



# Council Policy

## Privacy Management Plan

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## Introduction

### Objectives

Section 33 of the NSW *Privacy and Personal Information Protection Act 1998* ( PPIPA) requires all public sector agencies to prepare, implement, and review their Privacy Management Plan. This Policy titled Privacy Management Plan outlines how Lake Macquarie City 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.

### Statement

Lake Macquarie City Council (Council) is committed to protecting the privacy of our customers, business contacts, volunteers and our employees.

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

### What is personal information?

Personal information under Section 4 of the PPIPA 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.

### What is health information?

Health Information under Section 6 of the HRIPA is defined as, 'personal information that is information or an opinion about the physical, mental health or disability of a person, express wishes about the future provision of health services, a health service provided or to be provided, or any other personal information collected to provide or in providing a health service.'

### What is not personal or health 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.

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.

Where Council is requested to provide access or make a disclosure and that information has already been published, then Council will rely on the provisions of the relevant Act that authorises Council to hold that information and not the PPIPA (for example, Section 8 of the Government Information (Public Access) Act, 2009 (GIPA Act)).

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 public; and
- personal information that may be a part of a public display on view to the public.

### Application of this plan

The PPIPA, HRIPA and this management plan apply, wherever practicable, to:

- Councillors;
- Council employees;

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- Consultants and Contractors of Council;
- Council-owned businesses; and
- Council committees
- Volunteers

Council will ensure that all such parties are made aware that they must comply with the PPIPA, the HRIPA and this plan.

## Personal information held by Council

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

- rates records;
- DA applications and objections; and
- various types of health information.

Council holds personal information concerning Employees, such as

- recruitment material;
- leave and payroll data;
- personal contact information;
- complaints and disciplinary matters;
- pecuniary interest returns;
- wage and salary entitlements; and
- health information, for example medical certificates, workers compensation claims.

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.

## 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 be still treated in accordance with this Plan, the Codes, the HRIPA and the PPIPA 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 Section 10 of the HRIPA, the Council is not considered to have “collected” health information if the receipt of the information by the Council is unsolicited.

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

## Public registers

Council is required by law to maintain a number of public registers and to make them available for public inspection.

Some of these registers contain personal information as defined in the PPIPA, the HRIPA and the GIPA Act. Council is required to ensure that any access to personal information in a register is consistent with the purpose for which the register exists.

In line with this requirement, Council has developed specific rules governing disclosure of personal information on registers:

- Council will not disclose personal information kept in a public register unless the information is to

be used for a purpose relating to the purpose of the Register, or an Act under which the Register is kept.

- The Privacy Code of Practice allows disclosure of single items or one page in a Register without explanation. However, such a disclosure can only occur when the person seeking the information attends Council in person.
- Council requires that any person who applies for more than one record or page from a public register, does so by completing a Statutory Declaration. Any such declaration must describe the intended use of the information requested and be witnessed by a Justice of the Peace.

The list of Council registers below specifies the main purpose of each of those registers.

### Council's public register list

The GIPA Act and *Government Information (Public Access) Act Regulation 2009* (GIPA Regulation) lists information available to the public free of charge within a public register. The following is a list of Council's public registers:

- *Public Land Register* – (Section 53, Local Government Act, 1993). The purpose of this register is to identify all land vested in Council, or under its control. It includes a consideration of public accountability as to the land held by Council.
- *Records of Approvals* – (Section 113, Local Government Act, 1993). The primary purpose is to identify all approvals granted under the LGA
- *Pecuniary Interests* – (Section 450A, Local Government Act, 1993). The purpose of this register is to determine whether a Councillor, a member of a council committee or a designated officer, has a pecuniary interest in any matter with which the Council is likely to be concerned. There is a corresponding public accountability purpose.
- *Rates & Charges Records* - (Section 602, Local Government Act, 1993). The purpose of this register is to record the value of a parcel of land and record rate liability in respect of that land and the owner or lessee of each parcel of land.

The information that is held on the Rates & Charges record is:

- property address
- rate liability
- property valuation
- owner name/s

Owner contact mailing information is not considered part of the Rates and Charges record. Owner contact mailing information will only be provided to adjoining property owners who apply in person at Council's Administration Centre.

