
PRIVACY MANAGEMENT PLAN

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PURPOSE OF THE PLAN

This Privacy Management Plan details how Wentworth Shire Council deals with personal information and health information to ensure that it complies with the Privacy and Personal Information Protection Act 1998 (NSW) and the Health Records and Information Privacy Act 2002 (NSW). In this plan, a reference to 'personal information' is a reference to both personal information and health information, except where specifically referring to health information under the Health Records and Information Privacy Act 2000.

This plan is to be read in conjunction with Wentworth Shire Council's obligations under the Local Government Act 1993 (NSW) (Sections 11 and 12) and the Freedom of Information Act 1989 (NSW).

DEFINITIONS

In this Privacy Management Plan the following definitions apply:

- . "the Council" – Wentworth Shire Council
- . "the PPIP Act" - The Privacy and Personal Information Protection Act 1998 (NSW)
- . "the HRIP Act" - Health Records and Information Privacy Act 2002 (NSW)
- . "the Local Government Act" – The Local Government Act 1993 (NSW)
- . "the Freedom of Information Act" or "FOI Act" – The Freedom of Information Act 1989

INTRODUCTION

The PPIP Act and the HRIP Act impose on Council significant responsibilities in the way in which Council collects, stores, and uses personal information. The Acts also confer on the public certain rights. These rights ensure that their personal information is not used for unlawful purposes, and provides them with internal and external review processes to protect those rights. There are serious penalties in place for those who breach their responsibilities under the Acts, so it is in the best interest of both councillors and staff that they make themselves aware of the privacy laws, and the way in which those laws affect the manner in which they must perform their functions and duties.

Section 33 of the PPIP Act requires Council, as a public sector agency, to adopt and implement a Privacy Management Plan that explains its policies and procedures set in place to ensure Council complies with the PPIP Act and the HRIP Act.

In compliance with Section 33 of the PPIP Act, Council's Privacy Management Plan identifies:

- The procedures and practices that will be used to ensure that the Council complies with its obligations under the Acts
- How those procedures and practices will be made known to Council staff
- How the Council will conduct internal privacy reviews and
- Any other relevant matters.

The PPIP Act, the HRIP Act and this plan apply to the following:

- Councillors
- Council employees
- Consultants to and Contractors of Council
- Council-owned businesses
- Committees elected or appointed by Council.

1. THE INFORMATION PROTECTION PRINCIPLES

The PPIP Act (Part 2 Division 1) and the HRIP Act (Schedule 1) provides for protection of privacy by establishing certain Information Protection Principles (IPPs). These principles determine how personal and health information is to be collected, used, stored and disclosed. Each work practice that involves personal information is to be assessed against each of the principles to ensure that there is no departure from the provisions of the Acts in the manner in which Council performs its functions. If there is a discrepancy between work practices and the IPPs, the practice is to be modified to ensure that it does comply with the IPPs; otherwise, it is to be discontinued.

The PPIP Act contains twelve (12) IPPs. The principles are legal obligations that describe what NSW government agencies (including local councils) must do when they handle personal information. The HRIP Act contains fifteen (15) health IPPs. The principles are legal obligations describing what NSW public sector agencies, private sector organisations and individuals must do when they handle health information. The IPPs in both Acts cover the collection, storage, use and disclosure of personal and health information, as well as access and amendment rights.

The 12 PPIP Act Information Protection Principles are:

- Principle 1 Collection of personal information for lawful purposes
- Principle 2 Collection of personal information directly from the individual
- Principle 3 Notification requirements when collecting personal information
- Principle 4 Other requirements relating to collection of personal information
- Principle 5 Retention and security of personal information
- Principle 6 Information about personal information held by agencies
- Principle 7 Access to personal information held by agencies
- Principle 8 Alteration of personal information
- Principle 9 Agency must check accuracy of personal information before use
- Principle 10 Limits on use of personal information
- Principle 11 Limits on disclosure of personal information
- Principle 12 Special restrictions on disclosure of personal information

The HRIP Act Information Protection Principles are:

- Principle 1 Purposes of collection of health information
- Principle 2 Information must be relevant, not excessive, accurate and not intrusive
- Principle 3 Collection to be from individual concerned
- Principle 4 Individual to be made aware of certain matters
- Principle 5 Retention and security
- Principle 6 Information about health information held by organisations
- Principle 7 Access to health information
- Principle 8 Amendment of health information
- Principle 9 Accuracy
- Principle 10 Limits on use of health information
- Principle 11 Limits on disclosure of health information
- Principle 12 Special restrictions on disclosure of personal information

The 12 IPPs in the PPIP Act create the same obligations as principles 1 to 11 of the HRIP Act. The HRIP Act also includes the following four additional principles that apply only to health information:

- Principle 12 Identifiers
- Principle 13 Anonymity
- Principle 14 Transborder data flows and data flow to Commonwealth agencies
- Principle 15 Linkage of health records

This Plan outlines how the Council will incorporate the IPPs into its everyday functions.

2. PRIVACY CODES OF PRACTICE AND PUBLIC INTEREST DIRECTIONS

PRIVACY CODES OF PRACTICE

A Privacy Code of Practice can be made by the NSW Privacy Commissioner or any other public sector agency. The procedures for creating a Code of Practice are contained in the PPIP Act and the HRIP Act.

The purpose of a Code of Practice is to –

1. Vary the requirements set out in the Information Protection Principles
2. Specify the manner in which any of these requirements is to be applied
3. Exempt an agency from the need to comply with any particular requirement

Council must comply with any Privacy Code of Practice that applies to it. The modifications made to Council's privacy obligations by any relevant Privacy Code of Practice are contained in this Plan

Currently, the Codes of Practice which Council must comply with in dealing with an issue of privacy are:

- The *Privacy Code of Practice for Local Government* (made by the NSW Attorney General, gazetted on 30/06/00); and
- The *Health Records and Information Privacy Code of Practice* (made by the NSW Attorney General, gazetted on 01/07/05)

PUBLIC INTEREST DIRECTIONS

The NSW Privacy Commissioner may make a direction to waive or modify the requirement for a public sector agency to comply with an Information Protection Principle. Such a direction is called a Public Interest Direction, and is made by the Privacy Commissioner under Section 41 of the PPIP Act.

The Directions are intended to apply until an appropriate Privacy Code of Practice is made by the Attorney General.

Currently, the Public Interest Directions which Council must comply with in dealing with an issue of privacy are:

- The *Direction on Processing of Personal Information by Public Sector Agencies in Relation to their Investigative Functions* (This directive applies until making of a *Privacy Code of Practice for Investigations*).
- The *Direction on Information Transfers between Public Sector Agencies* (This directive does not apply to health information. This directive applies until making of a *Privacy Code of Practice for Information Transfers between Public Sector Agencies*).
- The *Direction on Disclosures of Information by Public Sector Agencies for Research Purposes* (This directive does not apply to health information. This directive applies until making of a *Privacy Code of Practice for Research*).

This Plan should be read in conjunction with the above Codes of Practice and Directions.

The Privacy Codes of Practice and Public Interest Directions can be accessed by the public from the Privacy NSW website: <http://www.lawlink.nsw.gov.au/lawlink/privacynsw>

Council staff and Councillors can access the Codes of Practice and Public Interest Directions from Council's Intranet - Liberty. The Codes of Practice and Directions are also stored in Council's electronic records management system for referencing.

3. PERSONAL INFORMATION

DEFINITION OF PERSONAL AND HEALTH INFORMATION

What is personal information?

Personal information is defined in Section 4 of the PPIP Act as information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. This information can be on a database and does not necessarily have to be recorded in a material form. This includes such things as fingerprints, retina prints, body samples and genetic characteristics.

What is health information?

Health information is defined in Section 6 of the HRIP Act as personal information that is information or an opinion about the physical, mental health or a disability (at any time) of an individual. It also includes an individual's express wishes about the provision of health services, a health service provided, or to be provided, to an individual, personal information collected to provide a health service, and personal information collected in connection with the donation of an individual's body parts, organs or body substances and genetic information.

For information to fall within the prescribed definitions, it is irrelevant that the identity of the person is already known. For example; a request for someone's address could be made by first supplying the name of the person. This is as much a privacy issue as would be a request simply for the name of person.

What is not "personal information?"

"Personal information" does not include information about an individual that is contained in a publicly available publication. Personal information, once it is contained in a publicly available publication, ceases to be covered by the PPIP Act.

