



Health Privacy Policy

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1 PURPOSE

The City of Darebin (Council) views the protection of an individual's health information as an integral part of good corporate governance, and is strongly committed to protecting an individual's right to privacy.

Accordingly, Council is committed to full compliance with its obligations under the *Health Records Act 2001 (the Act)*. In particular, Council will comply with the health privacy principles (HPP's) contained in the Act.

2 SCOPE

This policy applies to all Darebin City Council employees, Councillors, contractors and volunteers.

This policy covers all health information held by the Darebin City Council that is information, or an opinion about an individual, whose identity is apparent, or can be reasonably ascertained, from that information or opinion. This includes information that we have collected in any format including correspondence, in person, over the phone, and over the Internet.

This policy also covers health information that we have sourced from third parties.

The Act specifies 11 Health Privacy Principles (HPPs). This document outlines the policy of Council regarding its management of health information under these principles. In many respects, the HPPs are similar to the Information Privacy Principles prescribed by the *Privacy and Data Protection Act 2014*.

3 EXTERNAL CONTRACTORS

Council may outsource some of its functions to third parties. This may require the contractor to collect, and/or disclose certain health information.

It is Council's policy to require all its contractors to comply with the Act.

4 POLICY

It is the policy of the Darebin City Council that health information is managed in accordance with the 11 Health Privacy Principles (HPPs).

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Principle 1 - Collection

Council will only collect health information about someone when it is necessary to complete a function or activity. Council will only collect the information if:

- the person has provided consent;
- the collection is required, authorised or permitted, by or under a law.
- the information is disclosed to Council in accordance with HPP 2;
- the collection of health information is necessary for monitoring the health and wellbeing of clients, research, or the compilation or analysis of statistics which serves a public interest. If identifiable data is required for the purpose of the research or statistical analysis Council will obtain consent, unless it is impracticable to do so;
- it is necessary to prevent or lessen a serious and imminent threat to public life, health, safety or welfare of someone, or a serious threat to public health, public safety or public welfare;
- it is on behalf of a law enforcement agency or the Council itself and is necessary for a law enforcement function;
- the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

If someone is not able to provide consent and Council needs to collect information in order to provide a health service, all practical measures to obtain the consent of an authorised representative will be taken.

Council will collect health information only by lawful and fair means, and will endeavour to do so in a manner that is not unreasonably intrusive. If it is reasonable and practicable to do so, Council will only collect health information about an individual from that individual.

If Council collects an individual's health information from them or from another person, Council will take reasonable steps to ensure (before or at the time) that they are aware of:

- who is collecting the information;
- how Council may be contacted;
- their rights to access the information;
- the purpose for which Council has (or will be) collecting the information;
- if, and who, Council will be disclosing this information to;
- whether it is being collected because a law requires it; and

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- the main consequence (if any) for them if all or part of the information is not provided.

The only time that Council will not advise someone of the above is when a serious threat to the life or health of a person may occur, or when the information was provided to Council in confidence.

Principle 2 – Use and Disclosure

Council may only use or disclose health information about someone when that use or disclosure relates to the purpose for which the information was collected, or in the event that Council is audited by the relevant auditor's authority.

Council can use or disclose health information about someone for another (secondary) purpose if that purpose is related to the purpose for which the information was initially collected, and the individual would reasonably expect that Council make use of the information for this secondary purpose.

If the use or disclosure of health information about someone is not related to the primary purpose of collection then Council must obtain the consent of that person (or authorised representative), unless the use or disclosure is required by or under law.

However, there are some special situations where Council can use or disclose health information about someone without consent. These include:

- if Council is providing a health service to someone and there is a necessity to use or disclose health information to be able to provide that service, and the person is incapable of providing consent and it is not reasonably practicable to obtain the consent of an authorised representative of the individual or the individual does not have such an authorised representative; or
- if Council is providing a health service and that health information is needed to provide further health services to someone and Council believes that using that information will help ensure those services are provided safely and effectively; or
- when use or disclosure of health information is for the purpose of administering health services or training provided to Council employees and it is not possible to meet that purpose without disclosure of the information, and reasonable steps have been taken to de-identify the information. In this instance, the information will not be published in any form that may be generally available; or
- when use or disclosure of health information is necessary for research or statistical analysis that might serve public interest and it is not practical to seek the individual's consent before the use or disclosure and is not possible for the purpose of that research to be achieved without disclosure of the information; or

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- if the Council believes that the use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare or public health, public safety or public welfare.