- *Development Consent Approvals* – (Section 100, Environmental Planning and Assessment Act, 1979). The purpose of this register is to identify applications for development consent and other approvals, confirm determinations on Appeal, and identify applications for complying development certificates.
- *Building Certificates* – (Section 149G, Environmental Planning and Assessment Act, 1979). The purpose of this register is to identify all building certificates. Register information is available for inspection free of charge. However, copies of certificates are only available with owner's consent and the payment of the prescribed fee.
- *Public register of licences held* – (Section 308, Protection of the Environment Operations Act, 1997). The purpose of this register is to identify all licences granted under the Act.

- *Record of Impounding* – (Section 30 & 31, Impounding Act, 1993). The purpose of this register is to record any impounding action by Council.

### **Secondary purpose of all public registers**

Due to the general emphasis on local government processes and information being transparent and accountable, it is considered that a secondary purpose for councils holding public registers is the provision of access to the public. Therefore, disclosure of specific records from public registers would normally be considered allowable under Section 57 of the PPIPA.

However, requests for access, copying or the sale of the whole or a substantial part of a public register held by Council will not necessarily fit within this purpose. Council should be guided by the Privacy Code of Practice for Local Government in this respect. Where Council officers have doubt as to the intended use of the information, an applicant may be requested to provide a statutory declaration so that Council may satisfy itself as to the intended use of the information.

### **Application for access to one's 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.

### **Other registers**

Council may have other registers that are not considered public registers. The Information Protection Principles, the PPIP Act, all applicable codes, and this Privacy Management plan apply to those databases or registers.

## Information Protection Principles (IPPs)

Part 2, Division 1 of the PPIPA contains 12 Information Protection Principles with which we must comply. Here is an overview of the principles as they apply to Council.

### Principle 1 – Collection of personal information for lawful purposes

Information is collected for a lawful purpose that is directly related to a function or activity of Council. The collection of the information is reasonably necessary for that purpose.

Council will not collect personal information by any unlawful means.

Council will collect and deliver personal information to and from Government Departments involved in the normal functions of Council's operation.

Council will continue the practice of dealing with the NSW Department of Community Services for enquiries on personnel and recruitment matters, such as for pre-employment screening of people working with children (*Commission for Children & Young Peoples Act 1998*).

Council will use any personal information for a variety of purposes within its departments, as on most occasions the information was collected for one main purpose; it may be used for a variety of other purposes. For example, the names and addresses of individual property owners are used to notify adjoining owners of proposed development, identify companion animal ownership, evaluate road openings and obstructions, evaluate tree preservation orders, investigate parking controls, evaluate land dedications and laneway status as well as being the basis of the Rating and Valuation Register.

### Principle 2 – Collection of personal information directly from the individual

Council will collect information directly from the individual concerned unless:

- the individual has authorised collection from someone else; or
- the information has been provided by a parent or guardian of a person under the age of 16, or incapacitated by disability or age.

### Principle 3 – Requirements when collecting personal information

When Council collects personal information about an individual, that person will be notified of:

- the fact that the information is being collected;
- the purposes for which the information is collected;
- the intended recipients of the information;
- whether the supply of the information is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided;
- the existence of any right of access to, and correction of the information; and
- Council's name and address, and where the information will be stored.

Council has added a Privacy Protection Notice to forms where Council solicits personal information from the public. Internal forms are not affected.

### Principle 4 – Other requirements relating to collection of personal information

Council will take reasonable steps to ensure that:

- information collected is relevant to a purpose, is not excessive and is accurate, up to date, and complete; and
- the collection of the information does not intrude unreasonably on the personal affairs of the individual concerned.

## **Principle 5 – Retention and security of personal information**

Council will ensure that:

- information is used for a lawful purpose and is kept for no longer than is necessary;
- the information will be disposed of securely;
- the information is protected against loss, unauthorised access, use, modification or disclosure and against all other misuse (as are reasonable in the circumstances); and
- if it is necessary to release the information to a person in connection with the provision of a service to Council, everything reasonable is done to prevent unauthorised use or disclosure of the information.

The culling and destruction of records is performed in accordance with Council's approved Records Management Disposal Schedule.

The Records Disposal Schedule is available for public inspection. The Records Archivist routinely culls files for reasons of space as per the provisions outlined in Council's approved Records Management Plan.

