

Health Records & Information Privacy Management Plan

In accordance with the Health Records & Information Privacy Act
(HRIPA), 2002.



Endorsed by Chief Executive Officer 18 December 2006

city of villages

CITY OF SYDNEY HEALTH RECORDS PRIVACY MANAGEMENT PLAN

The Council respects the privacy of the residents, ratepayers and staff of the City of Sydney, by preparing the following Privacy Management Plan in accordance with the requirements of the *Health Records and Information Privacy Act (HRIPA), 2002*.

The Plan creates a legal framework to protect the privacy of individuals' health information in the City of Sydney Council area and the way that Council collects, holds and uses health information.

The provisions of HRIPA in Local Government, commenced on 1 September, 2004.

From 1 July, 2004, the NSW Privacy and Personal Information Protection Act (PPIPA) no longer regulates health information, but will continue to regulate all other personal information collected or held by Council.

Definition of "Health Information"

In this Act, *health information* means:

- (a) **that is information or an opinion about:**
 - (i) the **physical or mental health or a disability** (at any time) of **an individual**, or
 - (ii) an **individual's express wishes about the future provision of health services to him or her**, or
 - (iii) a **health service provided, or to be provided, to an individual**, 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, of an individual's body parts, organs or body substances**, or

- (d) **other personal information that is genetic information about an individual arising from a health service provided to the individual in a form that is or could be predictive of the health (at any time) of the individual or of any sibling, relative or descendant of the individual**,
 - but does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of this Act generally or for the purposes of specified provisions of this Act.

HEALTH PRIVACY PRINCIPLES (HPPs) – (Schedule 1 HRIPA)

1 Purposes of collection of health information

(1) The Council must not collect health information unless:

- (a) the information is collected for a lawful purpose that is directly related to a function or activity of Council business, and
- (b) the collection of the information is reasonably necessary for that purpose.

(2) The Council must not collect health information by any unlawful means.

2 Information must be relevant, not excessive, accurate and not intrusive

When Council collects health information from an individual, we will 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.

(Homeless Persons Information Centre (HPIC) will continue to collect appropriate personal information to provide specified services to individuals or on their behalf).

3 Collection to be from individual concerned

(1) Council will collect health information about an individual only from that individual, unless it is unreasonable or impracticable to do so.

(HPIC may take personal health information from health care providers, where their client has given permission to do this).

(2) Health information will be collected in accordance with any guidelines issued by the Privacy Commissioner for the purposes of this clause.

4 Individual to be made aware of certain matters

(1) When Council collects health information about an individual from the individual, we will, at or before the time that we collect the information, (or if that is not practicable, as soon as practicable after that time), take steps that are reasonable in the circumstances, to ensure that the individual is aware of the following:

- (a) the identity of City of Sydney and how to contact us,
- (b) the fact that the individual is able to request access to the information,
- (c) the purposes for which the information is collected,
- (d) the persons to whom (or the types of persons to whom) the Council usually discloses information of that kind,
- (e) any law that requires the particular information to be collected,
- (f) the main consequences (if any) for the individual if all or part of the information is not provided.

A Privacy Protection Notice will be added to all forms, where the Council solicits personal health related information from the general public. Internal forms that collect health information are also affected.

A Privacy statement will be made on telephone calls, where names and addresses of individuals and personal health details are collected to supply services to those individuals who contact HPIC for assistance, (clause (e) is not relevant to the functions of HPIC).

(2) If Council collects health information about an individual from someone else, we will take any steps that are reasonable in the circumstances to ensure that the individual is generally aware of the matters listed in subclause (1) except to the extent that:

- (a) making the individual aware of the matters, would pose a serious threat to the life or health of any individual, or
- (b) the collection is made in accordance with guidelines issued under subclause (3).

(3) The Privacy Commissioner may issue guidelines setting out circumstances in which Council is not required to comply with subclause (2). There have been no directions made to Councils.

(4) Council is not required to comply with a requirement of this clause if:

- (a) the individual to whom the information relates has expressly consented to Council not complying with it, or
- (b) Council is lawfully authorised or required not to comply with it, or
- (c) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998), or
- (d) compliance by Council would, in the circumstances, prejudice the interests of the individual to whom the information relates, or
- (e) the information concerned is collected for law enforcement purposes, or
- (f) the organisation is an investigative agency and compliance might detrimentally affect (or prevent the proper exercise of) its complaint handling functions or any of its investigative functions.

(5) If Council reasonably believes that the individual is incapable of understanding the general nature of the matters listed in subclause (1), we will take steps that are reasonable in the circumstances to ensure that any authorised representative of the individual is aware of those matters.

HPIC can only ever accept verbal consent to share information, as it is a telephone service.