Where the Council is requested to provide access to personal information, or make a disclosure of personal information, and that information has already been published, then the Council will rely on the provisions of the relevant Act that authorises Council to hold that information and not the PPIP Act (for example, Section 12(1) of the LGA).

Council considers the following to be publicly available publications:

- An advertisement containing personal information in a local, city or national newspaper
- Personal information on the Internet.
- Books or magazines that are printed and distributed broadly to the general public.
- Council Business papers or that part that is available to the general public.
- Personal information that may be a part of a public display on view to the general public.

Information published in this way ceases to be covered by the PPIP Act. However, Council's decision to publish in this way must be in accordance with PPIP Act.

Note on Electoral Rolls

The Electoral Roll is a publicly available publication. Council will provide open access to the Electoral Roll in Council's library. Council will refer any requests for copies of the Electoral Roll to the State Electoral Commissioner.

PERSONAL INFORMATION HELD BY COUNCIL

Personal information held by Council includes:

Councillors

- personal contact information
- complaints and disciplinary matters
- pecuniary interest returns
- entitlements to fee, expenses and facilities

Staff

- recruitment material
- leave and payroll data
- personal contact information
- performance appraisals
- disciplinary information
- pecuniary interest returns
- health and injury records

The Public

- property, valuation and rate records
- immunisation records
- names, contact details and addresses in development applications and letters of objection
- enrolment information under programs conducted by Council
- personal correspondence e.g letters from local residents expressing opinions about local issues

Personal and health information held by Council is to be handled in accordance with the IPPs in the PPIP Act and the HRIP Act, and any relevant Codes of Practice or Public Interest Directions. In some cases, there are different requirements when dealing with different types of personal information held by Council.

The requirements when dealing with personal and health information are provided in this Plan.

4. COLLECTING INFORMATION

This section of the plan relates to the following Information Protection Principles of the PPIP Act and the HRIP Act:

- Principle 1 Collection of personal & health information for lawful purposes
- Principle 2 Collection of personal & health information directly from the individual
- Principle 3 Notification requirements when collecting personal & health information
- Principle 4 Other requirements relating to collection of personal & health information

Wentworth Shire Council will not collect personal information unless it is for a lawful purpose directly related to a function or activity of Council and the information is reasonably necessary for that purpose.

In collecting information, Council will not intrude to an unreasonable extent on the personal affairs of the individual, and Council will not use this information unless it has taken reasonable steps to ensure that it is not excessive, and that it is relevant, accurate, up-to-date and complete.

If Council collects personal information, it will do so directly from the individual. It will only collect it indirectly if the individual has authorised indirect collection, or, in the case of a child under 16 years, if the information is provided by a parent or guardian of the child. Council can collect personal information indirectly if some other law specifically allows for the indirect collection.

If Council needs to collect personal information directly from an individual, it will notify the individual concerned:

- that Council has need to collect the information
- the purpose for which it is to be used
- those people who will have access to the information
- whether the supply of the information is voluntary or compulsory, and if it is compulsory,
- the consequences for failure to supply the information
- what rights the individual has to access the information, and to have it corrected, if
- necessary
- the name and address of the collecting agency and the same for the agency which will
- hold the information.

In order to meet the above requirements when collecting information directly from an individual, Council will notify the individual concerned of the above information, where appropriate, in a Privacy Statement. A Privacy Statement will be included on all forms and documents provided to the individual when collecting personal information. Council's standard Privacy Statement is contained in this plan (see Appendix A).

EXEMPTIONS UNDER THE PPIP ACT

There are several exemptions to the requirement of direct collection under the PPIP Act. If one of the exemptions applies, Council need not comply with the direct collection requirements. The statutory exemptions will be relied upon only in very obvious and limited circumstances, and legal advice should normally be obtained.

The relevant statutory exemptions follow:

- Section 23(2) of the PPIP Act permits non-compliance with the requirement of direct collection if the information concerned is collected in connection with proceedings before any court or tribunal (whether or not the proceedings have actually commenced).
- Section 23(3) the PPIP Act permits non-compliance with the notification requirements if the information concerned is collected for law enforcement purposes. However, this subsection 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.
- Section 24(4) of the PPIP Act permits non-compliance with the requirement of direct collection if:
 - (i) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency; and
 - (ii) if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.
- Section 25(a) of the PPIP Act permits non-compliance with the requirement of direct collection where the agency is lawfully authorised or required not to comply with the principle.
- Section 25(b) of the PPIP Act permits non-compliance with the requirement of direct collection where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.
- Section 26(1) of the PPIP Act permits non-compliance with the requirement of direct collection if compliance would prejudice the interests of the individual concerned.

MODIFICATION OF THE IPPS BY PRIVACY CODES OF PRACTICE AND PUBLIC INTEREST DIRECTIONS

PRIZES AND AWARDS

The *Privacy Code of Practice for Local Government* exempts Council from the necessity to collect information directly from a person if the purpose is to confer on that person an award, prize, benefit or other form of recognition without prior notification. The Code also exempts Council, under these circumstances, from complying with the requirement to notify the person of the intention to collect or the purpose of collection of the information.

INVESTIGATIONS

If Council collects information in connection with conducting an investigation, as part of its lawful responsibilities, the *Direction on Processing of Personal Information by Public Sector Agencies in Relation to their Investigative Functions* applies. This Direction exempts Council from complying with IPP 2 & 3 of the PPIP Act. The exemption only applies if non-compliance is reasonably necessary for the proper exercise of any of the agencies investigative functions, or its conduct of any lawful investigations. IPPS 2 & 3 of the PPIP Act relate to the direct collection of information and notification requirements when collecting personal information.

RESEARCH

The *Direction on Disclosures of Information by Public Sector Agencies for Research Purposes* modifies Council's responsibilities under the PPIP Act.

This Direction applies to:

- the collection, storage, use, disclosure, provision of personal access to, and alteration of, personal information in records which are created by a person or organisation that is not a public sector agency, but which are deposited with a public sector agency for purposes which include research; and

- the collection and use of personal information by an agency, or part of an agency, which has as a major function in the collection of items of historical or cultural significance, and the information is collected and used to provide reference material in relation to collected items.

Under this Direction, Council is not required to comply with IPPs 1, 2 & 3 of the PPIP Act, provided that Council takes such steps as are reasonable in the circumstances to protect the privacy of any person whose personal information is contained in the deposited records.

INDIRECT COLLECTION - PERMITTED BY LAW

Whilst most of the powers which allow Council to collect personal information are contained in the Local Government Act 1993, Council also has many responsibilities under other NSW legislation. Some of the additional NSW Acts which need to be considered to determine powers to collect are as follows:-

Coastal Protection Act 1979
Community Land Development Act 1989
Companion Animals Act 1998
Conveyancing Act 1919
Environmental Planning and Assessment Act 1979
Fire Brigades Act 1989 Food Act 2003
Freedom of Information Act 1989
Heritage Act 1977
Impounding Act 1993
Library Act 1939
Protection of the Environment Operations Act 1997
Public Health Act 1991
Recreation Vehicles Act 1983
Roads Act 1993
State Emergency and Rescue Management Act 1989
State Emergency Service Act 1989
Strata Schemes (Freehold Development) Act 1973
Strata Schemes (Leasehold Development) Act 1986
Swimming Pools Act 1992 Unclaimed Money Act 1995
Workplace Surveillance Act 2005

Careful consideration should be made prior to collecting personal information as to what legal authority exists to allow such action. If personal information is collected indirectly, only that which is essential to allow performance of the function in question must be collected.

UNSOLICITED INFORMATION

Where an individual, a group or a committee, not established by Council, gives Council unsolicited personal information, that information should still be treated in accordance with this Plan, relevant Codes of Practice, the PPIP Act, the HRIP Act and relevant Council policies which relate to storage, access, use and disclosure of information.

THIRD PARTY COLLECTION OF INFORMATION

Where a person who is not an employee of Council (i.e. a consultant, a committee member, a contractor, etc.) is engaged to collect personal information on behalf of Council, that person is required to obtain consent to collection of the information from the person to whom it relates, and to inform that person –

- of the purpose of collection,

- who will have access to the information,
- whether the information is required to be supplied by law,
- the consequences (if any) if it is not supplied.

The supplier of the information is also to be informed of their rights to access and amend their personal information.

