



INFORMATION PRIVACY POLICY

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1. PURPOSE

East Gippsland Shire Council (Council) is committed to protecting an individual's right to privacy, and maintaining a culture that respects that right. This policy outlines the management principles relating to determining what type of information, including data, needs to be protected and how Council will protect it in accordance with the law.

2. POLICY STATEMENT

It is the policy of Council that personal and health information is managed in accordance with all relevant legislation to ensure the responsible handling of it, and to protect an individual's right to privacy. Information privacy rights in Victoria are established by three pieces of key legislation (hereafter referred to as 'Privacy Legislation'):

- *Privacy and Data Protection Act 2014* (Victoria),
- *Health Records Act 2001* (Victoria), and
- *Privacy Act 1988* (Commonwealth).

In an effort to balance an individual's right to privacy with the public interest of ensuring the free flow of information, it is also the policy of Council to provide access to information where legislation permits and where the circumstances are appropriate to do so. Any person wishing to access their personal information held by Council may contact Council's Privacy Information Officer.

Access will be provided except in circumstances outlined in Privacy Legislation, or where the *Freedom of Information Act 1982* ('FOI Act') applies. Access to information via the FOI Act should only be in applicable or 'last resort' circumstances.

All requests for information will be dealt with in accordance with the relevant piece of legislation. This policy applies to both personal information and health information held by Council.

Personal Information

'Personal information' is defined in the *Privacy and Data Protection Act 2014* (PDPA) as:

Information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which the *Health Records Act 2001* applies.

Council holds personal information about people in order to carry out its functions and provide community services. In some instances, personal information may be contained on public registers and statutory records (for example, building permits, planning permits, food premises, animal registration and the municipality's voters' roll).

Although information pertaining to an individual's health is considered to be that individual's personal information, health information is expressly excluded from PDPA.

Health Information

'Health information' is defined in the *Health Records Act 2001* (HRA) as:

- a) Information or an opinion about—
 - (i) the physical, mental or psychological health (at any time) of an individual; or
 - (ii) a disability (at any time) of an individual; or

- (iii) an individual's expressed wishes about the future provision of health services to him or her; or
- (iv) a health service provided, or to be provided, to an individual—that is also personal information; or
- b) other personal information collected to provide, or in providing, a health service; or
- c) 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
- d) 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.

Sensitive Information

'Sensitive information' means information or an opinion about an individual's: racial or ethnic origin, political opinions, membership of a political association; membership of a professional association or trade association, membership of a trade union, philosophical or religious beliefs and associations, sexual preferences and practices, or criminal record. This is also considered personal information and protected under the same Victorian and Commonwealth Privacy Legislation.

Council will not collect sensitive information unless an individual has consented or collection is required or permitted by law, or when necessary for research or statistical purposes as permitted under the PDPA. Sensitive information will be treated with the utmost security and confidentiality and only used for the purpose for which it was collected. Council must ensure that any sensitive information collected is stored confidentially and securely in accordance with Information Privacy Principle 4 — Data Security and Retention (see the Information Privacy Principles section of this Policy and the associated guideline).

Confidential Information

'Confidential information' is not used for the same purposes as personal or health information. Confidential information is any data, documents, photos, drawings or other information marked as *confidential* in accordance with sections 77 and 89(2) of the *Local Government Act 1989* ('LGA'), which is provided to Council and/or councillors for a Closed Council meeting or a briefing, or for other purposes to assist councillors in the performance of their role.

It is possible that the different types of information may become intermingled in the course of Council business, which would mean the same piece of data or information is fully or partially protected by both privacy legislation and the LGA.

Information Privacy Officer

The Governance and Compliance Coordinator and Governance and Compliance Officer are Council's Information Privacy Officers. The Information Privacy Officers assist Council to comply with its obligations under the PDPA and HRA, and are authorised by Council to provide advice and/or receive requests for access and correction from a person regarding their own personal information held by Council. For information on complaints, refer to the 'Privacy Complaints' section.