If the Council does disclose health information about someone as part of an investigation into unlawful activity or if it is necessary for, or on behalf of, a law enforcement function then Council will make a written note of that disclosure.

In some circumstances where Council is a health provider, health information about an individual may be disclosed to an immediate family member if Council believes that the disclosure is necessary to provide appropriate health services to care for the individual and:

- the individual is incapable of giving consent; and
- disclosure is not contrary to any wish expressed by the individual before they became incapable of giving consent; and
- the immediate family member who has requested the information is over 18 years of age or has sufficient maturity to receive the information.

Council may also make a disclosure of health information for compassionate reasons if the above-mentioned criterion is met.

In some circumstances Council may disclose health information about someone for a secondary purpose, if Council knows, or suspects, that the person is deceased, missing or has been involved in an accident and is therefore incapable of consenting. This disclosure may occur in situations where it is reasonable to identify the person or to identify and locate an immediate family member so that the police, a coroner or other prescribed organisation can contact them. However, this disclosure will not occur where there is an expressed wish to the contrary made by the person and recorded by Council.

Principle 3 – Data Quality

Council will take all steps that are reasonable to make sure that, having regard to the purpose for which the information is to be used, the health information it collects, uses, holds or discloses is accurate, complete, up to date and relevant to its functions or activities.

Principle 4 – Data Security and Retention

Council will take steps to safeguard the health information it holds against misuse, loss, unauthorised access and modification. Where lawful, Council will take reasonable steps to destroy or permanently de-identify health information if it is no longer required.

Council's Health Protection Unit manages Infectious Diseases Investigations. The information is stored within Council's Electronic Document Management

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System (EDRMS) Objective with privacy restrictions exclusive to System Administration staff and Health Protection Unit staff.

Principle 5 – Openness

On request, Council will take reasonable steps to let someone know if it holds any health information about them and how they can access that information. At that time Council will advise that person in general terms the nature of the information, the purpose for which the information is used and how Council collects, holds, uses and discloses the information.

Principle 6 – Access and Correction

Council is committed to providing individuals with access to the health information which it holds about them on request. However there are some circumstances where Council may deny access. These circumstances include situations where:

- access would pose a serious threat to the life or health of any person;
- access would have an unreasonable impact on the privacy of other people;
- there are legal proceedings current between the person and Council;
- the disclosure would reveal the intentions of Council in relation to negotiations, other than about the provision of a health service, with someone in such a way as to expose the organisation unreasonably to disadvantage;
- the information is subject to confidentiality under s27 of the *Health Records Act 2001*;
- providing access would be unlawful;
- providing access would be likely to prejudice an investigation of possible unlawful activity;
- providing access would be likely to prejudice a law enforcement function by or on behalf of a law enforcement agency;
- a law enforcement agency performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia;
- the request for access is of a kind that has been made unsuccessfully on at least one previous occasion and there are no reasonable grounds for making the request again; or
- the individual has been provided with access to the health information previously and is making an unreasonable, repeated request for access to the same information in the same way.

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- if Council holds health information about an individual and the individual is able to establish that the information is inaccurate, incomplete, misleading or not up to date, Council will take reasonable steps to correct the information so that it is accurate, complete and up to date.

Further information about how to seek access is available at the end of this document, in the section titled "Request for Action and Correction".

Principle 7 – Identifiers

Council will only assign identifiers to records if it is necessary to enable Council to carry out a function efficiently. Identifiers are a number or code that is assigned to someone's record to assist with identification (similar to a drivers licence).

Principle 8 – Anonymity

If it is lawful and practicable, someone must have the option of not identifying themselves when entering transactions with Council.

Principle 9 – Transborder Data Flows

In some instances the Council may be asked to transfer health information about someone to another person or organisation that is outside Victoria. This will only occur if:

- Council is assured that the person or organisation receiving the information is subject to a legal requirement that equals the Health Privacy Principles;
- the person who is the subject of the health information has provided consent;
- the transfer is necessary for the performance of a contract between an individual and the organisation;
- 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;
- All of the following apply;
 - the transfer is for the benefit of the individual;
 - It is impracticable to obtain the consent of the individual to that transfer;
 - If it were practicable to obtain the consent, the individual would be likely to give it;

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- Council will take reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Health Privacy Principles; or
- the transfer is authorised or required by any other law.

Principle 10 – Transfer or Closure of the Practice of a Health Service Provider

If Council discontinues its health services it will publish a notice in a newspaper that circulates in the locality of the practice or business.

