

Privacy statement and privacy management plan

| | |
|--------------------------------------|---|
| Policy, procedure, protocol | Policy |
| Document version | V 7.0 |
| Date adopted by Council | 26 February 2019 |
| Minute number | 15.015/19 |
| File reference number | ECM 2312898 |
| Due for review | February 2021 |
| Documents superseded | V2.0 – 22/06/2010 – 13.088/10 V3.0 – 16/04/2013 – 13.059/13 V4.0 – 18/02/2014 – 14.005/14 V5.0 – 17/02/2015 – 14.008/15 V6.0 – 16/02/2016 – 14.008/16 |
| Related documents | Access to Council Documents Policy OLG Privacy Management Plan |
| Author | Director Corporate & Governance |
| Section / Department | Corporate & Governance |
| Linkage to Our Community Plan | 5 Leadership |
| Objective | 5.1 We will have a strong, accountable and representative Government |
| Strategy | 5.1.4 Ensure transparent and accountable decision making for our community |

Table of contents

| | |
|--|----|
| Privacy Statement | 1 |
| 1. Purpose | 2 |
| 2. Background | 2 |
| 3. Personal Information | 2 |
| What is personal information? | 2 |
| What is NOT personal information? | 3 |
| 4. Application of this plan | 3 |
| 5. Personal information held by Council..... | 3 |
| 6. Applications for suppression in relation to general information (not public registers) | 4 |
| 7. Public registers | 4 |
| 8. Applications for access to own records on a public register | 5 |
| 9. Caution as to unsolicited information..... | 5 |
| 10. Other registers | 5 |
| 11. Principles under the PPIP Act..... | 5 |
| Principle 1 – s8 PPIP Act - Collection of personal information for lawful purposes | 5 |
| Principle 2 – s9 PPIP Act – Collection of personal information directly from individual | 6 |
| Principle 3 – s10 PPIP Act - Requirements when collecting personal information..... | 7 |
| Principle 4 – s11 PPIP Act - Other requirements relating to collection of personal information . | 7 |
| Principle 5 – s12 PPIP Act - Retention and security of personal information | 8 |
| Principle 6 – s13 PPIP Act - Information about personal information held by Council | 8 |
| Principle 7 – s14 PPIP Act - Access to personal information held by Council | 9 |
| Principle 8 – s15 PPIP Act - Alteration of personal information | 10 |
| Principle 9 – s16 PPIP Act - Agency must check accuracy of personal information before use . | 11 |
| Principle 10 – s17 PPIP Act - Limits on use of personal information | 11 |
| Principle 11 – s18 PPIP Act - Limits on disclosure of personal information..... | 12 |
| Principle 12 – s19 PPIP Act - Special restrictions on disclosure of personal information..... | 13 |
| 12. Additional health principles | 15 |

| | |
|--|----|
| Health Principle 13 – Anonymity..... | 15 |
| Health Principle 14 – Transborder data flows and providing data to Commonwealth Agencies | 15 |
| Health Principle 15 – Linkage of health records | 15 |
| 13. Reviews and complaints..... | 16 |
| Formal Internal review..... | 16 |
| Informal internal review | 17 |
| Formal external complaint..... | 17 |
| Annual reporting..... | 17 |
| 14. Offences | 17 |
| 15. Supporting documentation- Privacy Management Procedures | 19 |
| 16. Minimising risk through public awareness and staff training..... | 19 |
| 17. Attachments..... | 19 |
| 18. Contact details | 19 |

Privacy Statement

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

This privacy statement provides information about the collection of personal or health information and the ways in which Council may use that information.

Collection of Personal Information

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

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

Use of information

We may use your personal information to provide or improve our services to you, to confirm your right to information you have requested from us or, to inform you about additional services that may be of interest to you or to which you may be entitled. We may also use your personal information to provide you with notices, newsletters and updates.

