

# Privacy Policy



<b>Policy Type:</b>	Organisational
<b>Version:</b>	3.0
<b>Date Adopted:</b>	21 October 2022
<b>Service Unit</b>	Governance
<b>Directorate:</b>	Democratic Support & Corporate Governance
<b>Review Date:</b>	2024

## 1. Purpose

Moorabool Shire Council (Council) views the protection of an individual's privacy as an integral part of its commitment towards accountability and integrity in all its activities and programs. The purpose of this policy is to outline Council's commitment to protecting an individual's right to privacy and the management of personal information as required by the *Privacy and Data Protection Act 2014* as well as health information as required by the *Health Records Act 2001*.

It is also a requirement under Information Privacy Principle 5 of the *Privacy and Data Protection Act 2014* for Council to make this Privacy Policy available to the public.

This policy has been designed to create transparency around:

- Council's main functions and the types of personal information it collects to fulfil those functions.
- How Council uses and shares the personal information it collects, including which third parties the information may be shared with and any legislation that authorises or permits the organisation to collect and handle the personal information.
- How the information is stored and kept secure.
- How individuals can contact Council's Privacy Officer and make a privacy complaint.

## 2. Definitions

<b>Term</b>	<b>Definition</b>
Health Information	Information or 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 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.

# Privacy Policy



Health Privacy Principles (HPP)	The eleven principles established by the <i>Health Records Act 2001</i> that regulate how Council as a health service provider will collect, hold, manage, use, disclose or transfer health information.
Health Services	An activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the organisation performing it to: <ul style="list-style-type: none"><li>• Assess, maintain or improve the individual's health</li><li>• Diagnose the individual's illness, injury or disability</li><li>• Treat the individual's illness, injury or disability or suspected illness, injury or disability</li><li>• Provide a disability service, palliative care service or aged care service</li><li>• Dispense a prescribed drug or medicinal preparation by a pharmacist</li><li>• The sale, supply or administration of a voluntary assisted dying substance within the meaning of the <i>Voluntary Assisted Dying Act 2017</i>.</li><li>• Provide a service, or class of service, provided in conjunction with an activity or service referred to above, which is a prescribed Health Service.</li></ul>
Information Privacy Principles (IPP)	The ten principles established by the <i>Privacy and Data Protection Act 2014</i> that regulate how Council will collect, hold, manage, use, disclose or transfer personal information.
Personal (health) Information	Information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information about an individual who has been dead for more than 30 years ( <i>Health Records Act 2001</i> ).
Personal Information	Information or opinion, whether true or not and whether recorded in material form or not (including information or an opinion forming part of a database), about a living individual whose identity is apparent, or can reasonably be ascertained from the information or opinion. It does not include information of a kind to which the <i>Health Records Act 2001</i> applies.
Primary Purpose	Primary purpose is one for which the individual concerned would expect their information to be used. Using the information for this purpose would be within their reasonable expectations.
Public Registers	Documents that Council is required to make publicly available in accordance with legislation. Public registers may contain personal information and are open to inspection by members of the public.

Examples of public registers maintained by Council include a register of building permits pursuant to section 31 of the *Building Act 1993* and a register of occupancy permits and temporary approvals received by Council pursuant to section 74 of the *Building Act 1993*. Public Registers are documents that Council is required to make publicly available pursuant to legislation. These registers:

- Are open to inspection by members of the public.
- contain information required or permitted by legislation.
- May contain personal information.

**Secondary Purpose** Secondary purpose may or may not be apparent to the individual concerned, or within their reasonable expectations. Collecting the information may be mandatory (because required by law) or optional. The main distinction is that the service could still be provided even if the secondary purpose were not served.

**Sensitive Information** Information or opinion about an individual's ethnic origins, religious beliefs, political opinions or association, philosophical beliefs, members of professional association or trade union, sexual preferences or practices and criminal record.

### 3. Scope

The policy applies to all personal and health information which is collected, used and disclosed by any area of Council. All employees (whether full-time, part-time or casual), Councillors, contractors and volunteers engaged by Council are required to adhere to this policy.

The object of this policy is to ensure when personal and health information is collected it is stored appropriately, and an individual's privacy is maintained in accordance with the *Privacy and Data Protection Act 2014*, the *Health Records Act 2001* and other applicable legislation.

