



Maribyrnong
CITY COUNCIL

Health Records Policy

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Introduction

Maribyrnong City Council is committed to complying with the *Health Records Act 2001 (Vic)*, which prescribed how Council must collect, manage and disclose health information.

Definitions

The Health Records Policy seeks to provide greater clarity in relation to privacy with key words and terms being clearly defined to minimise any ambiguity.

Term	Definition
Council	means Maribyrnong City Council.
Delegated Committee	means a Delegated Committee established by Council under section 63 of the <i>Local Government Act 2020</i> .
Health information	means <ul style="list-style-type: none">• Information or an opinion about:<ul style="list-style-type: none">○ 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 –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	The Health Privacy Principles (HPPs) are a set of eleven principles that regulate how health information is handled. These principles underpin the <i>Health Records Act 2001 (Vic)</i> .

<i>HRA</i>	means the <i>Health Records Act 2001</i> (Vic).
<i>Health Service</i>	<p>means:</p> <ul style="list-style-type: none"> • an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the organisation performing it— <ul style="list-style-type: none"> ○ 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 registered under the Health Practitioner Regulation National Law; or • the sale or supply of a voluntary assisted dying substance within the meaning of the Voluntary Assisted Dying Act 2017 in accordance with that Act by a pharmacist registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student); or • the supply or administration of a voluntary assisted dying substance within the meaning of the Voluntary Assisted Dying Act 2017 in accordance with that Act by a registered medical practitioner; or • a service, or a class of service, provided in conjunction with an activity or service referred to in the above points as a health service.
<i>Health Service Provider</i>	is an organisation that provides health services within Victoria but does not include those providers specifically exempted for the purposes of the <i>HRA</i> .
<i>PDPA</i>	means the <i>Privacy and Data Protection Act 2014</i> (Vic).

Personal information	means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which the <i>Health Records Act 2001 (Vic)</i> applies.
Sensitive information	means information or an opinion about an individual's: <ul style="list-style-type: none"> • racial or ethnic origin; or • political opinions; or • membership of a political association; or • religious beliefs or affiliations; or • philosophical beliefs; or • membership of a professional or trade association; or • membership of a trade union; or • sexual preferences or practices; or • criminal record
Unique Identifier	means a number or code that is assigned to an individual's record to assist with identification (similar to a drivers licence number)

Purpose

The purpose of Maribyrnong City Council's Health Records Policy (the Policy) is to assist Council to meet its compliance obligations under the *Health Records Act 2001* ("HRA"), relating to the collection, management and disclosure of health information.

Scope

The Policy applies to all Councillors, employees, volunteers and contractors of Council and covers all health information collected and held by Council.

Background

Maribyrnong City Council is committed to full compliance with its obligations under the HRA and an individual's right to privacy and protection of health information.

Responsibilities

The Manager Governance and Commercial Services is Council's Privacy Officer and responsible for Council's obligations under the *HRA*, promoting the Policy and to work with Council departments to ensure that existing processes are compliant with legislative requirements.

Policy Statement

The Policy prescribes that health information held, managed, used, disclosed or transferred by Council is undertaken in accordance with the 11 Health Privacy Principles (HPPs) contained in the *HRA* as outlined below.

11 Health Privacy Principles (HPPs)

Principle 1 – Collection

Principle 2 – Use and Disclosure

Principle 3 – Data Quality

Principle 4 – Data Security and Data Retention

Principle 5 – Openness

Principle 6 – Access and Correction

Principle 7 – Identifiers

Principle 8 – Anonymity

Principle 9 – Transborder Data Flows

Principle 10 - Transfer or closure of the practice of a health service provider

Principle 11 – Making information available to another health service provider

Health Privacy Principles (HPPs)

Principle 1 - Collection

Maribyrnong Council will only collect health information about an individual if necessary for one or more of Council's functions or services.

Maribyrnong 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 Principle 2 – Use and Disclosure; 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 of the individual, 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; or
- It is otherwise permitted under the HPPs and the HRA.

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 of the individual will be taken.

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

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

- Who is collecting the information
- How Council may be contacted
- Their rights to access the information
- The purposes for which the information is collected

- 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 the individual if all or part of the information is not provided.

Health Information - Collection Notices

Where Council is collecting your health information, a collection notice will be included based on the following:

Maribyrnong City Council (Council) is committed to protecting your privacy. The health information requested on this form is being collected by Council for the purpose of {insert purpose, name of legislation requiring collection if applicable}. The health information collected will be used by Council for that primary purpose or directly related purposes. The health information will be disclosed to {insert names of any external parties Council will be disclosing the personal information to} for the purpose of {insert how those external parties will be using the health information}. Health information collected will not be disclosed to any third party without your consent, unless permitted or required by law. If the health information is not collected, Council may not be able to {insert details of the service or function Council will be unable to provide without the requested health information}. Requests for access to and/or amendment of your health information should be made to Council's Freedom of Information Officer. For more information, refer to Council's Health Records Policy.

