

Health Records Policy

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1 Introduction

1.1 Purpose

The City of Boroondara (**Council**) views the protection of an individual's health information as an integral part of its commitment towards accountability and integrity in all activities and programs. This policy outlines Council's commitment relating to the management of personal information that is also health information, as required by the *Health Records Act 2001* (Vic) (the HRA).

1.2 Scope

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

This policy covers all personal information that is health information held by Council and includes information Council has collected:

- about a person through any of Council's public access interfaces or services
- from the person themselves
- about a person from third parties.

The policy applies to all health information regardless of format or method of collection. It encompasses, but is not limited to, personal health information provided in correspondence, on a form, in person, over the telephone or via Council websites. It applies to health information which is not recorded in material form, as well as information stored electronically, in audio form, on a disk or in a hardcopy.

2 Definitions

Personal Information is defined in the HRA as information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information about an individual who has been dead for more than 30 years.

Health Information is defined in the HRA as:

- Information or an opinion about -
 - the physical, mental or psychological health (at any time) of an individual; or
 - a disability (at any time) of an individual; or
 - an individual's expressed wishes about the future provision of health services to him or her; or
 - a health service provided, or to be provided, to an individual that is also personal information; or
- other personal information collected to provide, or in providing, a health service; or
- 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; or
- 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 set out in Schedule 1.

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 individual's health; or
 - to diagnose the individual's illness, injury or disability; or
 - to treat the individual's illness, injury or disability or suspected illness, injury or disability; or
- a disability service, palliative care service or aged care service; or
- the dispensing on prescription of a drug or medicinal preparation by a pharmacist; or
- the sale or supply of voluntary assisted dying substance within the meaning of the *Voluntary Assisted Dying Act 2017 (Vic)* in accordance with that Act by a pharmacist registered under the Health Practitioner Regulation National Law to practice in the pharmacy profession (other than as a student); or
- the supply or administration of a voluntary assisted dying substance within the meaning of the *Voluntary Assisted Dying Act 2017 (Vic)* in accordance with that Act by a registered medical practitioner; or
- 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 purposes of the HRA.

3 Background

3.1 Context

Council believes the protection of an individual's health information is a key aspect of good corporate governance, and is strongly committed to protecting an individual's health information. Accordingly, Council is committed to full compliance with its obligations under the HRA.

3.2 About Council

Council's provides a range of health services and programs to assist the community. Some of these include:

- maternal and child health services
- immunisation services
- counselling and mental health services
- youth support services.

Council also holds health information about individuals, such as health information contained in:

- disabled parking permit applications.
- an application form submitted as part of the Boroondara Kindergarten Central Enrolment Scheme.
- a worker's compensation claim.

3.3 Central Customer Database

Council maintains a central customer database, in addition to separate existing information systems and databases, and assigns a unique identifier to each individual to ensure there is only one name record for each individual customer so as to maintain data integrity and to ensure accurate records are maintained on individual customers.

Council uses customer identification information, such as your name, address, date of birth and contact details, from Council's health services for the purpose of matching it with other identifying information held for the purpose of managing the central customer database. That information may then be added to the central customer database and used in connection with both that service and other services Council provides.

4 Policy statement

It is Council's policy that health information is managed in accordance with the 11 Health Privacy Principles (HPPs). The 11 HPPs contained in the HRA are listed below:

- Principle 1 - Collection
- Principle 2 - Use and Disclosure
- Principle 3 - Data Quality
- Principle 4 - Data Security
- Principle 5 - Openness
- Principle 6 - Access and Correction
- Principle 7 - Unique Identifiers
- Principle 8 - Anonymity
- Principle 9 - Trans Border Data Flows
- Principle 10 - Transfer or Closure of the Practice of Health Service Provider
- Principle 11 - Making Information Available to Another Health Service Provider

5 Health Privacy Principles (HPPs)

5.1 Principle 1 - Collection

Council will only collect health information about someone when it is necessary for one or more of Council's functions or activities. Council will only collect this information if:

- the person has provided consent; or
- the collection is required, authorised or permitted, by or under a law; or
- the information is disclosed to Council in accordance with HPP 2; or
- the collection of the health information is necessary for research, or the compilation or analysis of statistics which serves a public interest. If identifiable data is required for the purposes of the research or statistical analysis Council will obtain consent, unless it is impracticable to do so; or

- it is necessary to prevent or lessen a serious and imminent threat to the life, health, safety or welfare of someone, or a serious threat to public health, public safety or public welfare; or
- it is on behalf of a law enforcement agency or the Council itself and is necessary for a law enforcement function; or
- the collection is necessary for the establishment, exercise or defence of a legal or equitable claim; or
- it is otherwise permitted under the HPPs and the HRA.

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

5.2 Principle 2 - Use and Disclosure

In most cases Council may only use or disclose health information about someone when that use or disclosure relates to the primary purpose for which the information was collected.

Council can use or disclose health information about someone for another (secondary) purpose if that purpose is directly 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 generally obtain the consent of that person (or authorised representative), unless the use or disclosure is required, authorised or permitted by or under law.

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 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 it is not possible for the purpose of that research to be achieved without disclosure of the information; or
- if Council believes that the use or disclosure is necessary to lessen or prevent a serious 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 service 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 abovementioned 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.