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

Council Policies

Council is bound by the Privacy Act 1988 (the Privacy Act) and the Australian Privacy Principles (APPs). These provisions limit how we use your information and when and to whom it can be released. The Council's policies and procedures meet its responsibilities under the Privacy Act and the APPs. Further details are available in Council's Privacy Management Plan.

Accuracy of your personal information

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

Access and Correction of Personal Information

You may access the Personal Information we hold about you. Should you believe that the information is inaccurate you may apply to Council to amend the information to ensure that it is accurate, complete and current.

Storage and security of your personal information

Reasonable steps are taken to protect the personal information we hold from misuse, unauthorised access, and modification. Your personal information will only be kept only as long as it is required by Council, or the law.

Complaints

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

1. Purpose

This policy outlines Council's approach to the collection and management of personal information and the requirements under the Privacy and Personal Information Protection Act 1998 (PIPP Act) and the Health Records and Information Privacy Act 2002 (HRIP Act).

2. Background

The PPIP Act and the HRIP Act provide for the protection of personal information and for the protection of the privacy of individuals. Section 33 PPIP Act requires all Councils to prepare a Privacy Management Plan.

The PPIP Act provides for the protection of personal information by means of 12 Information Protection Principles (IPPs) and the HRIP Act includes 15 health privacy principles. The 12 IPPs are similar to the first 12 HRIP principles and this Plan sets out Council's responsibilities in relation to each of them as well as to the remaining 3 HRIP principles. This Plan also incorporates the modifying effects of the Privacy Code of Practice for Local Government in the application of the "public register" provisions of Part 6 of the PPIP Act.

Council has also prepared Privacy Management Procedures which set out guidelines for staff on compliance with both the PPIP Act and the HRIP Act.

3. Personal Information

What is personal information?

Personal information is defined in s.4 PPIP Act to mean:

"information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. "

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

Health information is personal information that is information or an opinion about:

- a health service provided, or to be provided, to an individual,
- an individual's express wishes about the future provision of health services to him or her,
- other personal information collected in connection with the donation of human tissue,
- genetic information that is or could be predictive of the health of an individual or their relatives or descendants, or
- the physical or mental health or a disability (at any time) of an individual.

What is NOT personal information?

Certain information is excluded from the definition of 'personal information', for example information about someone who has been dead for more than 30 years, information about someone that is contained in a publicly available publication such as newspapers, magazines, books, the phone book, or information or an opinion about a person's suitability for employment as a public sector official, details available on the internet, on the Electoral Roll and details included in Council's business papers or attachments.

4. Application of this plan

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

- Councillors
- Council employees
- consultants and contractors of Council
- Council owned businesses
- members of Council committees (including community members of s.355 committees)

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

5. Personal information held by Council

Council holds personal information concerning Councillors, such as:

- personal contact information,
- complaints and disciplinary matters,
- pecuniary interest returns, and
- entitlements to fees, expenses and facilities.

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

- rates records,
- complaints,
- requests for access to information made under the PPIP Act and the Government Information (Public Access) Act (GIPA Act),
- development applications and objections; and
- various types of health information.

Council holds personal information concerning its employees, such as:

- recruitment material,
- leave and payroll data,
- personal contact information,
- performance management plans,
- disciplinary matters,
- pecuniary interest returns,
- wage and salary entitlements, and
- health information (such as medical certificates and workers compensation claims)

6. Applications for suppression in relation to general information (not public registers)

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

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

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, in accordance with section 58(2) of the PPIPA.

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

Any information that is removed from, or not placed on a public register may still be used for Council functions, but it cannot be disclosed to other parties.

An application for suppression should be made in writing addressed to the Director Corporate & Governance and must outline the reasons for the request. The Council may require supporting documentation where appropriate.

7. Public registers

Public registers maintained by Council containing personal information. Although their name suggests that they should be available to the public, Part 6 of the PPIP Act restricts public access to them. Public registers are defined in Section 3 of the PPIP Act as registers of personal information that are required by law to be, or are made, publicly available or open to public inspection (whether or not on payment of a fee).