COMPANION ANIMALS ACT 1998 (NSW)

Collection of information under the Companion Animals Act and Council's use of the register is to be in accordance with the guidelines issued by the Director General of the Department of Local Government. The Companion Animals Act guidelines are available to the public from the NSW Department of Local Government website: <http://www.dlg.nsw.gov.au> Council staff can access the Companion Animals Act guidelines from Council's electronic records management system.

PHOTOGRAPHS AND VIDEO RECORDING

Any photograph taken of a person is only to be taken with that person's approval. The photograph must then only be used for the purpose for which it was taken eg to report on a specific event. The photograph cannot be used at a later stage for an unrelated purpose eg in 3 years time in a Council publication. Video surveillance cameras may be used in a public place, but only in accordance with the New South Wales Government's *Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television in Public Places*. Council must also comply with the Workplace Surveillance Act 2005 (NSW).

The CCTV guidelines are available to the public from the NSW Attorney General's website: <http://www.lawlink.nsw.gov.au>. Council staff can access the CCTV guidelines from Council's electronic records management system.

HEALTH INFORMATION – ADDITIONAL OBLIGATIONS

- Identifiers

When collecting health information, Wentworth Shire Council will 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.

An identifier is usually a number (rather than just the individual's name):

- (a) assigned to an individual in conjunction with or in relation to the individual's health information by an organisation 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 an organisation for the purpose of uniquely identifying that individual.

- Anonymity

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

5. USING PERSONAL INFORMATION

This section of the plan relates to the following Information Protection Principles of the PPIP Act and the HRIP Act:

- Principle 9 Agency must check accuracy of personal & health information before use
Principle 10 Limits on use of personal & health information

Under the PPIP Act and the HRIP Act, personal information can only be used for the purpose for which it was obtained. An exemption under the PPIP Act allows the use of the personal information for a purpose other than the purpose for which it was collected if it is reasonably necessary for law enforcement purposes or for the protection of the public revenue.

Personal information can also be used for purposes other than for which it was collected-

- If the individual concerned authorises its use, OR
- If the secondary purpose is directly related to the primary use, OR
- The use of the information for a secondary purpose is necessary to prevent or lessen a serious and imminent threat to life or health, OR
- The information is to be used for the purpose of conferring upon a particular person, an award, prize or benefit, or some similar form of personal recognition, OR
- Some other legislation authorises its use.

The *Privacy Code of Practice* modifies IPP 10 (Limits on use of personal information) such that Council may use personal information for a purpose other than the purpose for which it was collected for law enforcement purposes, and for other lawful and proper functions for which Council is responsible. However, this exemption only applies if the information is considered reasonably necessary for the performance of those functions. An example of secondary use might be to notify neighbours of an impending development, or to evaluate a road opening, or to evaluate a tree preservation order.

Before personal information is used, reasonable steps must be taken to ensure that it is relevant to the purpose for which it is to be used. Any check must also ensure that the information is accurate, up-to-date and complete, and is not misleading. The nature of any check will depend on the age of the information and its significance. The more significant the information, the greater will be the necessity to check it. It is very important to get names, marital status, addresses and telephone numbers correct. Individuals are entitled to have their records up-dated whenever there is any alteration to their circumstances.

INVESTIGATIONS

The *Direction on Processing of Personal Information by Public Sector Agencies in Relation to their Investigative Functions* modifies Council's responsibilities under the PPIP Act. Council need not comply with IPP 10 of the PPIP Act (Limits on Use of Personal Information) if non-compliance is reasonably necessary for the proper exercise of any of the agency's investigative functions or its conduct of any lawful investigations. However, this Direction does not apply to health information.

RESEARCH

The *Direction on Disclosures of Information by Public Sector Agencies for Research Purposes* modifies Council's responsibilities under the PPIP Act.

This Direction applies to:

- the collection, storage, use, disclosure, provision of personal access to, and alteration of, personal information in records which are created by a person or organisation that is not a public sector agency but which are deposited with a public sector agency for purposes which include research; and
- the collection and use of personal information by an agency or part of an agency which has as a major function in the collection of items of historical or cultural significance, and the information is collected and used to provide reference material in relation to collected items

Under this Direction, Council is not required to comply with IPPs 9 & 10 of the PPIP Act, provided that Council takes such steps as are reasonable in the circumstances to protect the privacy of any person whose personal information is contained in the deposited records.

USE BY EXTERNAL PARTIES

Council owned businesses, consultants engaged by Council, private contractors and Council appointed or elected committees are required to comply with the principles governing the use of personal information, as outlined above. Any external party (such as a contractor) must obtain the direct consent of the person to whom the personal information relates before the information can be used for any purpose other than that for which it was collected. Any such consent must be in writing and contain the following information:

I,, of, hereby consent under Section 17(2) of the Privacy and Personal Information Protection Act, 1998, to personal information held by..... being used by for the purpose of

..... (SIGNED)

DATE.....

6. DISCLOSURE OF PERSONAL INFORMATION

This section of the plan relates to the following Information Protection Principles of the PPIP Act and the HRIP Act:

- Principle 7 Access to personal & health information
- Principle 8 Amendment of personal & health information
- Principle 11 Limits on disclosure of personal & health information
- Principle 12 Special restrictions on disclosure of personal & health information

Note: For the purpose of determining whether or not it is appropriate to disclose personal information, the following comments and procedures **do not apply to public registers**. For the correct process in dealing with access to public registers, please refer to the Section 9 on "Public Registers".

Unless it is for the purpose of law enforcement, or there is some Act, which specifically authorises such, personal information is not to be passed on by Council to any other person or agency unless:

- The individual concerned authorises it, OR
- It is done for the purpose for which the information was collected, AND there is no reason
- to believe that the individual concerned would object, OR
- It is reasonably likely that the individual concerned is aware that the information is
- ordinarily disclosed in this way, OR
- Where disclosure is required for the purpose of conferring an award, prize, or benefit, or
- some similar form of recognition upon the person to whom the personal information
- relates
- Council has reasonable grounds to believe that disclosure is necessary to prevent or
- lessen a serious and imminent threat to life or health.

Personal information can be disclosed to another person or agency if:

- it is for a purpose directly related to the purpose for which the information was obtained, AND
- the person to whom the information relates is reasonably likely to be aware that the information is used in this way.

For example, it might involve disclosure to a consultant engaged by Council to review the delivery of a particular service for which purpose the personal information was originally collected.

EXEMPTIONS UNDER THE PPIP ACT

The PPIP Act contains some statutory exemptions to IPP 11 (Limits on Disclosure). Council is not required to comply with IPP 11 if the disclosure of the information concerned:

- is made in connection with proceedings for an offence or for law enforcement purposes or,
- is to a law enforcement agency for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person,
- or is authorised or required by subpoena or by search warrant or other statutory instrument, or
- is reasonably necessary for the protection of the public revenue, or in order to investigate an offence where there are reasonable grounds to believe that an offence may have been committed.

However, Council is not required to disclose personal information to another person or body if Council is entitled to refuse to disclose the information in the absence of a subpoena, warrant or other lawful requirement.

DISCLOSURE OF DOCUMENTS UNDER THE LOCAL GOVERNMENT ACT

Section 12(1) of the Local Government Act provides that everyone is entitled to inspect certain documents free of charge. The following are the documents listed as public documents:-

- code of conduct
- code of meeting practice
- annual report
- annual financial reports
- auditor's reports
- management plan
- employment and equal opportunities management plan
- policy concerning the payment of expenses and provision of facilities to councillors
- land register
- register of investments
- returns of interests held by councillors, designated staff and delegates
- returns of candidates' campaign donations
- agendas, business papers for, and minutes of, Council and committee meetings (excluding any matters submitted to or dealt with in confidential session) other codes referred to in the Local Government Act
- register of delegations
- annual reports of bodies exercising delegated Council functions
- records of building certificates under the Environmental Planning and Assessment Act
- applications for approval to erect buildings (and associated documents)
- development applications and associated documents
- local policies adopted by Council concerning approvals and orders
- records of approvals granted, any variation from local policies with reasons for the variation, and decisions made on appeal concerning approvals
- plans of land to be compulsorily acquired by Council
- leases and licenses for use of public land classified as community land

- plans of management of community land
- environmental planning instruments, development control plans, and plans made under Section 94AB of the Environmental Planning and Assessment Act
- the statement of affairs and the summary of affairs under the Freedom of Information Act
- reports into Council's operations conducted by officers of the Department of Local Government.
- the register of graffiti removal work

Access is permissible upon request to documents listed in Section 12(1). For example, access to Council's agendas and business papers which contain the names and other details of persons who attended the meeting is permissible (except where the matters are dealt with in confidential session).

