



muswellbrook shire council

Privacy Management Plan

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Table of Contents

Part 1 - Introduction	3
What is personal Information and Health Information.	4
What is not personal or Health Information	4
Application of this Privacy Management Plan	4
Personal and Health Information held by Council	4
Applications for Access to Information not held in a Public Register	5
Unsolicited Information	5
Part 2 - Public Registers	6
Public Registers	6
Purposes of Public Registers under the Local Government Act*	6
Purposes of Public Registers under the Environmental Planning and Assessment Act*	7
Purposes of Public Registers under the Protection of the Environment (Operations) Act*	7
Purposes of the Public Register under the Impounding Act*	7
Applications for Suppression in Relation to a Public Register	7
Part 3 – The Information Protection Principles	9
Information Protection Principles 1 - 4 (Collection)	9
Information Protection Principle 5 (Storage)	13
Information Protection Principles 6 - 8 (Access & Accuracy)	13
Information Protection Principles 9 - 10 (Use)	15
Information Protection Principles 11 - 12 (Disclosure)	17
Part 4 – The Health Privacy Principles	22
Health Privacy Principles Covered Under the Information Privacy Principles.	22
Health Privacy Principle 1 - 4 (Collection)	22
Health Privacy Principle 5 (Storage)	23
Health Privacy Principle 6 - 9 (Access & Accuracy)	24
Health Privacy Principle 10 (Use)	24
Health Privacy Principle 11 (Disclosure)	25
Health Privacy Principle 12 - 13 (Identifiers & Anonymity)	25
Health Privacy Principle 14 - 15 (Transferrals & Linkage)	25
Part 6 - Internal Review and Complaints	28
Part 7 – Other Relevant Matters	29
Appendices	30
Appendix A – Statutory Declaration for Access to a Public Register held by Council.	30
Appendix B – Privacy Notification Form for Personal and Health Information (Pre-Collection) .	31
Appendix C – Privacy Notification Form for Personal and Health Information (Post-Collection)	32
Appendix D – Application to Determine Whether Council Hold Personal and Health Information.	33
Appendix E – Application for Access to Applicants Personal and Health Information.	34
Appendix F – Application for alteration of Applicants Personal and Health Information.	35

Part 1 - Introduction

This Privacy Management Plan sets out how the Muswellbrook Shire Council upholds the principles and requirements of the *Privacy and Personal Information Protection Act 1998* (PPIPA), the *Health Records and Information Privacy Act 2002* (HRIPA), any other relevant legislation or Code of Practice made by the Attorney-General in addition to directions issued by the New South Wales (NSW) Privacy Information Commission.

This plan has been developed in accordance with Section 33 of the PPIPA which requires all councils in NSW to prepare a Privacy Management Plan (the Plan) to address:

- i. compliance by Council with the requirements of the PPIPA and HRIPA;
- ii. the dissemination of those policies and practices to persons within the Council;
- iii. the procedures that Council proposes for internal review of privacy complaints; and
- iv. such other matters as are considered relevant by the Council in relation to privacy and the protection of personal information held by Muswellbrook Shire Council.

Under PPIPA, there are twelve (12) Information Protection Principles which describe the manner in which NSW government agencies must handle personal information. The principles cover the collection, storage, use and disclosure of personal information along with access to personal information.

Under HRIPA, there are also fifteen (15) Health Privacy Principles which describe the manner in which NSW government agencies must handle health information. The Health Privacy Principles include all the Information Protection Principles with the addition of Identifiers & Anonymity and Transferrals & Linkages that specifically relate to health information only. .

The Attorney General has amended these principles specifically for local government, the Privacy Code of Practice for Local Government (the Code) details the changes made. The Code enables local government to fulfil its statutory duties and functions under the *Local Government Act 1993* (the Act) in a manner that seeks to comply with the PPIPA and the HRIPA.

This plan should be read in conjunction with the Code of Practice for Local Government, Information Protection Principles and the Health Privacy Principles.

Where the Council has the benefit of an exemption from the Information Protection Principles, it will nevertheless describe procedures for compliance in this Plan. By doing so Council is not to be bound in a manner other than that prescribed by the Code.

Council staff collect, use and store a broad range of information, which a significant part of that information is personal. This Plan applies specifically to personal information including health information defined under section 6 of the HRIPA.

What is Personal Information and Health Information.

“Personal Information” under section 4 of the PPIPA is defined 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.

“Health Information” under section 6 of the HRIPA is defined as Personal information that is information or an opinion about the physical, mental health or disability of person. Express wishes about the future provision of health services; a health service provided or to be provided, or any other personal information collected to provide or in providing a health service.

What is not Personal or Health 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 PPIPA. Council considers the following to be publicly available:

- i. an advertisement containing personal information in a local, city or national newspaper;
- ii. personal information on the internet;
- iii. books or magazines that are printed and distributed broadly to the general public;
- iv. Council Business papers that are not confidential under Section 10A(2) of the *Local Government Act 1993* (Local Government Act); and
- v. Personal information that may be a part of a display on view to the general public.