This notice will advise that the practice or business has been, or is about to be, sold, transferred or closed down, as the case may be. It will address how the health service provider proposes to deal with any health information it holds about people who have used the service, whether they mean to retain the information or to transfer it to the new provider.

In either case Council will contact those people whose health information it holds, to let them know what will happen with the information.

If a Council health service provider is to be sold or transferred, or amalgamated and the provider continues to provide a health service they can elect to retain the health information. If this occurs they will continue to hold it, in accordance with these Health Privacy Principles or transfer it to a competent organisation for safe storage in Victoria until that health information is destroyed in accordance with Health Privacy Principle 4.

Principle 11 – Making Information Available to another Health Service Provider

If an individual requests a Council operated health service provider to make health information relating to them available to another health service provider, or that person authorises another health service provider to request the health information from Council, Council will, on payment of a fee, provide a copy or written summary of that health information to that other health service provider. Council will endeavour to provide this information as soon as practicable.

5 REQUESTS FOR ACCESS AND CORRECTION

Requests for access to and correction of documents containing health information are generally managed under the *Freedom of Information Act 1982* (Vic).

Requests under the *Freedom of Information Act 1982* must be made in writing stating as precisely as possible what information is required or needs correction and addressed to:

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Privacy Officer
City of Darebin,
PO Box 91
Preston VIC 3072

Or via email to Privacy.Officer@darebin.vic.gov.au

Where a person requests Council to correct their health information Council will take reasonable steps to notify the person of the decision of the request as soon as practicable, or within 30 business days of the request being received.

6 COMPLAINTS CONCERNING PRIVACY

Although there is no obligation to do so, Council encourages individuals to send written complaints directly to Council about a breach, or perceived breach of privacy in the first instance.

Upon receiving a complaint Council's Privacy Officer will investigate the complaint and resolve it as soon as practicable (but no later than 45 business days) a written response will be provided to the complainant.

Council's Coordinator Corporate Information acts as Council's Privacy Officer. The Privacy Officer will be responsible for preparing and periodically updating the policy and guidelines, and when necessary liaise with staff to ensure compliance with the Act.

Council's Privacy Officer can be contacted as follows:

Privacy Officer
City of Darebin
PO Box 91,
Preston VIC 3072
Telephone: 8470 8888
E-mail: Privacy.Officer@darebin.vic.gov.au

Alternatively, complaints can be directed to the Commissioner for Privacy and Data Protection by completing the CPDP's "[Privacy Complaint Information](#)", although the Commissioner can decline a complaint if the complainant has not complained directly to the Council.

The Commissioner for Privacy and Data Protection can be contacted as follows:

Privacy and Data Protection
Level 6, 121 Exhibition Street
Melbourne VIC 3000
Telephone: 1300 666 444

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Email: enquiries@privacy.vic.gov.au

7 STAFF TRAINING AND AWARENESS

All Council employees that are dealing with information on a daily basis will receive training to increase their awareness in relation to the treatment of personal information in the workplace.

The Employee Code of Conduct, issued to all staff, deals with the use and disclosure of information obtained in the course of employment and with the confidentiality obligations of staff that have left the organisation. All new staff members are required to sign and acknowledge that they understand the requirements set out in the Employee Code of Conduct.

8 DEFINITIONS

HRA – Health Records Act:

Health Information – information or an opinion about:

- the physical, mental or psychological health (at any time) of an individual;
- a disability (at any time) of an individual;
- an individual's expressed wishes about the future provision of health services to him or her;
- a health service provided, or to be provided, to an individual, that is also personal information;
- other personal information collected to provide, or in providing, a health service;
- other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances;
- other personal information that is genetic information about an individual in a form which is or could be predictive of the health (at any time) of the individual or of any of his or her descendants.

Health Privacy Principles (HPPs) are the principles that regulate the handling of personal information that is also health information. These principles form part of the *HRA*.

Health Service is defined as:

- an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the organisation performing it:
 - to assess, maintain or improve the individuals health;
 - to diagnose the individual's illness, injury or disability;

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- to treat the individual's illness, injury or disability or suspected illness, injury or disability;
- a disability service, palliative care service or aged care service;
- the dispensing on prescription of a drug or medicinal preparation by a pharmacist
- a service or class of service, provided in conjunction with an activity or service referred to in the above dot points that is prescribed as a health service.

Health Service Provider is an organisation that provides health services within Victoria but does not include those providers specifically exempted for the purpose of the *HRA*.