



# **INNER WEST COUNCIL**

## **Privacy Management Plan**

<b>Title:</b>	<b>Inner West Council Privacy Management Plan</b>
<b>Summary:</b>	Council must ensure that relevant personal and health Information is collected and stored securely and only used for the purpose to allow Council to carry out its business effectively and that people are provided with the opportunity to amend or suppress any personal information held by Council.
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<b>Main Legislative or Regulatory References:</b>	<i>Privacy &amp; Personal Information Protection Act 1998 Health Records and Information Privacy Act 2002 No 71</i>

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## **Policy Background**

The *Privacy and Personal Information Protection Act 1998* (the PPIPA) requires all councils to prepare a Privacy Management Plan. The Inner West Council (IWC) Privacy Plan is a summary of the Model Privacy Management Plan from the Office of Local Government.

The Privacy and Personal Information Protection Act 1998 (“PPIPA”) provides for the protection of personal information and for the protection of the privacy of individuals. Section 33 of the PPIPA requires all councils to prepare a Privacy Management Plan.

## **Policy Purpose**

The key purpose in developing a Privacy Management Plan is to:

- I. enable the community to be informed about how their personal information will be used, stored and accessed after it is collected by the council;
- II. ensure Council staff are aware of their obligations in relation to handling personal information and when they can and cannot disclose, use or collect it.

## **Policy Objectives**

The objectives of this policy are to:

- Outline the 12 Information Protection Principles and their application
- Outline the 15 Health Privacy Principles and their application
- Stipulate the criteria for the collection, retention and access to privacy information by Council
- Provide members of the public with the appropriate advice on accessing their personal information

Nothing in this Plan is to:

- affect any matter of interpretation of the Codes or the Information Protection Principles and the Health Privacy Principles as they apply to the Council;
- affect any obligation at law cast upon the Council by way of representation or holding out in any manner whatsoever;
- create, extend or lessen any obligation at law which the Council may have

Key aim of the Plan is to ensure compliance with the PPIPA and the HRIPA.

## **Coverage**

This plan covers:

- Councillors;
- Council employees;
- Consultants and contractors of the Council;
- Council owned businesses; and
- Council committees (including community members of those committees which may be established under section 355 of the LGA).

## **Personal Information held by Council**

The 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.

The Council holds personal information concerning its customers, ratepayers and residents, such as, rates records; and DA applications and objections; and various types of health information. The 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 medical certificates and workers compensation claims).

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

Under section 739 of the Local Government Act 1993 (“LGA”) a person can make an application to suppress certain material that is available for public inspection in circumstances where the material discloses or would disclose the person’s place of living if the person considers that the disclosure would place the personal safety of the person or their family at risk.

Section 739 of the LGA relates to publicly available material other than public registers. As such, it limits disclosure in those circumstances where an application for suppression is successful. An application for suppression must be verified by statutory declaration and otherwise meet the requirements of section 739. When in doubt, Council will err in favour of suppression.

## Public Registers

A public register is defined in section 3 of the PPIPA:

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

The Council holds the following public registers under the Local Government Act 1993:

Section	Title	Purpose
53	Land Register	to identify all land vested in Council, or under its control
113	Records of Approvals	to identify all approvals granted under the LGA
449 -450A	Register of Pecuniary Interests	to determine whether or not a Councillor or a member of a council committee has a pecuniary interest in any matter with which the council is likely to be concerned
602	Rates Record	record the value of a parcel of land and record rate liability in respect of that land

Council holds the following public registers under the Environmental Planning and Assessment Act:

Section	Title	Purpose
100	Register of consents and approvals	to identify applications for development consent and other approvals, confirm determinations on appeal and identify applications for complying development certificates
149G	Record of building certificates	identify all building certificates

Council holds the following public register under the Protection of the Environment (Operations) Act:

Section	Title	Purpose
308	Public register of licences held	to identify all licences granted under the Act

Council holds the following public register under the Impounding Act 1993:

Section	Title	Purpose
30 and 31	Record of impounding	to identify any impounding action by Council

## Privacy and other Legislation

This section contains a general summary of how the Inner West Council must manage personal and health information under the Privacy and Personal Information Protection Act 1998 (PIPP Act), the Health Records and Information Privacy Act 2002 (HRIP Act) and other relevant laws.

## The Privacy and Personal Information Protection Act

The PIPP Act sets out how the IWC must manage personal information.

### About Personal Information

Personal information is defined in section 4 of the PPIP Act as any information or opinions about a person where that person's identity is apparent or can reasonably be ascertained. This information can be on a database and does not necessarily have to be recorded in a material form.

### What is not Personal Information?

There are some kinds of information that are not personal information, these include:

- Information about someone who has been dead for more than 30 years;
- Information about someone that is contained in a publically available publication
- Information or an opinion about a person's suitability for employment as a public sector official
- Section 4A of the PPIPA also specifically excludes "health information", as defined by section 6 of the HRIPA, from the definition of "personal information", but includes "health information" in the PPIPA's consideration of public registers

Council considers the following to be publicly available publications:

- An advertisement containing personal information in a local, city or national newspaper;
- Personal information on the Internet;
- Books or magazines that are printed and distributed broadly to the general public;
- Council Business papers or that part that is available to the general public;
- Personal information that may be a part of a public display on view to the general public.