(6) Subclause (4) (e) does not remove any protection provided by any other law in relation to the rights of accused persons or persons suspected of having committed an offence.

(7) The exemption provided by subclause (4) (f) extends to any Council, or Council officer, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.

5 Retention and security

(1) Whilst Council holds health information, we will ensure that:

- (a) the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and
- (b) the information is disposed of securely and in accordance with any requirements for the retention and disposal of health information, and
- (c) 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) if it is necessary for the information to be given to a person in connection with the provision of a service to Council, everything reasonably within the power of the Council is done to prevent unauthorised use or disclosure of the information.

HPIC will retain individuals' personal information in secure storage for statistical reasons. Access to historical HPIC records requires signed authorisation from senior HPIC staff.

(2) Council is not required to comply with a requirement of this clause if:

- (a) Council is lawfully authorised or required not to comply with it, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

(3) An investigative agency is not required to comply with subclause (1) (a).

Disposal (archiving and destruction) of Council records is the responsibility of the City Archivist. All records' recommended for destruction by the City Archivist, are also approved for destruction by the business line manager and the executive manager responsible for the functional area that created the records.

The records' disposal schedule used as the basis for records disposal is GDA10: General Records Disposal Schedule for Local Government Records, issued by State Records NSW and having effect under the State Records Act 1998.

GDA10 is a public document available from State Records NSW.

Destruction of records which have no residual business or research values, and which are eligible for destruction in accordance with GDA10, is done annually.

6 Information about health information held by Council

(1) Whilst Council holds health information, we will take such steps as are, in the circumstances, reasonable to enable any individual to ascertain:

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

HPIC will disclose personal health information to legally authorised persons (eg. guardians) or if relevant, to a referral with consent of the caller.

(2) Council is not required to comply with a provision of this clause if:

- (a) the Council is lawfully authorised or required not to comply with the provision concerned, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

7 Access to health information

(1) Whilst Council holds health information we will, 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.

Requests for an individuals' health information must be made in writing to the Chief Executive Officer or may also be available under the Freedom of Information Act 1989.

(2) Council is not required to comply with a provision of this clause if:

- (a) the Council is lawfully authorised or required not to comply with the provision concerned, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

8 Amendment of health information

(1) Whilst Council holds health information, we will, 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 health 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 Council is not prepared to amend health information under subclause (1), in accordance with a request by the individual to whom the information relates, Council will, 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 health information is amended in accordance with this clause, 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 Council.

Amendment of health information held by public sector agencies may also be able to be sought under the Freedom of Information Act 1989.

(4) Council is not required to comply with a provision of this clause if:

- (a) Council is lawfully authorised or required not to comply with the provision concerned, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

9 Accuracy

Council must not use health 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.

HPIC collects personal information, with permission, from callers requesting assistance because they are homeless. Due to their situation these individuals may only phone once or occasionally and it is not possible to keep all clients records accurate and up to date, in these circumstances. HPIC staff will update records when new information is provided.

10 Limits on use of health information, and

11 Limits on disclosure of health information

(1) Health information held by Council must not be used or disclosed for a purpose (a *secondary purpose*) other than the purpose (the *primary purpose*) for which it was collected unless:

(a) Consent

the individual to whom the information relates has consented to the use and/or disclosure of the information for that secondary purpose, or

(b) Direct relation

the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the Council to use and/or disclosure of the information for the secondary purpose, or

Note. For example, if information is collected in order to provide a health service to the individual, the use of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.

(c) Serious threat to health or welfare

the use and/or disclosure of the information for the secondary purpose is reasonably believed by the Council to be necessary to lessen or prevent:

(i) a serious and imminent threat to the life, health or safety of the individual or another person, or

(ii) a serious threat to public health or public safety, or

(d) Management of health services

the use and/or disclosure of the information for the secondary purpose

is reasonably necessary for the funding, management, planning or evaluation of health services, and:

(i) either:

(A) that purpose cannot be served by the use and/or disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or

(B) reasonable steps are taken to de-identify the information, and

(ii) if the information is in a form that could reasonably be expected to identify individuals, the information is not published in a generally available publication, and

(iii) the use and/or disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or

(e) Training

the use and/or disclosure of the information for the secondary purpose is reasonably necessary for the training of employees of the Council or persons working with the Council and:

(i) either:

(A) that purpose cannot be served by the use and/or disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the Council to seek the consent of the individual for the use, or

(B) reasonable steps are taken to de-identify the information, and

(ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and

(iii) the use and/or disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or

(f) Research

the use and/or disclosure of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:

(i) either:

(A) that purpose cannot be served by the use and/or disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the Council to seek the consent of the individual for the use and/or disclosure, or