The Information Management Team Leader and Senior Information Management Officer perform the role of Council's Freedom of Information Officers. The FOI Act should only be used as a means of last resort to gain access to information held by Council.

Information Privacy Principles

Council must comply with the ten Information Privacy Principles (IPPs) contained in the PDPA, listed below:

Information Privacy Principles (IPPs)			
IPP 1	Collection	IPP 2	Use and Disclosure
IPP 3	Data Quality	IPP 4	Data Security
IPP 5	Openness	IPP 6	Access and Correction
IPP 7	Unique Identifiers	IPP 8	Anonymity
IPP 9	Trans-border Data Flows	IPP 10	Sensitive Information

Council will manage personal and health information in accordance with the principles, which are described further in this policy's associated guideline.

Public sector organisations can apply to the Commissioner for Privacy and Data Protection to depart from complying with the IPPs in permitted circumstances. Where the Commissioner is satisfied there is a substantial public interest in departing from the IPPs, they are authorised under the PDPA to amend an IPP for the organisation only using one of the approved mechanisms stipulated by the PDPA.

Health Privacy Principles

Council must comply with the eleven Health Privacy Principles (HPPs) contained in the HRA. The HPPs and IPPs are aligned with a significant amount of overlap in the first nine principles with only a few key differences. IPP 10 and HPP 10 and 11 are unique to their own legislation. All HPPs and IPPs are listed below:

Similar Principles: HPPs and IPPs ^{1,2}		Key differences
1	Collection	<i>As well as being necessary, the HPPs require at least one of nine conditions to be met.</i>
2	Use and Disclosure	<i>In addition to the shared exceptions, the HPPs include health-specific exceptions for use and disclosure for a secondary purpose.</i>
3	Data Quality	<i>HPP 3.1 also requires health information to be relevant to its functions or activities as a data quality issue.</i>
4	Data Security	<i>Under IPP 4.2, information no longer required for any purpose must be deleted or de-identified. HPP 4 refers to security and retention.</i>
5	Openness	<i>No key difference.</i>
6	Access and Correction	<i>Difference relates to health service providers.</i>
7	Unique Identifiers	<i>HPP 7.4 includes circumstances pertaining to using and disclosing unique identifiers between public and private organisations.</i>

¹ This table is taken from the Commissioner for Privacy and Data Protection Information Sheet, *The Information Privacy Principles and the Health Privacy Principles*, Melbourne, May 2016.

² Please note this list, as well as the limited analysis included in the table, is only provided for indicative purposes and should not be interpreted as authoritative or conclusive. There are more requirements and discussions under each Principle and the Schedule which contains them in the PDPA, while the HRA should be read and considered the authoritative document in every instance.

8	Anonymity	<i>No key difference.</i>
9	Trans-border Data Flows	<i>No key difference.</i>
Principles unique to PDPA or HRA³		
IPP	10. Sensitive Information	Organisations must not collect sensitive information (as defined in the PDPA) unless under certain circumstances.
HPP	11. Transfer or closure of the practice of a health service provider	Health service providers must comply with certain requirements.
HPP	12. Making information available to another health service provider	If an individual requests their health information to be made available to another health services provider, they must do so.

Breaches of Privacy Legislation

Council as an organisation, councillors or Council officers as individuals, may incur penalty units for breaches under Privacy Legislation. Disciplinary actions outlined in the Councillor Code of Conduct, and the Staff Code of Conduct, will also apply to individuals who have breached the privacy of another person, whether they be a private citizen or employee of Council.

It is the responsibility of all councillors, Council officers (employees), agents (consultants, agency staff and volunteers) and contracted service providers to comply with Privacy Legislation, the FOI Act and the LGA at all times.

Privacy Complaints

Any individual person who wishes to register a complaint about Council's handling of their personal information, or believes that a councillor, Council officer, an agent of Council or a contracted service provider is in breach of Privacy Legislation, has the right to do so in accordance with the procedure provided in this policy's associated guideline. Only Information Privacy Officers in the Governance and Compliance Business Unit are authorised to receive, investigate and respond to such complaints.