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

Application of this Privacy Management Plan

The PPIPA and this Plan apply, wherever practicable, to:

- i. councillors;
- ii. council employees;
- iii. consultants and contractors of the Council;
- iv. council owned businesses; and
- v. council committees. (Including committees established under section 355 of the *Local Government Act 1993*).

Personal and Health Information held by Council:

Council collects a range of personal and health information as part of its core business functions. The information and activities listed below is indicative of how and why Council collects personal and health information.

- i. recruitment material.
- ii. leave and payroll data.
- iii. personal contact information.
- iv. performance management plans.
- v. disciplinary matters.
- vi. pecuniary interest returns.
- vii. wages and salary entitlements.
- viii. rates records.
- ix. Development Application and objections.
- x. personal contact information.
- xi. complaints and disciplinary matters.
- xii. pecuniary interest returns. entitlements to fees, expenses and facilities.

Applications for Access to Information not held in a Public Register.

Council is bound by the provisions of the *Government Information (Public Access) Act 2009* (GIPA) that all applications for information should be made under this legislation. There are four ways in which government information is released, they are as follows;

i. Open access information

Council releases certain categories of information on our website as a normal procedure; this is known as Open Access Information. Open Access Information includes Council's policies, planning documents and agendas and minutes as well as many other categories of information.

ii. Proactive release

Council releases as much information other than Open Access as possible to the public free of charge predominately on our website and various Council owned locations.

iii. Informal release of information

Members of the public may contact us and ask for information. This is known as an informal request.

iv. Formal access application for release of information

If information cannot be accessed through any of the above ways, members of the public may submit an access application.

It should be noted that Section 14 subsection 3 of the GIPA allows government agencies to consider protection principles under the PPIPA and the HRIPA.

Unsolicited Information

Where an individual, a group or committee, not established by Council, gives unsolicited personal information, then that information should still be treated in accordance with this Plan, the Code and the PPIPA or HRIPA.

Note; *That for the purposes of section 10 of the HRIPA, the Council is not considered to have "collected" health information if the receipt of the information by the Council is unsolicited. Section 4(5) of the PPIPA also provides that personal information is not "collected" by Council if it is unsolicited.*

Part 2 - Public Registers

A distinction needs to be drawn between public registers within the meaning of Part 6 of the PPIPA and non public registers. A non public register is a register, although it is not a publicly accessible register for the purposes of the PPIPA or HRIPA. A Government 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 Local Government Act under which the register is kept.

Disclosure in relation to public registers must comply with Part 6 of the PPIPA and the Code. Personal information cannot be accessed by a person about another person unless the personal information is contained in a public register. Where personal information is contained in a public register, then Part 6 of the PPIPA applies to determine whether access to that information will be given to another person.

Disclosure in relation to all other personal information must comply with the Information and Health Privacy Principles and the Privacy Code of Practice for Local Government where it includes personal information that is not published.

Public Registers

Section 57 of the PPIPA requires very stringent controls over the disclosure of personal information contained in a public register. Section 57 provides broadly that where Council is responsible for keeping a public register, it will not disclose any personal information kept in that register unless it is satisfied that the information is to be used for a purpose relating to the purpose of the register or the Local Government Act under which the register is kept.

Section 57 (2) requires Council to comply to ensure that any person who applies to inspect personal information contained in the public register to give particulars in the form of a statutory declaration, attached as appendix A, as to the proposed use of that information.

Purposes of Public Registers under the Local Government Act*

Section 53 - Land Register – The primary purpose is to identify all land vested in Council, or under its control. The secondary purpose includes a consideration of public accountability as to the land held by Council. Third party access is therefore a secondary purpose.

Section 113 - Records of Approvals – The primary purpose is to identify all approvals granted under the Local Government Area (LGA).

Section 450A - Register of Pecuniary Interests – The primary purpose of this register is to determine whether or not a Councillor or a member of a council committee has a pecuniary interest in any matter with which the council is likely to be concerned. There is a corresponding public accountability purpose and third party access is a secondary purpose.

Section 602 - Rates Record - The primary purpose is to record the value of a parcel of land and record rate liability in respect of that land. The secondary purpose includes recording the owner or lessee of each parcel of land. For example, that a disclosure on a rating certificate that a previous owner was a pensioner is considered to be allowed, because the secondary purpose is “a purpose relating to the purpose of the register”.

Purposes of Public Registers under the Environmental Planning and Assessment Act*

Section 100 – Register of consents and approvals – The primary purpose is to identify applications for development consent and other approvals, confirm determinations on appeal and identify applications for complying development certificates.

Section 149G – Record of building certificates – The primary purpose is to identify all building certificates.

Purposes of Public Registers under the Protection of the Environment (Operations) Act*

Section 308 – Public register of licences held – The primary purpose is to identify all licences granted under the Act.

Purposes of the Public Register under the Impounding Act*

Section 30 & 31 – Record of impounding – The primary purpose is to identify any impounding action by Council.

*These registers are purely indicative, Council may or may not, by virtue of its own practice hold other Public Registers, to which the PPIPA and the HRIPA apply.

Applications for Suppression in Relation to a Public Register

An application for suppression in relation to a public register will be dealt with under PPIPA, rather than Section 739 of the Local Government Act.

