

## **BACKGROUND**

Council collects and holds personal and health information for the purpose of facilitating its business. It is important that the use of this information is confined to the purpose for which it is acquired. In order to properly manage the personal information it holds, it is essential for the provisions of this policy to be observed by Councillors, employees, contractors and volunteers.

## **OBJECTIVE**

The Privacy and Personal Information Protection Act 1998 [PPIPA] requires all public sector agencies to prepare, implement and review their Privacy Management Plan at least every three years. This policy outlines how Gwydir Shire Council complies with the legislative requirements of the PPIPA, the Health Records and Information Privacy Act 2002 [HRIPA] and the Privacy Code of Practice for Local Government [Code].

It is designed to inform the community and educate staff on access to personal information and to introduce Council policies and procedures to maximise compliance with the PPIPA and the HRIPA.

## **POLICY STATEMENT**

Gwydir Shire Council is committed to protecting the privacy of our customers, business contacts, Councillors, employees, contractors and volunteers.

The Privacy Management Plan details how Gwydir Shire Council manages the personal and health information it collects, stores, accesses, uses and discloses in the course of its business activities.

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## **STATEMENT OF PROCEDURES**

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## **Part 1 - Introduction**

### **1.1 What is personal information?**

Personal information is defined as:

“information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. This information can be on a database and does not necessarily have to be recorded in a material form”

### **1.2 What is not personal information?**

Personal information does not include information about an individual that is contained in a publicly available publication. Personal information, once it is contained in a publicly available publication, ceases to be covered by the PPIPA.

Where the Council is requested to provide access or make a disclosure and that information has already been published, then the Council will rely on the provisions of the relevant Act that authorises Council to hold that information and not the PPIPA (for example, a formal or informal request under the Government Information (Public Access) Act 2009 [GIPAA]).

In accordance with GIPAA, when inviting public submissions Council will advise people that their submission, including any personal information in the submission, may be made publicly available.

### **1.3 What is health information?**

Health information is defined in the HRIPA as:

“personal information that is information or an opinion about the physical or mental health or a disability (at any time) of an individual or an individual’s express wishes about the future provision of health services to him or her or a health service provided or to be provided to an individual”.

### **1.4 Application of this Plan**

The PPIPA and this Plan apply, wherever practicable, to:

- Councillors;
- Council employees;
- Consultants and contractors of the Council;
- Volunteers
- Council owned businesses; and
- Council Committees (including those which may be established under section 355 of the Local Government Act 1993 (LGA)).

### **1.5 Personal and Health information held by Council**

The Council holds personal information concerning Councillors, such as:

- personal contact information;
- complaints and disciplinary matters;
- disclosure of interest returns; and
- entitlements to fees, expenses and facilities;

The Council holds personal and health information concerning its customers, ratepayers and residents, in records such as:

- rates records;
- customer requests
- library lending records;
- fitness testing records;
- burial and cremation records;
- community service utilisation e.g. Community Transport;
- CCTV footage;
- donation, grant and sponsorship applications;
- submissions and information collected as part of Council's community engagement and consultation activities;
- public access forum applications; and
- development applications and related submissions.

The Council holds personal and health information concerning its current and former employees in records such as:

- recruitment material;
- pre-employment medical information;
- workers compensation investigations;
- public interest disclosure investigations;
- leave and payroll data;
- personal contact information;
- performance management plans;
- disciplinary matters;
- disclosure of interest returns; and
- wage and salary entitlements.

## **1.6 Unsolicited Information**

Unsolicited information is personal or health information received by Council in circumstances where Council has not asked for or required the information to be provided. It includes gratuitous or irrelevant information received. Such information is not deemed to have been collected by Council but the retention, use and disclosure principles of the information will apply to any such information in Council's possession. Personal information contained in petitions received in response to a call for submissions or unsolicited petitions tabled at Council meetings will be treated the same as any other submission and be made available for release to the public.

Personal or health information disclosed publicly and recorded for the purposes of webcasting at Council Meetings is not deemed to have been collected by Council. Retention and Use Principles of this information will apply to such information in Council's possession, however Disclosure Principles will not apply as the information was voluntarily disclosed with the prior knowledge that it would be recorded, broadcast via the internet to the public and made available by Council for public viewing.

## **Part 2 - Public Registers**

### **2.1 Definition**

A public register is defined as "a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee)".