Information published in this way ceases to be covered by the PPIPA.

## Information Protection Principles (IPPs)

Part 2, Division 1 of the PPIP Act contains 12 IPPs the IWC must comply with these are:

Category	Information Protection Principles
<b>Collection</b>	The IWC will: <ol style="list-style-type: none"><li>1. Collection information only for a lawful purpose that is directly related to the IWCs functions and activities</li><li>2. Collect personal information from the person concerned</li><li>3. Inform people where their personal information being collected, what will be used for, and to whom it will be disclosed. Also how the personal information can be accessed and amended and any possible consequences of not providing personal information</li><li>4. Ensure that personal information is relevant, accurate, is not excessive and does not unreasonably intrude into people's personal affairs</li></ol>
<b>Storage</b>	<ol style="list-style-type: none"><li>5. The IWC will store personal information securely, keeps it no longer than necessary and destroys it appropriately. Personal information will be protected from unauthorised access, use or disclosure</li></ol>
<b>Access and accuracy</b>	<ol style="list-style-type: none"><li>6. Be transparent about the personal information it holds, why it is used and about the right to access and amend it</li><li>7. Allow people to access their own personal information without unreasonable delay or expense</li><li>8. Allow people to update, correct or amend their personal information where it is necessary</li><li>9. Endeavour to ensure that personal information is relevant and accurate before using it</li></ol>
<b>Use</b>	<ol style="list-style-type: none"><li>10. The IWC will only use personal information for the purpose it was collected for unless it has consent for its use for another purpose</li></ol>
<b>Disclosure</b>	<ol style="list-style-type: none"><li>11. Will not disclose personal information without consent , unless disclosure is permitted under the PPIPA or other legislation</li><li>12. Will not disclose sensitive personal information without consent, e.g. ethnicity or racial origin, political opinions, religious or philosophical beliefs, health or sexual activities or trade union membership</li></ol>

## Offences

Offenses can be found in s62-68 of the PPIP Act. It is an offence for the IWC to:

- Intentionally disclose or use personal information for and unauthorised purpose;
- Offer to supply personal information that has been disclosed unlawfully;
- Hinder the Privacy Commissioner or their staff from doing their job

## The Health Records and Information Privacy Act

The HRIP Act sets out how the IWC must manage health information.

### About health information

Health information is a more specific type of personal information and is defined in Section 6 of the HRIP Act. Health information can include information about a person's physical or mental health such as a psychological report, blood test or an x-ray, and information about a person's medical appointments. It can also include some personal information that is collected to provide a health service, such as a name and telephone number.

## Health privacy principles (HPPs)

Schedule 1 of the HRIP Act contains 15 HPPs that the IWC must comply with. These are:

Category	Information Protection Principles
Collection	The IWC will: <ol style="list-style-type: none"><li>1. Collect health information only for a lawful purpose that is directly related to the IWCs functions and activities;</li><li>2. Ensure that health information is relevant, accurate, is not excessive and does not unreasonably intrude into people's personal affairs;</li><li>3. Collect health information directly from the person concerned;</li><li>4. Inform people why their health information is being collected, what it will be used for, and to whom it will be disclosed. Also how it can be accessed and amended and any possible consequences not providing health information.</li></ol>
Storage	<ol style="list-style-type: none"><li>5. The IWC will store health information securely, keep it no longer than necessary and destroy it appropriately. Health information will be protected from unauthorised access, use or disclosure.</li></ol>
Access and accuracy	<ol style="list-style-type: none"><li>6. Be transparent about the health information it holds, why it is used and about the right to access and amend it;</li><li>7. Allow people to access their own health information without unreasonable delay or expense;</li><li>8. Allow people to update, correct or amend their health information where necessary;</li><li>9. Ensure that health information is relevant and accurate before using it.</li></ol>
Use	<ol style="list-style-type: none"><li>10. The IWC will only use health information for the purpose it was collected for unless it has consent for its use for another purpose</li></ol>
Disclosure	<ol style="list-style-type: none"><li>11. The IWC will not disclose personal information without consent, unless disclosure is permitted under the HRIPA or other legislation;</li></ol>
Identifiers and anonymity	<ol style="list-style-type: none"><li>12. May use unique identifiers for health information;</li><li>13. Allow people to remain anonymous where it is lawful and practicable.</li></ol>
Transfers and linkage	<ol style="list-style-type: none"><li>14. Does not usually transfer health information outside of NSW;</li><li>15. Does not currently use a health records linkage system.</li></ol>

## Offences

Offences can be found in s68-70 of the HRIP Act. It is an offence for the IWC to:

- Intentionally disclose or use health information for an unauthorised purpose;
- Offer to supply health information that has been disclosed unlawfully.

