



INVERELL SHIRE COUNCIL

PRIVACY MANAGEMENT PLAN

FOR LOCAL GOVERNMENT

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1. Introduction

The Privacy and Personal Information Protection Act 1998 (“PIIPA”) provides for the protection of personal information and for the protection of the privacy of individuals.

Section 33 of the PIIPA requires all councils to prepare a Privacy Management Plan (the “Plan”) to deal with:

- ◆ the devising of policies and practices to ensure compliance by the Council with the requirements of the PIIPA,
- ◆ the dissemination of those policies and practices to persons within the Council,
- ◆ the procedures that the Council proposes for Internal review of privacy complaints;
- ◆ such other matters as are considered relevant by the Council in relation to privacy and the protection of personal information held by it.

This Plan has been prepared for the purpose of section 33 of the PIIPA.

The Act provides for the protection of personal information and health information by means of Information Protection Principles. Those principles are listed below:

Privacy & Personal Information Protection Act (PIIPA)

- Principle 1 - Collection of personal information for lawful purposes
- Principle 2 - Collection of personal information directly from the individual
- Principle 3 - Requirements when collecting personal information
- Principle 4 - Other requirements relating to collection of personal information
- Principle 5 - Retention and security of personal information
- Principle 6 - Information about personal information held by agencies
- Principle 7 - Access to personal information held by agencies
- Principle 8 - Alteration of personal information
- Principle 9 - Agency must check accuracy of personal information before use
- Principle 10 - Limits on use of personal information
- Principle 11 - Limits on disclosure of personal information
- Principle 12 - Special restrictions on disclosure of personal information

Health Records and Information Privacy Act (HRIPA)

- Principle 1 - Purposes of collection of health information
- Principle 2 - Information must be relevant, not excessive, accurate and not intrusive
- Principle 3 - Collection to be from individual concerned
- Principle 4 - Individual to be made aware of certain matters
- Principle 5 - Retention and security
- Principle 6 - Information about health information held by organisations
- Principle 7 - Access to health information
- Principle 8 - Amendment to health information
- Principle 9 - Accuracy
- Principle 10 - Limits on use of health information
- Principle 11 - Limits on disclosure of health information
- Principle 12 - Identifiers
- Principle 13 - Anonymity
- Principle 14 - Transborder data flows and data flow to Commonwealth agencies
- Principle 15 - Linkage to health records

Those principles are *modified* by the Privacy Code of Practice for Local Government (“the Code”) made by the Attorney General.

The Code has been developed to enable Local Government to fulfil its statutory duties and functions under the Local Government Act 1993 (the “LGA”) in a manner that seeks to comply with the PIIPA and HRIPA.

This Plan outlines how the Council will incorporate the 12 PIIPA and 15 HRIPA Information Protection

Principles into its everyday functions.

This Plan should be read in conjunction with the Code of Practice for Local Government.

Nothing in this Plan is to affect:

- ◆ any matter of interpretation of the Code or the Information Protection Principles as they apply to the Council;
- ◆ any obligation at law cast upon the Council by way of representation or holding out in any manner whatsoever;
- ◆ create, extend or lessen any obligation at law which the Council may have.

This Plan is designed to introduce policies and procedures to maximise compliance with the PPIPA and HRIPA.

Where the Council has the benefit of an exemption, it will nevertheless describe procedures for compliance in this Plan. By doing so, it is not to be bound in a manner other than that prescribed by the Code.

Council collects, stores and uses a broad range of information. A significant part of that information is personal information. This Plan applies to that part of the Council's information that is personal information.

It may mean in practice that any information that is not personal information will receive treatment of a higher standard; namely treatment accorded to personal information where the information cannot be meaningfully or practicably separated.

What is personal information?

"Personal information" is defined in section 4 of the PPIPA 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'.

What is not "personal information".

"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 PPIPA.

Where the Council is requested to provide access or make a disclosure and that information has already been published, then the Council will rely on the provisions of the relevant Act that authorises Council to hold that information and not the PPIPA (for example, section 12(1) of the LGA).

Council considers the following to be publicly available publications:

- ◆ An advertisement containing personal information in a local, city or national newspaper.
- ◆ Personal information on the Internet.
- ◆ Books or magazines that are printed and distributed broadly to the general public.
- ◆ Council Business papers or that part that is available to the general public.
- ◆ Personal information that may be a part of a public display on view to the general public.

Information published in this way ceases to be covered by the PPIPA.

However, Council's decision to publish in this way must be in accordance with PPIPA.

What is health information?

"Health information" is defined in Section 6 of HRIPA as:

- (a) *personal information that is information or an opinion about:*
 - (i) *the physical or mental health or 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 the HRIPA generally or for the purposes of specified provisions of the HRIPA.*

Policy on Electoral Rolls

The Electoral Roll is a publicly available publication. Council will provide open access to the Electoral Roll in Council's library. Council will refer any requests for copies of the Electoral Roll to the State Electoral Commissioner.

Application of this Plan

The PPIPA, HRIPA and this Plan apply, wherever practicable, to:

- ◆ Councillors;
- ◆ Council employees;
- ◆ Consultants and contractors of the Council;
- ◆ Council owned businesses; and
- ◆ Council committees (including those which may be established under section 355 of the LGA).

Council will ensure that all such parties are made aware that they must comply with PPIPA, HRIPA, the Code of Practice for Local Government, any other applicable Privacy Code of Practice and this Plan.

Personal Information Held by Council

The Council holds personal information concerning Councillors, such as:

- personal contact information;
- complaints and disciplinary matters;
- pecuniary interest returns;
- CCTV video surveillance footage; and
- entitlements to fees, expenses and facilities.

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

- CCTV video surveillance footage;
- rates records; and
- DA applications and objections.

The Council holds personal information concerning its employees, such as:

- recruitment material;
- leave and payroll data;
- personal contact information;
- performance management plans;
- disciplinary matters;
- pecuniary interest returns;
- CCTV video surveillance footage; and
- wage and salary entitlements.

Applications for suppression in relation to general information (not public registers).

Where an application for suppression is made in relation to anything other than a public register, then an application under section 739 of the Local Government Act 1993 (“LGA”) is required.

Section 739 of the LGA covers all publicly available material under section 12(1) and 12(6) of the LGA other than public registers. As such, it limits disclosure in those circumstances where an application for suppression is successful. An application for suppression must be verified by statutory declaration and otherwise meet the requirements of section 739. When in doubt, Council will err in favour of suppression.

For more information regarding disclosure of information (other than public registers) see the discussion of IPPs 11 and 12 in Part 3 of this Plan.

For information regarding suppression of information on *public registers*, see Part 2 of this Plan.

Caution as to Unsolicited Information

Where an individual, a group or committee, not established by Council, gives Council unsolicited personal information, then that information should be still treated in accordance with this Plan, the Code and the PPIPA for the purposes of IPPs 5-12 which relate to storage, access, use and disclosure of information.

In the event that the council receives unsolicited personal information, the following steps should be taken:

- The council where possible will record the details of the information received, including the source and the date it was received.
- The council will assess whether the information is necessary for the council's functions or activities. If it is not, the information will be securely disposed of.
- If the information is necessary for the council's functions or activities, the council will take reasonable steps to ensure that the information is accurate, up-to-date, complete and relevant before using or disclosing it.
- If the council is unable to determine whether the information is necessary, it will be retained for a reasonable period of time to allow for further assessment before deciding whether to keep or dispose of it.
- The council also ensure that all staff are aware of the procedures for dealing with unsolicited personal information and are trained to follow them.

2. Public Registers

A public register is defined in section 3 of the PPIPA:

'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).'