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

Accordingly, Council will permit public access to one entry or one page of a public register without requiring the applicant to state his or her purpose for access. However, more extensive access will not be granted unless the applicant furnishes Council with a statutory declaration as to the proposed use of the information to be obtained from the register and that use conforms with the purpose for which the register is kept.

Purposes of Public Registers

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

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

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

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

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

Record of Building Certificates (s149G EP&A Act) – the primary purpose is to identify all building certificates.

Contributions Register (s34 EP&A Act) – the primary purpose is to identify the s94 contributions or s94A levies imposed on development consents.

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

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

8. Applications for access to own records on a public register

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.

9. Caution as to unsolicited information

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

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

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

10. Other registers

Council has other registers that are not public registers. The IPPs, this Plan, any applicable Codes and the PPIP Act apply to those registers or databases.

11. Principles under the PPIP Act

Principle 1 – s8 PPIP Act - Collection of personal information for lawful purposes

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.

A public sector agency must not collect personal information by any unlawful means.

The circumstances under which Council may collect information, including personal information, are varied and numerous. Council will only collect personal information for a lawful purpose as part of its proper functions. Council will not collect any more personal information than is reasonably necessary for it to fulfil its proper functions.

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

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

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

Principle 2 – s9 PPIP Act – Collection of personal information directly from individual

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.

Council regards all information concerning its customers as information protected by the PPIP Act. Council will therefore collect all personal information directly from its customers except where it is exempted from doing so. Council may collect personal information from other public sector agencies in respect of specific statutory obligations where it is authorised by law to do so.

The Privacy Code of Practice for Local Government provides that Council may collect personal information indirectly when calling for nominations for, or otherwise researching for, an award, prize, benefit or other form of personal recognition.

In addition, if Council is carrying out an investigation, including investigation of a complaint, it may collect personal information indirectly if direct collection is reasonably likely to detrimentally affect Council's conduct of an investigation.

Council is not required to comply with this Principle:

- (a) if the personal information is unsolicited by Council, or

- (b) in the case of health information, it is unreasonable or impracticable to do so, in which event the person from whom the information is collected must be advised of the matters in Health Principle 4 (see above).

Principle 3 – s10 PPIP Act - Requirements when collecting personal information

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.*

Where Council proposes to collect personal information directly from a person, it will inform that person:

- (a) that their personal information is being collected,
- (b) what is done with that information,
- (c) who the intended recipients will be,
- (d) if the information is required by law or voluntarily given, and
- (e) where the information will be retained in Council.

Council will ensure that all its forms that are used to collect personal information include this advice.

However, Council is exempt from providing this advice:

- (a) where information is collected for law enforcement purposes,
- (b) in situations where the provision of this advice is reasonably likely to detrimentally affect Council's conduct of an investigation,
- (c) if compliance may detrimentally affect Council's compliant handling functions, or
- (d) where compliance may prejudice the interests of the individual concerned.

Principle 4 – s11 PPIP Act - Other requirements relating to collection of personal information

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.*

Council will seek to ensure that no personal information is collected which is not directly relevant to its proper functions.

Council may use public place video surveillance in accordance with NSW Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television in Public Places. If it does so, Council will comply with the provisions of the Work Place Surveillance Act.

Principle 5 – s12 PPIP Act - Retention and security of personal information

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.*

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

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

Principle 6 – s13 PPIP Act - Information about personal information held by Council

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.*

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

Section 13 of the PPIP Act requires a Council to take reasonable steps to enable a person to determine whether the Council holds personal information about them. If Council holds any information about a person, upon request it will advise them the nature of that information, the main purposes for which it is held, and that person's entitlement to access. As a matter of

practicality, not every item of personal information, however insignificant, will be capable of ascertainment.

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

Any person can make application to Council by completing the appropriate form and submitting it to Council. An example is at Appendix 1.

Where Council receives an application or request by a person as to whether Council holds information about them, Council will undertake a search of its records to answer the enquiry. Council may ask the applicant to describe what dealings the applicant has had with Council in order to assist Council to conduct the search.

