complaints**

An individual may lodge a complaint in writing with the Council's Privacy Officer regarding the handling of personal information. Council will acknowledge the complaint within 5 business days and begin an investigation as soon as possible. The complainant will be advised of the outcome of the investigation in writing.

Alternatively, individuals may lodge a complaint relating to personal information with the Office of the Victorian Privacy Commissioner, about a Council act or practice that may be an interference with their privacy. However, the Commissioner may decline to deal with the complaint, if the complainant has not first complained to the Council.

### **8 Public Interest Disclosures**

This is a written determination provided by the Commissioner which allows for departure from compliance with the IPPs (except IPP-4 data security and IPP-6 access and correction). The Commissioner must be satisfied that the public interest in the departure from privacy provisions *substantially outweighs the public interest* in complying.

Council may apply in writing for a determination that –

- An act or practice of an organisation is in contravention of an IPP or approved code of practice
- The public interest in engaging in the act or practice *substantially outweighs the public interest* in complying with the IPP or code of practice.

### **9 Public Registers**

Public registers are documents that Councils are required to make publicly available in accordance with legislation. These registers:

- are open to inspection by members of the public
- contain information required or permitted by legislation
- may contain personal information.

## 10 Appointment of a Privacy and Data Protection Officer

Council's Privacy Officer is responsible for overseeing the implementation and monitoring performance of the *Privacy and Data Protection Act 2014* (Victoria), *Health Records Act 2001* and Council's Privacy and Data Protection Policy. The Privacy and Data Protection Officer is also responsible for the handling of enquiries, complaints and breaches relating to the management of personal or health information.

## 11 Further Information

Copies of this policy are available from Council's Torquay office and on Council's website [www.surfcoast.vic.gov.au](http://www.surfcoast.vic.gov.au).

Further information with respect to Council's Privacy and Data Protection Policy and its handling of personal information can be obtained from Council's Privacy and Data Protection Officer on (03) 5261 0600.

## 12 Potential Information Privacy Breaches

In situations where Council may have breached an individual's privacy, Council will investigate the matter to establish the circumstances and whether a breach has occurred.

Where a breach is established it will be necessary for Council to determine a course of action to reduce the likelihood of reoccurrence. This could include counselling of individuals, training, development and update of procedures.

If it is considered that the breach poses a risk to a person's safety, reputation, financial situation or of other serious detriment, Council will write to the person explaining the circumstances and outlining the steps that have been taken to prevent further breaches. The Office of the Privacy Commissioner may also be notified.

## Records

Record	Retention/Disposal Responsibility	Retention Period	Location
Reconciliation Statement	Coordinator Records Management	7 years	1 Merrijig Drive, Torquay, Vic 3228

## 13 Attachments

Attachment A – Template letter to be sent by Council outlining obligations under Information Privacy Principles for requests to access personal information.

Attachment B – Template - Assurance relating to disclosure of personal information.

## 14 References

Privacy and Data Protection Act 2014 (Victoria)  
Privacy Act 1998 (Australia)  
Freedom of Information Act 1982  
Health Records Act 2001  
Public Records Act 1973  
Fences Act 1968  
Information Privacy Principles (Australian Government – Office of the Australian Information Commissioner)  
Local Government Privacy Guide.  
IS-010 Records Management Policy  
MPP-006 Complaints Procedure

## ATTACHMENT A

(TO BE PLACED ON COUNCIL LETTERHEAD)

Enquiries: Privacy and Data Protection Officer  
Telephone: (03) 5261 0600  
Our Ref:

Date

Address

Dear

### PROVISION OF PERSONAL INFORMATION

The Privacy and Data Protection Act 2014 (Victoria) allows for the application of Information Privacy Principles (IPPs) to guide Council in considering disclosure of personal information held by Surf Coast Shire Council.

It is understood that the contact information has been requested for the purposes of *insert reason for request*.

Under the IPPs, Council may disclose personal information for such a purpose(s) as it is related to the facilitation of a statutory process and also that a ratepayer might reasonably expect disclosure to be made in this instance.

With respect to IPP 4 (data security), Council is required to take reasonable steps to protect such personal information from misuse. In this context, such requests must confirm the name and contact details of the organisation making the request. It is acknowledged that *name of person or company* has already provided adequate information in this respect as part of the request.

A written assurance is required that the contact details will be used solely for the purpose(s) for which they have been requested and will not be retained, copied or disseminated for unrelated purposes.

The written assurance also confirms that Council has informed *name of company/person making request* about the relevant IPPs through our Privacy Policy which can be viewed at [http://www.surfcoast.vic.gov.au/A-Z\\_Listing/P/Privacy\\_and\\_Data\\_Protection](http://www.surfcoast.vic.gov.au/A-Z_Listing/P/Privacy_and_Data_Protection).

Could you please sign the attached assurance, on *company name* letterhead or official email address, and return it to Council at your earliest convenience. A copy of the information will then be forwarded to you for the purpose(s) you have stated.

**Yours sincerely**

**Privacy and Data Protection Officer**

**ATTACHMENT B**

(TO BE PLACED ON ORGANISATION'S LETTERHEAD OR EMAILED USING OFFICIAL ADDRESS)

I, ..... of .....

have read and understood Surf Coast Shire Council's Privacy and Data Protection Policy at [http://www.surfcoast.vic.gov.au/A-Z\\_Listing/P/Privacy and Data Protection](http://www.surfcoast.vic.gov.au/A-Z_Listing/P/Privacy_and_Data_Protection) relating to the disclosure, storage and disposal of personal information.

I confirm that the disclosed information has been requested for the purposes of:

*(Please record purpose of request)*

Once signed, this document forms written assurance that the information will be used solely for the purpose outlined above and will not be retained, copied or disseminated for any other purposes. The information will be destroyed when it has been used for the purpose for which it was obtained. .

Signed .....

Name .....

Title .....

Company: .....

Date .....