A distinction needs to be drawn between "public registers" within the meaning of Part 6 of the PPIPA and "non public registers". A "non public register" is a register but it is not a "public register" for the purposes of the PPIPA. For example, the register might not be publicly available or it may not contain personal information.

Disclosure in relation to public registers must comply with Part 6 of the PPIPA and the Code. Personal information cannot be accessed by a person about another person unless the personal information is contained in a public register. Where personal information is contained in a public register, then Part 6 of the PPIPA applies to determine whether access to that information will be given to another person.

Disclosure in relation to all other personal information must comply with the Information Protection Principles as outlined in Part 2 of this Plan and the Code where it includes personal information that is not published.

The Council holds the following public registers under the LGA: ***

- ◆ Section 53 - Land Register
- ◆ Section 113 - Records of Approvals
- ◆ Section 449 -450A - Register of Pecuniary Interests
- ◆ Section 602 - Rates Record

***Note – this is purely indicative. Council may, by virtue of its own practice, hold other Public Registers, to which PPIPA applies.

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

Council holds the following public register under the Impounding Act 1993:

- ◆ Section 30 & 31 – Record of impounding

Members of the public may enquire only in accordance with the primary purpose of any of these registers. The primary purpose for each of these public registers is set out in the sections that follow.

Public Registers and the PPIPA

A public register generally confers specific rights or privileges, a benefit, or status, which would not otherwise exist. It may be required by law to be made publicly available or open to public inspection, or it is simply made publicly available or open to public inspection (whether or not payment is required).

Section 57 of the PPIPA requires very stringent controls over the disclosure of personal information contained in a public register. Section 57 provides broadly that where Council is responsible for keeping a public register, it will not disclose any personal information kept in that register unless it is satisfied that the information is to be used for a purpose relating to the purpose of the register or the Act under 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 the public register to give particulars in the form of a statutory declaration as to the proposed use of that information. (Form at Appendix 1 may be used a guide)

If the stated purpose of the applicant does not conform with the purpose for which the public register is kept, access to the information sought will not be given.

Where personal information is contained in a publicly available publication, that information will not be regarded as personal information covered by the PPIPA.

Public Registers and HRIPA

No public registers held by Inverell Shire Council contain health information.

Effect on Section 12 of the LGA

Section 57 of the PPIPA prevails over section 12 of the LGA to the extent of any inconsistency. Therefore:

1. If a register is listed in section 12(1) of the LGA, access must not be given except in accordance with section 57(1) of the PPIPA.
2. If a register is not listed in section 12(1) of the LGA, access must not be given except:
 - (i) if it is allowed under section 57(1) of the PPIPA; **and**
 - (ii) inspection would not be contrary to the public interest as per section 12(6) of the LGA.

Note: Both 1 and 2 are amended with regard to specific public registers in the Privacy Code of Practice for Local Government.

Where some information in the public register has been published

That part of a public register that is not published in a publicly available publication will be treated as a “public register” and the following procedure for disclosure will apply.

For example, the Register of Consents and Approvals held by Council under section 100 of the Environmental Planning and Assessment Act requires Council to advertise or publish applications for development consent.

When Council publishes the address of the property, it may identify the owner. The personal information that has not been published and any applications not advertised or that have been rejected or withdrawn (and hence also not published) will be treated as a public register under PPIPA.

Council may hold a register under the Contaminated Land Management Act on behalf of the Environment Protection Authority. This is not to be considered a public register of the Council as the statute does not place any obligations on the Council to make this register publicly available as a register of contaminated land. Furthermore, the legislation foreshadows that the Environment Protection Authority may indeed post this list or register on the internet. This may constitute a publication of the information and therefore the PPIPA will not apply.

Registers should not be published on the internet.

Disclosure of personal information contained in the public registers

A person seeking a disclosure concerning someone else’s personal information from a public register must satisfy Council that the intended use of the information is for a purpose relating to the purpose of the register or the Act under which the register is kept.

In the following section, by way of guidance only, what might be called the “primary” purpose (or “the purpose of the register”) has been specified for each identified register. In some cases a “secondary purpose” has also been specified, by way of guidance as to what might constitute “a purpose *relating to* the purpose of the register”.

Purposes of Public Registers

Purposes of public registers under the Local Government Act

Section 53 - Land Register – The primary purpose is to identify all land vested in Council, or under its control. The secondary purpose includes a consideration of public accountability as to the land held by Council. Third party access is therefore a secondary purpose.

Section 113 - Records of Approvals – The primary purpose is to identify all approvals granted under the LGA.

Section 450A - Register of Pecuniary Interests – The primary purpose of this register is to determine whether or not a Councillor or a member of a council committee has a pecuniary interest in any matter with which the council is likely to be concerned. There is a corresponding public accountability purpose and third party access is a secondary purpose.

Section 602 - Rates Record - The primary purpose is to record the value of a parcel of land and record rate liability in respect of that land. The secondary purpose includes recording the owner or lessee of each parcel of land. For example, that a disclosure on a section 603 (of the LGA) rating certificate that a previous owner was a pensioner is considered to be allowed, because the secondary purpose is “a purpose relating to the purpose of the register”.

Purposes of public registers under the Environmental Planning and Assessment 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 public registers 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.

Purposes of the public register under the Impounding Act

Section 30 & 31 – Record of impounding – The primary purpose is to identify any impounding action by Council.

Secondary purpose of all Public Registers

Due to the general emphasis (to be found in the LGA and elsewhere) on local government processes and information being open and accountable, it is considered that a secondary purpose for which all public registers are held by Council 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 or the sale of the whole 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 doubt as to the intended use of the information, an applicant may be requested to provide a statutory declaration so 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 request.

Other Purposes

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.

Applications for access to own records on a public register

A person wishing to have access to a public register to confirm their own details needs only to prove their

identity to Council before having access to their own personal information.

Applications for suppression in relation to a public register

An application for suppression in relation to a public register will be dealt with under PPIPA, rather than section 739 of the LGA.

A person about whom personal information is contained (or proposed to be contained) in a public register, may request Council under section 58 of the PPIPA to have the information removed from, or not placed on the register.

If Council is satisfied that the safety or well-being of any person would be affected by not suppressing the personal information as requested, Council will suppress the information in accordance with the request unless Council is of the opinion that the public interest in maintaining public access to the information outweighs any individual interest in suppressing the information, in accordance with section 58(2) of the PPIPA. ("Well-being" is defined in the Macquarie Dictionary as "the good or satisfactory condition of existence; welfare".)

When in doubt, Council will err in favour of suppression.

Any information that is removed from, or not placed on, that aspect of a public register to be made public may be kept on the register for other purposes. That is, the information may still be used for council functions, but it cannot be disclosed to other parties.

An application for suppression should be made in writing addressed to the General Manager and must outline the reasons for the request. The Council may require supporting documentation where appropriate.

Other registers

Council may have other registers that are not public registers. The Information Protection Principles, this Plan, any applicable Code and the Act apply to those registers or databases.

Part 3 – The Information Protection Principles

Privacy and Personal Information Protection Act 1998

3.1 Principle 1 Collection for Lawful Purposes

The Privacy Code of Practice for Local Government

There is no intention to depart from this principle otherwise than is permitted by the PPIPA, or any other Privacy Code of Practice which may apply to Council from time to time.

Inverell Shire Council Policy

Council will only collect personal information for a lawful purpose as part of its proper functions. The LGA governs Council's major obligations and functions.