Council will ordinarily provide a response to applications of this kind within 28 days of the application being made. The fee structure is commensurate to that of the Council’s GIPA Act rates structure.

Investigative Functions

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 Information Protection Principle 6. The Directions are made from time to time and are available on the IPC website – see Contact Details below.

Existing exemptions under the Act

Compliance with Information Protection Principle 6 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) of the PPIP Act permits non-compliance with Information Protection Principle 6 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIP Act permits non-compliance with Information Protection Principle 6 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

Reporting matters

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

Principle 7 – s14 PPIP Act - Access to personal information held by Council

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.

This Principle requires Council, on request, to give access to a person to any personal information relating to them held by Council.

In considering any application under s14 PPIP Act, Council must consider the relevant provisions of the PPIP Act. Council will ordinarily provide a response to applications of this nature within 28 days of receipt of the application.

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

Personal information is also accessible under the GIPA Act. Briefly, if third party information of a personal nature is sought, the GIPA Act requires Council to consult with the third party before considering release of that information. The public interest considerations that must be addressed are found at Division 2 of the GIPA Act.

Principle 8 – s15 PPIP Act - Alteration of personal information

- (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.*

Council wishes to have its information current, accurate and complete, and as such, proposed amendments to the personal information held by Council are welcomed. However, Council will not provide access under section 15 to information that would not be available under section 14 of the PPIP Act.

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

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

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

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

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

Principle 9 – s16 PPIP Act - Agency must check accuracy of personal information before use

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.

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

- a) is advised to the contrary,
- b) has information that suggests otherwise, or
- c) judges that the information has not been updated for some time and may therefore be wise to make contact to confirm the personal information is correct.

Principle 10 – s17 PPIP Act - Limits on use of personal information

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.*

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

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

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

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

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

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

Principle 11 – s18 PPIP Act - Limits on disclosure of personal information

- (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.*

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

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

- (a) is made to a public sector agency or public utility on condition that:
 - i. the agency has approached Council in writing;
 - ii. Council is satisfied that the information is to be used by that agency for the proper and lawful function/s of that agency, and
 - iii. Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's function/s.
- (b) relates to personal information which has been collected about an individual and the disclosure is for the purpose of conferring upon that person an award, prize, benefit or similar form of personal recognition,
- (c) is directly related to the purpose for which the information was collected and the individual concerned is reasonably likely to have been aware of the intended recipients of that information ('directly related' can mean the disclosure to another person or agency to deliver a service which supplements that of Council or disclosure to a consultant for the purpose of assessing or reviewing the delivery of a program to which the original collection relates),
- (d) is necessary to prevent or lessen a serious or imminent threat to the life or health of the individual concerned or another person,
- (e) is made to a law enforcement agency in connection with proceedings for an offence or for law enforcement purposes or for the purpose of ascertaining the whereabouts of a missing person,
- (f) is authorised by subpoena, search warrant or other statutory instrument,
- (g) is reasonably necessary for the protection of public revenue,
- (h) is necessary to investigate an offence,
- (i) is necessary to enable Council to investigate a complaint,

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

Where Council is requested by a potential employer, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which they have applied.

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

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

Principle 12 – s19 PPIP Act - Special restrictions on disclosure of personal information

- (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 about an individual must not disclose the information to any person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency unless:*

- a. *the public sector agency 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 information protection principles, or*
- b. *the individual expressly consents to the disclosure, or*
- c. *the disclosure is necessary for the performance of a contract between the individual and the public sector agency, or for the implementation of pre-contractual measures taken in response to the individual's request, or*
- d. *the disclosure is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the public sector agency and a third party, or*
- e. *all of the following apply:*
 - i. *the disclosure is for the benefit of the individual,*
 - ii. *it is impracticable to obtain the consent of the individual to that disclosure,*
 - iii. *if it were practicable to obtain such consent, the individual would be likely to give it, or*
- f. *the disclosure is reasonably believed by the public sector agency to be necessary to lessen or prevent a serious and imminent threat to the life, health or safety of the individual or another person, or*
- g. *the public sector agency has taken reasonable steps to ensure that the information that it has disclosed will not be held, used or disclosed by the recipient of the information inconsistently with the information protection principles, or*
- h. *the disclosure is permitted or required by an Act (including an Act of the Commonwealth) or any other law.*

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

The Privacy Code makes provision for Council to depart from this Principle, in relation to s19(2) above, where Council is requested by a potential employer outside New South Wales to provide personal information. In these circumstances Council may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception does not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

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

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

12. Additional health principles

Health Principle 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.