The policy covers all personal and health information held by Council and includes information it has collected:

- About the individual, through any of Council's public access interfaces
- From the individual
- About the individual collected from third parties
- About the individual, regardless of format

This includes information collected on forms, in person, in correspondence, over the telephone, via Closed Circuit Television (CCTV) or via our various web sites including social media.

### 4. Non-Compliance

Violations of this policy may lead to disciplinary action, including dismissal, and/or action by the relevant authorities.

The Victorian Information Commissioner may also serve a compliance notice on Council if it appears that Council has done an act or engaged in a practice in contravention of an Information Privacy Principle.

#### 4.1 Penalties for non-compliance with a compliance notice

Under section 83C of the *Privacy and Data Protection Act 2014* persons are required to comply with notices issued by the Victorian Information Commissioner. Failure to comply with such notice may result in the following penalties:

- Individuals – 600 penalty units (\$110,952 as of July 2022)
- Corporations – 3000 penalty units (\$554,760 as of July 2022)

## 5. Policy

### 5.1 Types of Information Council Collects

Type	Description
Health Information	<p>Health information is any information or opinion about an individual's physical, mental, or psychological health, health services, disabilities, organ donation, and genetic information, as well as any personal information supplied for the purpose of obtaining a health service. Health information includes for example, but not limited to:</p> <ul style="list-style-type: none"><li>• Record of injury or disability</li><li>• Immunisation records</li><li>• Maternal and child health records</li><li>• Workcover records</li><li>• Fitness charts (e.g. Gyms)</li></ul>
Personal Information	<p>Personal Information is 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 (including information or an opinion forming part of a database), 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</i> applies. Personal information includes for example, but not limited to:</p> <ul style="list-style-type: none"><li>• Name</li><li>• Address</li><li>• Telephone number</li><li>• Date of birth</li><li>• Age</li><li>• Sex</li><li>• Marital status</li><li>• Financial information</li><li>• Photographs/images or footage</li></ul>

- Sensitive Information**      Sensitive information is personal information or an opinion about an individual's:
- Race or ethnic origin
  - Political opinions
  - Membership of a political association
  - Religious beliefs or affiliations
  - Philosophical beliefs
  - Membership of a professional trade association
  - Membership of a trade union
  - Sexual preferences or practice
  - Criminal record

## 5.2 Management of Personal Information

Unless required under specific legislation related to a particular service, it is the policy of Council that personal information is managed in accordance with the 10 Information Privacy Principles (IPPs) as stipulated in Schedule 1 of the *Privacy and Data Protection Act 2014*. Council manages health information in accordance with the 11 Health Privacy Principles (HPPs) as stipulated in Schedule 1 of the *Health Records Act 2001*.

While the IPP's and HPP's are strongly aligned, HPP10 and HPP11 have some key differences and are therefore listed separately below. Several Departments within Council collect health information including:

- Maternal and Child Health
- Child, Youth and Family Services
- Community Recreation and Leisure

## 5.3 Privacy Principles

<b>Information Privacy Principles (IPP)</b>	<b>Health Privacy Principles (HPP)</b>
1 Collection	1 Collection
2 Use and Disclosure	2 Use and Disclosure
3 Data Quality	3 Data Quality
4 Data Security	4 Data Security and Data Retention
5 Openness	5 Openness
6 Access and Correction	6 Access and Correction
7 Unique Identifiers	7 Identifiers
8 Anonymity	8 Anonymity
9 Trans Border Data Flows	9 Trans Border Data Flows
10 Sensitive Information	10 Sensitive Information
	11 Making information available to another Health Service Provider

## 5.4 Principles 1 – Collection of Personal Information

Council will only collect personal information necessary for the functions or activities of Council. If Council is required to collect personal information, it will only be collected by lawful and fair means and not in an unreasonably intrusive way. If it is reasonable and practicable to do so, personal

information will be collected directly from an individual, however there are situations where Council may need to collect an individual's information from someone else.

When collecting personal information, Council will take reasonable steps to advise the individuals concerned of what information is being collected, for what purpose, whether the law requires the collection of the information and the main consequences, if any, of not providing the information. If Council are collecting information in hard copy or online, notice will be provided at the time of collection.

Photographs and CCTV are at times taken on Council's premises and in public places. The photographs or video footage may be used by Council for publicity or for enforcement purposes.