Section 22 of the LGA provides other functions under other Acts. Some of those Acts are as follows:

Companion Animals Act 1998
Environmental Planning and Assessment Act 1979
Impounding Act 1993
Swimming Pools Act 1992
Environmental Offences and Penalties Act 1989
Freedom of Information Act 1989
Heritage Act 1977
Unhealthy Building Land Act 1990

Council performs a number of functions under a wide range of legislation as provided in Section 22 of the LGA. Additionally, the exercise by Council of its functions under the LGA may also be modified by the provisions of other Acts.

The circumstances under which Council may collect information, including personal information, are varied and numerous. Council will not collect any more personal information than is reasonably necessary for it to fulfil its functions.

Anyone engaged by Council as a private contractor or consultant that involves the collection of personal information, must agree not to collect personal information by any unlawful means. This will include debt recovery actions by or undertaken on behalf of Council by commercial agents.

The private contractor or consultant shall only collect personal information that is necessary for the purposes of the contract signed with the council and will not collect more information than is required. In the event that they are found to be over-collecting personal information, the council reserves the right to terminate the contract in accordance with the termination clause of the signed agreement and/or take legal action under the Privacy Act 1988 (Cth), specifically section 13G, which deals with serious or repeated interference with privacy.

Council will continue to collect and deliver personal information to and from government departments involved in the normal functions of Council's operation. Council will also continue the practice of dealing with the NSW Department of Community Services (DoCS) for enquiries on personnel and recruitment matters ie. pre-employment screening of people working with children (Children and Young Peoples Act).

Council will use personal information for a variety of purposes within its departments. Whilst the information was collected for 1 main purpose, it may be used for a variety of other purposes. Eg. the names and addresses of individual owners of property kept on the Rates & Charges Register are used to notify adjoining owners of proposed development, identify companion animal ownership, evaluate road openings and obstructions, evaluate tree preservation orders, investigate parking controls, evaluate land dedications and laneway status, as well as being the basis of the Rates & Charges Register.

In order to ensure compliance with IPP 1, internet contact forms, rates notices, application forms or written requests by which personal information is collected by Council; will be reviewed by the relevant manager prior to adoption, change or use.

Managers are to consider:

- whether the personal information is collected for a lawful purpose
- if that lawful purpose is directly related to a function of Council
- whether or not the collection of that personal information is reasonably necessary for the specified purpose.

3.2 Principle 2 Collection directly from the Individual

The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.

Council may wish to confer a special award, prize, benefit or similar form of personal recognition to an individual. This may take the form of a citizen of the year award, the naming of a park after that individual or other similar form of public recognition.

Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and approved by the Attorney General, will apply.

IPP 2 is modified by the Investigative Code of Practice to permit indirect collection where a direct collection is reasonably likely to detrimentally affect Council's conduct of any lawful investigation.

Inverell Shire Council Policy

The compilation or referral of registers and rolls are the major means by which the Council collects personal information. For example, the information the Council receives from the Land Titles Office would fit within Section 9(a) PPIPA.

Personal information is also collected from forms completed by customers for development consent, companion animal registration, applications for specific inspections or certifications or applications in respect of tree preservation orders.

Council will treat the personal information contained in petitions in accordance with Section 9 PPIPA. Where Council or a Councillor requests or requires information from individuals or groups, that information will also be treated in accordance with Section 9 PPIPA.

Council regards all personal information concerning its customers as information protected by PPIPA. Council will therefore, collect all personal information directly from its customers except as provided in Section 9(a) PPIPA or under other statutory exemptions or Codes of Practice. Council may collect personal information from other public sector agencies in respect of specific statutory obligations where it is authorised by law to do so.

Where Council anticipates the need to collect personal information indirectly, and not in accordance with this policy, it will first obtain the authorisation of each individual under Section 9(a) PPIPA.

Statutory Exemptions

Compliance with IPP 2 is subject to certain exemptions under the Act. The statutory exemption will be relied upon only in very obvious and limited circumstances and legal advice should normally be obtained.

The relevant statutory exemptions follow:

Section 23(2) PPIPA permits non-compliance with IPP 2 if the information concerned is collected in connection with proceedings (whether or not actually commenced) before any court or tribunal.

Section 24(4) PPIPA permits non-compliance by Council with IPP 2 if:

- investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency
- if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.

Section 25(a) and (b) PPIPA permits non-compliance with IPP 2 where the agency is lawfully authorised or required not to comply with the principle by any other Act or law.

Section 26(1) PPIPA permits non-compliance with IPP 2 if compliance would prejudice the interests of the individual concerned.

Discussion

Where Council cannot collect personal information directly from the person, it will ensure 1 of the following:

- Council has obtained authority from the person under Section 9(a) PPIPA.
- The collection of personal information from a third party is permitted under an Act or law. The collection of personal information about a person from a parent or guardian is permitted provided the information relates to a person who is less than 16 years of age.
- The collection of personal information indirectly where one of the above exemptions applies.
- The collection of personal information indirectly is permitted under the Privacy Code of Practice for Local Government or the Investigative Code of Practice.

The only other exception to the above is in the case where Council is provided unsolicited information. In this instance, that information will be treated in accordance with this Plan, the Code and the principles of HRIPA and PPIPA.

3.3 Principle 3 Requirements when Collecting Information

Privacy Code of Practice Local Government

The Code makes provision for Council to depart from this principle where personal information is collected about an individual for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition without prior or subsequent notification.

Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and approved by the Attorney General, will apply.

IPP 3 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council's conduct of any lawful investigation.

Inverell Shire Council Policy

Where Council proposes to collect personal information directly from the person, it will inform that person that the personal information is being collected, what is done with that information and who the intended recipients will be.

Council will inform persons if the information is required by law or voluntarily given. In order to address the requirements of Section 10 PPIPA, Council will provide the Pre-collection Privacy Notification Form as appropriate (**Attachment 3**).

A Privacy Protection Notice will be added to all forms where the Council solicits personal information from the general public. Forms used for internal communication will not be effected.

As a minimum, the following application procedures will require a Privacy Notification Form to be in accordance with Section 10 PPIPA:

- Lodging Development Applications
- Lodging comments to Development Applications
- Lodging applications for approval under the LGA
- Any stamps or printed slips that contain the appropriate wording for notification under Section 10
- When collecting an impounded item

In relation to the Privacy Notification Form that may be attached to a Development Application provided to the public, objectors have a right to remain anonymous if they so choose. However, should they need to substantiate their objections, anonymous objections may give less weight (or no weight) in the overall consideration of the Application.

Statutory Exemptions

Where Council collects personal information indirectly from another public sector agency in respect of anyone of its statutory functions, it will advise those individuals that it has collected their personal information in writing. A common example of the collection of information from another public sector agency is the Land Titles Office. Council receives information as to new ownership changes when property ownership is transferred. **Attachment 3** contains a Privacy Notification Form that will be used for post-collection.

Council's compliance with IPP 3 is subject to certain exemptions under the Act. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

The relevant statutory exemptions follow:

Section 23(3) permits non-compliance with IPP 3 where information is collected for law enforcement purposes. Law enforcement means a breach of the criminal law and criminal law enforcement. This Section does not remove the rights of an accused person.

Section 24(4) PPIPA permit non-compliance with IPP 3 if:

- investigation a complaint that could be referred or made to, or has been referred from or made by an investigative agency; and
- if compliance does not detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.

Section 25(a) and (b) PPIPA permits non-compliance with IPP 3 where the agency is lawfully authorised or required not to comply with the principle by any other Act or law.

Section 26 (1) PPIPA permits non-compliance with IPP 3 if compliance would prejudice the interests of the individual concerned.

Section 26(2) PPIPA permits non-compliance where the person expressly consents to such non-compliance.

3.4 Principle 4 Other requirements relating to Collection

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Inverell Shire Council Policy

Council will seek to ensure that no personal information is collected which is not directly relevant to its proper functions.