## **Principle 6 – Information about personal information held by agencies**

Council will take all reasonable steps to enable a person to determine whether Council holds personal information about them. If Council holds any information about a person, they may request council advise them the nature of that information, the main purposes for which it is held, and that person's entitlement to access.

Principle 6 is subject to the Government Information (Public Access) Act 2009 provisions.

## **Principle 7 – Access to personal information held by agencies**

At the request of an individual, Council will provide, without excessive delay and expense, details of the personal information it holds that relate to that individual.

Employees should enquire at the Human Resources Department to access their employee records.

## **Principle 8 – Alteration of personal information**

Any person who is concerned with the inaccuracy or unacceptable use of their personal information kept by Council may request, in writing, that amendments be made to that information. Changes to information will require supporting documentation and evidence to the reason to the request.

Council has an obligation to take such steps to amend personal information where necessary. If Council decides that it will not amend the information, it must add the additional information, enabling it to be read with the existing information and notify the individual concerned. The individual to whom the information relates is entitled to have the recipients notified of the amendments made by Council. Council's Privacy Officer will approve required changes where applicable.

## **Principle 9 – Accuracy of information**

Council will take reasonable steps to ensure the accuracy of personal information prior to use, having regard to the purpose for which it was collected, its proposed use, its relevance, whether it is up to date, complete and not misleading, in accordance with Council's Code of Conduct, approved policies and recorded procedures.

## **Principle 10 – Limits on use of personal information**

Council will not use personal information for a purpose other than for which it was collected unless:

- the individual to whom the information relates has consented to use the information for that other purpose;

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- the other purpose for which the information is used is directly related to the purpose for which it was collected;
- 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 that information relates, or of another person.

Officers using relevant personal information will not notify individuals for approval to perform usual office functions.

Officers will discuss personnel and recruiting records with solicitors and administrative staff when necessary without prior approval of individuals. These processes relate to the normal operational functions of Council and officers will use any personal information collected for multiple purposes if required for the business of Council.

Compliance with Information Protection Principle 10 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. Section 23(4) of the PPIPA permits Council not to comply with Information Protection Principle 10 where the use of the information for another purpose is reasonably necessary for law enforcement purposes or for the protection of the public revenue. Law enforcement purposes means a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person.

### **Principle 11 – Limitations on disclosure of personal information**

Council will not disclose personal information unless:

- the disclosure is directly related to the purpose for which it was collected and there is no reason to believe the individual concerned would object;
- the individual has been made aware that this kind of information is usually released;
- disclosure is necessary to prevent or lessen a serious or imminent threat to the life of the individual concerned, or another person.

The *Government Information (Public Access) Act*, 2009 overrides the restrictions on disclosure of personal information under Section 18 and 19 of PPIPA to the extent that it lawfully authorises, requires, necessarily implies, or reasonably contemplates that councils need not comply with these sections. Council must make records available for inspection and/or copy, and may be available subject to the public interest test.

### **Principle 12 – Special restrictions on disclosure of personal information**

Council will not disclose personal information that:

- relates to an individual's ethnicity/racial origin, political opinions, religion 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; or
- relates to any enquiry from anyone outside NSW unless:
  - a relevant privacy law applies to personal information in force in that jurisdiction; or
  - the disclosure is permitted under a privacy code of practice (a law determined by the Privacy Commissioner and published in the *Government Gazette*).

## The Health Privacy Principles (HPPs)

Under the provisions of the Health Records and Information Privacy Act 2002 (HRIPA) Council has a legal obligation in how it must collect, hold, use and disclose individuals' health information.

The following is a list of examples of the types of health information and circumstances in which Council may collect health information:

- seniors' bus outings where information may be collected on special medical needs;
- information on carers and families for the purposes of children's services;
- volunteer programs where volunteers are asked to disclose health conditions which assist Council to provide support in the event of an incident or which may preclude them from some types of volunteer work;
- information in relation to the need for assisted waste services; and
- information relating to employee health for example medical certificates and workers' compensation

In the same way as the Information Privacy Principles that have been outlined above, the provisions of the HRIPA allow for Health Privacy Principles. The meaning, intent and application of these principles are required when handling health information.