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

Health Principle 14 – Transborder data flows and providing data 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 between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request, 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 party, 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. 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.*

Council will not transfer health information either:

- a) interstate, or
- b) to a Commonwealth agency,

except in compliance with Health Principle 14.

Health Principle 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.*

Council will not include health information about an individual in a health records linkage system except in compliance with Health Principle 15. For the purposes of this Principle, a 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.

13. Reviews and complaints

Formal Internal review

A person who is aggrieved by the conduct of Council in relation to either the PPIP Act or the HRIP Act, may apply to Council for a review of that conduct. An application for a review must:

- a) be in writing (setting out the alleged conduct by Council and including supporting documentation),
- b) be addressed to Council,
- c) specify an address in Australia to which the findings of the review can be sent, and
- d) be lodged with Council within 6 months of date on which the applicant first become aware of the conduct the subject of the application.

Council will follow the procedure set out below upon receipt of a valid application.

- a) The General Manager will appoint a suitably qualified staff member to investigate and report on the complaint contained in the application (the internal review).

- b) The review will be completed and a report made available to the applicant within 60 days of the lodgement of the application.
- c) Council will notify the Privacy Commissioner of the complaint and the outcome of the internal review.

If the applicant remains dissatisfied following the review, he/she may appeal to the NSW Civil and Administrative Tribunal (NCAT) which will hear the matter afresh and may impose its own decision and award damages for breaches of information protection principles. See section 18 for contact details.

Informal internal review

A person who is aggrieved by the conduct of Council in relation to either the PPIP Act or the HRIP Act, but does not wish apply for a formal review, may request a meeting with the Privacy Contact Officer to discuss the circumstances and an agreed remedy.

If the applicant remains dissatisfied following the alternative complaint handling process, they may seek a formal internal review.

Formal external complaint

A person may make a complaint directly to the Privacy Commissioner, pursuant to s. 45 of the PPIP Act.

Annual reporting

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

14. Offences

The following offences are covered by the PPIP Act at Part 8 Miscellaneous with similar provisions also made under the HRIP Act at Part 8:

62 Corrupt disclosure and use of personal information by public sector officials

(1) A public sector official must not, otherwise than in connection with the lawful exercise of his or her official functions, intentionally disclose or use any personal information about another person to which the official has or had access in the exercise of his or her official functions.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) A person must not induce or attempt to induce a public sector official (by way of a bribe or other similar corrupt conduct) to disclose any personal information about another person to which the official has or had access in the exercise of his or her official functions.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(3) Subsection (1) does not prohibit a public sector official from disclosing any personal information about another person if the disclosure is made in accordance with the Public Interest Disclosures Act 1994.

(4) In this section, a reference to a public sector official includes a reference to a person who was formerly a public sector official.

63 Offering to supply personal information that has been disclosed unlawfully

(1) A person who offers to supply (whether to a particular person or otherwise), or holds himself or herself out as being able to supply (whether to a particular person or otherwise), personal information that the person knows, or ought reasonably to know, has been or is proposed to be disclosed in contravention of section 62 is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) If a person is convicted of an offence under section 62 or 63 (1), the court may order the confiscation of any money or other benefit alleged to have been obtained by the person in connection with the offence and for that money or other benefit to be forfeited to the Crown.