Where practicable, consent will be obtained through a photo release and permission form. When photographs are taken in a public space (e.g. during a community event) and obtaining the individual consent via the forms is not practicable, Council will use other methods to inform members of the public that photographs, or CCTV are being taken and how they will be used including signs or a public announcement. These methods will inform the individual that the footage may be taken, and the individual has the opportunity to approach and advise Council officers or the photographer that they do not want the photos or footage to be used.

## 5.5 Principle 2 - Use and Disclosure

Council will not use or disclose individual's personal information other than for the primary purpose for which it was collected unless one of the following apply:

- For a secondary purpose that the individual would reasonably expect;
- Where we have the individual's consent; or
- Law enforcement purposes and to protect safety.

In addition to the above, there are circumstances in which Council can disclose information to third parties without consent as legislated in:

- Child Information Sharing legislation - *Part 6A of the Child Wellbeing and Safety Act 2005*;
- Family Violence Information Sharing legislation - *Part 5A of the Family Violence Protection Act 2008*; and
- *Responsibilities under the Children, Youth and Families Act 2005*.

Council discloses personal information to external organisations such as Council's contracted service providers who perform various services for and on behalf of the Council. These contractors have agreed to be bound by the provisions of the *Privacy and Data Protection Act 2014*. Information provided to these contractors is limited to the information required by them to provide services to the individual on behalf of Council.

Personal information in applications for employment with Council will be supplied to agencies such as Victoria Police, as part of a background check. Such checks will only be carried out with the individual's written authorisation and the results will not be disclosed to third parties unless authorised by law.

Personal information provided by individuals as part of a public submission to a Council or committee meeting may be included with the published agenda papers and minutes of the meeting. The

published agenda papers and minutes are displayed online and available in hardcopy format for an indefinite period.

Personal information may also be contained in Council's Public Registers. Under s224(1)A of the Local Government Act 1989 and sections 11, 47 and 137 of the *Local Government Act 2020*, any person is entitled to inspect Council's Public Registers, or make a copy of them, upon payment of the relevant fee if applicable.

Council will ensure that an individual's personal information is not disclosed to other institutions and authorities outside Council except if required or authorised by law or where Council have the individual's consent.

## **5.6 Principle 3 – Data Quality**

Council will take reasonable steps to make sure that the personal information it collects, uses or discloses, is accurate, complete and up to date and does not give a misleading impression.

## **5.7 Principle 4 – Data Security and Data Retention**

Council will take all necessary steps to ensure that personal information is stored safely and securely to protect from misuse, loss, and unauthorised modification and disclosure in accordance with Council's Cyber Crime and Security Incident Policy and Access Control Policy.

Any personal information that an individual provides to Council, which is no longer necessary for Council's purposes, will be disposed of in accordance with the document disposal requirements of the *Public Records Act 1973*.

## **5.8 Principle 5 – Openness**

On request, Council must inform an individual, in general terms, of what information it holds on the individual, for what purpose this information is held and how the information is collected, held, used and disclosed.

Council's Privacy Policy is available on Council's website and upon request by contacting a member of the Customer Service Team on 03 5366 7100 or via e-mail at [info@moorabool.vic.gov.au](mailto:info@moorabool.vic.gov.au).

## **5.9 Principle 6 – Access and Correction**

Requests for access to and correction of documents containing personal information are generally managed under the *Freedom of Information Act 1982*.

Further information about submitting a request under the *Freedom of Information Act 1982* can be found in Council's Freedom of Information Part II Statement, which is available on Council's website and upon request by contacting a member of the Customer Service Team on 03 5366 7100 or via e-mail at [info@moorabool.vic.gov.au](mailto:info@moorabool.vic.gov.au).

## **5.10 Principle 7 – Identifiers**

An identifier is a number or code that is assigned to someone's record to assist with identification (similar to a driver's licence number).

Council will only assign identifiers to records if it is necessary to enable Council to carry out a function efficiently. The only exception is Maternal Child Health clients who are assigned a unique identifier by the state-wide system, managed by the Department of Health, – Child Development Information System (CDIS). This health record identifier does not nor cannot link to any Council identifier systems for purpose of any other Council business activity.

Council currently applies unique identifiers in the form of reference numbers allocated in relation to:

- Child and Family Services
- Customer requests
- Debtors
- Incoming, outgoing and internal documentation, mail and communication
- Property management
- Dog and cat registrations
- Disabled parking permits
- Cat trap booking

## **5.11 Principle 8 – Anonymity**

Council will, where it is lawful and practicable, give individuals the option of not identifying themselves when entering into transactions with Council. However, as anonymity may limit Council's ability to process a complaint or other matter, Council reserves the right to take no action on any matter if an individual chooses not to supply relevant personal information so that it can perform its functions.