(B) reasonable steps are taken to de-identify the information, and

- (ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and
- (iii) the use and/or disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or

(g) Find missing person

the use and/or disclosure of the information for the secondary purpose is by a law enforcement agency, (or such other person or organisation as may be prescribed by the regulations), for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or

(h) Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline

the Council:

- (i) has reasonable grounds to suspect that:
 - (A) unlawful activity has been or may be engaged in, or
 - (B) a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under a health registration Act, or
 - (C) an employee of Council has or may have engaged in conduct that may be grounds for disciplinary action, and
- (ii) uses and/or discloses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or

(i) Law enforcement

the use and/or disclosure of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or

(j) Investigative agencies

the use and/or disclosure of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or

(k) Prescribed circumstances

the use and/or disclosure of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.

(2) Council is not required to comply with a provision of this clause if:

- (a) Council is lawfully authorised or required not to comply with the provision concerned, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

(3) The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board, Community Services Commission and

Department of Corrective Services are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions.

(4) Nothing in this clause prevents or restricts the disclosure of health information by Council:

- (a) to another Council or public sector agency under the administration of the Minister for Local Government, if the disclosure is for the purposes of informing that Minister about any matter within that administration, or
- (b) to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.

(5) (A) The exemption provided by subclause (1) (j) extends to any Council, or Council officer, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.

(B) When dealing with disclosure under HPP 11, if health information is disclosed in accordance with subclause (1), the person, body or organisation to whom it was disclosed must not use or disclose the information for a purpose other than the purpose for which the information was given to it.

(6) When dealing with disclosures under HPP 11, the exemptions provided by subclauses (1) (k) and (2) extend to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.

12 Identifiers

“identifier” means an identifier (which is usually, but need not be, a number), not being an identifier that consists only of the individual’s name, that is:

- (a) assigned to an individual in conjunction with or in relation to the individual’s health information by Council for the purpose of uniquely identifying that individual, whether or not it is subsequently used otherwise than in conjunction with or in relation to health information, or
- (b) adopted, used or disclosed in conjunction with or in relation to the individual’s health information by Council for the purpose of uniquely identifying that individual.

(1) Council may only assign identifiers to individuals if the assignment of identifiers is reasonably necessary to enable the Council to carry out any of its functions efficiently.

(2) Subject to subclause (4), a private sector person may only adopt as its own identifier of an individual, an identifier of an individual that has been assigned by Council (or by an agent of, or contractor to Council, acting in its capacity as agent or contractor) if:

- (a) the individual has consented to the adoption of the same identifier, or
- (b) the use or disclosure of the identifier is required or authorised by or under law.

(3) Subject to subclause (4), a private sector person may only use or disclose an identifier assigned to an individual by Council (or by an agent of, or contractor to, Council acting in its capacity as agent or contractor) if:

- (a) the use or disclosure is required for the purpose for which it was assigned or for a secondary purpose referred to in one or more paragraphs of HPP 10 (1) (c)–(k) or 11 (1) (c)–(l), or
- (b) the individual has consented to the use or disclosure, or
- (c) the disclosure is to the Council that assigned the identifier to enable the Council to identify the individual for its own purposes.

(4) If the use or disclosure of an identifier assigned to an individual by Council is necessary for a private sector person to fulfil its obligations to, or the requirements of, the Council, a private sector person may either:

- (a) adopt as its own identifier of an individual an identifier of the individual that has been assigned by the Council, or
- (b) use or disclose an identifier of the individual that has been assigned by the Council.

HPIC use the nationally agreed and accepted SAAP service identifier known as Alpha Code. This code is used by NDCA at the AIHW to link de-identified data for analysis.

13 Anonymity

Wherever it is lawful and practicable, individuals must be given the opportunity to not identify themselves when entering into transactions with or receiving health services from Council.

To obtain referral to services, HPIC customers must identify themselves to obtain assistance. Requests for general information about homelessness or other community type services may be anonymous.

14 Transborder data flows and data flow to Commonwealth agencies

Council will not transfer health information about an individual to any person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency unless:

- (a) Council reasonably believes that the recipient of the information is subject to a law, binding scheme or contract that effectively upholds principles for fair handling of the information that are substantially similar to the Health Privacy Principles, or
- (b) the individual consents to the transfer, or
- (c) the transfer is necessary for the performance of a contract between the individual and Council, or for the implementation of pre-contractual measures taken in response to the individual's request, or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the Council and a third party, or
- (e) all of the following apply:
 - (i) the transfer is for the benefit of the individual,
 - (ii) it is impracticable to obtain the consent of the individual to that transfer,
 - (iii) if it were practicable to obtain such consent, the individual would be likely to give it, or
- (f) the transfer is reasonably believed by the Council to be necessary to lessen or prevent:
 - (i) a serious and imminent threat to the life, health or safety of the individual or another person, or
 - (ii) a serious threat to public health or public safety, or
- (g) Council has taken reasonable steps to ensure that the information that it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Health Privacy Principles, or
- (h) the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law.

