

## 2.3 INFORMATION SERVICES

### PRIVACY AND DATA PROTECTION POLICY

<b>Policy Number:</b>	2.3.1
<b>Approved by:</b>	Chief Executive Officer
<b>Date Approved:</b>	December 2021
<b>Date of Next Review:</b>	December 2022
<b>Applicable to Unit(s):</b>	Whole Organisation
<b>Responsible Officer:</b>	Manager Information Services
<b>Related Policies:</b>	Records Management Policy
<b>Related Documents:</b>	(OVIC) Privacy by Design Policy Wellington Shire Council's Freedom of Information Part II Statement (website); Customer Service Commitment
<b>Statutory Reference:</b>	<i>Electronic Transactions Act 2000</i> <i>Freedom of Information Act 1982</i> <i>Health Records Act 2001</i> <i>Privacy and Data Protection Act 2014</i> <i>Public Records Act 1973</i>

#### OVERVIEW

To assist Council in meeting the legislated requirements of the *Privacy and Data Protection Act 2014* and to establish policy for the responsible management of personal information held and collected by Wellington Shire Council.

#### THE POLICY

The Victorian *Privacy and Data Protection Act 2014* (Act) applies to Victorian government departments, Ministers, local councils, statutory offices, government schools, universities and TAFEs. These organisations are public sector organisations. The Act governs the way in which these organisations must responsibly collect, handle and protect personal information and ensure data security.

All Wellington Shire Council employees, Councillors, contracted service providers including subcontractors to them, consultants, volunteers, temporary and casual staff and other authorised personnel of Council are required to comply with the ten (10) Information Privacy Principles (IPPS) of the Act. The IPPS set out the minimum standards for the handling personal information.

*The Privacy and Data Protection Act 2014* does not apply to health information, or how Commonwealth government agencies (i.e.: Australian Tax Office, Centrelink, etc) and private organisations (i.e.: charities and companies) should handle personal information. These are covered by other privacy laws.

The purpose of this policy is to provide a general statement about how Wellington Shire Council manages personal information and to demonstrate our commitment to privacy by:

- Helping employees understand how personal information should be handled;
- Preventing the unnecessary collection or unlawful use or disclosure of personal information; and

- Promoting greater public confidence in Wellington Shire Council's handling of personal information.

Wellington Shire Council collects personal information provided by applicants, complainants, government agencies, members of the public, employees and other third parties in compliance with its functions and obligations under the *Privacy and Data Protection Act 2014* for the purpose of carrying out their statutory functions and associated activities.

#### **Definitions:**

<b>Personal Information</b>	Recorded information or opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be identified. Personal information can be almost any information linked to an individual, including name, email address, address, phone number, signature, photographs or surveillance footage of an individual, comments written about an individual, or financial details.
<b>Sensitive Information</b>	Information or an opinion about an individual's marital status, race, political opinions, trade union membership, religion, sexual preferences, education, criminal record or employment history is considered sensitive information.  These types of information are subject to higher protections under the <i>Privacy and Data Protection Act 2014</i> .
<b>Health Information</b>	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. Health Information does not include information about an individual who has been deceased for more than 30 years.

#### **Responsibilities:**

This Policy applies to **all** Council employees, Councillors, contracted service providers including subcontractors to them, consultants, volunteers, temporary and casual staff and other authorised personnel of Wellington Shire Council. These persons must comply with the Act and the Principles which regulate the handling of personal information of individuals.

The Coordinator Information Management is Wellington Shire Council's Information Privacy Officer. The Information Privacy Officer is responsible for the review of this policy, privacy training, the promotion of privacy and data protection and to assist with related internal and external enquiries.

An e-learning training course (Record Keeping and Privacy which also incorporates Freedom of Information) is available to new and existing staff on Wellington Shire Council's Learning & Development System (LDS).

#### **AN OVERVIEW OF THE TEN INFORMATION PRIVACY PRINCIPLES**

The *Privacy and Data Protection Act 2014* contains ten IPPs, namely Collection, Use and Disclosure, Data Quality, Data Security, Openness, Access and Correction, Unique Identifiers, Anonymity, Transborder Data Flows and Sensitive Information.

