



Department of Local Government
Circular to Councils



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Contact: Anna Johnston
(02) 9793 0892
johnston.a@dlg.nsw.gov.au

PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998

PRIVACY CODE OF PRACTICE FOR LOCAL GOVERNMENT

The Privacy Code of Practice for Local Government has been approved by the Attorney General, and was made by Order published in the Government Gazette on 30 June 2000 (page 6035). The Code takes effect from 1 July 2000.

The Privacy Code of Practice for Local Government has the effect of modifying the application of Part 6 of the Privacy and Personal Information Protection Act 1998 (the "public register" provisions) and the application of the 12 Information Protection Principles as they apply to local government.

By virtue of s.32 of the Privacy and Personal Information Protection Act 1998, Council must comply with any Privacy Code of Practice that applies to it.

In addition to the Privacy Code of Practice for Local Government it is anticipated that an Investigative Code of Practice will also be made by the Attorney General shortly, which will impact upon council's investigative functions. Details on the expected application of the Investigative Code of Practice were provided in the Model Privacy Management Plan, forwarded to councils in circular 00/41. However such provisions cannot be relied upon until councils have been notified by Privacy NSW that the Code has actually been made.

Garry Payne
Director General

PRIVACY CODE OF PRACTICE FOR LOCAL GOVERNMENT

Under the Privacy and Personal Information
Protection Act 1998 (NSW)

June 2000

PRIVACY CODE OF PRACTICE

- A. The Privacy and Personal Information Protection Act 1998 (the “PPIPA”) provides for the protection of personal information, and for the protection of privacy of individuals generally.
- B. This Privacy Code of Practice (the “Code”) is made under Part 3 Division 1 of the PPIPA.
- C. The effect of this Code is to modify :
- ◆ the Information Protection Principles contained in Part 2, Division 1 of the PPIPA; and
 - ◆ the provisions of Part 6 of the PPIPA,
- as they relate to Local Government.
- D. Each council must have a Privacy Management Plan (the “Plan”). The Plan will outline processes to complement this Code.
- E. Questions of interpretation and application in particular circumstances may require legal advice and such advice should be obtained where it appears appropriate.
- F. The operative elements of this Code so far as the Information Protection Principles and Part 6 of the PPIPA are modified, are shown in Part 3 with respect to public registers and in Part 4 after the relevant Information Protection Principle and marked “Modification”.
- G. Explanatory notes contained in this guide serve no legal purpose of interpretation and are intended only for the purpose of clarification, or expansion.
- H. This Code applies to councillors, employees and customers of Council.
- I. This Code applies to that part of the information collected or held by Council that is personal information.
- J. Questions or written communications concerning the application of this Code or Council’s Privacy Management Plan should be addressed to the Council’s Privacy Contact Officer.
- K. This Code was gazetted on _____ 2000.

1 Interpretation

Code means this Code of Practice;

Council refers to both “councils” and “county councils” under the Local Government Act 1993;

Information Protection Principles (“IPPs”) means those principles contained in Part 2 Division 1 of the PPIPA;

Other Privacy Codes of Practice refers to all Codes of Practice which apply to Council from time to time, and includes the Investigations Code of Practice and any Research Code of Practice developed by Privacy New South Wales and made by the Attorney General;

Personal Information has the same meaning as in PPIPA;

PPIPA means the Privacy and Personal Information Protection Act 1998 (NSW);

Privacy Management Plan means the Council’s Privacy Management Plan;

Public Sector Agency has the same meaning as in PPIPA;

Public Sector Official has the same meaning as in PPIPA and includes an officer of Council;

Section refers to a section of the PPIPA unless otherwise indicated.

2 Modifications to Public Registers

A council may allow any person to:

- i. inspect a publicly available copy of a public register in council premises, and
- ii. copy a single entry or a page of the register

without requiring the person to provide a reason for accessing the register and without determining that the proposed use of the register is consistent with the purpose of the register or the Act under which the register is kept.

In particular a council should not require any person to provide a reason for inspecting the council's pecuniary interest register or any register on which the council records declarations made by councillors or designated officers under Chapter 14 Part 2 Divisions 3 or 4 of the Local Government Act.

Requests for access, copying or sale of the whole or a substantial part of a Public Register held by Council may not necessarily fit within the purpose for which a Public Register was created. Council may therefore:

- (i) disclose by way of providing access, copy or sale of the whole or a substantial part of a Public Register, provided that the names and addresses of all current and previous property owners and the names and addresses of all current and previous applicants are not disclosed; or
- (ii) disclose by way of providing access, copy or sale of the whole or a substantial part of a Public Register where Council has satisfied itself by way of statutory declaration by the person requesting the information that the information is to be used for a purpose of the Register or the Act under which the Register is kept. (In this respect, Council must first determine for itself the "purpose of the Register or the Act under which the Register is kept", but may be guided by the provisions of the model Privacy Management Plan for Local Government.)

With respect to both (i) or (ii) above, Council must also ensure that the provisions of section 12(1A) Local Government Act 1993 and section 149G of the Environmental Planning and Assessment Act 1979 are complied with, where applicable.

3 The Information Protection Principles

The Council will apply the information protection principles as follows:

Information protection principle 1 – section 8 of the PPIPA

8 Collection of personal information for lawful purposes

- (1) A public sector agency must not collect personal information unless:
 - (a) the information is collected for a lawful purpose that is directly related to a function or activity of the agency, and
 - (b) the collection of the information is reasonably necessary for that purpose.
- (2) A public sector agency must not collect personal information by any unlawful means.

Modification

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time.