Council staff must not collect health information unless the information is necessary for one or more of Council's functions or activities.

Before collection occurs, Council staff must have established the type of health information they will be collecting and confirm that all health information proposed to be collected is required for the health program, service or activity they provide. Collecting health information with no identifiable purpose is not acceptable.

Occasionally, Council staff are provided with unrequested health information that is not necessary for or related to any purpose of Council. As soon as practical after such health information is received, Council officers should decide whether it is relevant to what Council does. If information is not relevant, Council officers should not keep it in its records.

Before the information is destroyed consideration must be given to the *Public Records Act 1973 (Vic)*. If the information received would be defined as a public record under the *Public Records Act 1973 (Vic)*, Council is obligated to retain the information for a specified statutory timeframe.

Principle 2 – Use and Disclosure

Council will only use or disclose your health information within the course of Council business, including:

- For the primary purpose for which it was collected;
- For a secondary purpose where related to the primary purpose of collection and which would be reasonably expected;
- In accordance with your consent;
- In accordance with legislative requirements, including where required or authorised under law; and
- Where otherwise permitted by the HPPS or HRA.

Council will take all necessary measures to prevent unauthorised access to, or disclosure of, your health information.

There are circumstances outlined in the HRA, which does permit Council to use and disclose health information without consent in the following situations:

- If Council is a health service provider providing a health service to an individual and the use or disclosure is reasonably necessary for the provision of the health service, and the individual is incapable of giving consent and it is not reasonably practicable to obtain consent from an authorised representative;
- If Council is a health service provider providing a health service to an individual and the use or disclosure is reasonably necessary for the safe and effective provision of further health services;
- 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; 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 threat to:
 - an individual's life, health, safety or welfare; or
 - public health, public safety or public welfare.

Council may also disclose an individual's health information to an immediate family member of the individual if the disclosure is either necessary to provide appropriate health services to or care of the individual, or for compassionate reasons, provided:

- the individual is incapable of giving consent; and
- the disclosure is not contrary to any wish expressed by the individual before they became capable 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.

Principle 3 – Data Quality

Council will take reasonable steps to ensure that health information it collects and holds is accurate, complete and up to date as possible. Requests to amend any health information supplied to Council are further detailed under Principle 6 – Access and Correction.

Principle 4 – Data Security and Data Retention

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

Council is required to retain health information in accordance with the HRA and must not delete health information relating to an individual unless:

- The deletion is permitted, authorised or required by the regulations or any other law; or
- The deletion is not contrary to the regulations or any other law and occurs:
 - In the case of health information collected while the individual was a child, after the individual attains the age of 25 years; or
 - In any case, more than 7 years after the last occasion on which a health service was provided to the individual by Council

Whichever is the latter.

Council is required to retain health information with the document retention disposal requirements of the *Public Records Act 1973* (Vic) and the Public Records Office Victoria.

Principle 5 – Openness

As required under the HRA, Council sets out its management of health information in this policy. It is available upon request by contacting a member of Council's Governance team by emailing Email@Maribyrnong.vic.gov.au. It may also be downloaded from Council's website at www.Maribyrnong.vic.gov.au.

Upon request, Council will take reasonable steps to advise an individual if it holds any health information about them, and how it may be accessed. At that time, Council will also advise that person in general terms the nature of the information, purpose for which the information is used and how Council collects, holds, uses and discloses the information.

Principle 6 – Access and Correction

Individuals have the right to access their own health information, and where necessary, request that information about them be corrected.

Where possible, all requests for access and correction to your health information will be facilitated and managed informally outside of the *Freedom of Information Act 1982* through relevant Council departments.

Please contact Council's customer service team at email@maribyrnong.vic.gov.au to discuss any requests to access your own health information.

More broadly, where such a request is initially declined, requests for access and correction to documents containing health information are then managed under the *Freedom of Information Act 1982*, and can be made in writing and addressed to the:

Manager Governance and Commercial Services

Maribyrnong City Council

PO Box 58

FOOTSCRAY VIC 3011

Email – Email@maribyrnong.vic.gov.au

Further information on making an Freedom of Information request can be found on Council's website at: <https://www.maribyrnong.vic.gov.au/About-us/Governance-and-Council-Information/Freedom-of-information>.

