

Health Records Policy

Policy Number:	2018/02	Directorate:	Corporate Services
Approval by:	EMT	Responsible Officer:	Manager – Governance & Strategy
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1. Purpose

The main purpose of this policy is to assist Council and staff in meeting their obligations under the Health Records Act 2001 (the Act) with regards to the collection, management, and disclosure of health information.

2. Context

The Health Act came into force on 1 July 2002 and governs the handling of health information by both public and private sector entities.

The main purposes of the Act are:

- protecting the privacy of an individual's health information that is held in the public and private sectors;
- providing individuals with a right of access to their health information; and
- providing an accessible framework for the resolution of complaints regarding handling of health information

Knox City Council (Council) believes that the responsible handling of health information is essential to good corporate governance and is strongly committed to achieving compliance with the purpose of the Act and the Health Privacy Principles (HPP's).

Council currently holds health information in a number of functional areas including:

- Family & Children's Services
- Youth, Leisure & Cultural Services
- Active Ageing and Disability Services
- City Safety and Health
- People and Performance

3. Scope

This policy applies to all Councillors, officers, contractors and volunteers of Knox City Council.

This policy applies to all health information held by Council, including information sourced by Council from third parties.

4. References

4.1 Community & Council Plan 2017-2021

- Goal 8 – We have confidence on decision making

4.2 Relevant Legislation

- Health Records Act 2001

4.3 Charter of Human Rights

- This policy has been assessed against and complies with the charter of Human Rights.

4.4 Related Council Policies

- Nil

4.5 Related Council Procedures

- Nil

5. Definitions

Health Information	means information or an opinion about the physical, mental, psychological health of an individual, disability of an individual or a health service provided or to be provided to an individual where that information is also personal information. It also includes other personal information that is collected to provide or in providing a health service. This can include, but is not limited to, such information as an individual's: <ul style="list-style-type: none"> • MCH file notes and records; • list of attendees at immunisation sessions; • requests for home support; or • request for a disabled parking permit
Health Privacy Principles	means a set of principles that regulate how health information is collected, held, managed, used, disclosed or transferred by an organisation.
Health Services	means an activity that is intended or claimed to assess, maintain or improve an individual's health, to diagnose the individual's illness, injury or disability or to treat an individual's illness, injury or disability.
Health Services Provider	means an organisation that provides a health service in Victoria to the extent that it provides a service but does not include those providers specifically exempted for the purposes of the Act
Identifier	means a number or code that is assigned to someone's record to assist with identification (similar to a drivers licence number).
Primary Purpose	means the purpose(s) for which an individual's health information was collected.
Secondary Purpose	means a purpose(s) directly related to the primary purpose; or where an individual would reasonably expect Council to use or disclose their health information

6. Council Policy

It is the policy of Council that health information is collected, held, managed, used, disclosed or transferred in accordance with the 11 Health Privacy Principles contained in the Act.

6.1 Principle 1 – Collection

Council must only collect an individual's health information if it is necessary to complete one of its core functions or activities. 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 necessary to provide a health service to the individual and the individual is incapable of giving consent and it is not reasonably practicable to obtain the consent of an authorised individual; or
- it is necessary to prevent or lessen a serious 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.

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

At or before the time of collection, Council will take reasonable steps to inform the individual:

- who is collecting the information and how to contact them;
- the fact that he or she is able to gain access to the information;
- the purposes for which the information is collected;
- to whom Council will disclose the information;
- any law that requires Council to collect the information; and
- the main consequences (if any) for the individual if all or part of the information is not provided

All Council forms that collect health information must include a privacy statement based on the following notification:

The health information requested on this form is being collected by Knox City Council (Council) for the purpose of {describe purpose, must name the legislation requiring collection if applicable}. The health information will be used by Council for that primary purpose or directly related purposes. The health information collected {1} will not be disclosed unless permitted or required by law {or 2} may be disclosed to {advise any anticipated disclosure to third parties and will not otherwise be disclosed unless permitted or required by law}. If the information is not collected {specify consequences}. Requests for access to and/or amendment of your health information should be made to Council's Freedom of Information Officer.

If personal information is given in confidence to a health service provider about an individual by a third party it must be recorded that the information has been given in confidence.

6.2 Principle 2 – Use and Disclosure

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

In the majority of instances, Council will only use or disclose health information for the primary purpose for which it was collected. Council may also use or disclose health information for a directly related secondary purpose the individual would reasonably expect.

If the use or disclosure of an individual's health information is not directly related to the primary purpose then Council must first obtain the consent of the individual (or authorised representative), unless the use or disclosure is required by or permitted under law.