Council holds public registers under the LGA, including:

- Land Register
- Records of Approvals
- Register of Disclosures of Interests

\*Note — this is purely indicative. Council may, by virtue of its own practice, hold other public registers, to which PPIPA applies.

Council holds public registers under the Environmental Planning and Assessment Act 1979 [EPA]:

- Register of consents and certificates
- Record of building certificates

Council holds a public register under the Protection of the Environment Operations Act 1997 [POEO]:

- Public register of licences

Council holds a public register under the Impounding Act 1993 [IA]:

- Record of impounding

The purpose for each of these public registers is set out in this Plan.

## **2.2 Disclosure of personal information contained in public registers**

Personal information contained in a public register, other than where required by legislation, will only be disclosed where Council is satisfied that it is to be used for a purpose relating to the purpose of the register.

Disclosure in relation to personal information not contained in a public register must comply with the Information Protection Principles as outlined in this Plan.

A person seeking a disclosure concerning someone else's personal information from a public register must make application to Council and outline their reasons and purpose.

## **2.3 Purposes of Public Registers**

Land Register — 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.

Records of Approvals — The primary purpose is to identify all approvals granted under the LGA.

Register of Disclosures of Interests — The primary purpose of this register is to determine whether or not a Council official has a pecuniary interest in any matter with which the council is likely to be concerned. There is a corresponding public accountability purpose and third party access is a secondary purpose.

Register of consents and certificates — 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 — The primary purpose is to identify all building certificates.

Public register of licences— The primary purpose is to identify all licences granted under the POEO.

Record of impounding — The primary purpose is to identify any impounding action by Council.

## **2.4 Secondary purpose of all Public Registers**

Council aims to be open and accountable and it is considered that a secondary purpose for which all public registers are held by Council includes the provision of access to members of the public. Disclosure of specific records from public registers would normally be permitted.

Requests for access, copying or the sale of the whole or a substantial part of a public register will not necessarily fit within this purpose. Council will make an assessment as to the minimum amount of personal information that is required to be disclosed with regard to any request.

## **2.5 Other registers**

Council may keep other registers that are not public registers. The Information Protection Principles, this Plan, the Code and PPIPA apply to the use and disclosure of information in those registers.

A register that Council keeps that is not a public register is the rates record and Council's position on this record is as follows:

Rates Record - 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. For example, a disclosure on a rating certificate that a previous owner was a pensioner is considered to be allowed, because the secondary purpose is "a purpose relating to the purpose of the register". Public access to the rates record will only be granted where the purpose of the access is to obtain information necessary for a statutory purpose such as the service of a notice under the Dividing Fences Act 1991. The rates record will also be used by Council to notify relevant land owners of development applications and other matters where Council is required or wishes to consult its local community.

## **2.6 Applications for access to own personal information**

A person wishing to have access to Council's records to confirm their own personal information should submit a Confirm Personal Information Application and if the person wishes to alter their personal information they should submit a Change of Personal Information Application.

## **2.7 Applications for suppression of personal information in a public register**

A person about whom personal information is contained (or is proposed to be contained) in a public register, may request Council to have the information removed from or not placed on the register by submitting an application in the form of a Statutory Declaration.

If Council is satisfied that the safety or well-being of any person would be affected by not suppressing the person's personal information, 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.

The information may still be used in the exercise of Council functions, but it cannot be disclosed to other parties.

## **Part 3 – Policies and Legislation**

Policies and legislation affecting the processing of information and related to this plan include:

- Council's Public Access to Information held by Council Policy

Public access to information and documents held by Council is facilitated by Council's Public Access to Information held by Council Policy. This Policy has regard to the Government Information (Public Access) Act 2009, Government Information (Public Access) Regulation 2009 and the Local Government Act 1993.

This Plan should be read in conjunction with the Public Access to Information Held by Council Policy, the Privacy Code of Practice for Local Government, together with Council's Publication Guide

The above documents are available for viewing at <http://www.gwydirshire.com/Council/>

- Environmental Planning and Assessment Act 1979 (EPAA)

The EPAA contains provisions that require Council to make development applications and accompanying information publicly available and provides a right for people to inspect and make copies of elevation plans during the submission period.