Council collects personal information through the various forms that customers may complete and lodge with Council. Before adoption of a new form, a draft form will be reviewed for compliance with IPP 4 by the EEO Officer, Council's legal advisor(s), Public Officer or other suitable person. Should Council have any residual doubts, the opinion of Privacy NSW will be sought.

Council will use public place video surveillance in accordance with *NSW Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television in Public Places*. The provisions of the Workplace Surveillance Act will be complied with.

3.5 Principle 5 Retention and Security

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Inverell Shire Council Policy

Council will comply with this principle by using any or all of the following documents:

Code of Conduct
Use of Internet & Email Policy
Records Management Policy
General Records Disposal Schedule for Local Government (GDA 10)

The culling and destruction of records is carried out by the Records Officer in accordance with the Council's Records Management Disposal Schedule. The Records Disposal Schedule is available for public inspection. The Records Officer routinely culls files on a 6 monthly basis for reasons of space and provisions in the Records Management Plan.

Section 12 Information Access Request Forms will be destroyed when each application is completed and any amendments to personal information, rectified.

3.6 Principle 6 Information held by Agencies

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Investigative Code of Practice

Where Council is disclosing personal information to conduct an investigation, disclosure will be allowed under Section 41 of PPIPA by a Direction made by the Privacy Commissioner on 31 December 2005 until such as a Investigative Code of Practice is approved by the Attorney General.

IPP 6 is modified by the Investigative Code to permit non compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council's conduct of any lawful investigation.

Inverell Shire Council Policy

Council will take all reasonable steps to enable a person to determine whether the council holds personal information about them. If Council holds any information about a person, upon request it will advise them the nature of that information, the main purposes for which it is held, and that person's entitlement to access.

IPP 6 is modified by Section 20(5) PPIPA. Section 20(5) PPIPA has the effect of importing Sections 30-33 and Schedule 1 of the Freedom of Information Act 1989 and treats them as if they were part of PPIPA. That means that in any application under IPP 6, Council must consider the relevant provisions of the FOI Act.

Any person can make application to Council to determine whether personal information is held by completing the appropriate form and submitting it to Council (**Attachment 4**).

Where a person makes an application for access under the PPIPA and it is involved or complex, it may be referred, with the written consent of the applicant, as an application under the FOI Act as a last resort. The applicant has the right to insist on being dealt with under PPIPA.

Where Council receives an application or request by a person as to whether it holds information about them, Council will undertake a search of its records to answer the enquiry. Council may ask the applicant to describe what dealings the applicant has had with Council in order to assist Council to conduct the search.

Council will ordinarily provide a response to applications of this kind within 28 days of the application being made. The fee structure is commensurate to that of the Council's Freedom of Information fees and charges structure.

Statutory Exemptions

Council's compliance with IPP 6 is subject to certain exemptions under the Act. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25 (a) and (b) PPIPA permits non-compliance with IPP 6 where Council is lawfully authorised or required not to comply with the principle by any other Act or law.

Nothing in this IPP prevents Council from dealing with a request for information about oneself under Section 12 LGA.

3.7 Principle 7 Access to Information held by Agencies

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Investigative Code of Practice

Where Council is disclosing personal information to conduct an investigation, disclosure will be allowed under Section 41 PPIPA by a Direction made by the Privacy Commissioner on 31 December 2005 until such as an Investigative Code of Practice is approved by the Attorney General.

IPP 7 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council's conduct of any lawful investigation.

Inverell Shire Council Policy

IPP 7 requires Council, at the request of any person, to give access to personal information held about them.

Compliance with IPP 7 does not allow disclosure of information about other people. If access to information that relates to someone else is sought, the application must be made under the FOI Act, unless IPPs 11 and 12 or the Public Register provisions apply.

Where a person makes an application for access under PPIPA and it is involved or complex, it may be referred, with the written consent of the applicant, as an application under the FOI Act. The use of the FOI Act provisions in this instance, will be as a last resort and the applicant has the right to insist on being dealt with under PPIPA.

When considering an application under Section 14 PPIPA, Council will consider Sections 30-33 and Schedule 1 of the FOI Act as if they were part of PPIPA.

Customers wishing to exercise their right of access to their own personal information should apply in writing or direct their inquiries to the Privacy Contact Officer, who will make a determination (**Attachment 5**).

Members of staff wishing to exercise their right of access to their personal information should apply in writing on the attached form to have the application dealt with.

In order to comply with the requirement to provide the requested information "without excessive delay or expense", Council will ordinarily provide a response to applications of this kind within 21 days of the application being made, and Council will use a fee structure commensurate to that of the FOI Act fee structure.

Statutory Exemptions

Compliance with IPP 7 is subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) PPIPA permits non-compliance with IPP 7 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) PPIPA non-compliance with IPP 7 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Nothing in this principle prevents Council from dealing with a request for information about oneself under Section 12 LGA.

Access to personal information contained in Council Business papers for a "Closed Meeting" should be provided with care to not disclose any other information. Personal information contained in Council Business papers for an "Open Meeting" is published and therefore **not** considered to be covered by the PPIPA.

3.8 Principle 8 Alteration of Personal Information

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Investigative Code of Practice

Where Council is disclosing personal information to conduct an investigation, disclosure will be allowed under Section 41 of PPIPA by a Direction made by the Privacy Commissioner on 31 December 2005 until such as a Investigative Code of Practice is approved by the Attorney General.

IPP 8 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council's conduct of any lawful investigation.

Inverell Shire Council Policy

IPP 8 allows a person to make an application to Council to amend personal information held about them so as to ensure the information is accurate and having regard to the purpose for which the information is collected, relevant to that purpose, up to date and not misleading.

Council wishes to have its information current, accurate and complete. Proposed amendments or changes to the personal information held by the Council are welcomed. However, Council will not provide access under Section 15 PPIPA to information that would not be allowed under Section 14 PPIPA.

Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be referred to the General Manager in the first instance and treated in accordance with the "Grievance and Complaint Handling Procedures".

Any alterations that are or could be the subject of a customer complaint or grievance will be referred to the General Manager, who will make a determination in relation to the matter.

Council has an obligation to take such steps to amend personal information where necessary. If Council decides that it will not amend the information, it must add the additional information, so it can be read with the existing information and the individual notified. The individual to whom the information relates is entitled to have the recipients notified of the amendments made by Council. Incorrect records will be physically altered, whether computerised or in hard copy form. Managers will approve required changes, where applicable. FOI applications may not be required where mistakes are proven quickly.

Where information is requested to be amended, the individual to whom the information relates, must make a request by way of statutory declaration. That request should be accompanied by appropriate evidence as to the cogency of the making of the amendment, sufficient to satisfy the Council that the proposed amendment is factually correct and appropriate. The Council may require further documentary evidence to support certain amendments. Council will not charge to process an application to amend a record under Section 15 PPIPA.

The Council's application form for alteration under IPP 8 is (**Attachment 6**).

If Council is not prepared to amend the personal information in accordance with a request by the individual, the Council may attach to the information in such a manner as is capable of being read with the information, any statement provided by that individual.

If personal information is amended in accordance with IPP 8, the individual to whom the information relates is entitled, if it is reasonably practicable, to have the recipients of that information notified of the amendments made by Council.

The Council will seek to notify recipients of information as soon as possible, of the making of any amendment, where it is reasonably practicable.

Statutory Exemptions

Compliance with IPP 8 is also subject to certain exemptions under the Act. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25 (a) and (b) PPIPA permits non-compliance with IPP 8 where Council is lawfully authorised or required not to comply with the principle by any other Act or law.