The Health Information Principles and the Information Privacy Principles are very similar with some principles overlapping in areas. For more information on these Health Privacy Principles, refer to the Information and Privacy Commissioner ([www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)).

### Principle 1 – Collection of health information for lawful purposes

Only collect individuals' health information for a lawful purpose that is directly related to the agency or organisation's activities and reasonably necessary for that purpose.

Council will only collect health information for a lawful purpose that is directly related to Council's activities and is necessary for that purpose

### Principle 2 – The collection of health information is relevant to Council's operations

Council will ensure that the health information is relevant, accurate, up to date and not excessive and that the collection is not unnecessarily intrusive into the personal affairs of the individual.

### Principle 3 – Collection of health information directly from the individual

Council will only collect health information directly from a person concerned, unless it is unreasonable or not practical to do so.

### Principle 4 – Requirements when collecting personal information

Council will tell the person why their health information is being collected, what will be done with it, who else might see it and what the consequences are if the person decides not to provide it. Council will also tell the person how they can see and correct their health information.

### Principle 5 – Retention and security of health information

Council will store health information securely and protect it from unauthorised access, use or disclosure. Health information will not be kept for any longer than is necessary and will be disposed of appropriately.

### Principle 6 – Information about health information held by agencies

Council will provide details about what health information Council is holding about an individual and with information about why Council is storing that information and what rights of access the individual has.

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**Principle 7 – Access to health information held by agencies**

Council will allow a person to access their health information without unreasonable delay or expense.

**Principle 8 – Alteration of health information**

Council will allow a person to update, correct or amend their personal information where necessary.

**Principle 9 – Accuracy of health information**

Council will ensure that individuals' health information is relevant and accurate before using it.

**Principle 10 – Limits on use of health information**

Council will only use individuals' health information for the purpose for which it was collected or for a directly related purpose that the person to whom the information relates would expect. Otherwise, Council will obtain the person's consent.

**Principle 11 – Limits on disclosure**

Council will only disclose health information under the following circumstances:

- with the consent of the individual to whom the information relates;
- for the purpose for which the health information was collected or a directly related purpose that the individual to whom it relates would expect; or
- if an exemption applies within Health Privacy Principle 11 (for example law enforcement or serious threat to health or welfare)

**Principle 12 – Not identified**

Council will only attribute an identification number to health information if it is reasonably necessary for Council to carry out its functions effectively.

**Principle 13 – Anonymous**

Council will provide health services anonymously where it is lawful and practical.

**Principle 14 – Transfer of health information to Commonwealth agencies**

Council will only transfer personal information out of NSW if the requirements of Health Privacy Principle 14 are met.

**Principle 15 – Authorised**

Council will only include health information in a system to link health records across more than one organisation if the individual to whom the health information relates expressly consents to the link.

**Supplementary information****Suppression of personal 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.

This section 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

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739. When in doubt, Council will favour suppression.

### **Suppression of personal information (public registers)**

An application for suppression of personal information in relation to a public register will be dealt with under PPIPA, rather than Section 739 of the LGA.

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.

If Council considers that the safety or wellbeing of a person would be affected by not suppressing the personal information as requested, 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 favour suppression.

Any information that is removed from, or not placed on, parts of a public register to be made public may still be kept on the register for other purposes; the information may still be used for Council functions, but cannot be disclosed to other parties.

An application for suppression should be made in writing, addressed to the General Manager and must outline the reasons for the request. Council may require supporting documentation where appropriate.

### **Privacy Complaint process**

A complaint about Council's handling of their personal information will be handled via an internal review, which is an internal investigation by Council Privacy Officer .

Conduct can mean an action, a decision, or even inaction by Council. Examples of the conduct complained about could be:

- a decision to refuse a person access to their personal or health information, or
- the action of disclosing a person's personal or health information to another person, or
- the failure to protect a person's personal or health information from being inappropriately accessed by someone else.

The person (applicant) is entitled to apply for an Internal Review. The application for review must be in writing and addressed to Council's Privacy Contact Officer:

The Privacy Contact Officer  
Lake Macquarie City Council  
Box 1906  
Hunter Regional Mail Centre NSW 2310,

On receipt of the Review Request, Council will forward a copy to the Privacy Commissioner. Council will inform the Privacy Commissioner of progress and the outcome of the review. Council will assess whether or not it has complied with its privacy obligations and then tell the applicant of its findings and what it will do as a result.