66A Protection from liability

(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person by reason only of any of the following acts done in good faith:

- (a) the making of a complaint or application under this Act,*
- (b) the making of a statement to, or the giving of a document or information to, the Privacy Commissioner, whether or not pursuant to a requirement under section 37.*

(2) If a public sector agency provides an individual with access to personal information under this Act, and the access was required by section 14 (Access to personal information held by agencies), or an employee, officer or agent of the public sector agency believed in good faith that the access was required by section 14:

- (a) no action for defamation or breach of confidence lies against the public sector agency, any employee, officer or agent of the agency or the Crown by reason of the provision of access, and*
- (b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access lies against the person who provided the personal information to the public sector agency by reason of the person having supplied the information to the agency, and*
- (c) the public sector agency, or any employee, officer or agent of the public sector agency, or any other person concerned in giving access to the personal information is not guilty of an offence merely because of the giving of access.*

(3) The provision of access to personal information in the circumstances referred to in subsection (2) must not be taken to constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the health information by the person to whom access to the information is provided.

68 Offences relating to dealings with Privacy Commissioner

(1) A person must not:

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Privacy Commissioner or a member of the staff of the Privacy Commissioner in the exercise of functions under this or any other Act, or*

(b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Privacy Commissioner or a member of the staff of the Privacy Commissioner under this or any other Act, or

(c) wilfully make any false statement to or mislead, or attempt to mislead, the Privacy Commissioner or a member of the staff of the Privacy Commissioner in the exercise of functions under this or any other Act.

Maximum penalty: 10 penalty units.

15. Supporting documentation- Privacy Management Procedures

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

16. Minimising risk through public awareness and staff training

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

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

Front-line staff and regulatory staff who deal with the public and with the collection of personal or health information will be given training in respect of the Privacy Statement, this Plan and the Privacy Management Procedures.

Gaining familiarity with the Privacy Statement and this Plan is incorporated in Council's staff induction activities

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

17. Attachments

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

18. Contact details

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

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

Enquiries may also be addressed to:

Information and Privacy Commission
Level 11, 1 Castlereagh Street, Sydney NSW 2000
Telephone: 1800 472 679
Fax: 02 8114 3756
Email: ipcinfo@ipc.nsw.gov.au
www.ipc.nsw.gov.au

NSW Civil and Administrative Tribunal
Level 10, 86 Goulburn Street, Sydney NSW 2000
Phone 02 9377 5711
Fax 02 9377 5723
www.ncat.nsw.gov.au

APPENDIX 1

APPLICATION UNDER SECTION 13 OF THE PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 TO DETERMINE WHETHER COUNCIL HOLDS PERSONAL INFORMATION ABOUT A PERSON

| |
|--|
| I, (1) _____ (1) insert full name |
| of (2) _____ (2) insert address |
| <p>hereby request Clarence Valley Council's Director Corporate & Governance provide the following:</p> <ul style="list-style-type: none"> • Does the Council hold personal information about me? <input type="checkbox"/> Yes <input type="checkbox"/> No • If so, what is the nature of that information? _____ |
| <ul style="list-style-type: none"> • What is the main purpose for holding the information? _____ |
| <ul style="list-style-type: none"> • Am I entitled to access the information? <input type="checkbox"/> Yes <input type="checkbox"/> No • My address for response to this application is: _____ |
| <p style="text-align: right;">State: _____ Postcode: _____</p> |
| <p style="text-align: center;"><u>NOTE TO APPLICANTS</u></p> <p>Council will not record your address or any other contact details that you provide for any other purpose other than to respond to your application.</p> <p>As an applicant, you have a right of access to personal information concerning yourself that is held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 (PPIP ACT). There is a separate application form to gain access.</p> <p>The Council may refuse to process this application in part or in whole if:</p> <ul style="list-style-type: none"> • there is an exemption to section 13 of the PPIP ACT; or • a Code of Practice may restrict the operation of section 14. <p style="text-align: center;">Enquiries concerning this matter can be addressed to:</p> <p style="text-align: center;">Director Corporate & Governance Clarence Valley Council 2 Prince Street GRAFTON NSW 2463</p> |