Access to all Council's documents, including the documents listed above, can be requested by applying for access under the Local Government Act or the Freedom of Information Act. Copies of Council's **application forms for access to Council's documents** are contained in this Plan (see Appendices E & F). Applications will be processed in accordance with the PPIP Act and the HRIP Act.

NOTE: Special requirements exist for disclosing personal information from a public register. For information on disclosing information from a Public Register, for example the register of development applications; see Section 9 of this Plan: "Public Registers".

DISCLOSURE TO PUBLIC SECTOR AGENCIES

The *Privacy Code of Practice for Local Government* modifies Council's requirements when disclosing personal information. Under the Code, personal information can be disclosed to Commonwealth and State Government authorities and other councils in New South Wales, but **only on the following conditions:**

1. The agency concerned must have approached Council in writing;
2. Council must be satisfied that the information is to be used for a lawful purpose of the agency;
3. Council must be satisfied that the information is reasonably necessary for the exercise of that agency's functions.

Council can respond verbally to a request for information from a government authority with the required information, but only after a written application has been received.

If another public sector agency discloses personal information to Council, it must not use that information for any purpose other than that for which it was supplied.

DISCLOSURE TO POTENTIAL EMPLOYERS

The *Privacy Code of Practice for Local Government* modifies Council's requirements in regard to disclosure of personal information. Under the Code, where Council is requested by a potential employer, it may verify:

- that the person is or was an employee of Council
- the duration of that employment
- the positions held whilst employed by Council.

This exception under the Code does 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.

SPECIAL RESTRICTIONS ON DISCLOSURE

Notwithstanding any exceptions relating to disclosure mentioned above, information which concerns a person's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, and health or sexual activities is protected. This type of information cannot be disclosed unless it is necessary to prevent a serious threat to life or health, or there is specific legislation authorising its disclosure, or the person to whom the information applies has consented to its disclosure.

Personal information cannot be disclosed interstate unless there is privacy law in place in that jurisdiction to address the information involved, or it is authorised in a Privacy Code of Practice.

Council is not required to comply with IPP 12 (Special restrictions on disclosure) if the disclosure of the information concerned is reasonably necessary for the purposes of law enforcement in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed.

INVESTIGATIONS

The *Direction on Processing of Personal Information by Public Sector Agencies in Relation to their Investigative Functions* modifies Council's responsibilities under the PPIP Act. Under this Direction, Council need not comply with IPP 11 or 12 of the PPIP Act if non-compliance is reasonably necessary for the proper exercise of any of the agency's investigative functions or its conduct of any lawful investigations. However, this Direction does not apply to health information and does not exempt Council from the requirement to only disclose personal information interstate unless there is privacy law in place in that jurisdiction, or it is authorised in a Privacy Code of Practice.

RESEARCH

The *Direction on Disclosures of Information by Public Sector Agencies for Research Purposes* modifies Council's responsibilities under the PPIP Act.

This Direction applies to:

- the disclosure by a public sector agency covered by this Direction of personal information held by the agency for research where this would otherwise breach IPPs 11 & 12 of the PPIP Act.

Under this Direction, Council may reasonably depart from IPPs 11 & 12 of the PPIP Act if

- it follows Council guidelines or policies covering the disclosure of personal information for research purposes, or
- the proposed research has been approved by a committee established for the purpose of giving ethical approval to research projects. But only after such a committee has considered the privacy implications of the collection, and subsequent use of such information, by the researcher in the absence of express consent.

EXEMPTIONS FOR THE PREMIER OR MINISTER

Section 28 of the PPIP Act contains a specific exception for the NSW Premier the Minister for Local Government. Under the Act, if the Premier is required to be informed about a matter, Council is not limited by any of the previously mentioned restrictions. Therefore, Council is free to supply any public sector agency under the Premier's jurisdiction with personal information without following any of the procedures outlined above. Similarly, if the Minister for Local Government needs to be informed about a matter, personal information can flow unrestricted between Council and any public sector agency within the Minister's portfolio.

HEALTH INFORMATION – ADDITIONAL OBLIGATIONS

- **Trans-border data flows and data flow to Commonwealth agencies**

Wentworth Shire 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 Information Protection 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 the 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:
 - the transfer is for the benefit of the individual
 - it is impracticable to obtain the consent of the individual to that transfer
 - if it were practicable to obtain such consent, the individual would be likely to give it, or
 - the transfer is reasonably believed by the Council to be necessary to lessen or prevent a serious and imminent threat to the life, health or safety of the individual or another person, or a serious threat to public health or public safety, or
 - the Council has taken reasonable steps to ensure that the information that it has transferred will not be held, or used or disclosed by the recipient of the information inconsistently with the Health Information Protection Principles, or the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law.

- **Linkage of health records**

Wentworth Shire Council will not:

- 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
- *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*

Wentworth Shire Council is not required to comply with these requirements if:

- the Council is lawfully authorised or required not to comply with the provision concerned, or
- 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 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 of the information that complies with Health Information Protection Principle (HIPP) 10 (1) (f) or a disclosure of the information that complies with HIPP 11 (1) (f)

7. ACCESS TO OWN PERSONAL INFORMATION HELD BY COUNCIL

This section of the Plan relates to the following Information Protection Principles of the PPIP Act and the HRIP Act:

- Principle 6 Information about personal information held by agencies
- Principle 7 Access to personal information
- Principle 8 Alteration of personal information

The PPIP Act and the HRIP Act states that Council must have a procedure in place, which enables anyone to enquire whether Council holds personal information. If Council does hold personal information, a Council must have a procedure to enable that person to determine the nature of the information, the purpose for which it is held, and the right of that person to access the information.

PROCEDURE FOR ACCESS TO PERSONAL INFORMATION

If Council holds personal information about someone, that person may apply for access to the relevant records without excessive delay or expense. An application for such access is to be made in writing on the prescribed application form (see Appendix C: *Request to Access or Amend Personal Information*). The applicant must provide Council with Proof of Identity. The application will be processed within 14 working days of receipt.

An application by a person for access to their own personal records will be considered in the context of any grounds which might allow refusal of access. For example, If Council is conducting an investigation as part of its lawful responsibilities, the Privacy Commission's *Direction on Processing of Personal Information by Public Sector Agencies in Relation to Their Investigative Functions* permits Council to refuse an application for details of personal information which it holds if disclosure of that information is likely to detrimentally affect the investigation. In addition, the exemption provisions of Schedule 1 to the Freedom of Information Act 1989 (NSW) need to be taken into account. Some of the grounds which might apply would be:

- documents associated with litigation and considered to be the subject of legal professional privilege
- documents which contain matter the disclosure of which might prejudice any audit or examination
- documents which, if disclosed, would adversely impact on the industrial relations of Council, or which would have a substantial adverse effect on the effective performance of Council's functions
- internal working documents containing advice, opinions or recommendations, and where there is an overriding public interest at a point in time in preserving their confidentiality.

Subject to any reason which might exist under the Freedom of Information Act or any relevant Code of Practice to deny access to the records, and unless there is another law that specifically exempts Council from doing so, Council must allow a person to access their personal information held by Council. Council must also, at the request of that person, amend it to ensure that it is accurate, up-to-date, complete and is not misleading.

PROCEDURE TO AMEND PERSONAL INFORMATION

An application to amend personal information is to be on the same form as a request to access personal information (see Appendix C: *Request to Access or Amend Personal Information*). The applicant must provide Council with Proof of Identity. There is no fee application fee for a request to amend personal information held by Council. The application must be supported by a signed statement made by the applicant concerning the reasons for the amendment. Copies of supporting documents must be attached to the application, for example, a copy of a marriage certificate where a request is made to amend the last name of the applicant.

If Council is not prepared to amend the information, it must, at the request of the individual, attach to the document, a statement supplied by the individual that contains details of the requested

amendment. If the information is amended, the individual concerned has the right to have recipients of the information informed of the amendment, if practicable. The provisions to alter records in the PPIP Act and the HRIP Act prevail over those contained in the State Records Act 1998 (NSW), which prevent alteration.

If, after a full and considered assessment of an application, Council decides to deny a person access to information concerning them, and that information is contained in a document as defined in Section 6 of the Freedom of Information Act, the person concerned is to be advised of their right to have their application dealt with as an application under the Freedom of Information Act.

