

Health Records

Policy Number: 2018/02	Directorate: Customer and Performance
Approval by: Chief Executive Officer	Responsible Officer: Manager Governance & Risk
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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* with regards to the collection, management, and disclosure of health information.

2. Context

The Health Records Act 2001 (the Act) 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

3. Scope

This policy applies to all:

- Councillors, Council staff, contractors and volunteers of Council.
- Health information held by Council, and includes information we have collected:
 - About a member of the public through any of Council’s public interfaces.
 - From a member of the public.
 - Information sourced by Council from third parties.
 - About a member of the public.

The above includes any Health information, regardless of the format, collected on forms, in person, in correspondence, over the telephone or via our website.

4. References

4.1 Community & Council Plan 2021-2025

- Ensure our processes are transparent and decisions are accountable.

4.2 Relevant Legislation

- *Health Records Act 2001*
- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020*
- *Privacy and Data Protection Act 2014*
- *Public Records Act 1973*
- *Freedom of Information Act 1982*
- *Child Wellbeing and Safety Act 2005*
- *Child Wellbeing and Safety (Information Sharing) Regulations 2018*

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

Visual Surveillance Devices Policy

Information Management Security Policy

Records Management Policy

- Privacy and Data Protection Policy and Procedure

4.5 Related Council Procedures

- Data Breach Process

5. Definitions

Detail any definitions within the policy.

Council	means Knox City Council, whether constituted before or after the commencement of this Policy.
Individual(s)	means a resident(s) of the public.
Community Group(s)	means a legal entity who provide services, support or activities to the Knox community.
Health Information	Unless otherwise prescribed in the Health Records Act 2001 (The Act), means

- (a) information or an opinion about—
 - (i) the physical, mental or psychological health (at any time) of an individual; or
 - (ii) a disability (at any time) of an individual; or
 - (iii) an individual's expressed wishes about the future provision of health services to him or her; or
 - (iv) a health service provided, or to be provided, to an individual— that is also personal information; or
- (b) other personal information collected to provide, or in providing, a health service; or
- (c) 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
- (d) 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— but does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of this Act generally or for the purposes of specified provisions of the Act.

Health Privacy Principles	means the set of principles that regulate how health information is collected, held, managed, used, disclosed or transferred by an organisation as prescribed in the Health Records Act 2001.
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Health Services	<p>Unless otherwise prescribed in the Health Records Act 2001 (the Act), means:</p> <ul style="list-style-type: none"> (a) 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"> (i) to assess, maintain or improve the individual's health; or (ii) to diagnose the individual's illness, injury or disability; or (iii) to treat the individual's illness, injury or disability or suspected illness, injury or disability; or (b) a disability service, palliative care service or aged care service; or (c) the dispensing on prescription of a drug or medicinal preparation by a pharmacist registered under the Health Practitioner Regulation National
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Law; or

(cb) 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 practice in the pharmacy profession (other than as a student); or

(cc) 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

(d) a service, or a class of service, provided in conjunction with an activity or service referred to in paragraph (a), (b), (c), (cb) or (cc) that is prescribed as a health service— but does not include a health service, or a class of health service, that is prescribed as an exempt health service for the purposes of the Act generally or for the purposes of specified provisions of the Act or to the extent that it is prescribed as an exempt health service;

Health Services Provider	<p>Unless otherwise prescribed in the Health Records Act 2001 (the Act), means:</p> <p>an organisation that provides a health service in Victoria to the extent that it provides such a service but does not include a health service provider, or a class of health service provider, that is prescribed as an exempt health service provider for the purposes of the Act generally or for the purposes of specified provisions of this Act or to the extent that it is prescribed as an exempt health service provider</p>
Identifier	<p>means a number or code that is assigned to someone’s record to assist with identification (similar to a drivers licence number).</p>
Primary Purpose	<p>means the purpose(s) for which an individual’s health information was collected.</p>
Secondary Purpose	<p>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</p>

6. Council Policy

Protection of an individual’s health information is an integral part of Council’s commitment towards accountability and integrity in all activities and programs.