## Internal Review

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

Under section 53 of the PPIPA a person (the applicant) who is aggrieved by the conduct of a council is entitled to a review of that conduct. An application for internal review is to be made within 6 months of when the person first became aware of the conduct.

The application is to be in writing and addressed to Council's General Manager. The General Manager will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the application. The Reviewing Officer must be an employee and suitability qualified.

The review must be completed as soon as is reasonably practicable in the circumstances. If the review is not completed within 60 days of the lodgement, the applicant is entitled to seek external review.

The Council must notify the Privacy Commissioner of an application as soon as practicable after its receipt, keep the Commissioner informed of the progress of the application and inform the Commissioner of the findings of the review and of the action it proposes to take in relation to the application.



The Privacy Commissioner is entitled to make submissions in relation to internal reviews and the council is required to consider any relevant material submitted by the Privacy Commissioner. The Council must provide the Privacy Commissioner with a draft of the council's internal review report to enable the Privacy Commissioner to make a submission.

Council may provide a copy of any submission by Privacy Commissioner's to the applicant. The Council must notify the applicant of the outcome of the review within 14 days of its determination. A copy of the final review should also be provided to the Privacy Commissioner where it departs from the draft review.

An internal review checklist has been prepared by the Office of the Privacy Commissioner NSW and can be accessed from its website <http://www.ipc.nsw.gov.au>.

The Privacy Commissioner must be notified of a complaint, briefed on progress and notified of the outcome of an internal review under the PPIPA or HRIPA.

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

If the complainant remains unsatisfied, he/she may appeal to the Administrative Decisions Tribunal which hears the matter afresh and may impose its own decision and can make a range of orders including an award of damages for a breach of an information protection principle or a health privacy principle.

## **Other relevant laws**

This section contains information about other relevant legislation.

### *Government Information (Public Access) Act 2009 (GIPA Act) and Government Information (Public Access) Regulation 2009*

Under this Act and Regulation people can apply for access to information held by the IWC. This information may include personal or health information.

### *Independent Commission Against Corruption Act 1988*

Under this Act the IWC must provide information to the Independent Commission Against Corruption about allegations of fraud and corruption that may contain personal information.

### *Public Interest Disclosures Act 1994 (PID Act)*

Under the PID Act people working for a NSW public sector agency can make a public interest disclosure to the IWC. The PID Act requires that information that might identify or tend to identify a person who has made a public interest disclosure should be protected.

### *State Records Act 1998 and State Records Regulation 2010*

This Act and Regulation authorise the State Records Authority to establish policies, standards and codes to ensure that NSW public sector agencies manage their records appropriately.

### Referrals to external agencies under other relevant legislation

Under the *Ombudsman Act*, the *Independent Commission Against Corruption Act*, and the *Crimes Act*, Council can provide information to the:

- NSW Ombudsman;
- Independent Commission Against Corruption; and
- NSW Police.

## **Exemptions, directions and codes of practice**

### **Exemptions to the Information Protection Principles (IPPs)**

Part 2, Division 3 of the PPIP Act contains exemptions that may permit the IWC not to comply with IPPs in certain situations. These include the following:

- the IWC is not required to comply with IPPs 2-3, 6-8, or 10-12 if lawfully authorised or required not to do so;
- the IWC is not required to comply with IPP 2 if the information concerned is collected in relation to court or tribunal proceedings.

### **Exemptions to the Health Privacy Principles (HPPs)**

Exemptions are located mainly in Schedule 1 to the HRIP Act, and may permit Council not to comply with HPPs in certain situations. For example, the IWC is not required to comply with HPPs 4-8, and 10 if lawfully authorised or required not to do so.

### **Public interest directions**

Under section 41 of the PPIP Act, the Privacy Commissioner has made Public Interest Directions to waive or modify the requirement for a public sector agency to comply with an IPP.

The following public interest directions may permit the IWC:

- to be exempt from IPPs 2-3, 6-8, 10-12 in relation to the conduct of investigations;
- to be exempt from the IPPs when transferring enquiries to another NSW public sector agency;
- to disclose personal information collected for research purposes.

### **Privacy codes of practice**

The IWC has adopted the Privacy Code of Practice for Local Government as prepared by the Office of the Privacy Commissioner and the Health Records and Information Privacy Code of Practice 2005.

Under the Privacy Code of Practice for Local Government where it is reasonably necessary, Council may indirectly collect and use personal information to confer an award, prize, or similar form of personal recognition on the person about whom the information relates.

The Privacy Code of Practice for Local Government also permits the IWC to use personal information for a purpose other than the purpose for which it was collected where the use is in pursuance of the Council's lawful and proper functions and the personal information is reasonably necessary for the exercise of those functions. In general, the IWC does not use personal information for a purpose other than which it was collected without the consent of the individual.

## **Contact details**

Further information about the Inner West Council's Privacy Management Plan, or the personal and health information Council holds can be obtained by contacting Council:

**In person:** Petersham Service Centre, 2-14 Fisher Street, Petersham NSW 2049

**By telephone:** (02) 9392 5000

**Email:** [council@innerwest.nsw.gov.au](mailto:council@innerwest.nsw.gov.au)