APPLICATIONS TO SUPPRESS ACCESS TO PERSONAL INFORMATION

If an application is made by a person to suppress public access to their personal information held by Council, that would otherwise be subject to disclosure to some person, agency or body (other than on a public register), the application must be dealt with under Section 739 of the Local Government Act. Section 739(1) states that:-

“A person may request that any material that is available (or is to be made available) for public inspection by or under this Act be prepared or amended so as to omit or remove any matter that would disclose or discloses the person’s place of living if the person considers that the disclosure would place or places the personal safety of the person or of members of the person’s family at risk.”

Any such application has to be supported by a statutory declaration outlining the circumstances, which, in the opinion of the applicant, warrant suppression of access to the personal information. The application will be considered and determined by the General Manager in accordance with procedure.

Note: For details of the procedure to be followed for the suppression of personal information from a public register, see Section 9 on “Public Registers”.

8. STORAGE OF PERSONAL INFORMATION

This section of the Plan relates to the following Information Protection Principles of the PPIP Act and the HRIP Act:

Principle 5 Retention and security of personal information

Personal Information must be stored safely so as to prevent loss, and unauthorised access, disclosure or misuse. It is not to be held longer than is required for the purpose for which it was originally obtained.

The *General Retention and Disposal Authority for Local Government* adopted under the State Records Act 1998 (NSW), is the instrument which determines the timing and process for disposal of Council’s records. Before disposing of documented information in their possession, staff are, in the first instance, to obtain and complete a disposal authorisation form. These forms are available from Corporate Information.

When disposal of documents has been approved, disposal is to be carried out by *security disposal*. This can be arranged by Corporate Information.

RESEARCH

The *Direction on Disclosures of Information by Public Sector Agencies for Research Purposes* modifies Council’s responsibilities under the PPIP Act.

Under this Direction, documents or “deposited records” that may have research value may be kept longer than is required by IPP 5 of PPIP Act. A “deposited record” means records containing personal information that are deposited with Council for the purpose of preservation or making them

available for research. A disclosure of personal information for research purposes is allowed, subject to certain requirements, under the *Direction on Disclosures of Information by Public Sector Agencies for Research Purposes*.

9. PUBLIC REGISTERS

This section of the Plan relates to Part 6 of the PPIP Act and applies to health information. Council is required under some legislation to keep Public Registers. The registers are usually expressly deemed to be "Public Registers" open to the public for inspection, and they often record personal information.

For the purpose of the PPIP Act, a Public Register is defined as a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee). This means that the information in this Chapter about Public Registers applies when:

- the information is in the form of a register
- the public are able to gain access to it
- the information contains or consists of personal information.

Personal Information that has been Published

If personal information has been published it ceases to be personal information for the purposes of the PPIP Act. For example, if a law requires or permits publication of certain information in a newspaper, and Council has relied upon these powers to publish personal information, it is no longer personal, and if it appears in a register, there are no longer any grounds to deny public access to it under the PPIP Act.

APPLICATIONS FOR SMALL AMOUNTS OF PERSONAL INFORMATION FROM A PUBLIC REGISTER

The *Privacy Code of Practice for Local Government* states that a person is permitted to inspect a Public Register in Council premises, and is permitted to copy a single entry or a page of the register. In the case of this information being held in an electronic form, staff are permitted to supply information from a Public Register **verbally**, provided that the request has first been made **in writing**. The request needs to be in writing in order to record the circumstances under which the information was supplied in case any issues arise concerning the supply of the information. Therefore, the response can be made **verbally**, but the details of the information supplied should be recorded and placed on file with the application. Each application must be assessed individually when dealing with personal information on a Public Register.

Some practical examples of the small items of personal information, which can be given out from a Public Register, verbally or in writing, after written application has been made, are:

1. To enable a property owner or resident to determine the ownership of an adjoining property, and the mailing address of that owner
2. To enable a person who has been the subject of an injury to establish the identity and mailing address of the owner of the property upon which the accident occurred
3. Cemetery details to an undertaker, family member or to a person conducting genealogical research
4. The name and address of an applicant for building or development approval.

Note: Notwithstanding any application, in writing or otherwise, personal information about a living child under the age of 16 years is not to be given out without the consent of the

guardian. An application for this type of information needs to be dealt with under the Freedom of Information Act.

APPLICATION FOR LARGE AMOUNTS OF INFORMATION FROM A PUBLIC REGISTER

Absolute care should be taken in supplying substantial amounts of personal information from a Public Register to a single applicant. In some cases, Council will be approached for substantial amounts of information. For example, the developers of a private high school might wish to contact a number of residents in the vicinity of the proposal to inform them what is proposed and to seek their in-put during the planning stage.

The *Privacy Code of Practice for Local Government* provides two options for dealing with this type of situation:

1. Supply the requested details after deleting the identity of the property owners. In other words, supply only the property and zoning details, but exclude people's names.
2. Require the developer to supply a statutory declaration confirming that the intended use of the information is consistent with the purpose of the register or the legislation under which the register has been established.

A copy of Council's **statutory declaration** form for the purpose of acquiring access to substantial amounts of a public register is provided in this Plan (see **Appendix B**).

Note: In the case of the pecuniary interest register, inspection is permitted without the need to supply a statutory declaration.

SCHEDULE OF PUBLIC REGISTERS

Listed in the Schedule in this Plan are those documents, which have been identified as Public Registers held by Wentworth Shire Council. Also listed in the Schedule are the related purposes of each register. Any Council employee who allows a person to access or copy a substantial part of a Public Register listed in the Schedule must be satisfied that the purpose of access is consistent with the purposes listed in Schedule.

ACCESS UNDER THE LOCAL GOVERNMENT ACT

The requirements of the PPIP Act concerning access to Public Registers prevail over those contained in Section 12(1) of the Local Government Act (LGA). Section 12(1) of the LGA provides that everyone is entitled to inspect the current version of certain specified documents free of charge. These documents are set out in this Plan in Section 6 under "Disclosure".

If a register is listed in Section 12(1) of the LGA, it is a Public Register. The issue is whether or not the register contains personal information. If the register does contain personal information, access must still be permitted to it, but only on the grounds stated in this section under the heading "*Applications for Small Amounts of Personal Information from a Public Register*".

If access is required to a substantial part of the register, the purpose of access must be consistent with the purpose of the register, which can be determined and recorded by requiring the applicant to fill out a statutory declaration form. Otherwise, access is still permissible, **provided personal information is first removed from the register**. See the above section: "*Application for Large Amounts Of Information From A Public Register*".

A register held by Council that is **not** listed in Section 12(1) of the LGA can still be classified as a Public Register. A register is considered a Public Register if it is a register of information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee). If this type of Public Register contains personal information, public access to the register can still be provided on the same conditions as for documents listed in Section 12(1) of the

LGA, but there is an added requirement in **Section 12(6) of the LGA that it not be contrary to the public interest to disclose the information.**

SUPPRESSION OF PERSONAL INFORMATION ON A PUBLIC REGISTER

Any person whose personal information appears on a Public Register may apply to have it:

- removed from, or not placed on, the register as publicly available, and
- not disclosed to the public.

If Council believes that the safety or well-being of the applicant is likely to be adversely affected by the information remaining on the register, it must be removed, unless there is an overriding public interest in it remaining on the register. If the information is removed from public access, it may be kept on the register for other purposes.

Any application for the suppression of personal information from a Public Register is to be made in writing, addressed to the General Manager, outlining the circumstances which the applicant considers justify suppression of their personal information from the public record. The application will be considered and determined by the General Manager in accordance with procedure.

10. REVIEWS

If Council,

- contravenes an Information Protection Principle, or
- contravenes a relevant Privacy Code of Practice or Public Interest Direction, or
- wrongfully discloses information contained in a Public Register,

any person who is aggrieved by such conduct may seek a review of that conduct. The application for a review must be made within six months of the time the applicant became aware of the alleged misconduct.

The application for review must be in writing and addressed to the General Manager and it must contain an address in Australia for direction of notices under the Act. The Privacy Commissioner must be informed as soon as possible after receipt of the application.

A review of misconduct under the Privacy and Personal Information Protection Act is to be undertaken by the General Manager. Any relevant material submitted by the applicant or the Privacy Commissioner must be considered as part of the review, and the Commissioner must be kept informed of the investigation's progress. The review has to be conducted as soon as possible, but if it is not complete within 60 days, the applicant is entitled to refer the matter to the Administrative Decisions Tribunal (ADT).

A copy of an **Internal Review Application form** is contained in this plan (**see Appendix D**).

