



City of Melbourne Health Records Policy Statement

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Purpose

The City of Melbourne views the protection of an individual's health information as an integral part of its commitment towards accountability and integrity in all activities and programs. This statement outlines Council's policy relating to the management of personal information that is also health information, as required by the *Health Records Act 2001 (Vic)* (the HRA).

Scope and application

This policy applies to all Councillors, officers and contractors of the City of Melbourne.

This policy applies to all personal information that is also health information held by the City of Melbourne and includes information Council has collected:

- about a person through any of Council's public access interfaces or services
- from the person themselves
- about a person from a third parties.

The policy applies to all health information regardless of format or method of collection. It encompasses, but is not limited to, personal health information provided in correspondence, on a form, in person, over the telephone or via Council websites. It applies to health information which is not recorded in material form, as well as information stored electronically, in audio form, on a video or in a hardcopy.

Definitions

Personal Information is defined in the HRA as information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information about an individual who has been dead for more than 30 years.

Health Information is defined in the HRA as:

- Information or an opinion about—
 - the physical, mental or psychological health (at any time) of an individual; or
 - a disability (at any time) of an individual; or
 - an individual's expressed wishes about the future provision of health services to him or her; or
 - a health service provided, or to be provided, to an individual—
that is also personal information; or
- other personal information collected to provide, or in providing, a health service; or
- other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances; or
- other personal information that is genetic information about an individual in a form which is or could be predictive of the health (at any time) of the individual or of any of his or her descendants.

Health Privacy Principles (HPPs) are the principles that regulate the handling of personal information that is also health information. These principles form part of the HRA.

Health Service is defined as:

- an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the organisation performing it:
 - to assess, maintain or improve the individual's health; or
 - to diagnose the individual's illness, injury or disability; or
 - to treat the individual's illness, injury or disability or suspected illness, injury or disability; or
- a disability service, palliative care service or aged care service; or
- the dispensing on prescription of a drug or medicinal preparation by a pharmacist; or
- the sale, supply or administration of a voluntary assisted dying substance; or
- a service, or class of service, provided in conjunction with an activity or service referred to in the above dot points that is prescribed as a health service.

Health Service Provider is an organisation that provides health services within Victoria but does not include those providers specifically exempted for the purposes of the HRA.

Identifier means an identifier (which is usually, but need not be, a number and does not include an identifier that consists only of the individual's name) that is:

- 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
- 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.

Policy

It is the policy of the City of Melbourne that health information is managed in accordance with the 11 Health Privacy Principles (HPPs).

Collecting Health Information (Health Privacy Principle 1)

Council will only collect health information about someone when it is necessary to complete a function or activity. Council will only collect this information if:

- the person has provided consent; or
- the collection is required, authorised or permitted, by or under a law; or
- the information is disclosed to Council in accordance with HPP 2; or
- the collection of the health information is necessary for research, or the compilation or analysis of statistics which serves a public interest. If identifiable data is required for the purposes of the research or statistical analysis Council will obtain consent, unless it is impracticable to do so; or
- it is necessary to prevent or lessen a serious and imminent threat to the life, health, safety or welfare of someone, or a serious threat to public health, public safety or public welfare; or
- it is on behalf of a law enforcement agency or the Council itself and is necessary for a law enforcement function; or
- the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

- If someone is not able to provide consent and Council needs to collect information in order to provide a health service, all practical measures to obtain the consent of an authorised representative will be taken.

Council will collect health information only by lawful and fair means and will endeavour to do so in a manner that is not unreasonably intrusive. If it is reasonable and practicable to do so, Council will only collect health information about an individual from that individual.

If Council collects an individual's health information from them or from another person, Council will take reasonable steps to ensure (before or at the time) that they are aware of:

- who is collecting the information
- how Council may be contacted
- their rights to access the information
- the purpose for which Council has (or will be) collecting the information
- if, and who, Council will be disclosing this information to
- whether it is being collected because a law requires it
- the main consequences (if any) for them if all or part of the information is not provided

The only time that Council will not advise someone of the above is when a serious threat to the life or health of a person may occur, or when the information was provided to Council in confidence.

Use and Disclosure (Health Privacy Principle 2)

In most cases Council may only use or disclose health information about someone when that use or disclosure relates to the purpose for which the information was collected.

Council can use or disclose health information about someone for another (secondary) purpose if that purpose is related to the purpose for which the information was initially collected, and the individual would reasonably expect that Council make use of the information for this secondary purpose.

If the use or disclosure of health information about someone is not related to the primary purpose of collection then Council must obtain the consent of that person (or authorised representative), unless the use or disclosure is required by or under law.