The EPAA is available for viewing at [www.austlii.edu.au/](http://www.austlii.edu.au/)

- Health Records and Information Privacy Act 2002 (HRIPA)

The HRIPA governs both the public and private sector in NSW. It contains a set of 15 Health Privacy Principles and sets up a complaints mechanism to ensure agencies abide by them.

The HRIPA is available for viewing at [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

- Privacy and Personal Information Protection Act 1998 (PPIPA)

In addition to requirements covered in this plan, the PPIPA prohibits disclosure of personal information by public sector officers that are not done in accordance with the performance of their official duties. These provisions are generally directed at corrupt or irregular disclosure of personal information staff may have access to at work and not inadvertent failure to follow procedures or guidelines. Corrupt or irregular disclosure can include intentionally disclosing or using personal information accessed in doing our jobs for an unauthorised purpose, or to offer to supply personal information that has been disclosed unlawfully. Offences can be found listed in s62-68 of the PPIPA, are considered serious and may, in some cases, lead to imprisonment.

The PPIPA is available for viewing at [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

- Public Interest Disclosures Act 1994 (PIDA)

The definition of personal information under PPIPA excludes information contained in a public interest disclosure. This means that a person cannot seek review of the use or disclosure of a public interest disclosure or be prosecuted for unauthorised disclosure of public interest disclosure information under PPIPA. However, this plan is still able to address strategies for the protection of personal information disclosed under PIDA.

The PIDA is available for viewing at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) – further information can be obtained from the NSW Ombudsman at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

## Part 4 - Information Protection Principles

- 4.1 Council complies with the Information Protection Principles (IPPs) prescribed under PPIPA and Health Privacy Principles (HPPs) prescribed under HRIPA as follows:

### **IPP 1 & HPP 1 Lawful collection**

Council will collect personal and/or health information that is reasonably necessary and for a lawful purpose that is directly related to its functions and/or activities. Such personal and health information may include names, residential address, phone numbers, email addresses, signatures, medical certificates, photographs and video footage (CCTV).

### **IPP 2 & HPP 2 Direct collection**

Personal information will be collected directly from the individual, unless that person consents otherwise. Parents or guardians may give consent for minors

Health information will be collected directly from the person concerned, unless it is unreasonable or impracticable to do so.

Collection may occur via phone, written correspondence to Council, email, facsimile, Council forms or in person.

**IPP 3 & HPP 3 Requirements when collecting**

- a. Council will inform individuals that their personal information is being collected, why it is being collected and who will be storing and using it. Council will also inform the person how they can view and correct their information. A Privacy Statement is published on Council's website, intranet, included on forms where personal or health information is collected and available as a handout to the public.
- b. Council will inform persons why health information is being collected about them, what will be done with it and who might see it. Council will also inform the person how they can view and correct their health information and any consequences if they do not provide their information. If health information is collected about a person from someone else, reasonable steps will be taken to ensure that the person has been notified as above.

**IPP 4 & HPP 4 Relevance of collection**

Personal and health information collected will be relevant to Council's functions and services, accurate, up-to-date, complete and not excessive. The collection will not unreasonably intrude into the individual's personal affairs.

Council will in normal circumstances rely on the individual to supply accurate, complete information, although in special circumstances some verification processes may be necessary.

**IPP 5 & HPP 5 Secure storage**

Council will store personal information securely, for no longer than as required by the General Retention and Disposal Authorities for Local Government Records issued by State Records Authority of NSW, and will be disposed of appropriately. It will be protected from unauthorised access, use or disclosure by application of appropriate access levels to Council's electronic data management system and staff training.

If it is necessary for the information to be given to a person in connection with the provision of a service to the Council (e.g. consultants and contractors), everything reasonably within the power of the Council is done to prevent unauthorised use or disclosure of the information.

**IPP 6 & HPP 6 Transparent access**

Council will provide reasonable detail about what personal and/or health information is stored on an individual. Council stores information for the purpose of carrying out its services and functions and in order to comply with relevant records keeping legislation.

Individuals have a right to request access to their own information to determine what, if any information is stored, how long it will be stored for and how it is stored (e.g. electronically with open or restricted access to staff, in hard copy in a locked cabinet etc.).

**IPP 7 & HPP 7 Access to own information**

Council will ensure individuals are allowed to access their own personal and health information without unreasonable delay or expense by way of implementation of appropriate procedures for access to this information.