At the completion of a review, Council can do one or more of the following:

- Take no further action
- Apologise formally to the applicant
- Take such remedial action considered appropriate, e.g. make a monetary payment
- Provide an undertaking that the conduct will not be repeated
- Implement administrative measures to ensure that the conduct will not be repeated.

The applicant must be informed of the outcome of the review within 14 days of its completion. The determination must include reasons for the findings, the actions to be taken and the reasons therefore, and an outline of the rights of the applicant to have the findings and the proposed action

reviewed by the ADT. The Privacy Commissioner must also be informed of the findings and of the actions to be taken.

Council's annual report must include a statement of what action Council has taken to comply with the provisions of the PPIP Act and the HRIP Act. The statement must include statistics of internal reviews conducted by or on behalf of Council.

If Council does not wish to conduct its own internal review, it can request the Privacy Commissioner to do so. The Commissioner is entitled to charge for the service. In this case, the Commissioner determines what action is to be taken and notifies the applicant of the outcome.

If the applicant is dissatisfied with the findings or the actions to be taken, he or she may apply to the ADT for a review of the alleged misconduct originally complained about. The ADT may decide not to take any action, or, if it is satisfied that the applicant has suffered financial loss or psychological or physical harm as a result of the misconduct, it may decide to issue one or more of the following orders:

- (a) Pay damages to the applicant of up to \$40,000
- (b) Restrain from any conduct which would contravene an information protection principle or a privacy code of practice
- (c) Enforce an information protection principle or a privacy code of practice
- (d) Correct the inaccuracies in disclosed personal information
- (e) Take specific steps to remedy any loss or damage suffered by an applicant because of the misconduct
- (f) Desist from disclosing personal information contained in a public register.

If, in conducting a review, the ADT is of the view that any member of Council's staff has failed to exercise their responsibilities under the PPIP Act in good faith, the Tribunal may draw the matter to the attention of the Minister for Local Government.

11. THE PRIVACY COMMISSIONER

The Privacy Commissioner has a range of powers. For example, he or she may investigate compliance with the PPIP Act by conducting enquiries. In doing so, the Commissioner may require Council, or any person, to produce "statements of information", documents, or copies of documents. Council is not required to comply with this direction if a court would not require it to do so on grounds of overriding public interest, legal professional privilege, or self incrimination; nor is Council required to provide access to documents if they would be exempt under the Freedom of Information Act. The Commissioner may also direct that a council is not required to comply with an information protection principle or a privacy code of practice.

The powers, authorities, protections and immunities of a Royal Commission extend to any enquiry or investigation conducted by the Commissioner. Any enquiries are to be as informal as possible. Legal representation is not permitted without leave of the Commissioner.

If the Commissioner elects to deal with a complaint, he or she may conduct such investigations or enquiries as the Commissioner deems necessary. This can include the person or council against whom a complaint is made being called to appear before the Commissioner in conciliation proceedings.

12. EDUCATION AND TRAINING

A statement is to be inserted on Council's web page which indicates the general nature and categories of personal information held by Council, and the purpose for which that information is used. It is also to contain advice on rights of personal access to information held about an individual. The statement of affairs and annual report are to contain a similar statement.

Initially, training sessions are to be held for all Council staff to make them aware of the requirements of the PPIP Act and the HRIP Act. A 'privacy information pamphlet' will be distributed as part of the Council's Staff Induction Program for new staff to make them aware of this plan and of their overall obligations to observe the Information Protection Principles and the management of Public Registers.

13. THE PRIVACY CONTACT OFFICER

The Internal Ombudsman and/or the Public Officer are the appropriate persons to whom queries and concerns about privacy issues should be directed.

The Internal Ombudsman and/or the Public Officer are to undertake privacy audits, and are responsible for corrective action to ensure that personal information held by Council is collected, used, stored and disclosed in compliance with the Information Protection Principles.

In order to ensure compliance with the Information Protection Principles, Internet contact forms, notice forms, application forms, and any other written form of request for information from Council are to be referred to the Internal Ombudsman and/or the Public Officer in the first instance for checking. The Internal Ombudsman and/or the Public Officer are to provide advice as to:

- whether the personal information is collected for a lawful purpose
- if so, whether that lawful purpose is related to a function of Council
- whether or not the collection of that personal information is reasonably necessary for the specified purpose.
- whether the form adequately notifies the applicant of the use, storage and disclosure of their personal information

14. PENALTIES

Unless it is in connection with the lawful exercise of his or her designated duties, a Councillor or staff member (past or present) must not intentionally disclose, use, or offer to supply any personal information about another person to which the Councillor or staff member has had access as part of his or her duties. To do so is an offence punishable by a maximum penalty of 100 penalty points or two years imprisonment. This does not apply to protected disclosures made under the Protected Disclosures Act.

The offence of inducing (or attempting to induce) a Councillor or staff member by corrupt conduct to disclose personal information about another person to which the Councillor or staff member has access in the course of his or her duties is also an offence similarly punishable.

SCHEDULE OF PUBLIC REGISTERS HELD BY WENTWORTH SHIRE COUNCIL

Register	Act	Section	Primary Purpose	Secondary Purpose
Land Register (Council controlled)	LGA 1993	53	To identify all land vested in Council or under its control	Public accountability as to the land held by Council
Register of Pecuniary Interests and Other Matters - Councillors and Designated persons	LGA 1993	449 - 450A	To detail pecuniary interests and other matters of Councillors and designated persons, including property ownership and dispositions, sources of income and gifts, travel contributions, positions in corporations, trade unions and business associations, nature of debts and any other discretionary disclosures	Public accountability purpose and third party access
Rates Register	LGA 1993	602	To record the value of a parcel of land and rate liability in respect to that land	Recording the owner or rate paying lessee of each parcel of land

APPENDICES

Appendix A: Privacy Statement

The Standard Privacy Statement below complies with the notification requirements in the PPIP Act 1998 and the HRIP Act 2002. The Statement has been developed using the Privacy Notification Statements contained in the Department of Local Government Model Privacy Management Plan. The Standard Privacy Statement is to be adapted and included on all Council forms and documents that collect personal information. An example of an adaptation of the Standard Privacy Statement is also provided below.

Appendix A: Privacy Statement

STANDARD PRIVACY STATEMENT

Some of the information that Council *has/is collected/collecting* from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 ("PPIP Act").

The intended recipients of the personal information are:

- officers within the Council (*specify Department where applicable*);
- data service providers engaged by the Council from time to time;
- any other agent of the Council;

The supply of the information by you *is / is not* voluntary. If you do not provide the information Council *may/will* (*e.g. will not be able to process your application*)

Council has collected this personal information from you in order to..... (*e.g. provide you library services*).

The information will be retained by Council and stored:

- *in Council's Central Records System and will not be made publicly available or*
- *in a register that can be viewed by the public at any time in accordance with the Local Government Act 1993(specify other legislation where applicable).*

You may make application for access or amendment to your personal information. You may make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the PPIP Act.

Wentworth Shire Council is to be regarded as the agency that holds the information (*state other organisation that holds or controls the information if not Council*).

For more information about your privacy please contact Wentworth Shire Council. Complaints or concerns regarding the use of your personal information can be made to Council's Privacy Contact Officer.

Example – Privacy Statement on Development Assessment Forms

Some of the information that Council is collecting from you in this form is 'personal information' for the purposes of the *Privacy & Personal Information Protection Act 1998* ("PPIP Act"). The supply of the information by you is voluntary. If you do not provide the information, Council will be unable to process your application. Council is collecting this personal information from you in order to process your application in accordance with the *Environmental Planning & Assessment Act 1979*. You may make an application for access or amendment to your personal information. The information will be retained by Council and stored in a register that can be viewed by the public at any time in accordance with the *Local Government Act 1993*. Your application may be advertised to the public for comment, in accordance with Council policies and relevant legislation. You may make a request that Council suppress your personal information from a public register in accordance with the PPIP Act. For more information about your privacy please contact Wentworth Shire Council.



Appendix B: Statutory Declaration - Request to Access, Copy or Purchase the Whole or a Substantial part of a Public Register

Address: 26-28 Adelaide Street, Wentworth NSW 2648 Postal: PO Box 81 Wentworth 2648 Telephone: 03 5027 5027 Fax: 03 5027 5000 Email: council@wentworth.nsw.gov.au	Council logo
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**STATUTORY DECLARATION
 REQUEST TO ACCESS, COPY OR PURCHASE THE WHOLE OR A SUBSTANTIAL PART OF A
 PUBLIC REGISTER
 Under Section 57 of the Privacy and Personal Information Protection Act 1998**

I, the undersigned,(name of applicant)

of.....(address)

in the State of New South Wales, do solemnly and sincerely declare that:-

I seek access to

*on the public register of**

The purpose for which I seek this information is:

.....