A person about whom personal information is contained (or proposed to be contained) in a public register, may request Council under Section 58 of the PPIPA to have the information removed from, or not placed on the register.

If Council is satisfied that the safety or well-being of any person would be affected by not suppressing the personal information as requested, Council will suppress the information in accordance with the request unless Council is of the opinion that the public interest in maintaining public access to the information outweighs any individual interest in suppressing the information, in accordance with section 58(2) of the PPIPA. When in doubt, Council will err in favour of suppression.

Well-being” is defined in the Macquarie Dictionary as “the good or satisfactory condition of existence; welfare”.)

Any information that is removed from, or not placed on, that aspect of a public register to be made public may be kept on the register for other purposes. That is, the information may still be used for council functions, but it cannot be disclosed to other parties.

An application for suppression should be made in writing addressed to the General Manager and must outline the reasons for the request. The Council may require supporting documentation where appropriate.

Effect on Section 6 of the Government Information (Public Access) (GIPA)

Section 57 of the PPIPA prevails over clause 1 (3) of Schedule 1 of the *Government Information (Public Access) Regulation 2009* (GIPA Regulation) to the extent of any inconsistency. Therefore:

- i. If a register is listed in Schedule 1 of the GIPA Regulation, access must not be given except in accordance with section 57(1) of the PPIPA.
- ii. If a register is not listed in Schedule 1 of the GIPA Regulation, access must not be given except:
 - a) if it is allowed under section 57(1) of the PPIPA; and
 - b) there is no overriding public interest against disclosure of the information under section 6 of the GIPA Act.

Part 3 – The Information Protection Principles

Each of the following organisations or groups will be required to comply with this Plan, any applicable Privacy Code of Practice and the PPIPA.

- i. Council owned businesses;
- ii. Council consultants;
- iii. Private contractors; and
- iv. Council committees.

Where any of the above seek to use personal information collected for one purpose, that body or person will be required to obtain the written consent of those persons in accordance with Section 18 to the use of the information for another purpose.

Information Protection Principles 1 - 4 (Collection)

1. 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.

Council Policy

Council collects personal information for a range of different activities and functions legislated under the Local Government Act. Examples which Council collects personal information for, although not limited to are;

- i. enquiries from the public;
- ii. complaints handling;
- iii. recruitment;
- iv. return to work programs;
- v. rating purposes; and
- vi. other core business such as regulatory functions or development matters.

Anyone engaged by Council as a private contractor or consultant that involves the collection of personal information is bound not to collect personal information by any unlawful means. This will include debt recovery actions by or undertaken on behalf of Council by commercial agents.

In order to ensure compliance with Information Protection Principles, internet contact forms, rates notices, various application forms, or written requests by which personal information is collected by Council; will be referred to the Council's Public Officer prior to adoption or use.

The Public Officer will also provide advice on:

- i. whether the personal information is collected for a lawful purpose;
- ii. if that lawful purpose is directly related to a function of Council; and
- iii. whether or not the collection of that personal information is reasonably necessary for the specified purpose.

2. Collection of personal information directly from the individual

A public sector agency must, in collecting personal information, collect the information

directly from the individual to whom the information relates unless:

- i. the individual has authorised collection of the information from someone else, or
- ii. 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.

Council Policy

The compilation or referral of registers and rolls are the major means by which the Council collects personal information. For example, the information the Council receives from the Land Titles Office.

Other means include forms that customers may complete and lodge with Council for development consent, companion animal registration, applications for specific inspections, certifications or applications in respect of tree preservation orders.

Council regards all information concerning its customers and employees as information protected by the PPIPA or the HRIPA. Council will therefore collect all personal information, where possible, directly from its customers or employee except as provided in section 9 of the PPIPA, under other statutory exemptions or Code of Practice. Council may collect personal information from other public sector agencies in respect of specific statutory obligations where it is authorised by law to do so.

3. 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:

- i. the fact that the information is being collected;
- ii. the purposes for which the information is being collected;
- iii. the intended recipients of the information;
- iv. 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;
- v. the existence of any right of access to, and correction of, the information; and
- vi. the name and address of the agency that is collecting the information and the agency that is to hold the information.

The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle where personal information is collected about an individual for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition without prior or subsequent notification.

Council Policy

Where Council proposes to collect personal information directly from the person, it will inform that person that the personal information is being collected, what is done with that information and who the intended recipients will be.

In relation to privacy notifications that are to be attached to a Development Application provided to objectors, it could be stated that objectors have a right to remain anonymous if they so choose. However, should they need to substantiate their objections; anonymous

objections may be given less weight (or no weight) in the overall consideration of the Application.

Where Council collects personal information indirectly from another public sector agency in respect of any one of its statutory functions, it will advise those individuals that it has collected their personal information by including a privacy notification form in the next issue of their rates notice, or otherwise by letter. A common example of the collection of information from another public sector agency is the Land Titles Office. Council receives information as to new ownership changes when property is transferred from one owner to the next. Appendix B and Appendix C contain samples Privacy Notification Form that could be used for pre and post collection of personal information.