5.3 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.

5.4 Principle 4 - Data Security

Council will take all reasonable steps to protect the health information it holds from misuse and loss and from unauthorised access, modification or disclosure.

Council will retain health information in accordance with HPP 4 and the document retention and disposal requirements of the *Public Records Act 1973* (Vic) and the Public Records Office Victoria.

5.5 Principle 5 - Openness

As required by HPP 5, Council sets out in this statement its expressed policy on the management of health information and the steps that someone can take in order to obtain access to their health information.

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.

5.6 Principle 6 - 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) (**FOI Act**).

Such requests must be made in writing and addressed to the:

Freedom of Information Officer
Boroondara City Council
Private Bag 1
CAMBERWELL VIC 3124

Email - boroondara@boroondara.vic.gov.au

For further information on how to make an FOI request, please visit the Council website at - <https://www.boroondara.vic.gov.au/about-council/council-administration/make-freedom-information-request>

For requests seeking access, they must state as precisely as possible what information is being sought. For requests seeking amendment of health information, they must state the information is believed to be inaccurate, incomplete, out of date or would give a misleading impression and what changes are requested to be made.

However, some requests for health information may be dealt with informally (outside the FOI Act), such as example, Immunisation History Statements. Please contact a member of the Council Governance Team on (03) 9278 4473 to discuss your requirements.

5.7 Principle 7 - Unique Identifiers

A unique identifier is a number or code that is assigned to someone's record to assist with identification (similar to a drivers licence number). Unique identifiers may be assigned where necessary to enable Council to carry out any of its functions efficiently. An example is the unique identifier assigned to customers in Council's central customer database so as to ensure that there is only one name record for each individual customer.

5.8 Principle 8 - Anonymity

Where **lawful and practicable**, you have the option of remaining anonymous when dealing with Council.

Many types of contact with us are able to be completed without someone providing their details (such as lodging complaints, reporting broken assets, etc.). However, in some situations, this will not be possible, such as where a person is seeking the provision of health services to them.

5.9 Principle 9 - Trans Border Data Flows

In some instances Council may transfer health information about someone to another person or organisation that is outside Victoria. For example, this may occur if:

- Council is assured that the person or organisation receiving the information is subject to a legal requirement that equals these HPPs;
- 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;
- it is necessary for the conclusion or performance of a contract that is interest of the individual and is between Council and a third party;
- all of the following apply:
 - if the transfer is for the benefit of the individual; and
 - if it is impracticable to obtain the consent of the person to that transfer; and
 - if it were practicable to obtain that consent, the person would be likely to give it.
- Council has taken 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 HPPs; or
- it is authorised or required by any other law.

5.10 Principle 10 - Transfer or Closure of the Practice of Health Service Provider

If a Council health service provider is to be sold or transferred, or amalgamated and the provider will no longer be providing health services in the new practice or business or will be closed down, then Council 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 Council holds, within 21 days of the newspaper publication 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 will continue to provide health services they can elect to retain the health information. If this occurs they will continue to hold it, in accordance with these HPPs or transfer it to a competent organisation for safe storage in Victoria until that health information is destroyed in accordance with HPP 4 above.

5.11 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 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 subject to any fee or charge prescribed by Council

6 Complaints or enquiries

Complaints about a breach of health privacy, in the first instance, may be directed to Council’s Coordinator Governance as follows:

Coordinator Governance
 Private Bag 1
CAMBERWELL VIC 3124
 Telephone: (03) 9278 4471
 Email: boroondara@boroondara.vic.gov.au

These complaints will be acknowledged within three business days and will be resolved as soon as practicable.

Alternatively, complaints can be directed to the Victorian Health Complaints Commissioner, although the Commissioner may decline to consider a complaint if the complainant has not first complained directly to Council.

The Health Complaints Commissioner can be contacted as follows:

Level 26, 570 Bourke Street
MELBOURNE VIC 3000
 Telephone: 1300 582 113
 Email: hcc@hcc.vic.gov.au

7 Implementation and monitoring

7.1 Accountabilities

For all queries or feedback regarding this policy, please contact either of the responsible officers below.

Position Title	Contact number	Contact department email
Coordinator Governance	9278 4471	boroondara@boroondara.vic.gov.au
Manager Governance and Legal	9278 4470	boroondara@boroondara.vic.gov.au

The Manager Governance and Legal and the Coordinator Governance act as Council's Health Privacy Officers.

The Manager Governance and Legal will review and make any necessary amendments to the policy at their discretion or otherwise in accordance with any changes in the legislation.

The Coordinator Governance, the Manager Civic Services, Manager Liveable Communities or the Manager Governance and Legal can take complaints and requests for access and correction to health information.

8 Relevant Legislation

- Health Records Act 2001 (Vic)*
- Privacy and Data Protection Act 2014 (Vic)*
- Freedom of Information Act 1982 (Vic)*
- Local Government Act 1989 (Vic)*
- Local Government Act 2020 (Vic)*
- Equal Opportunity Act 2010 (Vic)*
- Occupational Health and Safety Act 2004 (Vic)*
- Public Records Act 1973 (Vic)*
- Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- Working with Children Act 2005 (Vic)*
- Privacy Act 1988 (Cth)*

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