

KEMPSEY SHIRE COUNCIL

HEALTH RECORDS AND INFORMATION PRIVACY

Procedure 5.3.4

Policy No. and Title	5.3	Access to Information Policy
Procedure	5.3.4	Health Records and Information Privacy
Version	1	
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1 Overview

On 1 July 2004 a new health privacy law commenced in NSW. The Health Records and Information Privacy Act 2002 (HRIP Act) regulates how public and private sector organisations in NSW collect and handle health information. The HRIP Act applies to organisations that are health service providers, or that collect, hold or use health information.

The objects of the HRIP Act are to:

- Balance the public interest in protecting the privacy of health information with the public interest in the legitimate use of that information.
- Enhance the ability of individuals to be informed about their health care.
- Promote the provision of quality health services.

What is health information?

'Health information' is a specific type of personal information. Health information includes information or an opinion about the physical or mental health or a disability of an individual. It can include information about a health service provided, the donation of human tissue, or genetic information about a family member and so on. As Council is a health service provider, 'health information' includes all of the above plus any other personal information collected to provide a health service.

2 15 health privacy principles

Schedule 1 of the HRIP Act contains 15 health privacy principles (HPPs). The 15 HPPs are the key to the HRIP Act. They are legal obligations that describe what organisations must do when they collect, store, and use or disclose health information.

If a person believes that a public sector agency may have breached any of the 15 HPPs when handling their information, they have a right to seek an internal review by the agency. Remedies are enforceable on appeal to the Administrative Decisions Tribunal.

3 Introduction

The HRIP Act commenced on 1 July 2001.

Most organisations already have experience with privacy. NSW public sector agencies have been covered by the *NSW Privacy and Personal Information Protection Act 1998* (the PPIP Act) since 1 July 2000. Most NSW private sector

organisations have been covered by the Commonwealth *Privacy Act 1988* since 21 December 2001. As Council already complies with the existing privacy laws, the HRIP Act does not impose any significant additional obligations.

However the HRIP Act does provide more detailed rules on the way Council handles health information. This publication explains seven steps that we can go through to help prepare for the HRIP Act.

Step 1: The meaning of 'health information'

'Health information' is a specific type of personal information. It is defined in section 6 of the HRIP Act. It includes personal information that is information or an opinion about:

- The physical or mental health or a disability of an individual.
- An individual's express wishes about the future provision of health services to him or her.
- A health service provided, or to be provided, to an individual.
- Other personal information collected in connection with the donation of human tissue.
- Genetic information that is or could be predictive of the health of an individual or their relatives or descendants.
- Any other personal information collected to provide, or in providing a health service.

4 The Health Privacy Principles (HPPs) summary for organisations

4.1 Collection

- a) Lawful – only collect health information for a lawful purpose. Only collect health information if it is directly related to the organisation's activities and necessary for that purpose.
- b) Relevant – ensure that the health information is relevant, not excessive, accurate and up to date. Ensure that the collection does not unreasonably intrude into the personal affairs of the individual.
- c) Direct – only collect health information directly from the person concerned, unless it is unreasonable or impracticable to do so. See the Handbook to Health Privacy for an explanation of 'unreasonable' and 'impracticable'.
- d) Open – inform the person as to why you are collecting health information about them, what you will do with the health information, and who else might see it. Tell the person how they can see and correct their health information and any consequences if they decide not to provide their information to you.

If you collect health information about a person from someone else, you must still take reasonable steps to ensure that the person has been notified as above.

4.2 Storage

- e) Secure – ensure that health information is stored securely, not kept any longer than necessary, and disposed of appropriately. Information should be protected from unauthorised access, use or disclosure.

4.3 Access and accuracy

- f) Transparent – explain to the person what health information about them is being stored, why it is being used and any rights they have to access it.
- g) Accessible – allow people to access their health information without unreasonable delay or expense.
- h) Correct – allow people to update, correct or amend their health information where necessary.
- i) Accurate – ensure that the health information is relevant and accurate before using it.

4.3 Use

- j) Limited – only use health information for the purpose for which it was collected, or a directly related purpose that the person would expect. Otherwise, you generally need their consent.

4.4 Disclosure

- k) Limited – only disclose health information for the purpose for which it was collected, or a directly related purpose that the person would expect. Otherwise, you generally need their consent.

4.5 Identifiers and anonymity

- l) Not identified – only identify people by using unique identifiers if it is reasonably necessary to carry out your functions efficiently.
- m) Anonymous – give people the option of receiving services from you anonymously, where this is lawful and practicable.

4.6 Transferrals and linkage

- n) Controlled – only transfer health information outside NSW in accordance with HPP 14.
- o) Authorised – people must expressly consent to participate in any system that links health records across more than one organisation. Only include health information about them, or disclose their identifier for the purpose of the health records linkage system, if they have expressly consented to this.

5 Purposes of collection of health information

Council will collect by lawful means, health information that is directly related to a function or activity of the organisation and is reasonably necessary for that purpose.

6 Information must be relevant, not excessive, accurate and not intrusive

Council shall take such steps as are reasonable in the circumstances to ensure that the information is not excessive and is accurate, up to date and complete, and does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.

7 Collection to be from individual concerned

Council shall collect health information about an individual only from that individual, unless it is unreasonable or impracticable to do so and such information is to be collected in accordance with any guidelines issued by the Privacy Commissioner. In the case of children, information may also be collected from their parents or guardians.