4. 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:

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

Council Policy

Council will seek to ensure that no personal information is collected which is not directly relevant to its proper functions. Council collects personal information through the various forms that customers complete and lodge with Council. Before adoption of a new form, a draft form will be reviewed for compliance with Information Protection Principle 4 by the Public Officer or other suitable persons. Should Council have any residual doubts, the opinion of the Officer of the Privacy Commissioner will be sought.

Council may use public place video surveillance in accordance with the provisions of the Work Place Surveillance Act.

Statutory Exemptions for Information Protection Principles 1 - 4

Compliance with Information Protection Principles is also subject to certain exemptions under the PPIPA. If one of these exemptions applies, Council need not comply.

The relevant statutory exemptions follow:

- i. Section 23(2) of the PPIPA permits non-compliance with Information Protection Principle 2 if the information concerned is collected in connection with proceedings (whether or not actually commenced) before any court or tribunal.
- ii. Section 23(3) permits non-compliance with Information Protection Principle 3 where information is collected for law enforcement purposes. Law enforcement means a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person.
- iii. Section 24(4) of the PPIPA permits non-compliance with Information Protection Principles 2 and 3 if:
 - (a) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency; and
 - (b) if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.
- iv. Section 25(a) of the PPIPA permits non-compliance with Information Protection

Principle 2 and 3 where the agency is lawfully authorised or required not to comply with the principle.

- v. Section 25(b) of the PPIPA permits non-compliance with Information Protection Principles 2 and 3 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.
- vi. Section 26(1) of the PPIPA permits non-compliance with Information Protection Principles 2 and 3 if compliance would prejudice the interests of the individual concerned.
- vii. Where Council cannot collect personal information directly from the person, it will ensure one of the following:
- viii. Council has obtained authority from the person under section 9(a) of the PPIPA.
- ix. The collection of personal information from a third party is permitted under an Act or law. (For example, the indirect collection from the Land Titles Office.)
- x. The collection of personal information from a parent or guardian is permitted provided the person is less than 16 years of age.
- xi. The collection of personal information indirectly where one of the above exemptions applies.
- xii. The collection of personal information indirectly is permitted under the Privacy Code of Practice for Local Government or the Investigative Code of Practice.
- xiii. The only other exception to the above is in the case where Council is given unsolicited information.
- xiv. Section 26(2) of the PPIPA permits non-compliance where the person expressly consents to such non-compliance.

Information Protection Principle 5 (Storage)

5. Retention and security of personal information

A public sector agency that holds personal information must ensure:

- iii. that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used;
- iv. that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information;
- v. 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
- vi. 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.

Council Policy

Council may comply with this principle by using any or all of the following or similar documents:

- i. General Retention and Disposal Authority for Local Government Records (GA39);
- ii. The Council's Policy R22/2 – Records Management (Staff);
- iii. Council's Policy C51/1 – Computer & IT Use; and
- iv. Council's Code of Conduct.

Council holds all personal information on a range of different electronic data management systems, which are password protected and subject to the terms and conditions stated in the policy documents mentioned above. The disposal of personal information will be administered by Council Officials in accordance with the General Retention and Disposal Authority (GA39).

Information Protection Principles 6 – 8 (Access & Accuracy)

6. 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:

- vii. whether the agency holds personal information;
- viii. whether the agency holds personal information relating to that person;
- ix. if the agency holds personal information relating to that person:
 - x. the nature of that information;
 - xi. the main purposes for which the information is used; and
 - xii. that person's entitlement to gain access to the information.

Council Policy

Section 13 of the PPIPA requires Council to take reasonable steps to enable a person to determine whether Council holds personal information on an individual. If any information about a person, upon request is held by Council the individual will be advised of the nature of information, the main purposes for which it is held, and that person's entitlement to access. As a matter of practicality, not every item of personal information, however insignificant, will be capable of ascertainment. Depending on the circumstances of the information requested, the person seeking their personal information can be provided access.

Any person may make an application for Council to determine if any Council records contain your personal information this form is attached as Appendix D.

Where a person makes an application for access under the PPIPA and it is involved or complex, it may be referred, with the written consent of the applicant, as an application under the GIPA. However use of the GIPA is to be a last resort. The applicant has the right to insist on being dealt with under PPIPA with the appropriate application form, attached as appendix E.

Information Protection Principle 6 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council's conduct of any lawful investigation.

7. 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.

Council Policy

Section 14 of the PPIPA requires a Council, at the request of any person, to give access to that person to personal information held about them.

Compliance with Information Protection Principle 7 does not allow disclosure of information about other people. If access to information that relates to a third party is sought, the application must be made under the GIPA provisions unless Information Protection Principles 11 and 12 or the Public Register provisions apply.

Customers wishing to exercise their right of access to their own personal information should apply in writing or direct their inquiries to the Public Officer, who will make a determination.

Members of staff wishing to exercise their right of access to their personal information should apply in writing on the attached form or direct their inquiries to the Public Officer, who will deal with the application.

8. 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.