Below is a summary of the ten Information Privacy Principles:

### **Principle 1 - Collection**

Council must only collect personal information that is necessary for specific and legitimate functions and activities and only collect the information by fair, lawful and unobtrusive means. Where reasonably practicable, Council will inform individuals why their personal information is being collected, how it will be used and to whom it may be disclosed. Privacy Collection Statements will be included on forms which collect personal affairs information of individuals.

### **Principle 2 – Use and Disclosure**

Council must not use or disclose personal information for a purpose other than the primary purpose for which it was collected, unless it is for a related purpose that would be reasonably expected or consent from the individual has been obtained. The law allows some uses and disclosures without consent, such as to protect safety and for law enforcement purposes.

**Note:** Where authorised, Council may disclose personal information to third parties.

### **Principle 3 – Data Quality**

Council takes reasonable steps to ensure that the personal information it collects, uses or discloses, is accurate, complete and up-to-date.

Wellington Shire Council will endeavour to maintain accurate records. When an error is identified (either internally or by an external party) Council will correct the information promptly.

### **Principle 4 – Data Security**

Council takes reasonable steps to protect all personal information it holds from misuse, loss, unauthorised access, modification or disclosure.

If Council becomes aware that an individual's information has been inappropriately handled, it will take steps to inform the individual of the incident and will take appropriate action to ensure that such a breach does not occur again.

When/if Council becomes aware of a privacy breach, they must report it to Office of Victorian Information Commissioner (OVIC) so that they can respond to any enquiries which they may receive relating to the breach.

### **Principle 5 - Openness**

Wellington Shire Council's Privacy and Data Protection Policy is publicly available on Council's website [www.wellington.vic.gov.au](http://www.wellington.vic.gov.au)

Council, on request, will take reasonable steps to provide individuals with general information on the types of personal information it holds and for what purposes and how it collects, holds, uses and discloses that information.

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

Individuals are able to inform Wellington Shire Council of changes to their name or address by completing a Name and Address Alteration form either online via Council's website or by hard copy and submitting the completed form to Council.

Wellington Shire Council will provide an individual with reasonable access to their personal information held by Council and will take reasonable steps to correct such information when

requested by that person, in order to ensure that its records are accurate.

If Council denies access or correction, Council will provide reasons in accordance with the *Freedom of Information Act 1982*.

### **Principle 7 – Unique Identifiers**

Council will only assign, adopt, use, disclose or require unique identifiers from individuals for the course of conducting normal Council business or if required by law. Council will only use or disclose unique identifiers assigned to individuals by other organisations if the individual consents to the use and disclosure or the conditions for use and disclosure set out in the Act are satisfied.

### **Principle 8 - Anonymity**

Council, **where it is lawful and practicable**, will give individuals the option of remaining anonymous when entering into transactions with Council.

### **Principle 9 – Transborder Data Flows**

Generally, Council will not send your personal information outside Victoria. In the rare cases that this may be necessary, Council will only send this personal information if the recipient of the information is bound by a scheme that is substantially similar to the IPPs or Council has obtained your consent. In some cases, this consent may be implied.

Any other transfers of information outside Victoria will be made in accordance with the provisions of the *Privacy and Data Protection Act 2014*.

### **Principle 10 – Sensitive Information**

Sensitive information is information or an opinion about an individual's racial or ethnic origin, political opinions, trade union membership, philosophical or religious beliefs, sexual preferences or criminal record. Council will not collect sensitive information about an individual except for circumstances specified under the Act.

## **WHAT PERSONAL INFORMATION CAN AN ORGANISATION ASK FOR?**

In Victoria, public sector organisations, including Councils, must allow individuals to remain anonymous when dealing with the organisation, where possible, if they do not require your personal information to do their work.

Personal information must be collected in a fair and lawful way and preferably collected directly from the individual rather than from another person or organisation.

## **DISCLOSURE OF PERSONAL INFORMATION WHERE AUTHORISED**

In Victoria, individuals have the right to have their information handled securely and to be informed why their information is being collected, how it will be used, and if their information is likely to be disclosed. Council must protect and manage the personal information it holds and ensure any disclosure of personal information is authorised under the Act.

Information sharing and disclosure of personal information can occur in some instances, typically when established agreements or procedures are in place. Any disclosure requires proper legislative authority and must be documented accordingly.