Alternatively, a complaint can be made to the Commissioner for Privacy and Data Protection or the Health Complaints Commissioner, although either Commissioner may decline to hear the complaint if it has not first been made to Council.

Where the complainant is not satisfied with the decision of the Information Privacy Officer, the complainant may apply to the Commissioner for Privacy and Data Protection or the Health Complaints Commissioner for further action.

3. RESPONSIBILITY FOR IMPLEMENTATION AND COMPLIANCE

The following positions are responsible for implementation and compliance monitoring of the policy in their work areas:

³ Please note this list, as well as the limited analysis included in the table, is only provided for indicative purposes and should not be interpreted as authoritative or conclusive. There are more requirements and discussions under each Principle and the Schedule which contains them in the PDPA, while the HRA should be read and considered the authoritative document in every instance.

Parties:	Roles and responsibilities:
Executive Group	Overall responsibility for organisational compliance.
Managers and Supervisors	Ensure all Council officers, agents and contracted service providers who fall in the purview of their business unit(s) and management responsibilities, are aware of data and information handling requirements, and monitor compliance with legislative provisions, this policy and any associated procedures.
Director Corporate	An authorised Information Privacy Officer; and a Freedom of Information Officer under the <i>Freedom of Information Act 1982</i> .
Governance and Compliance Coordinator	Policy Owner. An authorised Information Privacy Officer
Governance and Compliance Officer	An authorised Information Privacy Officer
Information Management Team Leader	An authorised Freedom of Information Officer under the <i>Freedom of Information Act 1982</i> .
Senior Information Management Officer	An authorised Freedom of Information Officer under the <i>Freedom of Information Act 1982</i> .

All officers are obligated to report occurrences of non-compliance with Council policy. Incidents of non-compliance should be reported immediately to the policy owner or a member of the Governance Business Unit.

4. SCOPE OF POLICY

This policy applies to all councillors, officers, agents (consultants, agency staff and volunteers) and contractors of Council.

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

- from a person, as well as information about a person collected from third parties; and
- about a person regardless of format. This includes information collected on forms, in person, in correspondence, over the telephone or via Council's websites and social media.

5. REFERENCES / ASSOCIATED DOCUMENTS

The Governance and Compliance Officer will support the organisation in complying with the provisions of Privacy Legislation.

Applicable Legislation

The following pieces of legislation establish and protect individual privacy in Victoria:

- *Privacy and Data Protection Act 2014* (Vic). This Act governs the collection and handling of personal information (excluding health information) in the Victorian public sector and provides for the establishment of a protective data security regime for the Victorian public sector. It applies to living natural persons, unless the disclosure of a deceased person's personal information has the potential to interfere with the privacy rights of a living person.

It is important to note where the Privacy and Data Protection Act 2014 is inconsistent with another piece of legislation the other legislation will take precedence.

- *Health Records Act 2001* (Vic). This Act regulates the way that health information is collected and handled by the public and private sector bodies throughout Victoria. It has provisions dealing specifically with privacy.
- *Privacy Act 1988* (Commonwealth). This Act regulates personal information held by federal and Norfolk Island government agencies as well as large Australian private sector organisations, including those operating in Victoria.
- *Freedom of Information Act 1982* (Vic). This Act provides members of the public rights of access to official documents of Ministers, state government departments, local Councils, most semi-government agencies and statutory authorities, public hospitals and universities, TAFE colleges and schools.
- *Local Government Act 1989* (Vic). This Act administers the local government sector in Victoria and provides a framework for the establishment and operation of councils.
- *Charter of Human Rights and Responsibilities Act 2006* (Vic). This Victorian law sets out the basic, rights, freedoms and responsibilities of all people in Victoria. Section 13 of the Charter establishes a person's right to privacy.
- *Public Records Act 1973* (Vic). This Act established the state's Public Records Advisory Council and Public Record Office Victoria, and under section 12 stipulates the requirements and standards for the efficient management of public records in Victorian public sector organisations.