Council Policy

Section 15 of the PPIPA allows a person to make an application to Council to amend personal information held about them so as to ensure the information is accurate, and, having regard to the purpose for which the information is collected, relevant to that purpose. Council may, if it deems necessary, take reasonable steps to verify the persons identify making the application, which could involve a statutory declaration in order to make the changes requested.

Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be referred to the Human Services Manager in the first instance and treated in accordance with the "Grievance and Complaint Handling Procedures" as per the current Local Government Award.

The Council's application form for alteration under Information Privacy Principle 8 is attached as Appendix F.

Statutory Exemptions for Information Protection Principles 6 – 8

Compliance with Information Protection Principles is also subject to certain exemptions under the PPIPA. If one of these exemptions applies, Council need not comply.

- i. Section 25 (a) of the PPIPA permits non-compliance with Information Protection Principle 6, 7 and 8 where Council is lawfully authorised or required not to comply with the principle concerned.
- ii. Section 25 (b) of the PPIPA permits non-compliance with Information Protection Principle 6, 7 and 8 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Information Protection Principles 9 – 10 (Use)

9. 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.

Council Policy

The steps taken to comply with section 16 will depend on the age of the information, its likelihood of change and the particular function for which the information was collected.

The more significant the information, the greater the necessity that checks to ensure its accuracy and currency be undertaken prior to its use. Information will be checked against other government agency databases or by direct verification with the individual, whose information is required.

For example, each employee's record should be updated when there is any change of circumstances or when the employee's contact details change.

10. 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:

- i. the individual to whom the information relates has consented to the use of the information for that other purpose; or
- ii. the other purpose for which the information directly relates to the purpose for which the information was collected; or
- iii. 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.

The Privacy Code of Practice for Local Government

The Code makes provision that Council may use personal information for a purpose other than the purpose for which it was created in the following circumstances:

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

Explanatory Note

Council may use personal information obtained for another purpose in pursuance of its lawful and proper functions. For example, the Rates Record that Council holds under Section 602 of the Local Government Act may also be used to:

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

Council Policy

Council will seek to ensure that information collected for one purpose will be used for that same purpose. Where Council may need to use personal information collected for another purpose, it will first gain the consent of the individual concerned, unless an exemption applies.

Statutory Exemptions for Information Protection Principles 9 – 10

Compliance with Information Protection Principle 10 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

- i. Section 23(4) of the PPIPA permits Council not to comply with Information Protection Principle 10 where the use of the information for another purpose is reasonably necessary for law enforcement purposes or for the protection of the public revenue.
- ii. Section 24 (4) of the PPIPA permits non-compliance with Information Protection Principle 10 if:
 - (a) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency; and
 - (b) if the use is reasonably necessary in order to enable the Council to exercise its complaint handling or investigative functions.
- iii. Section 25 (a) of the PPIPA permits non-compliance with the Information Protection Principle 10 where Council is lawfully authorised or required not to comply with the principle.
- iv. Section 25 (b) of the PPIPA permits non-compliance with section Information Protection Principle 10 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.
- v. Section 28(3) of the PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government (e.g. the Department of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister’s (or Premier’s) administration.

Information Protection Principles 11 – 12 (Disclosure)

11. 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.

The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle in the circumstances described below:

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

Council Policy

Council will not disclose the information to another person or other body, unless the disclosure is directly related to the purpose for which the information was collected. Where the Council has no reason to believe that the individual concerned would object to the disclosure, the information would be provided.

Council may disclose personal information to another person or other body where this disclosure is directly related to the purpose for which the personal information was collected and the individual concerned is reasonably likely to have been aware, (or has been made aware in accordance with section 10), of the intended recipients of that information. "Directly related" can mean the disclosure to another person or agency to deliver a service which supplements that of Council or disclosure to a consultant for the purpose of assessing or reviewing the delivery of a program to which the original collection relates.

Council may disclose personal information to another person or other body where this disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

Public Registers

Section 18 of PPIPA does not apply to the information held on Public Registers. Instead refer to Part 2 of this Plan.

12. Special restrictions on disclosure of personal information

- i. A public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.
- ii. A public sector agency that holds personal information must not disclose the information to any person or body that is in a jurisdiction outside New South Wales unless:
 - (a) a relevant privacy law that applies to the personal information concerned is in force in the that jurisdiction, or
 - (b) the disclosure is permitted under a privacy code of practice.
- iii. 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.
- iv. The Privacy Commissioner is, within the year following the commencement of this section, to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales.
- v. 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 Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle in the circumstances described below:

For the purposes of Section 19(2) only, where Council is requested by a potential employer outside New South Wales, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

Council Policy

Council will not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

Public Registers

Section 19 of PPIPA does not apply to the information held on Public Registers. Instead refer to Part 2 of this Plan.