The State Records Act does not allow for the deletion of records however, as a result of Section 20(4) PPIPA, some deletions may be allowed in accordance with IPP 8.

Nothing in PPIPA affects the operation of the *Freedom of Information Act* 1989, and therefore applications to amend records under that Act remain in force as an alternative mechanism.

3.9 Principle 9 Accuracy of Personal Information before Use

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Inverell Shire Council Policy

The steps taken to comply with IPP 9 will depend on the age of the information, its likelihood of change and the particular function for which the information was collected. The more significant the information, the greater the necessity that checks to ensure its accuracy and currency be undertaken prior to its use.

For example, each employee's record should be updated when there is any change of circumstances or when the employee's contact details change.

3.10 Principle 10 Limits on Use

The Privacy Code of Practice for Local Government

The Code makes provision that Council may use personal information for a purpose other than the purpose for which it was created in the following circumstances:

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

Council may use personal information obtained for another purpose in pursuance of its lawful and proper functions. For example, the Rates Record that Council holds under Section 602 LGA may also be used to:

- notify neighbours of a proposed development
- evaluate a road opening /closure

Investigative Code of Practice

Where Council is disclosing personal information to conduct an investigation, disclosure will be allowed under Section 41 of PPIPA by a Direction made by the Privacy Commissioner on 31 December 2005 until such as a Investigative Code of Practice is approved by the Attorney General.

IPP 10 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council's conduct of any lawful investigation.

Inverell Shire Council Policy

Council will seek to ensure the information collected for one purpose will be used for that same purpose. Where Council may need to use personal information collected for one purpose, for another purpose in pursuance of its lawful and proper functions, it will first gain the consent of the individual concerned, unless the information to be used is on the Council's public register or an exemption applies.

Statutory Exemption

Compliance with IPP 10 is subject to certain exemptions under the Act. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(4) PPIPA permits Council not to comply with IPP 10 where the use of the information for another purpose is reasonably necessary for law enforcement purposes or for the protection of the public revenue. *Law enforcement purposes* means a breach of the criminal law and criminal law enforcement. This Section does not remove the rights of an accused person. *Protection of the public revenue* means, a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty.

Section 24 (4) PPIPA permits non-compliance with IPP 10 if:

- investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency; and
- if the use is, reasonably necessary in order to enable the Council to exercise its complaint handling or investigative functions.

Section 25 (a) and (b) PPIPA permits non-compliance with IPP 10 where Council is lawfully authorised or required not to comply with the principle by any other Act or law.

Section 28(3) PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister's (or Premier's) administration.

The form of consent should include the following elements:
I, (insert name)
of,(insert address)
hereby consent under section 17(2) of the Privacy and Personal Information Protection Act 1998 to Council using the information collected from me by (insert 1st purpose or name of collecting body or person) for the purpose of.....(insert 2nd purpose).
Signed and Dated.....

3.11 Principle 11 Limits on Disclosure

The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle in the circumstances described below:

Council may disclose personal information to public sector agencies or public utilities on condition that:

- the agency has approached Council in writing;
- Council is satisfied that the information is to be used by that agency for the proper and lawful function/s of that agency, and
- Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's function/s

Where personal information which has been collected about an individual is to be disclosed for the purpose, of conferring upon that person, an award, prize, benefit or similar form of personal recognition.

Where Council is requested by a potential employer, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that 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 for which he/she has applied.

Investigative Code of Practice

Where Council is disclosing personal information to conduct an investigation, disclosure will be allowed under Section 41 of PPIPA by a Direction made by the Privacy Commissioner on 31 December 2005 until such as a Investigative Code of Practice is approved by the Attorney General.

IPP 11 is modified by the Investigative Code to permit non- compliance if disclosure of information is made to another agency that is conducting, or may conduct, a lawful investigation. The information provided must be reasonably necessary for the purposes of that investigation.

Inverell Shire Council Policy

Council will not disclose the information to another person or other body, unless the disclosure is directly related to the purpose for which the information was collected or where the Council has no reason to believe that the individual concerned would object to the disclosure.

Council may disclose personal information to another person or other body where this disclosure is directly related to the purpose for which the personal information was collected and the individual concerned is reasonably likely to have been aware, (or has been made aware in accordance with Section 10 PPIPA), of the intended recipients of that information. "Directly related" can mean the disclosure to another person or agency to deliver a service which supplements that of Councillor disclosure to a consultant for the purpose of assessing or revealing the delivery of a program to which the original collection relates.

The council may disclose personal information to another person or other body where this disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

Statutory Exemptions

Compliance with IPP 11 is subject to certain exemptions under the Act. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(5)(a) PPIPA permits non-compliance with IPP 11 where disclosure is made to a law enforcement agency in connection with proceedings for an offence or for law enforcement purposes. *Law enforcement purposes* means a breach of the criminal law and criminal law enforcement. However, Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(b) PPIPA permits non-compliance with IPP 11 where the disclosure is made to a law enforcement agency for the purpose of ascertaining the whereabouts of a person reported to be missing. However, Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(c) PPIPA permits non-compliance with IPP 11 where disclosure is authorised by subpoena, search warrant or other statutory instrument. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(d)(i) PPIPA permits non-compliance with IPP 11 where disclosure is reasonably necessary for the protection of the public revenue. *Protection of the public revenue* could mean a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(c)(ii) PPIPA permits non-compliance with IPP 11 where disclosure is reasonably necessary to investigate an offence where there are reasonable grounds to believe an offence has been committed.

Section 24(4) PPIPA permits non-compliance with IPP 11 if:

- investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency, and
- if the disclosure is to an investigative agency

Section 25 (a) and (b) PPIPA permits non-compliance with IPP 11 where Council is lawfully authorised or required not to comply with the principle by any other Act or law.

Section 26(2) PPIPA permits non-compliance where the person expressly consents to such non-compliance.

Section 28(3) PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister's (or Premier's) administration.

Section 12 LGA overrides Sections 18 and 19 PPIPA to the extent that it lawfully authorises, requires, necessarily implies or reasonably contemplates that councils need not comply with these Sections.

3.12 Principle 12 Special restrictions on Disclosure

The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle in the circumstances described below:

For the purposes of Section 19(2) only, where Council is requested by a potential employer outside New South Wales, it may verify that a current or former employee works or has worked

for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that 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 for which he/she has applied.

Investigative of Practice

Where Council is disclosing personal information to conduct an investigation, disclosure will be allowed under Section 41 of PPIPA by a Direction made by the Privacy Commissioner on 31 December 2005 until such as a Investigative Code of Practice is approved by the Attorney General.

The Investigative Code modifies IPP 12 to permit the disclosure of information to another agency that is conducting, or may conduct, a lawful investigation provided the information is reasonably necessary for the purposes of that investigation.

Inverell Shire Council Policy

Council will not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

Statutory Exemptions

Compliance with IPP 12 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(7) PPIPA permits non-compliance with IPP 12 where the disclosure is necessary to investigate an offence or where there are reasonable grounds to believe an offence has been or may be committed.

Section 25 (a) and (b) PPIPA permits non-compliance with IPP 12 where Council is lawfully authorised or required not to comply with the principle by any other Act or law.

Section 26(2) PPIPA permits non-compliance where the person expressly consents to such non-compliance.

Section 28(2) permits non-compliance with IPP 12 where, in the case of health information, the consent of the person cannot reasonably be obtained and the disclosure is made by an authorised person to another authorised person. "Authorised person" means a medical practitioner, health worker, or other official or employee providing health or community services who is employed or engaged by a public sector agency.

Section 28(3) PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister's (or Premier's) administration.

Section 12 LGA overrides Sections 18 and 19 PPIPA to the extent that it lawfully authorises, requires, necessarily implies or reasonably contemplates that councils need not comply with these Sections.