However, there are some special situations where Council can use or disclose health information about someone without consent. These include:

- the use or disclosure is required, authorised or permitted, whether expressly or impliedly, by or under law;
- if Council is providing a health service to someone and there is necessity to use or disclose health information to be able to provide that service, and the person is incapable of providing consent and it is not reasonably practicable to obtain the consent of an authorised representative of the individual or the individual does not have such an authorised representative; or
- if Council is providing a health service and that health information is needed to provide further health services to someone and Council believes that using that information will help ensure those services are provided safely and effectively; or
- when use or disclosure of health information is for the purpose of administering health services or training provided to Council employees and it is not possible to meet that purpose without disclosure of the information, and reasonable steps have been taken to de-identify the information. In this instance, the information will not be published in any form that may be generally available; or

- when use or disclosure of health information is necessary for research or statistical analysis that might serve public interest and it is not practical to seek the individual's consent before the use or disclosure, and it is not possible for the purpose of that research to be achieved without disclosure of the information; or
- if Council believes that the use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare or public health, public safety or public welfare.

If the Council does disclose health information about someone as part of an investigation into unlawful activity or if it is necessary for, or on behalf of, a law enforcement function then Council will make a written note of that disclosure.

In some circumstances where Council is a health service provider, health information about an individual may be disclosed to an immediate family member if Council believes that the disclosure is necessary to provide appropriate health services to care for the individual and:

- the individual is incapable of giving consent; and
- disclosure is not contrary to any wish expressed by the individual before they became incapable of giving consent; and
- the immediate family member who has requested the information is over 18 years of age or has sufficient maturity to receive the information.

Council may also make a disclosure of health information for compassionate reasons if the above-mentioned criterion is met.

In some circumstances Council may disclose health information about someone for a secondary purpose, if Council knows, or suspects, that the person is deceased, missing or has been involved in an accident and is therefore incapable of consenting. This disclosure may occur in situations where it is reasonable to identify the person or to identify and locate an immediate family member so that the police, a coroner or other prescribed organisation can contact them. However, this disclosure will not occur where there is an expressed wish to the contrary made by the person and recorded by Council.

Data Quality (Health Privacy Principle 3)

Council will take all steps that are reasonable to make sure that, having regard to the purpose for which the information is to be used, the health information it collects, uses, holds or discloses is accurate, complete, up to date and relevant to its functions or activities.

Data Security and Data Retention (Health Privacy Principle 4)

Council will take all reasonable steps to protect the health information it holds from misuse and loss and from unauthorised access, modification or disclosure.

Council will retain health information in accordance with this HPP.

Openness (Health Privacy Principle 5)

As required by this HPP, Council sets out in this statement its expressed policy on the management of health information and the steps that someone can take in order to obtain access to their health information.

On request, Council will take reasonable steps to let someone know if it holds any health information about them and how they can access that information. At that time Council will advise that person in general terms the nature of the information, the purpose for which the information is used and how Council collects, holds, uses and discloses the information.

Access and Correction (Health Privacy Principle 6)

Council is committed to providing individuals with access to the health information which we hold about them on request. However, there are some circumstances where Council may deny access. These circumstances include situations where:

- access would pose a serious threat to the life or health of any person;
- access would have an unreasonable impact on the privacy of other people;
- there are legal proceedings current between the person and the Council;
- the disclosure would reveal the intentions of Council in relation to negotiations, other than about the provision of a health service, with someone in such a way as to expose the organisation unreasonably to disadvantage;
- the information is subject to confidentiality under s27 of the *Health Records Act 2001*;
- providing access would be unlawful;
- denying access is required or authorised by or under law;
- providing access would be likely to prejudice an investigation of possible unlawful activity;
- providing access would be likely to prejudice a law enforcement function by or on behalf of a law enforcement agency;
- a law enforcement agency performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia;
- the request for access is of a kind that has been made unsuccessfully on at least one previous occasion and there are no reasonable grounds for making the request again; or
- the individual has been provided with access to the health information previously and is making an unreasonable, repeated request for access to the same information in the same way.

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

Identifiers (Health Privacy Principle 7)

Council will only assign identifiers to records if it is necessary to enable Council to carry out a function efficiently. Identifiers are a number or code that is assigned to someone's record to assist with identification (similar to a drivers licence number).

Anonymity (Health Privacy Principle 8)

If it is lawful and practicable, someone must have the option of not identifying themselves when entering transactions with Council.

Many types of contact with us are able to be completed without someone providing their details (such as lodging complaints, reporting broken assets). However, in some situations it is not lawful or practical for a person to remain anonymous if they are seeking the provision of health services provided by Council.

