



**BOROONDARA**  
*City of Harmony*

# Health Records Policy

2015

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## 1. Introduction

### 1.1. Purpose

The City of Boroondara 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 the Boroondara City Council.

This policy covers all personal information that is health information held by the Boroondara City 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 a 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.

**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
- 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. Methodology

The *Privacy Data and Protection Act 2014 (Vic)* replaced the *Information Privacy Act 2000 (Vic)* and this policy reflects the Boroondara City Council commitment to compliance with its obligations under the HRA.

## 4. Policy statement

It is the policy of the Boroondara City Council 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 to complete a function or activity. 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.
- 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.

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.



## 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 purpose for which the information was collected.

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 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 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 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 this HPP.

### **5.5. Principle 5 - Openness**

As required by this HPP, 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**

Council is committed to providing individuals with access to the health information which we hold 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 the Council;

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- 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;
  - denying access is required or authorised by or under law;
  - 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.

Further information about how to seek access is available at the end of this document.

### **5.7. Principle 7 - Unique 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 number).

### **5.8. Principle 8 - Anonymity**

If it is lawful and practicable, someone must have the option of not identifying themselves when entering transactions 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). However, in some situations it is not lawful or practical for a person to remain anonymous if they are seeking the provision of health services provided by Council.

### **5.9. Principle 9 - Trans Border 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 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 another 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. 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)*.

However, some requests for personal information may be dealt with informally (outside the *Freedom of Information Act 1982*). For example, Immunisation History Statements.

Please contact a member of the Council Governance Team on (03) 9278 4473 to discuss your requirements.



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

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

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

## 7. Complaints or Enquiries

Complaints, in the first instance, may be directed to the Coordinator Governance. These complaints will be acknowledged within two business days and will be resolved as soon as practicable.

The contact details for the Coordinator Governance are below.

Alternatively, complaints can be directed to the Commissioner for Privacy and Data Protection, although the Commissioner can decline a complaint if the complainant has not first complained directly to the Council.

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

Level 6, 121 Exhibition Street  
MELBOURNE VIC 3000  
Telephone: 8684 1660  
Email: [enquiries@privacy.vic.gov.au](mailto:enquiries@privacy.vic.gov.au)

## 8. Implementation and monitoring

### 8.1. Accountabilities

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

Contact	Contact number	Contact e-mail
Coordinator Governance	9278 4471	<a href="mailto:boroondara@boroondara.vic.gov.au">boroondara@boroondara.vic.gov.au</a>
Manager Governance	9278 4470	<a href="mailto:boroondara@boroondara.vic.gov.au">boroondara@boroondara.vic.gov.au</a>

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

The Manager Governance will review and make any necessary amendments to the policy in consultation with the Chief Executive Officer or otherwise in accordance with any changes in legislation.

The Manager Governance, the Manager Health, Active Ageing and Disability Services or the Coordinator Governance can take complaints and requests for access and correction to health information.



## 9. Relevant Legislation

*Health Records Act 2001 (Vic)*

*Privacy and Data Protection Act 2014 (Vic)*

*Freedom of Information Act 1982 (Vic)*

*Equal Opportunity Act 2010 (Vic)*

*Occupational Health and Safety Act 2004 (Vic)*

*Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)*

*Local Government Act 1989 (Vic)*

### Version History:

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