8 Individual to be made aware of certain matters

Council when collecting health information about an individual must, at or before the time it collects the information take steps that are reasonable in the circumstances to ensure that the individual is aware of how to contact Council to request access to the information and the purposes for which the information is collected.

Council is also required to disclose the persons to whom the organisation usually discloses information of that kind, any law that requires the particular information to be collected, and the main consequences (if any) for the individual if all or part of the information is not provided.

If Council collects health information about an individual from someone else, it must take reasonable steps to ensure that the individual is generally aware of the matters listed above unless making the individual aware of the matters would pose a serious threat to the life or health of any individual. This may include disclosures of information relating to children protection and abuse matters to the Department of Community Services. The disclosure of this type of information is governed by Council's Child Protection Policy.

9 Retention and security

Council must ensure that the information is kept for no longer than is necessary and is disposed of securely and in accordance with any requirements for the retention and disposal of health information. It shall ensure it is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and everything reasonably within the power of the organisation is done to prevent unauthorised use or disclosure of the information.

10 Health information held by Council

Council shall take reasonable steps, to enable any individual to ascertain whether the organisation holds health information, whether it relates to that individual, and if so:

- a) The nature of that information.
- b) The main purposes for which the information is used.
- c) That person's entitlement to request access to the information.

11 Access to health information

Council shall, when requested by the individual concerned and without excessive delay or expense, provide the individual with access to the information.

12 Amendment of health information

Council shall, at the request of the individual to whom the information relates, make appropriate amendments to ensure that the health information is accurate, and having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.

If Council is not prepared to amend health information in accordance with a request by the individual it must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, any statement provided by that individual of the amendment sought.

If health information is amended in accordance with this clause, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the Council.

13 Accuracy

Council shall not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.

14 Limits on use of health information

Council shall not use the information for a secondary purpose unless:

- a) The individual has consented to the use of the information for that purpose, or the individual would reasonably expect it to be used for that purpose, or the use of the information is reasonably believed to be necessary to lessen or prevent: a serious and imminent threat to the life, health or safety of the individual or an act that threatens public safety.
- b) The use of the information for the purpose is reasonably necessary for the funding, management, planning or evaluation of health services and the individual's identity cannot reasonably be ascertained and it is impracticable for Council to seek the consent of the individual. Alternatively, reasonable steps are taken to de-identify the information, and if the information is in a form that could reasonably be expected to identify individuals, the information is not published in a generally available publication, and its use is in accordance with guidelines, if any, issued by the Privacy Commissioner.
- c) The use of the information is reasonably necessary for the training of employees and the individual's identity cannot reasonably be ascertained and it is impracticable for Council to seek the consent of the individual for the use. Alternatively reasonable steps are taken to de-identify the information and if the information is in a form that could reasonably be expected to identify individuals, the information is not published in a generally available publication and its use is in accordance with guidelines, if any, issued by the Privacy Commissioner.
- d) The use of the information for the secondary purpose is reasonably necessary

for research, or the compilation or analysis of statistics, in the public interest.

- e) The use of the information for the secondary purpose is by a law enforcement agency for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person.
- f) The organisation has reasonable grounds to suspect that either unlawful activity has been or may be engaged in, or a person has or may have engaged in conduct that may be unsatisfactorily professional conduct or professional misconduct under a health registration Act, or an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action and uses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities.
- g) The use of the information is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed.
- h) The use of the information is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies.
- i) Passing information to another public sector agency under the administration of the same Minister or Premier if the disclosure is for the purposes of informing that Minister or the Premier about any matter within that administration is permissible.

This exemption extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.

15 Limits on disclosure of health information

Council will not disclose the information for a secondary purpose unless the individual has consented to the disclosure of the information or the individual would reasonably expect the organisation to disclose the information for the secondary purpose. Other reasons may be that the disclosure of the information is reasonably believed by Council to be necessary to lessen or prevent a threat to the individual or another person, or threat to public health or safety.

Information can be disclosed when it is reasonably necessary for the funding, management, planning or evaluation of health services. However, if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and is in accordance with privacy principles.

Disclosure can be made if it is reasonably necessary for the training of employees of Council or persons working with the organisation. In such cases the information is not made publicly available and it is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph.

Disclosure of the information can also be made if it is reasonably necessary for research or the compilation or analysis of statistics, in the public interest provided it protects the identity of the individual concerned. Limited disclosure of information can be made to an immediate family member of the individual for compassionate reasons to the extent reasonable for those compassionate reasons or in a case where the affected person is a missing person.

Council is entitled to disclose health information that would not otherwise be available to an investigative agency or authorities for the purposes of law enforcement where there are reasonable grounds to believe that an offence may have been, or may be committed.

If health information is disclosed to another body or organisation Council shall attach to the information a statement that the other organisation shall not use or disclose the information for a purpose other than the purpose for which the information was given to it unless by process of the law.

16 Trans-border data flows and data flow to Commonwealth agencies

Council will not transfer health information about any individual to any person or body who is in a jurisdiction outside NSW or to a Commonwealth agency unless the individual consents to the transfer or the transfer is necessary for the performance of a contract between or in the interest of the individual, Council and a third party.

VARIATION

Council reserves the right to review, vary or revoke this procedure which will be reviewed periodically to ensure it is relevant and appropriate.