Statutory Exemptions Information Protection Principles 11 – 12

Compliance with Information Protection Principle 12 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

- i. Section 23(5)(a) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is made to a law enforcement agency in connection with proceedings for an offence or for law enforcement purposes. *A Law enforcement purpose means* a breach of the criminal law and criminal law enforcement. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.
- ii. Section 23(5)(b) of the PPIPA permits non-compliance with Information Protection Principle 11 where the disclosure is made to a law enforcement agency for the purpose of ascertaining the whereabouts of a person reported to be missing. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.
- iii. Section 23(5)(c) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is authorised by subpoena, search warrant or other statutory instrument. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.
- iv. Section 23(5)(d)(i) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is reasonably necessary for the protection of the public revenue. *Protection of the public revenue* could mean a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.
- v. Section 23(5)(d)(ii) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is reasonably necessary to investigate an offence where there are reasonable grounds to believe an offence has been committed.
- vi. Section 23(7) of the PPIPA permits non-compliance with Information Protection Principle 12 where the disclosure is necessary to investigate an offence or where there are reasonable grounds to believe an offence has been or may be committed.

- vii. Section 24(4) of the PPIPA permits non-compliance with Information Protection Principle 11 if:
 - (a) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency; and
 - (b) if the disclosure is to an investigative agency.
- viii. Section 25 (a) of the PPIPA permits non-compliance with Information Protection Principle 12 where Council is lawfully authorised or required not to comply with the principle.
- ix. Section 25 (b) of the PPIPA permits non-compliance with Information Protection Principle 12 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.
- x. Section 26(2) of the PPIPA permits non-compliance where the person expressly consents to such non-compliance.
- xi. Section 28(2) permits non-compliance with Information Protection Principle 12 where, in the case of health information, the consent of the person cannot reasonably be obtained and the disclosure is made by an authorised person to another authorised person. “Authorised person” means a medical practitioner, health worker, or other official or employee providing health or community services who is employed or engaged by a public sector agency.
- xii. Section 28(3) of the PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government (eg. the Department of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister’s (or Premier’s) administration.

Part 4 – The Health Privacy Principles

Under the provisions of the *Health Records and Information Privacy Act 2002* (HRIPA) Council has a legal obligation in how it must collect, hold, use and disclose health information.

Health information includes personal information that is an opinion about the physical or mental health or a disability of an individual. Health information also includes personal information that is information or an opinion about:

- i. a health service provided, or to be provided, to an individual;
- ii. an individual's express wishes about the future provision of health services to him or her;
- iii. other personal information collected in connection with the donation of human tissue; or
- iv. genetic information that is or could be predictive of the health of an individual or their relatives or descendants.

In the same way as the Information Privacy Principles which have been outlined above, the provisions of the HRIPA allow for Health Privacy Principles. The meaning, intent and application of these principles are required when handling health information.

The Health Information Principles and the Information Privacy Principles are very similar with some principles overlapping in areas. There are some notable differences as the Local Government Privacy Code of Practice does not allow for exemptions to the Health Information Principles.

For this reason Council will in accordance with the relevant Information Privacy Principle apply those principles when using, storing and destroying health information. Unless an Information Privacy Principle including all exemptions departs from a Health Privacy Principle.

All health records received, created, used and stored in the day-to-day operation will be located on Council's Electronic Data Management System (EDMS). Health information access is restricted to the Human Services Section; by restricting access to these specific files, Council can confidentially fulfil its obligations under the HRIPA.

Health Privacy Principles Covered Under the Information Privacy Principles.

Health Privacy Principle 1 - 4 (Collection)

1. Lawful

Only collect health information for a lawful purpose that is directly related to the agency or organisation's activities and necessary for that purpose.

2. Relevant

Ensure the health information is relevant, accurate, not excessive, up-to-date and that the collection does not unreasonably intrude into the personal affairs of a person.

3. Direct

Only collect health information directly from a person concerned, unless it is unreasonable or impracticable to do so. See the handbook on Health Privacy for an explanation of “unreasonable” and “impracticable”.

Visit www.privacy.nsw.gov.au

4. Open

Inform a person as to why you are collecting health information, what you will do with it, and who else may see it. Tell the person how they can view and correct their health information and any consequences that will occur if they decide not to provide their information to you. If you collect health information about a person from a third party you must still take reasonable steps to notify the person that this has occurred.

Council Policy

Council will only collect health information for a lawful purpose that is directly related to Council’s activities and is necessary for that purpose (HPP 1).

Council will ensure that the health information is relevant, accurate, up to date and not excessive and that the collection is not unnecessarily intrusive into the personal affairs of the individual (HPP 2).

Council will only collect health information directly from the individual that the information concerns, unless it is unreasonable or impractical for Council to do so (HPP 3).

Council will tell the person why the health information is being collected, what will be done with it, who else might see it and what the consequences are if the person decides not to provide it. Council will also tell the individual how they can see and correct the health information.

If Council collects health information about a person from someone else, Council will take reasonable steps to ensure that the subject of the information is aware of the above points (HPP 4).

Health Privacy Principle 5 (Storage)

5. Secure

Ensure the health information is stored securely, not kept any longer than necessary, and disposed of appropriately. Health information should be protected from unauthorised access, use or disclosure. (Note: private sector organisations should also refer to section 25 of the HRIPA for further provisions relating to retention).

Council Policy

Council will store health information securely and protect health information from unauthorised access, use or disclosure. Health information will not be kept for any longer than is necessary and will be disposed of appropriately (HPP 5).

Health Privacy Principle 6 - 9 (Access & Accuracy)

6. Transport

Explain to the person what health information is being stored, the reasons it is being used and any rights they have to access it.

