

POLICY

Privacy and Personal Information Protection Act 1998, Health Records and Information Privacy Act 2002, Privacy Code of Practice for Local Government and Model Privacy Management Plan

Department: All Departments
File No(s): A01.001.000, I28.002.000
Meeting Date: 19 September 2000
CR No.: 545
Minute No.: 221

Meeting Date: 16 March 2004
CR No.: 136
Minute No.: 050

Meeting Date: 19 July 2005
CR No.:
Minute No.:

KIAMA MUNICIPAL COUNCIL



POLICY

Privacy and Personal Information Protection Act 1998 (PIIPA), Health Records and Information Privacy Act 2002 (HRIPA), Privacy Code of Practice for Local Government and Model Privacy Management Plan

The Privacy and Personal Information Protection Act 1998 and the Privacy Code of Practice for Local Government commenced on 1 July 2000. The Health Records and Information Privacy Act 2002 commenced in 2004. The Acts provide for the protection of personal and health information and for the protection of the privacy of individuals. PIIPA defines personal information as follows: -

Personal information is defined to mean 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.

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 Act.

HRIPA defines health information as follows:-

- (a) Personal information that is information or an opinion about:
 - i. the physical or mental health or a disability (at any time) of an individual, or
 - ii. an individual's express wishes about the future provision of health services to him or her, or
 - iii. a health service provided, or to be provided, to an individual, 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, of an individual's body parts, organs or body substances, or

- (d) other personal information that is genetic information about an individual arising from a health service provided to the individual in a form that is or could be predictive of the health (at any time) of the individual or of any sibling, relative or descendant of the individual,

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 this Act.

Council holds personal information concerning its customers, ratepayers and residents such as:-

- Rate records;
- Development Applications; and
- Objections.

Council may use personal information for a purpose other than the purpose for which it was created in the following circumstances: -

- (i) Where the use is in pursuance of Council's lawful and proper functions and Council is satisfied that the personal information is reasonably necessary for the exercise of such function; or
- (ii) Where personal information is to be used for the purpose of conveying upon a particular person, an award, prize, benefit or similar form of personal recognition.

Council has no intention to depart from the principle otherwise than is permitted by the Act or any other privacy code of practice which may apply to Council from time to time and in the circumstances described below: -

- (1) Council may disclose personal information to public sector agencies or public utilities on the condition that:-
- (i) the agency has approached Council in writing;
- (ii) Council is satisfied that the information to be used by that agency for the proper and lawful functions of that agency; and
- (iii) Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's functions.
- (2) Where personal information which has been collected about an individual is to be disclosed for the purpose of conveying upon that person an award, prize, benefit or similar form of personal recognition.

- (3) Where a potential employer requests Council, it may verify that a current or former employee works or has worked for Council, the duration of that work and the position of the employee during that time. This exception does not permit Council to give an opinion as to the 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 which he/she has applied.
- (4) The Privacy Commissioner will allow disclosure of personal information for research purposes under a Section until such time as the research code of practice is made by the Attorney General.

Public Registers

A public register is defined in Section 3 of the PPIPA as:-

Public Register means a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).

Please note any request for information must be put in writing and include the reason for requesting the information. All requests must be approved by the General Manager or Public Officer or other senior staff member with suitable knowledge of the provisions of the Acts.

The Council holds the following public registers under the Local Government Act

- Section 53 – Land Register – Section 113 – Records of Approvals
- Section 449 – 45A Register of Pecuniary Interests

Council holds the following public registers under the Environmental Planning and Assessment Act

- Section 100 – Register of Consents and Approvals
- Section 149G – Record of Building Certificates

Council holds the following public register under the Protection of the Environment (Operations) Act

- Section 308 – Public Register of Licences held

Section 57 of the PPIPA requires very strict controls over the disclosure of personal information contained in a public register. Section 57 provides that where Council is responsible for keeping a public register it must not disclose any personal information kept in that register unless it can be satisfied that the information is to be used for a purpose relating to the purpose of the register or the Act on 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 a public register is to give particulars in the form of a statutory declaration as to the proposed use of the information. If the stated purpose of the applicant does not conform to the purpose for which the public register is kept access to the information sought will not be

given. The Model Plan suggests that Public Registers have a primary purpose or (the purpose of the Register). In other cases a secondary purpose has also been specified and is regarded as a purpose relating to the purpose of the Register.

Purposes for Public Registers under the Local Government Act

- Section 53 Land Register

The Primary purpose is to identify all land vested in Council under its control and a secondary purpose includes the consideration of public accountability as to the land held by the Council. Therefore, third party access to a secondary purpose.