.....

.....

.....

and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW).

Declared at.....(place where declaration made)

By (signature of applicant)

in the said State this (date)

before me.

.....
Signature of Justice of the Peace/Solicitor

..... (print name)
Name of Justice of the Peace/Solicitor

* Applicant to describe the relevant public register.

PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 - SECTION 57

This statutory declaration for a request to access, copy or purchase the whole or a substantial part of a public register is required to be made under Section 57 of the Privacy and Personal Information Protection Act 1998 (NSW):

Section 57 - Disclosure of personal information contained in public registers

- (1) *The public sector agency responsible for keeping a public register must not disclose any personal information kept in the register unless the agency is satisfied that it is to be used for a purpose relating to the purpose of the register or the Act under which the register is kept.*
- (2) *In order to enable the responsible agency to comply with subsection (1), the agency may require any person who applies to inspect personal information contained in the public register to give particulars, in the form of a statutory declaration, as to the intended use of any information obtained from the inspection.*

PRIVACY STATEMENT

Some of the information in this form falls within the definition of 'Personal Information' under the *Privacy and Personal Information Protection Act 1998*. Council requires the information to properly process your application in accordance with the *Privacy & Personal Information Protection Act 1998*. The information is intended for use by the Council, its staff, contractors or agents appointed for a particular task, or for those users who may have a legal entitlement to such information. The supply of the information to the Council is not voluntary, and if it is not made available, Council will not be able to process your application. The information will be retained by Council and stored within its central records system under the control of its Business and Finance Department, and will not be made publicly available. For more information about your privacy please contact Wentworth Shire Council. Complaints or concerns regarding the use of your personal information can be made to Council's Privacy Contact Officer.

Enquiries concerning this application should be made to the Customer Service Centre:

In person: 26-28 Adelaide Street, Wentworth 2648
 By Mail: PO Box 81 Wentworth 2648
 By Phone: 03 5027 5027

Office Use Only:

	Acknowledged:		Completed:
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Address: 26-28 Adelaide Street, Wentworth NSW 2648 Postal: PO Box 81 Wentworth 2648 Telephone: 03 5027 5027 Fax: 03 5027 5000 Email: council@wentworth.nsw.gov.au	Council logo
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STATUTORY DECLARATION
REQUEST TO ACCESS, COPY OR PURCHASE THE WHOLE OR A SUBSTANTIAL PART OF A PUBLIC REGISTER
Under Section 57 of the Privacy and Personal Information Protection Act 1998

APPLICANT DETAILS	DATE:
Name	
Address	
Telephone Number	
Mobile Number	
Email	
Type of Request (please tick✓)	

- Access to all personal information held by Council concerning myself
- Access to the following

<input type="checkbox"/> Property File	<input type="checkbox"/> Library Membership & Borrowing Records
<input type="checkbox"/> Personal Correspondence	<input type="checkbox"/> Council Childcare Records
<input type="checkbox"/> Development Application File	<input type="checkbox"/> Rates Records
<input type="checkbox"/> Other Council documents (please specify)	

Amend my personal information held by Council (please give details of amendment below)

Please provide any additional information that will assist Council in processing your request to access your personal information:

Details of Changes to Personal Information

What needs to be altered or amended?

Reason for alteration or amendment (e.g. change of name)

Description of supporting documents (e.g. Marriage certificate)

Proof of Identity

You must show proof of identity to access or amend your personal information Please tick proof of identity supplied: <input type="checkbox"/> Drivers Licence or <input type="checkbox"/> Passport	For Office Use Only Proof of ID cited Licence or Passport No. Staff Initials
---	--

Signature of Applicant	<i>I declare that the information provided by me in this form is true:</i>
-------------------------------	--

NOTE TO APPLICANTS

- **There is no application fee for amendments.**
- **You must attach to this application all supporting documents relating to the alteration or amendment of your records**

As an applicant, you have a right of access to your personal information held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 ("PIIP Act"). You are entitled to have access without excessive delay or cost.

You have a right to request appropriate amendments to be made (whether by way of corrections, deletions or additions) to ensure that the personal information held by the Council is accurate, relevant, up to date, complete and not misleading.

If Council is not prepared to amend the personal information in accordance with a request by you, Council must 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 you.

If your personal information is amended, you are entitled under the PPIIP Act 1998, if it is reasonably practicable, to have recipients of that information notified of the amendments made by Council.

Council may refuse to process your application in part or in whole if:

the correct amount of fees has not been paid;
there is an exemption to section 14 of the PPIIP Act; or
a Code of Practice may restrict disclosure.

PRIVACY STATEMENT

Some of the information in this form falls within the definition of 'Personal Information' under the PPIIP Act 1998.

Council requires the information to properly process your application in accordance with the PPIIP Act 1998. The information is intended for use by the Council and its staff. The supply of the information to the Council is not voluntary and if it is not made available, Council will not be able to process your application. The information will be retained by Council and stored within its central records system under the control of its Business and Finance Department, and will not be made publicly available. For more information about your privacy please contact Wentworth Shire Council. Complaints and concerns regarding the use of your personal information can be made to Council's Privacy Contact Officer.

Enquiries concerning this application should be made to the Customer Service Centre:

In person: 26-28 Adelaide Street, Wentworth 2648

By Mail: PO Box 81 Wentworth 2648

By Phone: 03 5027 5027

Office Use Only: Received:
Paid:

Acknowledged:
Receipt #:

Completed:

Appendix D: Internal Review Application Form

REQUEST FOR INTERNAL REVIEW

This is an application for review of conduct under:

- s53 of the Privacy and Personal Information Protection Act 1998 (the PPIP Act)
 - s21 of the Health Records Information Privacy Act 2002 (the HRIP Act)
- (please choose one -see www.lawlink.nsw.gov.au/privacynsw for further information)*

1.	Name of the agency you are complaining about: WENTWORTH SHIRE COUNCIL
2.	Your full name:
3.	Your postal address:
4.	If you are complaining on behalf of someone else, write their full name here: What is your relationship to this other person (eg. parent)? Is the other person capable of making the complaint him or herself? . Yes . No . I'm not sure
5.	What is the specific <i>conduct</i> you are complaining about?
6.	Please tick which of the following describes your complaint: <i>(You can tick more than one)</i> collection of my personal/health information security or storage of my personal/health information refusal to let me access or find out about my own personal/health information accuracy of my personal/health information use of my personal/health information disclosure of my personal/health information other I'm not sure

7.	When did the conduct occur? <i>(Please be as specific as you can)</i>
8.	When did you first become aware of this conduct?
9.	You need to lodge this application within 6 months of the date you have written at Q.8. If more than 6 months has passed, you need to ask the agency for special permission to lodge a late application. If you need to, write here to explain why you have taken more than 6 months to make your complaint:
10.	What effect did the conduct have on you?
11.	What effect might the conduct have on you in the future?
12.	What would you like to see the agency do about the conduct? <i>(For example: an apology, a change in policies or practices, your expenses paid, damages paid to you, training for staff, etc.)</i>
13.	I understand that this form will be used by the agency to process my request for an Internal Review. I understand that details of my application will be referred to the Privacy Commissioner in accordance with: section 54 (1) of the Privacy and Personal Information Protection Act 1998; or section 21 of the Health Records and Information Privacy Act 2002; and that the Privacy Commissioner will be kept advised of the progress of the review.
14.	I would prefer the Privacy Commissioner to have: a copy of this application form, or just the information provided at Q's 5 - 12.

Your signature:

Dated:

NOW SEND THIS FORM TO THE AGENCY YOU HAVE NAMED AT Q.1

Keep a copy for your own records too.

NOTE

- It is not a requirement under the PPIP Act/the HRIP Act that you complete an application form. This form is designed for your convenience only.
- The PPIP Act regulates NSW State government departments, Area Health Services, most other State government bodies, and NSW local councils. Each of these is

defined as a “public sector agency”. The HRIP Act regulates private and public sector agencies and private sector persons.

- Conduct’ can include an action, a decision, or even inaction by the agency. For example the ‘conduct’ in your case might be a *decision* to refuse you access to your personal information, or the *action* of disclosing your personal information to another person, or the *inaction* of a failure to protect your personal information from being inappropriately accessed by someone else.