Health Records and Information Protection Act 2002

3.13 Principle 1 Collection for Lawful Purposes

All information collection will be carried out under the obligations imposed on Council by its governing legislation and administrative requirements.

Inverell Shire Council Policy

Council will only collect health information for a lawful purpose as part of its proper functions. The LGA governs Council's major obligations and functions. Council will not collect any more health information than is reasonably necessary for it to fulfil its functions.

In very general terms, collection refers to the process by which a person comes into possession of health information. A agency collects health information if it gathers, acquires or obtains information directly from the person to whom it relates or from someone else.

Under the HPPs, the basic standards for collection are:

- only collect health information for a lawful purpose
- only collect health information if it is directly related to Council's activities and necessary for that purpose
- make sure the health information is relevant, accurate and up-to-date and not excessive
- make sure the collection does not unreasonably intrude into the personal affairs of the individual
- collect directly from the person where reasonable and practicable
- inform people you are collecting the health information and why

Under HPP 4(1), Council must take reasonable steps to make sure that the person is aware of the following points:

- the identity of the organisation collecting the information and how to contact them
- the purposes for which the information is collected
- who the Council usually discloses information of that kind to
- any law that requires the particular information to be collected
- the fact that they are able to request access to the information
- the main consequences, if any, for them if all or part of the information is not provided

The meaning of reasonable steps will vary depending on the circumstances of the collection, and what the reasonable person would expect in those circumstances. Where Council collects health information on a form ie. Client Information and Referral Record or Neighbour Aid Home Visiting Service, Council's obligations under Health Privacy Principle 4(1) could be satisfied by a prominent and easy to read statement on that form.

Council must notify the person of the points at or before the time of collection. If that is not practicable, Council must notify the person as soon as practicable after that time.

3.14 Principle 2 Collection to be Relevant

Where information is collected directly from the individual, a statement will appear on the collection instrument to ensure that Council is compliant with this principle.

Inverell Shire Council Policy

In relation to applications for community services purposes the Council will treat the health information contained in these applications in accordance with HRIPA.

Where Council or a Councillor requests or requires information from individuals or groups, that information will be treated in accordance with HRIPA.

Council regards all information concerning its customers as information protected by HRIPA. Council will therefore, collect all health information directly from its customers except as provided in HPP 10 or under other statutory exemptions or Codes of Practice. Council may collect health information from other public sector agencies in respect of specific statutory obligations where it is authorised by law to do so.

Where Council anticipates that it may otherwise need to collect health information indirectly it will first obtain the authorisation of each individual under Section 11(1) HRIPA.

3.15 Principle 3 Collection to be from Individual

Where information is being collected, a statement will appear on the collection instrument to ensure that Council is compliant with this principle.

Inverell Shire Council Policy

Where Council proposes to collect health information directly from the person, it will inform that person that the personal information is being collected, what is done with that information and who the intended recipients will be.

If it is unreasonable or impracticable, Council may need to collect the health information from someone else. Some examples of when it may be unreasonable or impracticable are if the person lacks the capacity to provide their health information, Council may need to collect health information about them from an authorised representative such as, a carer or guardian.

When Council collects a person's health information, Council is required to tell them certain things. This is the case even when collecting health information about them from someone else. At all times, Council must respect the dignity and personal privacy of the person to whom the information relates.

The collection of the person's information as part of the third party's family, social or medical history, is reasonably necessary for the organisation to provide a health service directly to the third party and the person's health information is relevant to the family, medical or social history of the third party.

3.16 Principle 4 Individual to be made aware of Certain Matters

In the process of collecting information, Council will ensure that the information collected is relevant to that purpose, is not excessive and is accurate, up-to-date and complete. Council will ensure the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.

Inverell Shire Council Policy

Council will under HPP 4(1) take reasonable steps to make sure that the person is aware of the following points:

- the identity of the organisation collecting the information and how to contact them
- the purposes for which the information is collected
- who the Council usually discloses information of that kind to
- any law that requires the particular information to be collected
- the fact that they are able to request access to the information
- the main consequences, if any, for them if all or part of the information is not provided

The meaning of reasonable steps will vary depending on the circumstances of the collection and what the reasonable person would expect in those circumstances. Council will fulfil its obligations by use of a prominent and easy to read statement on the application form.

In certain circumstances, notifying the person is not necessary or appropriate. Under HPP 4(2) and 4(4) you are not required to notify the person if:

- the person has expressly consented to not being notified

- Council is lawfully authorised or required not to notify the person
- not notifying the person is permitted or is necessarily implied or reasonably contemplated under an Act or any other law
- notifying the person would prejudice their interests
- the information has been collected for law enforcement purposes
- Council is an investigative agency and notifying the person might detrimentally affect or prevent the proper exercise of Council's complaint handling or investigative functions
- Council collects health information about the person from someone else and notifying the person would pose a serious threat to the life or health of any individual

If Council collects health information about the person from someone else, Council may also be able to rely on the notification exemption in Principle 4(3) to not notify the person as long as Council complies with the statutory guidelines.

3.17 Principle 5 Retention and Security

Council will ensure that information is:

- kept no longer than is necessary for the purpose for which the information may lawfully be used through the use of an approved sentencing schedule, disposal authority and storage standard
- disposed of securely and in accordance with any requirements for the retention and disposal of information
- 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 through the use of secure information systems and operational policies and procedures
- only provided to a person in connection with the provision of a service to Council and that everything reasonably within the power of Council is done to prevent unauthorised use or disclosure of the information.

Inverell Shire Council Policy

If Council reasonably believes that the person is incapable of understanding the general nature of the points outlined in HPP 4(1), Council can and should notify any authorised representative of the person instead.

Definition of 'authorised representative'

- (1) In this Act, 'authorised representative' in relation to an individual, means:
 - (a) an attorney for the individual under an enduring power of attorney or
 - (b) a guardian within the meaning of the Guardianship Act 1987 or a person responsible within the meaning of Part 5 of that Act, or
 - (c) a person having parental responsibility for the individual, if the individual is a child or
 - (d) a person who is otherwise empowered under law to exercise any functions as an agent of or in the best interests of the individual.
- (2) A person is not an authorised representative of an individual for the purposes of this Act to the extent that acting as an authorised representative of the individual is inconsistent with an order by a court or tribunal.
- (3) In this section:

'child' means an individual under 18 years of age.

'parental responsibility' in relation to a child, means all the duties, powers, responsibility and authority which, by law, parents have in relation to their children.

Where Council needs to deal with an authorised representative it should still, where practicable, explain the points to the person to whom the information relates in a way that is appropriate to their level of understanding. This is to enable the person to be involved in the notification process to the greatest extent possible.

3.18 Principle 6 Information held by Organisations

Inverell Shire Council Policy

Council will take such steps that are, in the circumstances, reasonable to enable any person to ascertain:

- whether Council holds information relating to that person
- if Council holds information relating to that person the nature of that information, the main purposes for which the information is used and that person's entitlement to gain access to that information.

3.19 Principle 7 Access to Health Information

Inverell Shire Council Policy

Council, at the request of the individual to whom the information relates and without excessive delay or expense, will provide the individual with access to the information.

3.20 Principle 8 Amendment to Health Information

Inverell Shire Council Policy

Council, at the request of the individual to whom the information relates, will make appropriate amendments (whether by corrections, deletions or additions) to ensure that the information is accurate, relevant, up-to-date, complete and not misleading. Where the information has been collected via other agents, the agent will be requested to amend the information.

If it is not considered appropriate for Council to amend information in accordance with a request by the individual concerned, take reasonable steps to attach to the information any statement provided by that individual of the amendment sought so that this information can be viewed alongside the original information.