It is important to note that this Act determines that any record made or received by a public officer, or in other words the creation or receipt of data and information, in the course of their duties is a public record owned by that public sector organisation and subject to the provisions of the Public Records Act 1973.

Office of the Commissioner for Privacy and Data Protection

This Office was established in 2014 to administer the PDPA and regulate three specific areas of activity: information privacy, protective data security and law enforcement data security. The Commissioner for Privacy and Data Protection is the public agency head of the Office of the Commissioner for Privacy and Data Protection.

Website: <https://www.cpdp.vic.gov.au/index.php>

Office of the Health Complaints Commissioner

The new Office of the Health Complaints Commissioner was established under the *Health Complaints Act 2016* which came into effect on 1 February 2017, replacing the Office of the Health Services Commissioner, and administers the HRA. The change follows the passing of the *Health Complaints Act 2016* (Vic), which sets out new powers and a more flexible and efficient approach to complaints handling for Victoria's health complaints body. The Health Complaints Commissioner is the public agency head of the Office of the Health Services Commissioner

Website: <http://www.health.vic.gov.au/hsc/index.htm>

6. PRIVACY AND HUMAN RIGHTS CONSIDERATION

The type of data and information collected by East Gippsland Shire Council will be assessed using the management principles of this policy and legislative requirements; it will be handled in accordance with all applicable Privacy Legislation; and will be used only for the purposes to comply with relevant legislation or local law.

Personal and health information about an individual held by Council must only be used to carry out the primary or directly related purpose of collection.

Furthermore, Council must not collect personal information unless the information is necessary for one or more of its functions.

Individuals have the right to make a complaint to the Privacy and Data Protection Commissioner if they believe their privacy has been breached.

The Information Privacy Policy has been assessed as compliant with the obligations and objectives of the Victorian Charter of the *Human Rights Responsibilities Act 2006*.

7. DEFINITIONS AND ABBREVIATIONS

Term/Acronym:	Meaning:
Agents (of Council)	Consultants, agency staff and volunteers
Data	Facts and statistics collected together for reference or analysis.
Health Privacy Principles or HPPs	These eleven principles regulate the handling of health information, which are prescribed in Schedule 1 of the <i>Health Records Act 2001 (Vic)</i> .
Information	Facts provided or learned about something or someone.
Information Privacy Principles or IPPs	These ten principles regulate the handling of personal information, which are prescribed in Schedule 1 of the <i>Privacy and Data Protection Act 2014 (Vic)</i> .
Privacy Legislation	Refers to the three key pieces of legislation that establish and protect a person's right to privacy in Victoria. These are the <i>Privacy and Data Protection Act 2014 (Vic)</i> , <i>Health Records Act 2001 (Vic)</i> and <i>Privacy Act 1988 (Commonwealth)</i> .
Public register	Holds documents that are available for inspection by members of the public and contain information required or permitted by legislation, and is subject to the <i>Public Records Act 1973 (Vic)</i> .
Statutory record	A statutory record has the same meaning as a 'public record' under the <i>Public Records Act 1973 (Vic)</i> , except that it relates to a specific statutory provision under legislation, that is any record made or received by a public officer in the course of their duties.
Unique identifier	An identifier (usually a number) assigned by an organisation to an individual uniquely to identify that individual for the purposes of the operations of the organisation, but does not include an identifier that consists only of the individual's name but does not include an identifier within the meaning of the <i>Health Records Act 2001 (Vic)</i> .

8. SUPPORTING PROCEDURES / GUIDELINES

The supporting procedure to this policy is the 'East Gippsland Shire Council Information Privacy Guidelines', which is accessible on Council's website.

The Office of the Commissioner for Privacy and Data Protection website has a number of useful information sheets at: <https://www.cpdp.vic.gov.au/menu-resources/resources-privacy/resources-privacy-background-papers>.

The Office of the Health Complaints Commissioner website also has a useful resources page at: <http://www.health.vic.gov.au/hsc/resources/pubs.htm>.