15 Linkage of health records

(1) Council will not:

- (a) include health information about an individual in a health records linkage system unless the individual has expressly consented to the information being so included, or
- (b) disclose an identifier of an individual to any person if the purpose of the disclosure is to include health information about the individual in a health records linkage system, unless the individual has expressly consented to the identifier being disclosed for that purpose.

HPIC require clients consent for referrals.

(2) Council is not required to comply with a provision of this clause if:

- (a) Council is lawfully authorised or required not to comply with the provision concerned, or

- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998), or
- (c) the inclusion of the health information about the individual in the health records information system (including an inclusion for which an identifier of the individual is to be disclosed) is a use and/or disclosure of the information that complies with HPP 10 & 11 (1) (f).

(3) In this clause:

health record means an ongoing record of health care for an individual.

health records linkage system means a computerised system that is designed to link health records for an individual held by different Councils or organisations for the purpose of facilitating access to health records, and includes a system or class of systems prescribed by the regulations as being a health records linkage system, but does not include a system or class of systems prescribed by the regulations as not being a health records linkage system.

Review of Certain Conduct (Internal Review Process) – (Part 3 Section 21 HRIPA) - (Same Process as Council's PPIPA Management Plan)

Initial Inquiry or Complaint

Any person is entitled to obtain access to any personal health information that Council holds about them. They may request alterations be made to their personal details or request information on the way their personal details have been used.

Staff should make initial enquires to Council's Human Resources Manager to obtain their personal health information from Councils Personnel files.

It is important that the initial enquiry or complaint be a formal submission, in the form of a letter addressed to:

The Chief Executive Officer
City of Sydney
GPO Box 1591
Sydney NSW 2001

Where a person has requested information about their personal health information and has been refused access or is unsatisfied with Council's response or Council's refusal to change a persons health details, they are entitled to request an Internal Review of the initial complaint or enquiry.

A person, who has requested information and

- **is aggrieved by the conduct of Council in the following circumstances:**
 - a) contravention of a privacy principle that applies to Council.
 - b) contravention of a code of practice that applies to Council,
 - c) disclosure of personal information kept on a register,
- **and has made an initial request** for access to personal health information or requested a response concerning Council's actions and the use their health information,
- **is entitled to apply for an Internal Review.**

An Application for Review must be obtained by completing a **Freedom of Information Internal Review Form** and forwarding it to:

The Freedom of Information Officer
 City of Sydney
 GPO Box 1591
 Sydney NSW 2001

Review Process

- 1. On receipt of the request for review, a copy will be forwarded to the Privacy Commissioner. The Privacy Commissioner will be informed of progress and the outcome of the review.**

The application must be lodged 6 months from the time the applicant first became aware of the conduct (the subject of the application).

At all times the contents of the review will be kept confidential in accordance with Council's Code of Conduct.

- 2. The application will be dealt with by General Counsel, who will consider any relevant material submitted by either the applicant or the Privacy Commissioner.**

The review will be completed as soon as reasonably practicable within 60 days from receipt of the application for review.

- 3. Following completion of the review, Council will do one or more of the following:**
 - a) take no further action on the matter,
 - b) make a formal apology to the applicant,
 - c) take appropriate remedial action,

- d) provide undertakings that the conduct will not occur again,
- e) implement administrative measures to ensure that the conduct will not occur again.

4. As soon as practicable within 14 days of the completion of the review, Council will notify the applicant in writing of:

- i) the findings and the reasons for those findings;
- ii) any proposed actions to be
- iii) the right of the applicant to have those findings and the Council's proposed action, reviewed by the Administrative Appeals Tribunal.

Training & Education

Council's Freedom of Information Officer will provide advice to staff when required. This HRIPA Document will be distributed during Council's Staff Induction Program.

The HRIPA Document will be circulated to staff and made available at counter areas of offices and libraries in the City of Sydney Council area.

This HRIPA Privacy Management Plan will be reviewed on a yearly basis by Council's Freedom of Information Officer. The plan's effectiveness will be assessed and this will lead to any necessary changes.

The FOI Co-Ordinators & Privacy Network Meetings are regularly attended.

Further Information

For assistance in understanding the processes associated with the Health Records and Information Privacy Act, please contact the following:

The Freedom of Information Officer on phone 9246 7503

Or

**The NSW Privacy Commissioners Office on phone 9268 5588
or fax 9268 5501.**