Transborder Data Flows (Health Privacy Principle 9)

In some instances the Council may be asked to transfer health information about someone to another person or organisation that is outside Victoria. This will only occur if:

- Council is assured that the person or organisation receiving the information is subject to a legal requirement that equals these HPPs;
- the person who is the subject of the health information has provided consent;
- the transfer is necessary for the performance of a contract between an individual and the organisation;
- it is necessary for the conclusion or performance of a contract that is interest of the individual and is between Council and a third party;
- all of the following apply:
 - If the transfer is for the benefit of the individual; and
 - If it is impracticable to obtain the consent of the person to that transfer; and
 - If it were practicable to obtain that consent, the person would be likely to give it.
- Council has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the HPPs; or
- It is authorised or required by any another law.

Transfer or Closure of the Practice of a Health Service Provider (Health Privacy Principle 10)

If a Council health service provider is to be sold or transferred, or amalgamated and the provider will no longer be providing health services in the new practice or business or will be closed down, then Council will publish a notice in a newspaper that circulates in the locality of the practice or business.

This notice will advise that the practice or business has been, or is about to be, sold, transferred or closed down, as the case may be. It will address how the health service provider proposes to deal with any health information it holds about people who have used the service, whether they mean to retain the information or to transfer it to the new provider.

In either case Council will contact those people whose health information Council holds, within 21 days of the newspaper publication to let them know what will happen with the information.

If a Council health service provider is to be sold or transferred, or amalgamated and the provider will continue to provide health services they can elect to retain the health information. If this occurs they will continue to hold it, in accordance with these HPPs or transfer it to a competent organisation for safe storage in Victoria until that health information is destroyed in accordance with HPP 4 above.

Making Information Available to another Health Service Provider (Health Privacy Principle 11)

If an individual requests a Council operated health service provider to make health information relating to them available to another health service provider, or that person authorises another health service provider to request the health information from Council, Council will, on payment of a fee, provide a copy or written summary of that health information to that other health service provider. Council will endeavour to provide this information as soon as practicable.

Requests for Access and Correction

Requests for access to and correction of documents containing health information are generally managed under *the Freedom of Information Act 1982 (Vic)*.

However, some requests for personal information may be dealt with informally (outside the *Freedom of Information Act 1982*). Please contact a member of the Council Business Team on 03 9658 9658 or via email foi@melbourne.vic.gov.au to discuss your requirements.

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

Senior Governance Officer
Governance Branch
Post: City of Melbourne
GPO Box 1603
MELBOURNE VIC 3001
Email: foi@melbourne.vic.gov.au

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

Complaints or Enquires Concerning Privacy

Complaints may be directed to the Senior Governance Officer. These will be acknowledged within two business days and will be investigated as soon as practicable. You will be provided with a written response within 20 business days of the date your complaint is received by Council.

Contact details are as follows:

Senior Governance Officer
Governance Branch
Post: City of Melbourne
GPO Box 1603
MELBOURNE VIC 3001
Email: privacy@melbourne.vic.gov.au
Online: <https://services.melbourne.vic.gov.au/report/complaint>
Telephone: (03) 9658 965

Office of the Victorian Information Commissioner

A complaint can be made to the Office of the Victorian Information Commissioner (OVIC), however the OVIC may decline to hear the complaint if you have not made a complaint to Council first.

Where a complainant is not satisfied with the decision of the Council's Information Privacy Officer they may apply to the OVIC.

Contact details are as follows:

Post: Office of the Victorian Information Commissioner
PO Box 24274
Melbourne VIC 3001
Email: privacy@ovic.vic.gov.au
Online: <https://make-a-privacy-complaint.ovic.vic.gov.au/>
Telephone: 1300 006 842

Health Complaints Commissioner

You may make a complaint to the Health Complaints Commissioner if you are not satisfied with the service you have received from Council as a health service provider. The Health Complaints Commissioner may decline to hear the complaint if you have not made a complaint to Council first.

Contact details are as follows:

Post: Health Complaints Commissioner
Level 26, 570 Bourke Street
Melbourne VIC 3000
Online: <https://www.hcc.vic.gov.au/make-complaint#section2408>
Phone: 1300 582 113

Responsibilities

It is the responsibility of the Council Business team to review and make any necessary amendments to the Policy annually or otherwise in accordance with any changes in the legislation.

Relevant Legislation

- *Health Records Act 2001*
- *Privacy and Data Protection Act 2014*
- *Freedom of Information Act 1982*
- *Occupational Health and Safety Act 1991*
- *Victorian Equal Opportunity Act 1995*
- *Local Government Act 1989*
- *Local Government Act 2020*