- Section 113 Records of Approvals

The primary purpose is to identify all approvals granted under the Local Government Act.

- Section 450A Register of Pecuniary Interests

The primary purpose of this register is to determine whether or not a Councillor a member of Council committee has a pecuniary interest in a matter in which the Council is likely to be concerned. There is a corresponding public accountability purpose and a third party access as a secondary purpose.

- Section 602 Record of Rates and Charges

Please note the Record of Rates and Charges is not a public register under the Local Government Act 1993.

Purpose of Public Registers under the EPA 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 the public register 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.

Secondary Purpose of All Public Registers

Due to the general emphasis on Local Government processes and information being open and accountable, it is considered that a secondary purpose for which a Council holds all public registers includes the provision of access to members of the public. Therefore disclosure of specific records from public registers would normally be considered to be allowable under Section 57 of the PPIPA. However, requests for access, copying all or a substantial part of a public register held by Council will not necessarily fit within this purpose. Council should be guided by the Privacy Code of Practice for Local Government in this respect. Where Council Officers have doubts as to the intended use of the information, an applicant may be requested to provide a statutory declaration to that Council may satisfy itself as to the intended use of the information. Council will make its assessment as to the **minimum** amount of personal information that is required to be disclosed with regard to any requests. Persons or organisations who apply to Council to have access to the information contained in any public register for a purpose not related to the purpose of the register, may be given access at the discretion of Council but only in accordance with the Privacy Code of Practice for Local Government concerning public registers.

Modification to Public Registers (Modified by Privacy Code of Practice for Local Government)

A Council **MAY** allow any person to:

- i) Inspect a publicly available copy of a public register in Council premises, and
- ii) Copy a single entry or a page of the register

without requiring the person to provide a reason for accessing the register and without determining that the proposed use of the register is not consistent with the purpose of the register or the Act under which the register is kept.

In particular a Council should not require any person to provide a reason for inspecting the Council's pecuniary interest register or any register on which the Council records declarations made by Councillors or designated officers under Chapter 14 Part 2 Divisions 3 or 4 of the Local Government Act.

Requests for access, copying or sale of the whole or a substantial part of a Public Register held by Council may not necessarily fit within the purpose for which a Public Register was created. Council may therefore:

- (i) disclose by way of providing access, a copy of the whole or a substantial part of the Public Register, provided that the names and contact details are not disclosed; or
- (ii) disclose by way of providing access, a copy of the whole or a substantial part of a Public Register where Council has satisfied itself by way of statutory declaration by the person requesting the information that the information is to be used for a purpose of the Register or the Act under which the register is kept. (In this respect, Council must first determine for itself the "purpose of the Register or the Act under which the Register is kept", but may be guided by the provisions of the model Privacy Management Plan for Local Government).

With respect to both (i) or (ii) above, Council must also ensure that the provisions of section 12(1A) Local Government Act 1993 and section 149G of the Environmental Planning and Assessment Act 1979 are complied with, where applicable.

HEALTH RECORDS AND INFORMATION PRIVACY ACT 2002

The Health Records and Information Privacy Act 2002 (HRIPA). The Act encompasses all public and private providers of health services in NSW.

Health Services includes:-

- a) medical, hospital and nursing services
- b) dental services
- c) mental health services
- d) pharmaceutical services
- e) ambulance services
- f) community health services
- g) health education services
- h) welfare services necessary to implement any services referred to in paragraphs (a) – (g)
- i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, psychologists and optical dispensers in the course of providing health care.
- j) services provided by dietitians, masseurs, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers in the course of providing health care
- k) services provided in other alternative health centre fields in the course of providing health care
- l) a service prescribed by the regulations as a health service for the purposes of this Act

The purpose of the Act is to promote fair and responsible handling of health information by:-

- i) protecting the privacy of an individuals health information that is held in the public and private sectors, and
- ii) enabling individuals to gain access to their health information, and
- iii) providing an accessible framework for the resolution of complaints regarding the handling of health information.

The objects of the Act are:-

- i) to balance the public interest in protecting the privacy of health information with the public interest in the legitimate use of that information, and
- ii) to enhance the ability of individuals to be informed about their health care, and
- iii) to promote the provision of quality health services.

The Act has been initiated by the NSW Department of Health and is being monitored by Privacy NSW.

Council will need to ensure compliance with the Act in regard to the Aged Care Facility, Independent Living Units, the various Community Services Health Packages and also health information that may be forwarded to Council in respect of Workers Compensation matters etc.

All enquiries regarding information under these Acts should be referred to Council's Public Officer.