Principle 7 – Unique Identifiers

A unique identifier is a number or code that is assigned to someone's record to assist with identification. Council will only assign a unique identifier to a person if the assignment is reasonably necessary to carry out its functions efficiently.

Council will not adopt or disclose a unique identifier assigned to an individual by another organisation unless:

- It is necessary to enable Council to carry out any of its functions efficiently;
- It has obtained the consent of the individual to the use of the unique identifier;
- There are legal requirements for Council to do so; or
- The conditions for use and disclosure set out in the *HRA* are satisfied.

Principle 8 – Anonymity

Where lawful and practicable, Council will provide the option for individuals to remain anonymous in their interactions with Council. However, anonymity may limit Council's ability to process a complaint or other matter.

Therefore, if you choose not to supply health information that is necessary for the Council to perform its functions, then Council reserves the right to take no further action on that matter.

Principle 9 – Transborder Data Flows

The progress of new technologies has resulted in more common transborder data flows between organisations.

Council will only transfer personal information outside of Victoria in accordance with the provisions outlined in the *HRA*.

Council uses cloud computing services based outside Victoria, however, it has taken all reasonable steps to ensure that the information which it transfers will not be held, used or disclosed by third party service providers inconsistently with the *HPPs*.

Council also ensures third party service providers are subject to laws and/or binding contractual arrangements that provide similar protections to that afforded under the *HRA*.

Principle 10 – Transfer or Closure of the Practice of a Health Service Provider

If Council discontinues one or more of its health services, it will publish a notice in a newspaper that circulates in the locality of the practice or business.

This notice will include details that the health service has been, or is about to be sold, transferred or closed down, as relevant to the circumstances. It will also detail how Council proposes to deal with the health information held about individuals who have used the service, and whether it means to retain the information or transfer it to the new provider.

Within 21 days of the published notice, Council will take necessary steps to notify individuals whose health information it holds whether Council means to retain or transfer the health information.

Principle 11 – Making Information Available to Another Health Service Provider

If an individual requests Council to make health information relating to the individual held by the provider available to another health service provider, or if that individual authorises another health service provider to request the health information from Council, Council will provide a copy or written summary of the requested health information to the other health service provider. Subject to any fee or charge as prescribed by Council.

Privacy Training

All Council staff receive privacy training to enhance awareness, understanding and obligations in regards to the collection and management of personal information and health information in the workplace.

All new staff as part of their corporate induction are required to complete a mandatory online module specifically focusing on information privacy.

Refresher training is also provided at annually across the organisation with Council's Privacy Officer responsible for providing additional training, support and advice to staff upon request.

A copy of this Policy will be made available to staff via Council's Policy database and Council's website.

Enquiries or Complaints

Individuals concerned at Council's handling of their health information are encouraged to contact Council's Privacy Officer.

Enquiries or complaints about a breach of health information, in the first instance, may be directed to Council's Privacy Officer as follows:

Privacy Officer

Maribyrnong City Council

PO Box 58

FOOTSCRAY VIC 3011

Email – Email@maribyrnong.vic.gov.au

Council will be proactive in dealing with any potential privacy breach and its consequences. This includes:

- Containing the breach and conducting a preliminary assessment
- Evaluating the risks associated with the breach
- Remediating and notifying affected parties, if required
- Review (and remedy if appropriate) the cause of the breach and Council's response.

Complaints about personal information can also be directed to the Victorian Health Complaints Commissioner. The Commissioner may decline to consider a complaint, if the complainant has not first complained directly to Council.

The Victorian Health Complaints Commissioner can be contacted as follows:

Office of the Victorian Health Complaints Commissioner

Level 26, 570 Bourke Street

MELBOURNE VIC 3000

Telephone: 1300 582 113

Email: hcc@hcc.vic.gov.au

Implementation and Monitoring

Policy Owner	Directorate
Manager Governance and Commercial Services	Corporate Services

Review of Policy

The Policy will be reviewed in 2028, as legislation requires, or when Council determines a need has arisen for a review.

References

- *Privacy and Data Protection Act 2014* (Vic)
- *Health Records Act 2001* (Vic)
- *Freedom of Information Act 1982* (Vic)
- *Local Government Act 1989* (Vic)
- *Local Government Act 2020* (Vic)
- *Equal Opportunity Act 2010* (Vic)
- *Occupational Health and Safety Act 2004* (Vic)
- *Public Records Act 1973* (Vic)
- *Working with Children Act 2005* (Vic)
- *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic)
- *Local Government Act 1989*.
- *Privacy Act 1988* (Cth)