7. Accessible

Allow a person to access their health information without unreasonable delay or expense. (Note: private sector organisations should also refer to sections 26-32 of the HRIPA for further provisions relating to access).

8. Correct

Allow a person to update, correct or amend their personal information where necessary.

Note: Private sector organisations should also refer to sections 33-37 of the HRIPA for further provisions relating to amendments.

9. Accurate

Ensure that the health information is relevant and accurate before using it.

Council Policy

Council will provide details about what health information Council current holds about an individual, along with information about why Council is storing that information. The person to which the information relates will be given sufficient rights of access to the records held by Council (HPP 6). Council will allow the individual to access his or her health information without reasonable delay or expense (HPP 7).

Council will allow the individual to update, correct or amend his or her health information where necessary (HPP 8), and will make sure that the health information being used is relevant and accurate before use (HPP 9).

Health Privacy Principle 10 (Use)

10. Limited

Only use health information for the purpose for which it was collected or for a directly related purpose, which a person would expect. Otherwise, you would generally need their consent to use the health information for a secondary purpose.

Council policy

Council will only use the health information for the purpose for which it was collected or for a directly related purpose that the individual to whom the information relates would expect. Otherwise, Council will obtain the individual's consent (HPP 10).

Health Privacy Principle 11 (Disclosure)

11. Limited

Only disclose health information for the purpose for which it was collected, or for a directly related purpose that a person would expect. Otherwise, you would generally need their consent. (Note: see HPP 10).

Council Policy

Council will only disclose health information under the following circumstances:

- i. With the consent of the individual to whom the information relates; or
- ii. For the purpose for which the health information was collected or a directly related purpose that the individual to whom it relates would expect; or
- iii. If an exemption applies (HPP 11).

Health Privacy Principle 12 - 13 (Identifiers & Anonymity)

12. Not identified

Only identify people by using unique identifiers if it is reasonably necessary to carry out your functions efficiently.

Council Policy

Council will only give an identification number to health information if it is reasonably necessary for Council to carry out its functions effectively (HPP 12).

13. Anonymous

Give the person the option of receiving services from you anonymously, where this is lawful and practicable.

Council Policy

Council will provide health services anonymously where it is lawful and practical (HPP 13).

Health Privacy Principle 14 - 15 (Transferrals & Linkage)

14. Controlled

Only transfer health information outside New South Wales in accordance with HPP 14.

Council Policy

Council will only transfer personal information out of New South Wales if the requirements of Health Privacy Principle 14 are met.

15. Authorised

Only use health records linkage systems if the person has provided or expressed their consent.

Council Policy

Council will only include health information in a system to link health records across more than one organisation if the individual to whom the health information relates expressly consents to the link (HPP 15).

Part 5 – Implementation of the Privacy Management Plan

Training Seminars/Induction

Councillors, Council staff and members of Council committees should be acquainted with the general provisions of the PPIPA, and in particular, the Twelve (12) Information and fifteen (15) Health Privacy Principles, the Public Register provisions, the Privacy Code of Practice for Local Government, this Plan and any other applicable Code of Practice. Staff undertakes a general induction within 2 months of commencement, in which, information management is incorporated.

Responsibilities of the Privacy Contact Officer

The Public Officer will be assigned the role of the Privacy Contact Officer unless the General Manager directs otherwise.

In order to ensure compliance with PPIPA, the Privacy Contact Officer will review all contracts and agreements with consultants and other contractors, rates notices, various application forms, and other written requests by which personal information is collected by Council, to ensure that Council is in compliance with the PPIPA.

The Privacy Contact Officer will also provide opinions within Council as to:

- (i) Whether the personal information is collected for a lawful purpose;
- (ii) If that lawful purpose is directly related to a function of Council; and
- (iii) Whether or not the collection of that personal information is reasonably necessary for the specified purpose.

Any further concerns of a legal nature will be referred to Council's legal services panel.

The Privacy Contact Officer may assign designated officers as "Privacy Resource Officers" within the larger departments of Council. In this manner the Council may ensure that the information protection principles are more broadly understood and that individual departments have a greater focus on the information protection principles and are directly applied to Council's day to day functions.

Distribution of information to the public

Council may prepare its own literature such as pamphlets on the PPIPA, HRIPA or it may obtain and distribute copies of literature available from the Office of the Privacy Commissioner NSW.

Part 6 - Internal Review and Complaints.

Under section 53 of the PPIPA a person (the applicant) who is aggrieved by the conduct of Council is entitled to a review of that conduct. An application for internal review is to be made within 6 months of when the person first became aware of the conduct.

The application is to be in writing and addressed to Council's Privacy Contact Officer. The Privacy Contact Officer will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the application. The Reviewing Officer must be an employee and suitability qualified.

The review must be completed as soon as is reasonably practicable in the circumstances. If the review is not completed within 60 days of the lodgement, the applicant is entitled to seek external review.

The Council must notify the Privacy Commissioner of an application as soon as practicable after its receipt, keep the Commissioner informed of the progress of the application and inform the Commissioner of the findings of the review and of the action it proposes to take in relation to the application.