INFORMATION PROTECTION PRINCIPLES**PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 (NSW)
(Section 8 – Section 19) INFORMATION PROTECTION PRINCIPLES****Principle 1 (Section 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

Principle 2 (Section 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.

Principle 3 (Section 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.

Principle 4 (Section 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.

Principle 5 (Section 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.

Principle 6 (Section 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.

Principle 7 (Section 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.

Principle 8 (Section 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.
- (4) This section, and any provision of a privacy code of practice that relates to the requirements set out in this section, apply to public sector agencies despite section 25 of this Act and section 21 of the State Records Act 1998.

Principle 9 (Section 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.

Principle 10 (Section 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.

Principle 11 (Section 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.

Principle 12 (Section 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 or sexual activities unless the disclosure is necessary to prevent a serious and 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 or to a Commonwealth agency unless:
- (a) a relevant privacy law that applies to the personal information concerned is in force in that jurisdiction or applies to that Commonwealth agency, 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 to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales and to Commonwealth agencies.
- (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.

THE HEALTH RECORDS INFORMATION PROTECTION ACT 2002 (NSW)***(Schedule 1) INFORMATION PROTECTION PRINCIPLES******Principle 1******Purposes of collection of health information***

- (1) An organisation 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 the organisation, and
 - (b) the collection of the information is reasonably necessary for that purpose.
- (2) An organisation must not collect health information by any unlawful means.

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

An organisation that collects health information from an individual 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.

Principle 3***Collection to be from individual concerned***

- (1) An organisation must collect health information about an individual only from that individual, unless it is unreasonable or impracticable to do so.
- (2) Health information is to be collected in accordance with any guidelines issued by the Privacy Commissioner for the purposes of this clause.

Principle 4***Individual to be made aware of certain matters***

- (1) An organisation that collects health information about an individual from the individual must, at or before the time that it collects 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 the organisation and how to contact it,
 - (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 organisation 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.
- (2) If an organisation collects health information about an individual from someone else, it must 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 an organisation is not required to comply with subclause (2).
 - (4) An organisation is not required to comply with a requirement of this clause if:
 - (a) the individual to whom the information relates has expressly consented to the organisation not complying with it, or
 - (b) the organisation 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 the organisation 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 the organisation reasonably believes that the individual is incapable of understanding the general nature of the matters listed in subclause (1), the organisation must take steps that are reasonable in the circumstances to ensure that any authorised representative of the individual is aware of those matters.
 - (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 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.

Principle 5 ***Retention and security***

- (1) An organisation that holds health information must 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 the organisation, everything reasonably within the power of the organisation is done to prevent unauthorised use or disclosure of the information.

Note: Division 2 (Retention of health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.

- (2) An organisation is not required to comply with a requirement of this clause if:
 - (a) the organisation 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).

Principle 6**Information about health information held by organisations**

- (1) An organisation that holds health information must take such steps as are, in the circumstances, reasonable to enable any individual to ascertain:
 - (a) whether the organisation holds health information, and
 - (b) whether the organisation holds health information relating to that individual, and
 - (c) if the organisation 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.
- (2) An organisation is not required to comply with a provision of this clause if:
 - (a) the organisation 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).

Principle 7**Access to health information**

- (1) An organisation that holds health 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.

Note: Division 3 (Access to health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause. Access to health information held by public sector agencies may also be available under the Freedom of Information Act 1989 or the State Records Act 1998.

- (2) An organisation is not required to comply with a provision of this clause if:
 - (a) the organisation 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).

Principle 8**Amendment of health information**

- (1) An organisation that holds health 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 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 an organisation is not prepared to amend health information under subclause (1) in accordance with a request by the individual to whom the information relates, the organisation 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 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 organisation.

Note: Division 4 (Amendment of health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause. Amendment of health information held by public sector agencies may also be able to be sought under the Freedom of Information Act 1989 .

- (4) An organisation is not required to comply with a provision of this clause if:
 - (a) the organisation 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).

Principle 9 ***Accuracy***

An organisation that holds health 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.

Principle 10 ***Limits on use of health information***

- (1) An organisation that holds health information must not use the information for a purpose (a "secondary purpose") other than the purpose (the "primary purpose") for which it was collected unless:
 - (a) the individual to whom the information relates has consented to the use of the information for that secondary purpose, or
 - (b) the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to use 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) the use of the information for the secondary purpose is reasonably believed by the organisation 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) the use 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 of information that does not identify the individual or from which the individual's

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- 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 of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or
- (e) the use of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:
 - (i) either:
 - (A) that purpose cannot be served by the use 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 could reasonably be expected to identify individuals, the information is not published in a generally available publication, and
 - (iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or
 - (f) the use 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 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 could reasonably be expected to identify individuals, the information is not published in a generally available publication, and
 - (iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or
 - (g) the use 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) the organisation:
 - (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 the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and
 - (ii) uses 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) the use 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) the use 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) the use of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.
- (2) An organisation is not required to comply with a provision of this clause if:
- (a) the organisation 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 and Community Services Commission 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 a public sector agency:
- (a) to another public sector agency under the administration of the same Minister 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) The exemption provided by subclause (1) (j) extends 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.

Principle 11

Limits on disclosure of health information

- (1) An organisation that holds health information must not disclose the information for a purpose (a "secondary purpose") other than the purpose (the "primary purpose") for which it was collected unless:
- (a) the individual to whom the information relates has consented to the disclosure of the information for that secondary purpose, or
 - (b) the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to disclose 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 disclosure of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.

- (c) the disclosure of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:

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- (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) the 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 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 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 disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or
 - (e) the disclosure of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:
 - (i) either:
 - (A) that purpose cannot be served by the 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 disclosure, or
 - (B) reasonable steps are taken to de-identify the information, and
 - (ii) if the information could reasonably be expected to identify the individual, the information is not made publicly available, and
 - (iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or
 - (f) the 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 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 disclosure, or
 - (B) reasonable steps are taken to de-identify the information, and
 - (ii) the disclosure will not be published in a form that identifies particular individuals or from which an individual's identity can reasonably be ascertained, and
 - (iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or

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- (g) the disclosure of the information for the secondary purpose is to provide the information to an immediate family member of the individual for compassionate reasons and:
- (i) the disclosure is limited to the extent reasonable for those compassionate reasons, and
 - (ii) the individual is incapable of giving consent to the disclosure of the information, and
 - (iii) the disclosure is not contrary to any wish expressed by the individual (and not withdrawn) of which the organisation was aware or could make itself aware by taking reasonable steps, and
 - (iv) if the immediate family member is under the age of 18 years, the organisation reasonably believes that the family member has sufficient maturity in the circumstances to receive the information, or
- (h) the disclosure of the information for the secondary purpose is to 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
- (i) the organisation:
- (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 the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and
 - (ii) 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
- (j) the 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
- (k) the use of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or
- (l) the disclosure of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.
- (2) An organisation is not required to comply with a provision of this clause if:
- (a) the organisation 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 organisation is an investigative agency disclosing information to another investigative agency.
- (3) The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission 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.

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- (4) Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:
 - (a) to another public sector agency under the administration of the same Minister 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) 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) 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.

Principle 12 ***Identifiers***

- (1) An organisation may only assign identifiers to individuals if the assignment of identifiers is reasonably necessary to enable the organisation 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 a public sector agency (or by an agent of, or contractor to, a public sector agency 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 a public sector agency (or by an agent of, or contractor to, a public sector agency 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 public sector agency that assigned the identifier to enable the public sector agency to identify the individual for its own purposes.
- (4) If the use or disclosure of an identifier assigned to an individual by a public sector agency is necessary for a private sector person to fulfil its obligations to, or the requirements of, the public sector agency, 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 public sector agency, or
 - (b) use or disclose an identifier of the individual that has been assigned by the public sector agency.

Principle 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 an organisation.

Principle 14

Transborder data flows and data flow to Commonwealth agencies

An organisation must 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) the organisation 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 Information Protection 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 the organisation, 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 organisation 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 organisation 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) the organisation 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 Information Protection Principles, or
- (h) the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law.

Principle 15***Linkage of health records***

- (1) An organisation must 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.
- (2) An organisation is not required to comply with a provision of this clause if:
 - (a) the organisation 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 of the information that complies with HPP 10 (1) (f) or a disclosure of the information that complies with HPP 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 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.