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 (HPPs) contained in the Act. The HPPs

are listed below:

<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Principle 7: Unique Identifiers • Principle 8: Anonymity • Principle 9: Trans-border 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
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The following sections of this policy are a summary of Council’s consideration of the HPPs and how they are applied to Council’s functions, services, events, and activities.

6.1 Principle 1 – Collection

For collection to be lawful, it must be done in accordance with the law. This means that Council must have the appropriate power to collect the information it is requesting and that there are no other laws prohibiting such collection.

Under sections 10(1) and 10(2) of the *Local Government Act 2020*, Council has the power do all things necessary or convenient in connection with the performance of its role (subject to limitations imposed by this or other Acts).

Before collecting any personal information, Council staff must determine the type of health information needed and ensure that all information to be collected is required for that particular function, service, event and/ or activity.

- 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 disclosed to Council in accordance with HPP 2; or
- the collection of the health information is necessary for research, or the compilation or analysis of statistics which serves a public interest. If identifiable data is required for the purposes of the research or statistical analysis Council will obtain consent, unless it is impracticable to do so; or
- it is otherwise permitted under the HPP’s and the Health Records Act; 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 of 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 defense of a legal or equitable claim.

If someone is not able to provide consent and Council needs to collect information in order to provide a

health service, all practical measures to obtain the consent of an authorised representative will be taken. Council will 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 they are able to gain access to the information;
- how Council may be contacted;
- 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 generally in accordance with the following format:

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.

6.1.1 Collection by Artificial Intelligence

Artificial Intelligence (AI) is a way for computers to perform tasks that humans normally would. While the full extent of the use of AI is still to be realised, Council is already using it to help increase efficiency.

Some of the uses may include but are not limited to:

- identifying objects
- making predictions
- translating language
- collecting information
- processing very large amounts of information

Before a decision is made to use artificial intelligence (AI) solutions to collect or use personal information, or outsource work to a third party who uses AI, a Privacy Impact Assessment (PIA) must be completed along with a security risk assessment.

These assessments will help Council to identify risks arising from either the outsourcing arrangement or the use of AI. These assessments should be reviewed throughout the term of the arrangement.

6.1.2 Third Party Contractors Bound by Act

Council provides some services through third party contractors. This may result in Council collecting health information via a contractor so Council requires that its contractors comply with the Act. 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. Model Terms should be used in contracts, Memorandums of Understanding and/or other agreements. To assist with compliance the contractor must be alerted to this policy.

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.

6.2.1 Circumstances where the Act permits disclosure

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.

6.2.2 Disclosure for a secondary purpose

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

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 and 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. A unique identifier is a number or code that is assigned to someone's record to assist with identification (for example a driver's licence number).

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 which equals the principles in the Act;
- the individual has provided consent;
- disclosure is authorised or required by law;
- the transfer is necessary for the performance of a contract between an individual and the organisation;
- it is necessary for the conclusion or performance of a contract that is in the interest of an individual and is between Council and a third party;
- 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 like 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*.

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

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

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. This may require Council to disclose health information to the contractor or for the contractor to collect, use or disclose certain health information. Council requires that its contractors comply with the Act. 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. Model Terms should be used in contracts, Memorandums of Understanding and/or other agreements. To assist with compliance the contractor must be alerted to this policy.

6.13 Complaints

Individuals dissatisfied with our services, actions, decisions or policies may make a complaint to Council and Council has a dedicated Complaints Policy that documents the procedure for how we manage such complaints.

[For](#) more information on making a complaint, search for "Complaints Policy" on Council's website or contact Council's Customer Service team on (03) 9298 8000.

Individuals may also make a complaint under the Act to the Health Complaints Commissioner, who can be contacted as follows:

Level 26, 570 Bourke Street
MELBOURNE VIC 3000
Telephone: 1300 582 113

Email: hcc@hcc.vic.gov.au

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.

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 on approval of the Director Customer and Performance. Examples of minor administrative changes include changes to names of Council departments or positions, change to names of Federal or State Government departments or changes required by 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 the Chief Executive Officer.