The Privacy Commissioner is entitled to make submissions in relation to internal reviews and Council is required to consider any relevant material submitted by the Privacy Commissioner. The Council must provide the Privacy Commissioner with a draft of the Council's internal review report to enable the Privacy Commissioner to make a submission.

The Council must notify the applicant of the outcome of the review within 14 days of its determination. A copy of the final review should also be provided to the Privacy Commissioner where it departs from the draft review.

What happens after an Internal Review?

If the complainant remains unsatisfied, the individual may appeal to the Administrative Decisions Tribunal which hears the matter afresh and may impose its own decision and can make a range of orders including an award of damages for a breach of an Information Protection Principle or a Health Privacy Principle.

Part 7 – Other Relevant Matters

Contracts with consultants and other private contractors

It is necessary to have specific provisions to protect the Council in any dealings with private contractors.

Confidentiality

The obligation of confidentiality is additional to and separate from that of privacy. Nevertheless, a duty to withhold information lies at the heart of both concepts. Confidentiality attaches to personal information to whom that information relates. An obligation of confidentiality exists for all employees whether express or implied as a matter of law.

Information which may be confidential is also likely to have a separate and independent obligation attaching to it in the form of privacy and in that regard, a release for the purposes of confidentiality will not suffice for privacy purposes. Two separate releases will be required and, in the case of privacy, the person to whom the information relates will be required to provide the release.

Misuse of personal information

Section 664 of the *Local Government Act 1993* makes it an offence for anyone to disclose information except in accordance with that section. Whether or not a particular disclosure is made with lawful excuse is a matter that requires legal opinion on a case-by-case basis.

Regular review of the collection, storage and use of personal information

The information practices relating to the collection, storage and use of personal information will be reviewed by the Council every from time-to-time ensuring compliance with current standards. Any new program initiatives will be incorporated into the review process with a view to ascertaining whether or not those programs comply with the PPIPA.

Regular Review of Privacy Management Plan

Once the information practices are reviewed from time to time, the Privacy Management Plan will also be reviewed to ensure that the Plan is up to date.

Further Information

For assistance in understanding the processes under the PPIPA and HRIPA, please contact the Council on 6549 3707 or visit www.muswellbrook.nsw.gov.au alternately the Information and Privacy Commission can assist on 1800 472 679 or www.ipc.nsw.gov.au.

REVIEW HISTORY:

	<i>Current</i>	<i>Previous</i>	<i>Prior</i>	<i>Prior</i>
Minute No:		254		
Meeting Date:		12/10/2009		
Review Date:				
Rescind Date:				

Appendix D – Application to Determine Whether Council Hold Personal and Health Information.

Personal information held by the Council

I, ⁽¹⁾ _____

(1) insert full name

of ⁽²⁾ _____

(2) insert address

Hereby request the General Manager of ⁽³⁾ _____

(3) insert name of Council

provide the following:

- Does the Council hold personal information about me? Yes No
- If so, what is the nature of that information? _____

- What is the main purpose for holding the information? _____

- Am I entitled to access the information? Yes No

My address for response to this application is:

State: _____ Post Code: _____

Note to applicants

Council **will not** record your address or any other contact details that you provide for any other purpose other than to respond to your application.

As an applicant, you have a right of access to personal information concerning yourself that is held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 (PPIPA). There is a separate application form to gain access.

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

- there is an exemption to section 13 of the PPIPA; or
- a Code of Practice may restrict the operation of section 14.

Enquiries concerning this matter can be addressed to:

Appendix E – Application for Access to Applicants Personal and Health Information.

Personal information held by the Council

I, ⁽¹⁾ _____

(1) insert full name

of ⁽²⁾ _____

(2) insert address

Hereby request that the ⁽³⁾ _____

(3) insert name of Council

Provide me with:

- (a) access to all personal information held concerning myself; or
 (b) access to the following personal information only (LIST INFORMATION REQUIRED BELOW):

My address for response to this application is:

_____ State: _____

Post Code: _____

Note to applicants

As an applicant, you have a right of access to personal information concerning yourself that is held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 (PPIPA).

You are entitled to have access without excessive delay or cost.

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 PPIPA; or
- a Code of Practice may restrict disclosure.

Enquiries concerning this matter can be addressed to:

Appendix F – Application for alteration of Applicants Personal and Health Information.

Personal information held by the Council

I, ⁽¹⁾ _____

(1) insert full name

of ⁽²⁾ _____

(2) insert address

Hereby request that the ⁽³⁾ _____

(3) insert name of Council

alter personal information regarding myself in the following manner:

- I propose the following changes: _____
- The reasons for the changes are as follows: _____
- The documentary bases for those changes is as shown on the attached documents

Note to Applicants :

You have a right to request appropriate amendments are made (whether by way of corrections, deletions or additions) to ensure that the personal information held by the Council:

- (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.

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 Privacy and Personal Information Protection Act 1998 (PPIPA), if it is reasonably practicable, to the 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:

- there is an exemption to section 15 of the PPIPA; or
- a Code of Practice may restrict alteration.

Enquiries concerning this matter can be addressed to: _____