**IPP 8 & HPP 8 Right to request to alter own information**

Council will, at the request of a person, allow them to make appropriate amendments (i.e. corrections, deletions or additions) to their own personal and health information:



Changes of name, address and other minor amendments require appropriate supporting documentation. Where substantive amendments are involved, an application form will be required and appropriate evidence must be provided as to why the amendment is needed.

**IPP 9 & HPP 9      Accurate use of information collected**

Taking into account the purpose for which the information is proposed to be used, Council will ensure that personal and health information is accurate before using it. Council will ensure that the information it proposes to use is the most recent information kept on file, is not unreasonably out of date or where it is reasonable and necessary to do so, write to the individual to whom the information relates.

**IPP 10 & HPP 10      Limits to use of information collected**

Council will only use personal and health information for the purpose for which it was collected, for a directly related purpose or for a purpose for which a person has given consent. It may also be used without consent in order to deal with a serious and imminent threat to any person's life, health or safety, for the management of a health service, for training, research or to find a missing person. Additionally, a secondary purpose includes investigation of suspected unlawful activity, to exercise complaint handling functions or investigative functions

**IPP 11 & HPP 11      Restricted and Limited disclosure of personal and health information**

Council will only disclose personal and health information with the individual's consent or if the individual was told at the time of collection that it would do so. Council may also disclose information if it is for a related purpose and it considers that the individual would not object. Personal and health information may also be used without the individual's consent in order to deal with a serious and imminent threat to any person's life, health, safety, for the management of a health service, for training, research or to find a missing person. Additionally, a secondary purpose includes investigation of suspected unlawful activity, to exercise complaint handling or investigation functions.

**IPP 12      Special limits on disclosure**

Council will not disclose sensitive personal information relating to an individual's:

- ethnic or racial origin
- political opinions
- religious or philosophical beliefs
- trade union membership
- health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

Council will not disclose this information to any person or body who is in a jurisdiction outside New South Wales unless:

- a relevant privacy law that applies to the personal information concerned is in force in that jurisdiction, or
- the disclosure is permitted under a Privacy Code of Practice

**SPECIFIC HEALTH INFORMATION PRIVACY PRINCIPLES**

Health information is given a higher level of protection regarding use and disclosure than is other personal information. In addition to the privacy principles, above, that apply to both personal and health information, the following four additional principles apply specifically to health information.

The specific Health Privacy Principles are:

**HPP 12      Unique Identifiers**

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

**HPP 13 Anonymity**

Wherever it is lawful and practicable, individuals must be given the opportunity to not identify themselves when entering into transactions with or receiving any health service(s) from Council.

**HPP 14 Transborder data flow**

Health information must only be transferred outside NSW if Council reasonably believes that the recipient is subject to laws or obligations substantially similar to those imposed by the HRIPA or consent has been given or transfer is under a contract between Council and the individual or transfer will benefit the individual or to lessen a serious threat to an individual's health and welfare, or steps have been taken to ensure that the information will not be handled inconsistently with the HRIPA or transfer is permitted or required under any other law.

**HPP 15 Cross-organisational linkages**

Council will seek the express consent of individuals before participating in any system that links health records across more than one organisation. Health information or the disclosure of their identifier for the purpose of the health records linkage system will only be included if the person has given express consent.

**4.2 How the Privacy Code of Practice for Local Government affects the IPPs**

With regard to IPPs 2, 3, 10 and 11 the Code makes provision for Council to depart from these principles where the collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.

With regard to IPP 10, in addition to the above, the Code makes provision that Council may use personal information for a purpose other than the purpose for which it was collected where the use is in pursuance of Council's lawful and proper function/s and Council is satisfied that the personal information is reasonably necessary for the exercise of such function/s.

With regard to IPP 11, in addition to the above, the Code makes provision for Council to depart from this principle in the circumstances described below:

1. Council may disclose personal information to public sector agencies or public utilities 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.
2. 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 he/she has applied.

**Part 5 – Dissemination of the Privacy Management Plan****5.1 Compliance strategy**

During induction and on a regular basis all employees will be made aware of this Plan and it will be made available for on Council's Intranet and Council's website.

Councillors, employees, contractors and volunteers will be regularly acquainted with the general provisions of the PPIPA and HRIPA and, in particular, this Plan, the Information Protection Principles, the Public Register provisions, the Privacy Code of Practice for Local Government and any other applicable Code of Practice.