Personal information may be disclosed in the following circumstances:

1. if the information is being disclosed for a related purpose which the individual would reasonably expect;
2. if the individual has given consent (remembering that there are instances permitted under the *Privacy and Data Protection Act 2014* which don't require individual's consent);
3. if the information is necessary to lessen or prevent a serious threat to health or safety;
4. if the organisation suspects unlawful activity has occurred and using or disclosing the personal information of an individual is necessary to investigate or report the activity;
5. where other law allows or requires it;
6. if it is necessary to assist a law enforcement agency; or
7. if it is necessary for research that will benefit the wider community and the research will not be published in a way that identifies the individual.

## THE RIGHT TO BE INFORMED

To enable individuals to be informed, Council uses Privacy Collection Statements on forms and other platforms which seek the collection of personal information.

### Privacy Collection Statements:

**A Privacy Collection Statement** is included on forms and online applications where individuals are required to provide their personal information. The collection statement informs the individual why their information is being collected, the intended use of the information and which third parties the information may be disclosed to.

## OTHER LEGISLATION

If the *Privacy and Data Protection Act 2014* is inconsistent with a particular piece of legislation, the other legislation will take precedence.

## VICTORIAN PROTECTIVE DATA SECURITY STANDARDS (VPDSS)

The *Privacy and Data Protection Act 2014*, also refers to the Victorian Protective Data Security Standards (VPDSS) which establish mandatory requirements to protect public sector information across all security areas including governance, information security, personnel security, Information Communications Technology (ICT) and physical security.

Wellington Shire Council performs assessments of its business using the Standards which support a risk management approach to identify and manage risks. This in turn informs good decision making, supports the achievement of business objectives, and effective information sharing whilst protecting public section information.

OVIC is the primary regulator of the *Privacy and Data Protection Act 2014* and the standards and provide a source of independent advice to the community and Victorian government about how the public sector collects, uses and discloses information.

## OTHER PRIVACY RIGHTS

Person Information held by Commonwealth agencies and private organisations is protected under the *Privacy Act 1988* – Australian Commonwealth law.

The *Health Records Act 2001* protects individual's health information when it is handled by public and private sector organisations in Victoria.

## BREACHES

Privacy breaches occur when personal information is stolen, lost or mistakenly or deliberately disclosed. Council must make every attempt to ensure they follow the *Privacy and Data Protection Act 2014* Information Privacy Principles to prevent breaches. If you believe Council has breached your privacy you can lodge a complaint.

## YOUR RIGHT TO MAKE A PRIVACY COMPLAINT

If you have concerns about how Wellington Shire Council has handled your personal information, you have the right to make a complaint.

If you believe that Council has breached your privacy rights, you should first make a complaint to Wellington Shire Council's Privacy Officer and try to resolve the issue.

You can do so by phoning Council's Privacy Officer on 1300 366 244

By email at [enquiries@wellington.vic.gov.au](mailto:enquiries@wellington.vic.gov.au) or

By post at PO Box 506 Sale, Vic 3850

Wellington Shire Council treats complaints seriously and will try to resolve them fairly and quickly, whilst working with you and keeping you informed of its progress.

If you are not satisfied with how Wellington Shire Council deals with your *privacy* complaint, you may lodge a complaint with the Office of the Victorian Information Commissioner (OVIC) :

By phone on 1300 006 842 between 9am and 5pm, Monday to Friday.

By email at [privacy@ovic.vic.gov.au](mailto:privacy@ovic.vic.gov.au); or

By post at PO Box 24274 Melbourne, VIC 3001

A copy of OVIC's privacy complaint form is available on their website <https://ovic.vic.gov.au>

If you are not satisfied with how OVIC deals with your *privacy* complaint, your complaint will be referred to an external, independent conciliator, who will attempt to resolve the complaint. If conciliation is inappropriate or unsuccessful, the Information Commissioner can refer the matter to VCAT.

## ENQUIRIES/FURTHER INFORMATION

Enquiries regarding the *Privacy and Data Protection Act 2014* or this Policy can be directed to Council's Information Privacy Officer by contacting 1300 366 244 or emailing [enquiries@wellington.vic.gov.au](mailto:enquiries@wellington.vic.gov.au)

Wellington Shire Council's Privacy Statement is available on Council's website.

## **HUMAN RIGHTS**

Wellington Shire Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* and referred to in Council's Human Rights Policy. The Human Rights Checklist has been completed and this policy accords with Council's policy commitment to uphold human rights principles.