The Act does permit Council to use and disclose health information without consent in the following situations:

- where 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 reasonable practicable to obtain consent from an authorised representative;
- where 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; and
- 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 and the purpose of the research cannot be achieved without the disclosure of the information;
- Council reasonably believes that it is necessary to prevent or lessen a serious threat to the life, health, safety of welfare of someone, or a serious threat to public health, public safety or public welfare.

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

- 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 the sufficient maturity to receive the information.

6.3 Principle 3 – Data Quality

Council will take reasonable steps to ensure that the health information it collects, holds, uses or discloses is accurate, complete, up to date and relevant to its functions or activities.

6.4 Principle 4 – Data Security and Data Retention

Council will take all necessary steps to ensure that health information is stored safely and securely and thus protected from misuse, loss and unauthorised modification and disclosure.

Council, as a health service provider, 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 whichever is the latter-
 - in the case of health information collected while the individual was a child, after the individual turns 25 years; or
 - more than 7 years after the last occasion on which a health service was provided to the individual by Council.

6.5 Principle 5 – Openness

This document details Council's management of health information.

On request, Council will inform an individual if it holds any health information about them. Council will advise the individual, in general terms, the nature of the information, the purpose for which it was used and how Council collects, holds, uses and discloses the information.

6.6 Principle 6 – Access and Correction

Individuals have a right to ask for access to their health information and seek corrections if they believe a record to be inaccurate or incomplete.

Requests for access to, and correction of, documents containing an individual's health information are generally managed under the Freedom of Information Act 1982 (FOI Act).

Requests under the FOI Act must be made in writing and state, as precisely as possible, what information is required or requested to be corrected.

When a request for correction is received by Council all reasonable steps will be made to notify the requestor of the decision within 30 days of the request being received. If the access to, or correction of, health information is denied Council must provide reasons for this decision in writing.

6.7 Principle 7 – Unique Identifiers

Council will not assign, adopt, use, disclose or require unique identifiers from individuals unless it is reasonably necessary to enable Council to carry out any of its functions more efficiently.

6.8 Principle 8 – Anonymity

Where it is both lawful and practicable, Council will give an individual the option of not identifying themselves when supplying information or entering into transactions with it.

Anonymity may limit Council's ability to process a complaint or offer a service. If an individual chooses to not supply personal information that is necessary for Council to perform its functions then Council has the right to take no further action on the matter.

6.9 Principle 9 – Trans-border Data Flows

Council may transfer health information about an individual to another individual or organisation outside Victoria only in the following instances:

- the recipient of the information is subject to a law binding scheme or contract with similar principles as the Act;
- the individual has provided consent;
- disclosure is authorised by law;
- 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 Health Privacy Principles; or
- all of the following apply:
 - the transfer is for the benefit of the individual;
 - it is impracticable to obtain the consent of the individual to transfer;
 - if it were practicable to obtain that consent, the individual would be likely to give it

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

If Council discontinues a health service it provides it will place a notice in a newspaper that circulates in the locality of the practice of business.

The notice will advise that the practice or business has been, or is about to be, sold, transferred or closed down. It will also detail how Council proposes to deal with the health information held by the practice or business. Retention of health information will be dependent on Council's obligations under the Public Records Act 1973.

6.11 Principle 11 – Making Information available to another health service provider

If an individual requests a Council operated health service provider to make health information relating to them available to another health service provider, 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.

6.12 Third Party Contractors Bound by Act

Council provides some services through third party contractors. Where a contractor breaches the HPPs the Council will be held responsible, unless the contractor has agreed to be bound by the HPPs in an enforceable contract with the Council.

For this reason all new contracts should include a provision ensuring that third party contractors, including subcontractors to them, are bound by the HPP's in the same way and to the same extent as Council. To assist with compliance the contractor must be alerted to this policy.

6.13 Complaints

Individuals may make a complaint under the Act to the Health Complaints Commissioner.

Please be aware, however, that the Health Complaints Commissioner can decline to entertain a complaint if the individual has not first complained to the Council. All complaints should go to Council's Chief Privacy Officer.

7. Administrative Updates

From time to time, circumstances may change leading to the need for minor administrative changes to this policy. Where an update does not materially alter this policy, such a change may be made administratively. Examples of minor administrative changes include changes to names of Council departments or positions, change to names of Federal or State Government departments or a minor amendment to legislation that does not have material impact. Where any change or update may materially change the intent of this policy, it must be considered by Chief Executive Officer.