## **5.2 Communication strategy**

Council informs its employees, Councillors and the community of their rights under PPIPA and this Plan by:

- publishing the Privacy Management Plan and associated documents on Council's website together with a link to the Information & Privacy Commission website;
- including privacy statements on application forms and invitations for community engagement; and;
- publishing a Privacy Handout advising how to access information on an individual's rights under PPIPA, HRIPA and this Plan.

## **Part 6 – Complaints and procedures for internal review**

### **6.1 Internal Review**

Any person is entitled to obtain access to any personal information that Council holds about them. They may request alterations be made to their personal details or request information on the way their personal details have been used.

If an individual is not satisfied with Council's conduct in relation to their privacy request, disclosure of personal information on a public register or believe Council is contravening a privacy principle or privacy code of practice they can make an application for internal review of Council's conduct or decision by writing to Council's Privacy Contact Officer.

The written application must be addressed to Council, include a return postal address in Australia and be received by Council within 6 months of the individual becoming aware of the conduct or decision that is the subject of the application.

### **6.2 How does the process of Internal Review operate?**

The Privacy Contact Officer will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer will report their findings to the Privacy Contact Officer.

The review is to be completed within 60 days of receipt of the application. The applicant will be notified of the outcome of the review within 14 days of its determination.

The Privacy Commissioner will be notified by the Privacy Contact Officer of a review application as soon as is practicable after it is received. Council will brief the Privacy Commissioner on the progress of an internal review and notify them of the outcome.

### **The role of the Privacy Commissioner in the internal review process**

The Privacy Commissioner may make submissions to Council in relation to the subject matter of the application for internal review. Council may, if it deems it appropriate, ask the Privacy Commissioner to conduct the internal review.

### **6.3 What happens after an Internal Review?**

If the applicant remains dissatisfied with the outcome of a review, an application may be made to the Administrative Decisions Tribunal for a review of Council's conduct.

If the applicant is dissatisfied with an order or decision made by the Tribunal they may make an appeal to an Appeal Panel of the Tribunal.

#### **6.4 Alternative to lodging an application for internal review**

If a person does not want to lodge an application for internal review with Council, they may contact the Privacy Commissioner directly.

### **Part 7 - Specific Exemptions in PPIPA and HRIPA Relevant to Council**

There are a number of exemptions from compliance with the PPIPA and HRIPA that apply directly to Council. These relate to situations where:

- information is collected in connection with proceedings (whether commenced or not) before any Court or Tribunal;
- information is collected for law enforcement purposes;
- information is used for a purpose reasonably necessary for law enforcement purposes or to protect the public revenue;
- Council is authorised or required by a subpoena or search warrant or other statutory instrument;
- Council is investigating a complaint that may be referred or made to an investigative agency;
- Council is permitted by a law or Act not to comply;
- compliance would prejudice the interests of the individual to whom the information relates;
- the individual to whom the information relates has given express consent to Council not to comply; or
- disclosure is permitted under the Privacy Code of Practice for Local Government.

### **Part 8 - Other Information**

#### **Gwydir Shire Council**

Privacy Contact Officer  
Locked Bag 5  
Bingara NSW 2404

Phone: (02) 6724 2000  
Fax: (02) 6724 1771  
Email: [mail@gwydir.nsw.gov.au](mailto:mail@gwydir.nsw.gov.au)

#### **Information & Privacy Commission**

GPO Box 7011  
SYDNEY NSW 2001

Phone: 1800 472 679

Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

#### **Administrative Decisions Tribunal**

Level 10  
John Maddison Tower  
86-90 Goulburn Street  
SYDNEY NSW 2000

Phone: (02) 9377 5711  
Fax: (02) 9377 5723



## SUMMARY SHEET

<b>RESPONSIBLE DIVISION</b>	<b>Corporate Services</b>
<b>DATE ADOPTED ON BEHALF OF COUNCIL</b>	<b>25 July 2013</b>
<b>DATE OF PREVIOUS ADOPTION(S)</b>	
<b>DATE FOR REVIEW</b>	<b>June 2016</b>
<b>PREPARED BY</b>	<b>Records Coordinator and Chris Fripp</b>
<b>AUTHORISED BY</b>	<b>Director Corporate Services</b>