Information protection principle 2 – section 9 of PPIPA

9 Collection of personal information directly from individual

A public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless:

- (a) the individual has authorised collection of the information from someone else, or
- (b) in the case of information relating to a person who is under the age of 16 years - the information has been provided by a parent or guardian of the person.

Modification

Council may depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.

Explanatory Note

Council may wish to confer a special award, prize, benefit or similar form of personal recognition to an individual. This may take the form of a citizen of the year award, the naming of a park after that individual, or other similar form of public recognition.

Information protection principle 3 – section 10 of the PPIPA

10 Requirements when collecting personal information

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:

- (a) the fact that the information is being collected,
- (b) the purposes for which the information is being collected,
- (c) the intended recipients of the information,
- (d) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,
- (e) the existence of any right of access to, and correction of, the information,
- (f) the name and address of the agency that is collecting the information and the agency that is to hold the information.

Modification

Council may depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.

Information protection principle 4 – section 11 of the PPIPA

11 Other requirements relating to collection of personal information

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:

- (a) the information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and
- (b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.

Modification

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time.

Information protection principle 5 – section 12 of the PPIPA

12 Retention and security of personal information

A public sector agency that holds personal information must ensure:

- (a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and
- (b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and
- (c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and
- (d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.

Modification

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time.

Information protection principle 6 – section 13 of the PPIPA

13 Information about personal information held by agencies

A public sector agency that holds personal information must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (a) whether the agency holds personal information, and
- (b) whether the agency holds personal information relating to that person, and
- (c) if the agency holds personal information relating to that person:
 - (i) the nature of that information, and
 - (ii) the main purposes for which the information is used, and
 - (iii) that person's entitlement to gain access to the information.

Modification

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time.

Information protection principle 7 – section 14 of the PPIPA

14 Access to personal information held by agencies

A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.

Modification

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time.

Information protection principle 8 – section 15 of the PPIPA

15 Alteration of personal information

(1) A public sector agency that holds personal information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:

(a) is accurate, and

(b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.

(2) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.

(3) If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.

Modification

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time.

Information protection principle 9 – section 16 of the PPIPA

16 Agency must check accuracy of personal information before use

A public sector agency that holds personal information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.

Modification

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time.

Information protection principle 10 – section 17 of the PIPA

17 Limits on use of personal information

A public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected unless:

- (a) the individual to whom the information relates has consented to the use of the information for that other purpose, or
- (b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or
- (c) 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 the information relates or of another person.

Modification

Council may use personal information for a purpose other than the purpose for which it was created in the following circumstances:

- (i) where the use is in pursuance of Council's lawful and proper function/s and Council is satisfied that the personal information is reasonably necessary for the exercise of such function/s; or
- (ii) where personal information is to be used for the purpose of conferring upon a particular person, an award, prize, benefit or similar form of personal recognition.

Explanatory Note

For example with respect to exemption (i) above, the Rates Record that Council holds under section 602 of the Local Government Act may also be used to:

- notify neighbours of a proposed development;
- evaluate a road opening; or
- evaluate a tree preservation order.

Information protection principle 11 – section 18 of the PPIPA

18 Limits on disclosure of personal information

- (1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:
- (a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or
 - (b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or
 - (c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.
- (2) If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.

Modification

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time, and in the circumstances described below:

1. Council may disclose personal information to public sector agencies or public utilities on condition that:
 - (i) the agency has approached Council in writing;
 - (ii) Council is satisfied that the information is to be used by that agency for the proper and lawful function/s of that agency, and
 - (iii) Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's function/s.
2. Where personal information which has been collected about an individual is to be disclosed for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition.
3. Where Council is requested by a potential employer, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.
4. A disclosure of personal information for research purposes will be allowed under a section 41 Direction made by the Privacy Commissioner (if such a direction exists) until such time as a Research Code of Practice is made by the Attorney General.

Information protection principle 12 – section 19 of the PPIPA

19 Special restrictions on disclosure of personal information

- (1) A public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious 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.
- (2) A public sector agency that holds personal information must not disclose the information to any person or body who is in a jurisdiction outside New South Wales unless:
 - (a) a relevant privacy law that applies to the personal information concerned is in force in that jurisdiction, or
 - (b) the disclosure is permitted under a privacy code of practice.
- (3) For the purposes of subsection (2), a *relevant privacy law* means a law that is determined by the Privacy Commissioner, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned.
- (4) The Privacy Commissioner is, within the year following the commencement of this section, to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales.
- (5) Subsection (2) does not apply:
 - (a) until after the first anniversary of the commencement of this section, or
 - (b) until a code referred to in subsection (4) is made, whichever is the later.

Modification

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time except in the circumstances described below:

1. For the purposes of s.19(2) only, where Council is requested by a potential employer outside New South Wales, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.
2. A disclosure of personal information for research purposes will be allowed under a section 41 Direction made by the Privacy Commissioner (if such a direction exists) until such time as a Research Code of Practice is made by the Attorney General.

4 Implementation of this Code of Practice

The General Manager of Council is responsible for the implementation of this Code of Practice.

Compliance

This Code will be made by an order published in the Government Gazette. This Code takes effect once the order making this Code is published (or such later date as may be specified in the order) and the Council to whom this Code applies must comply with its provisions.

The Council's Privacy Management Plan includes provisions to comply with the obligations imposed by the PPIPA having regard to this Code.

Complaints

Complaints in respect of the protection and obligations arising under PPIPA and this Code should be addressed to the General Manager of the Council. All complaints will then be forwarded to the Privacy Contact Officer for review.

Complaints may alternatively be directed to the Privacy Commissioner.

Review of Code

The Council will review this Code at regular intervals of not more than three years to ensure that it is optimising its compliance measures whereby personal information is collected, stored, used and disseminated.