In the amendment of information, Council permits the individual to whom the information relates, if it is reasonably practicable, to have recipients of that information notified of the amendments made by Council.

Section 20 HRIPA states:

HPP 8 and any provision of a health privacy code of practice applying to a public sector agency that relates to the requirements set out in that HPP, applies to public sector agencies despite HPP 8(4) and Section 21 of the State Records Act 1998.

3.21 Principle 9 Accuracy

Inverell Shire Council Policy

Council will not use 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.

3.22 Principle 10 Limits on Use

Inverell Shire Council Policy

Where Council collects health information about a person from someone else without notifying the person in accordance with the principles, Council must ensure that any subsequent uses or disclosures it proposes to make of that information are in accordance with these principles. In this regard, Council should recognise that some of the exemptions in the Health Privacy

Principles, may be difficult to apply if the person is unaware that their information has been collected.

Example, exemptions based on consent 10(1)(a) and 11(1)(a) and the person reasonably expecting the use or disclosure will generally not be available where the person has not been notified and is not aware that their information has been collected.

3.23 Principle 11 Limits on Disclosure

Council will not disclose information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:

- the disclosure is directly related to the purpose for which the information was collected and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure
- the individual concerned is reasonably likely to have been aware or has been made aware that information of that kind is usually disclosed to that other person or body
- Council believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person
- Council believes on reasonable grounds that the disclosure is necessary to assist in an investigation that may lead to prosecution

Inverell Shire Council Policy

Information is disclosed in accordance with the above criteria to a person or body that is a public sector agency or an organisation that is authorised by legislation administered by Council. That agency or organisation shall not use or disclose the information provided by Council for a purpose other than the purpose for which the information was given to it.

3.24 Principle 12 Identifiers

Inverell Shire Council Policy

Council will not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

Individuals are only identified by using unique identifiers if it is reasonably necessary to do so in order to carry out the Council's functions efficiently.

3.25 Principle 13 Anonymity

Inverell Shire Council Policy

Where lawful and practical, individuals are given the opportunity to not identify themselves when entering into transactions with or receiving health services from Council.

3.26 Principle 14 Transferal to Commonwealth Agencies

Inverell Shire Council Policy

Council does not transfer health information outside NSW unless it is in accordance with the conditions set out in HPP 14.

3.27 Principle 15 Linkage to Health Records

Inverell Shire Council Policy

Council endeavours to gain consent before linking health records across more than 1 organisation and only discloses or uses identifiable health information to other organisations with consent.

Part 4 – Implementation of the Privacy Management Plan

Training Seminars/Induction

During induction, all employees should be made aware that the performance management system has the potential to include personal information on their individual work performance or competency.

Councillors, all staff of the Council including staff of council businesses, and members of council committees should be acquainted with the general provisions of the PPIPA, and in particular, the 12 Information Protection Principles, HRIPA, the Public Register provisions, the Privacy Code of Practice for Local Government, this Plan and any other applicable Code of Practice.

Responsibilities of the Privacy Contact Officer

It is assumed that the Public Officer within Council will be assigned the role of the Privacy Contact Officer unless the General Manager has directed otherwise.

In order to ensure compliance with PPIPA, HRIPA, the Privacy Contact Officer will review all contracts and agreements with consultants and other contractors, rates notices, application forms of whatsoever nature, and other written requests by which personal information is collected by Council, to ensure that Council is in compliance with the PPIPA and HRIPA.

Interim measures to ensure compliance with IPP 3 in particular may include the creation of stamps or printed slips that contain the appropriate wording (see Appendices 2 and 3).

The Privacy Contact Officer will ensure Council in its public areas has special provisions for working with computer screens. Computer screens may require:

- ◆ fast screen savers;
- ◆ face the computers away from the public; or
- ◆ only allow the record system to show one record at a time.

Council's electronic databases should also be reviewed to ensure that they contain procedures and protocols to check the accuracy and currency of personal information.

The Privacy Contact Officer will also provide opinions within Council as to:

- (i) Whether the personal information is collected for a lawful purpose;
- (ii) If that lawful purpose is directly related to a function of Council; and
- (iii) Whether or not the collection of that personal information is reasonably necessary for the specified purpose.

Any further concerns of a legal nature will be referred to Council's solicitor.

Should the Council require, the Privacy Contact Officer may assign designated officers as "Privacy Resource Officers", within the larger departments of Council. In this manner the Council may ensure that the information protection principles are more broadly understood and that individual departments have a greater focus on the information protection principles and are directly applied to Council's day to day functions.

Distribution of information to the public

Council may prepare its own literature such as pamphlets on the PPIPA, HRIPA or it may obtain and distribute copies of literature available from Privacy NSW.

Council may also publish public notices, newsletters or website bulletins explaining the key elements of the Act and the rights of persons about whom information is held. See the discussion in this Plan with respect to IPP 6 for more information in this regard.

The Privacy Contact Officer will ensure that the next available rates notice includes a notice which:

- (i) mentions the commencement of the new PPIPA;
- (ii) states that Council holds personal information;
- (iii) mentions that Council may use and disclose personal information in various circumstances; and
- (iv) states that for further information, please contact the Privacy Contact Officer on (telephone number)

Council may however choose to do a council-wide letterbox drop in preference to (or in addition to) an insert in the rates notices.

Part 5 – Data Breach

5.1 What is Data Breach?

A data breach happens when there is an error that has allowed or could allow unauthorised access to Council's data. Examples include emails sent to the incorrect recipients if they contained classified material or personal information, malware, hacking and data theft, unintentional loss of a paper document, laptop, or USB stick.

5.2 Notifiable Data Breach Scheme (NDB)

5.2.1 Tax File Number collection

As Council collects tax file numbers (TFNs), Council is obligated to fulfil NDB duties in the event of a TFN data breach that is "likely to result in serious harm" to any person. The notification requirements concern notifying both the impacted individuals and the Australian Privacy Commissioner.

5.3 Other Data Breach notification schemes

5.3.1 Sharing of government sector data

The Data Sharing (Government Sector) Act of 2015 (DSGS Act) contains a data breach notification scheme for exchanging government sector data with the other government sector entities under the DSGS Act. If Council receives personal or health information under the DSGS Act and learns that privacy laws have been (or are likely to have been) violated, Council is required to notify the data supplier and the NSW Privacy Commissioner of the violation as soon as practically possible.

5.3.2 European Union's General Data Protection Regulation

The General Data Protection Regulation (GDPR) will apply to any entity that provides products or services to, or monitors the activity of, individuals living in the European Union (EU). The GDPR's requirements for data breach notification include notifying the appropriate EU regulatory authority within 72 hours of becoming aware of the incident.

5.4 Voluntary Notification of Data Breaches

As a matter of best practice, the Information and Privacy Commission (IPC) encourages Council to voluntarily notify their organisation of all additional data breaches, as well as any affected persons, as necessary. This may include data breaches involving TFNs but not other personally identifiable information (PII) or data breaches involving TFNs but not likely to cause irreparable harm.

The following factors will be taken into consideration by Council when assessing the seriousness of a breach:

- The type of data revealed;

- The disclosure of personal or health information;
- The number of people impacted;
- The risk of harm that the breach could cause to individuals, organisations, and/or Council

Following a determination of the severity of a breach, Council will take the following actions to handle it:

Contain – steps will be taken to contain the breach and minimise any resulting damage.

Evaluate – ascertain the type of data involved in the breach and the risks associated with the breach. This will include an assessment of who is affected by the breach, what was the cause of the breach, and any foreseeable harm to the affected individuals/organisations.