The Privacy Commissioner is entitled to make submissions in relation to internal reviews and council is required to consider any relevant material submitted by the Privacy Commissioner. The Council must provide the Privacy Commissioner with a draft of 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 to the applicant. The aggrieved individual must lodge an application within six months from the time the applicant first became aware of the conduct (the subject of the application).

Council will keep the contents of the review confidential in accordance with Council's Code of Conduct. The Privacy Contact Officer, who will consider any relevant material submitted by either the applicant or the Privacy Commissioner, will deal with the application.

Council will complete the review as soon as reasonably practicable within 60 days from receipt of the application for review.

Following completion of the review, Council will do one or more of the following:

- take no further action on the matter;
- make a formal apology to the applicant;
- take appropriate remedial action;
- provide undertakings that the conduct will not occur again; or
- implement administrative measures to ensure that the conduct will not occur again.

Council will notify the applicant in writing as soon as practicable within 14 days of the completion of the review. This will include:

- the findings and the reasons for those findings;
- any proposed actions to be taken; and
- the right of the applicant to have those findings and the Council's proposed action, reviewed by the NSW Civil and Administrative Tribunal (<http://www.ncat.nsw.gov.au/> or 1300 006228)

### **Misuse of personal or health information**

Section 664 of the Local Government Act makes it an offence for anyone to disclose information except in accordance with that section. Whether or not a particular disclosure is made with lawful excuse is a matter that requires legal opinion from case to case.

### **Training and education**

All new employees will be trained in privacy legislation awareness at induction. This training is also supplemented by additional awareness training for supervisors and managers.

This Plan will be available on Council's website [www.lakemac.com.au](http://www.lakemac.com.au).

### **Contact details**

You may obtain further information by contacting:

Privacy Officer  
Lake Macquarie City Council  
PO Box 1906  
HUNTER REGION MAIL CENTRE NSW 2310  
Phone: 02 4921 0172

**OR**

Privacy Commissioner  
GPO Box 7011  
SYDNEY NSW 2001  
Phone: 1800 472 679  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)

## Controlled Document Information

### Authorisation Details

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<b>Authorisation - Council Adoption Date:</b>	15 December 2014		

### Related Document Information, Standards & References

<b>Related Legislation:</b>	(Legislation) <i>The PIPP Act 1998</i> <i>Health Records and Information Privacy Act 2002</i> <i>Government Information (Public Access) Act 2009</i> <i>GIPA regulations</i>	(Relationship/Context) <i>Requirement of Act</i> <i>Plan must address requirements of Act</i> <i>Requirement of Act</i>
<b>Related Policies (Council &amp; Internal):</b>	(Policy Name & TRIM Document No.)	(Relationship/Context)
<b>Related Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements:</b>	(Document Name & TRIM Document No.)	(Relationship/Context)
<b>Standards COP's &amp; Other References</b>	(Standard, COP or Other References) <i>- Information and Privacy Commission's checklist for privacy management plans, guide to making privacy management plans</i> <i>- Dept of Local Government Model Privacy Management Plan</i>	(Relationship/Context)

### Definitions

Term / Abbreviation	Definition
<b>Council</b>	to mean all Council employees, contractors and volunteers

### Version History

Version No	Date Changed	Modified By	Details and Comments
0	09/05/2005	G Brown	Inclusion of reference to Health Records and Information Privacy Act
1	7/10/2005	G Brown	Conversion to new template.
2	30/11/2007	L Fitton	Changes in legislation, titles, headings

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3	29/04/2009	R.Skelton	Conversion to new template, improved format and corrected out of date information.
4	27/07/2010	R Skelton	Included GIPA (Act) and corrected out of date information
5	2/02/2011	R. Skelton	Included changes to applying for suppression of personal information and body of document reviewed for improved grammatical presentation.
6	25/09/2014	T. Hamilton	Updated template, updated content and improved format. Updated contact information for Privacy Commissioner NSW. Changes of note are, the inclusion of a definition of what is not personal or health information, examples of personal information held by Council and the inclusion of the detailed list of the health privacy principles