For some services such as Maternal and Child Health or Immunisation, individuals cannot remain anonymous as it is a legal requirement under the Child Wellbeing and Safety Act 2005, the Children, Youth and Families Act 2005 and the Australian Immunisation Register Act 2015.

## **5.12 Principle 9 – Trans Border Data Flows**

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

- Council reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the Information Privacy Principles; or
- The individual consents to the transfer; or
- The transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of precontractual measures taken in response to the individual's request; 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 that transfer.
  - if it were practicable to obtain that consent, the individual would be likely to give it; or



- The organisation 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 IPPs.

## 5.13 Principle 10 – Sensitive Information

Subject to exclusions contained within the *Privacy and Data Protection Act 2014*, Council will not collect sensitive information about an individual unless:

- The individual has consented; or
- The collection is required under law; or
- The collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns
  - is physically or legally incapable of giving consent to the collection; or
  - physically cannot communicate consent to the collection; or
- The collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

In addition to the above, there are circumstances in which Council can collect information from third parties without consent as legislated in:

- Child Information Sharing legislation – *Part 6A of the Child Wellbeing and Safety Act 2005*;
- Family Violence Information Sharing legislation – *Part 5A of the Family Violence Protection Act 2008*; and
- *Responsibilities under the Children, Youth and Families Act 2005*.

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

This principle applies if the practice or business of a health service provider (the provider) is to be:

- Sold or otherwise transferred and the provider will not be providing health services in the new practice or business; or
- Closed down.

If the above is to occur, Council will publish that the practice or business has been, or is about to be, sold, transferred or closed down, as the case may be. Council will also publish the manner in which it proposes to deal with the health information held by the practice or business about individuals who have received health services from the provider, including whether the provider proposes to retain the information or make it available for transfer to those individuals or their health service providers.

No earlier than 21 days after Council publishes the above information, Council must elect to retain or transfer information to either the health services provider, if any, who takes over the practice or business, or the individual or health service provider nominated by the individual.

Despite any other provisions of the Health Privacy Principles, a person who transfers health information in accordance with this principle does not, by doing so, contravene the Health Privacy Principles.

## **5.15 Health Privacy Principle 11 – Making Information Available to Another Health Service Provider if an individual:**

If an individual:

- Requests a health service provider to make health information relating to the individual held by the provider available to another health service provider; or
- Authorises another health service provider to request a health service provider to make health information relating to the individual held by that provider available to the requesting health service provider.

A health service provider to whom the request is made and who holds the information about the individual must, on payment of a fee not exceeding the prescribed maximum fee and subject to the regulations, provide a copy or written summary of that health information to that other health service provider.

Council must comply with the requirements of this Principle as soon as practicable.

## **6. Exemptions**

The *Privacy and Data Protection Act 2014* does not apply to:

- Publicly available information, including a publication that is generally available, information kept within a library, art gallery or museum, or public record under the *Public Records Act 1973*, archives within the Copyright Act 1968.
- Information kept on public registers i.e. Building Permit Register, Domestic Animals Register, Register of Pecuniary Interests, Prescribed Matters Register.
- Certain information may be given to law enforcement agencies if it is believed necessary for the purposes of law enforcement functions or activities.
- Personal information relating to deceased persons.

Within Council, the *Health Records Act 2001* does not apply to:

- All points listed above except for personal information relating to deceased persons. The *Health Records Act 2001* does not apply to deceased persons 30 years after their death.
- Health information can be accessed through the *Freedom of Information Act 1982*.

## **7. Privacy Breaches and Complaints**

Council Officers upon becoming aware of a potential breach of this will notify their supervisor as soon as reasonably practicable. The supervisor will follow internal policy and procedural requirements.

If an individual is concerned about the management of their personal, health or confidential information, including any known or potential breaches they can make a complaint to Council's Privacy Officer:

Privacy Officer, Moorabool Shire Council, 15 Stead Street or PO Box 18, Ballan Victoria 3342  
Email: [info@Moorabool.vic.gov.au](mailto:info@Moorabool.vic.gov.au)

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Complaints will be investigated and dealt with in accordance with Council's Complaints Handling Policy and Procedure. Alternatively, individuals may make a complaint directly to:

<i>Victorian Information Commissioner</i>	<i>or</i>	<i>Health Complaints Commissioner</i>
<i>PO Box 24274</i>		<i>Level 26</i>
<i>Melbourne, Victoria 3001</i>		<i>570 Bourke Street</i>
<i>Telephone: 1300 006 842</i>		<i>Melbourne, Victoria 3000</i>
<i>Email: enquiries@ovic.vic.gov.au</i>		<i>Telephone: 1300 582 113</i>

Note: These offices may decline to hear the complaint if the individual has not first made a complaint to Council.

## 8. External Contractors

While personal and/or health information is usually only handled by Council Officers, Council may outsource some of its functions to third parties e.g. a contractor (a person or body which provides service under a contract to Council). This may require the contractor to collect, use or disclose certain personal and/or health information (e.g. garbage collection and recycling, meals service).

Contractors are contractually obliged to comply with the requirements of the legislation in all respects.

Council's contract agreements include the following statement regarding privacy:

*The Contractor is bound by the Information Privacy Principles contained in the Privacy and Data Protection Act 2014 (Vic) in respect of any act done, or practice engaged in, by the Contractor for the purposes of this Agreement in the same way and to the same extent that Council would have been bound by them in respect of that act or practice had it been directly done or engaged in by Council.*

## 9. Responsibilities

### 9.1. Compliance, Monitoring and Review

The policy will be reviewed to ensure it:

- Aligns with all relevant legislation, government policy and Council's requirements / strategies / values.
- Is implemented and monitored (i.e. the policy is followed, reflects the changing policy environment, and emerging issues are identified); and
- Evaluates its continuing effectiveness (e.g. achieving its purpose, remains relevant/current).

### 9.2. Reporting

Council is required to investigate and report privacy breaches within the requirements specified by the Office of the Victorian Information Commissioner (OVIC) and the Office of the Australian Information Commissioner (OAIC).

Performance and conformance against the Privacy Policy, including the number of privacy complaints and breaches, will be reported to Council's Audit and Risk Committee, Executives and Councillors on a quarterly basis.

The Privacy Officer will provide a summary of all privacy related issues raised during the year, including comparative information for the prior two years, to the Executive Manager, Democratic Support and Corporate Governance on an annual basis.

The Privacy Officer will review and provide a report on key privacy controls and processes used to assist in ensuring compliance with privacy legislation, including their effectiveness, to the Executive Manager, Democratic Support and Corporate Governance on an annual basis.

The Privacy Officer will keep and maintain privacy related registers, including privacy breaches.

### **9.3. Records Management**

Council must maintain all records relevant to administering the *Privacy and Data Protection Act 2014*, the *Health Records Act 2001* and this procedure in accordance with the *Public Records Act 1973*.

This includes lawfully destroying records which have reached their minimum retention period under an applicable Public Record Office Retention and Disposal Authority in a timely manner.

## **10. Related Legislation**

*Education and Care Services National Law Act 2010*  
*Education and Care Services National Regulations 2011*  
*Equal Opportunity Act 2010*  
*Fences Act 1968*  
*Freedom of Information Act 1982*  
*Health Records Act 2001*  
*Local Government (General) Regulations 2015*  
*Local Government Act 2020*  
*National Quality Standard (ACECQA) 2018*  
*Part 6A of the Child Wellbeing and Safety Act 2005*  
*Part 5A of the Family Violence Protection Act 2008*  
*Privacy Act 1988*  
*Privacy and Data Protection Act 2014*  
*Public Records Act 1973*  
*Responsibilities under the Children, Youth and Families Act 2005*  
*Victorian Charter of Human Rights and Responsibilities Act 2006*  
*Working With Children Act 2005*

## **11. Related Council Documents**

Staff and Councillor Codes of Conduct  
Complaints Handling Policy  
Records Management Policy  
Counselling and Disciplinary Action Policy  
Cyber Crime and Security Incident Policy

# Privacy Policy



## 12. Council Plan Reference

Objectives	Providing good governance and leadership
Contest	Our people Our business and systems

## 13. Review

As a minimum this policy will be reviewed every second year.

## 14. Approval

This policy will come in effect once signed by the CEO.

A handwritten signature in blue ink, appearing to read "D. Madden", is written over a light blue circular stamp.

**Derek Madden**  
**Chief Executive Officer**

21 October 2022