Notify – individuals/organisations affected by the breach will be notified as soon as possible to enable them to take any steps required to protect themselves, and to advise them of their rights to lodge a complaint with the Privacy Commissioner. Council's default position is to voluntarily report data breaches of personal information to the Privacy Commissioner.

Act – any additional action identified to mitigate risks will be implemented.

Prevent – preventive efforts will be put into action based on the type and seriousness of the breach.

Part 6 - Internal Review

How does the process of Internal Review operate?

Complaints are to be made within **6 months** of the complainant being first aware of the conduct. The complaint is to be in writing and addressed to Council's Privacy Contact Officer. The Privacy Contact Officer will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the complaint. The Reviewing Officer must be an employee and suitability qualified. The review is to be completed within **60 days** of the lodgement of the complaint. The Council must notify the complainant of the outcome of the review within **14 days** of its determination.

The Privacy Commissioner must be notified of a complaint, briefed on progress and notified of the outcome of an internal review under PPIPA or HRIPA.

What happens after an Internal Review?

If the complainant remains unsatisfied, he/she may appeal to the Administrative Decisions Tribunal which hears the matter afresh and may impose its own decision and award damages for a breach of an information protection principle.

Part 7 – Other Relevant Matters

Contracts with consultants and other private contractors

It is necessary to have specific provisions to protect the Council in any dealings with private contractors.

Confidentiality

The obligation of confidentiality is additional to and separate from that of privacy. Nevertheless, a duty to withhold information lies at the heart of both concepts. Confidentiality attaches to information per se, personal information to the person to whom that information relates.

An obligation of confidentiality exists for all employees whether express or implied as a matter of law.

Information which may be confidential is also likely to have a separate and independent obligation attaching to it in the form of privacy and in that regard, a release for the purposes of confidentiality will not suffice for privacy purposes. Two separate releases will be required and, in the case of privacy, the person to whom the information relates will be required to provide the release.

Misuse of personal information

Section 664 of the LGA makes it an offence for anyone to disclose information except in accordance with that section. Whether or not a particular disclosure is made with lawful excuse is a matter that requires legal opinion from case to case.

Regular review of the collection, storage and use of personal information

The information practices relating to the collection, storage and use of personal information will be reviewed by the Council every three (3) years. Any new program initiatives will be incorporated into the review process with a view to ascertaining whether or not those programs comply with the PPIPA and HRIPA.

Regular Review of Privacy Management Plan

Once the information practices are reviewed from time to time, the Privacy Management Plan will also be reviewed to ensure that the Plan is up to date.

STATUTORY DECLARATION FOR ACCESS UNDER SECTION 57 OF THE PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 TO A PUBLIC REGISTER HELD BY COUNCIL

**STATUTORY DECLARATION
OATHS ACT, 1900, NINTH SCHEDULE**

I, the undersigned,(name of applicant)

of.....(address),

in the State of New South Wales, do solemnly and sincerely declare that:

I am.....(relationship (if any) to person inquired about)

I seek to know whether is on the public register of*

The purpose for which I seek this information is

The purpose for which the information is required is to

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Declared at.....

in the said State this day of 200_
before me.

.....
before me:
Justice of the Peace/Solicitor

.....
Name to be printed

** Applicant to describe the relevant public register.*

Privacy Notification Form - Section 10 (Post – Collection)

(Addressed to the person from whom information has been collected.)

The personal information that Council has collected from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998.

The intended recipients of the personal information are:

- ◆ officers within the Council;
- ◆ data service providers engaged by the Council from time to time;
- ◆ any other agent of the Council; and
- ◆ *(any other)*.

The supply of the information by you *is / is not* voluntary. If you cannot provide or do not wish to provide the information sought, the Council may

Council has collected this personal information from you in order to

.....

You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the PPIPA.

Council* is to be regarded as the agency that holds the information.

Enquires concerning this matter can be addressed to

Signed.....

Dated.....

*Please state who holds or controls the information if not Council.

Privacy Notification Form - Section 10 (Post – Collection from other source)

(Addressed to the person from whom information is about to be collected or has been collected.)

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998.

The intended recipients of the personal information are:

- ◆ officers within the Council;
- ◆ data service providers engaged by the Council from time to time;
- ◆ any other agent of the Council; and
- ◆ *(any other)*.

The supply of the information by you *is / is not* voluntary. If you cannot provide or do not wish to provide the information sought, the Council may.....

Council is collecting this personal information from *<other source name>* about you in order to

.....

You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the PPIPA.

Council* is to be regarded as the agency that holds the information.

Enquires concerning this matter can be addressed to

Signed.....

Dated.....

Privacy Notification Form - Section 10 (Pre –Collection)

(Addressed to the person from whom information is about to be collected or has been collected.)

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 (“the Act”).

The intended recipients of the personal information are:

- ◆ officers within the Council;
- ◆ data service providers engaged by the Council from time to time;
- ◆ any other agent of the Council; and
- ◆ *(any other)*.

The supply of the information by you *is / is not* voluntary. If you cannot provide or do not wish to provide the information sought, the Council may/will be unable to process your application.

Council is collecting this personal information from you in order to

.....

You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the Act.

Council* is to be regarded as the agency that holds the information.

Enquires concerning this matter can be addressed to

Signed.....

Dated.....

*Please state who holds or controls the information if not Council

**APPLICATION UNDER SECTION 13 OF THE PRIVACY AND PERSONAL INFORMATION
PROTECTION ACT 1998 –
TO DETERMINE WHETHER COUNCIL HOLDS PERSONAL INFORMATION ABOUT A
PERSON**

Personal information held by the Council

I, _____, of (address), hereby request the General Manager of Council provide the following :

Does the Council hold personal information about me ? YES/NO

If so, what is the nature of that information?

.....
.....
.....

What is the main purpose for holding the information?

.....
.....
.....

Am I entitled to access the information? YES/NO

My address for response to this Application is:

.....
.....
.....

Note to applicants

Should you provide your address or any other contact details the Council will not record those details for any other purpose other than to respond to your application.

As an applicant, you have a right of access to personal information concerning yourself that is held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 ("the Act"). There is a separate application form to gain access.

The Council may refuse to process this application in part or in whole if:

- ◆ there is an exemption to section 13 of the Act; or
- ◆ a Code may restrict the operation of section 14.

**APPLICATION UNDER SECTION 14 OF THE PRIVACY AND PERSONAL INFORMATION PROTECTION
ACT 1998 -
FOR ACCESS TO APPLICANT'S PERSONAL INFORMATION**

Personal information held by Council

I, (name).....

of (address),

hereby request that the Council provide me with:

- (a) access to **all** personal information held concerning myself; or
- (b) access to the following personal information only.....

Note to applicants :

As an applicant, you have a right of access to your personal information held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 ("the Act").

You are entitled to have access without excessive delay or cost.

Council may refuse to process your Application in part or in whole if:

- ◆ the correct amount of fees has not been paid;
- ◆ there is an exemption to section 14 of the Act; or
- ◆ a Code of Practice may restrict disclosure.

Enquires concerning this application should be made to

**APPLICATION UNDER SECTION 15 OF THE PRIVACY AND PERSONAL INFORMATION PROTECTION
ACT 1998 –
FOR ALTERATION OF APPLICANT’S PERSONAL INFORMATION**

Personal Information held by Council

I, (name).....

of (address),

hereby request the Council to alter personal information regarding myself in the following manner :

I propose the following changes:

.....

The reasons for the changes are as follows :

.....

The documentary bases for those changes is as shown on the attached documents :

.....

Note to Applicants :

You have a right to request appropriate amendments are made (whether by way of corrections, deletions or additions) to ensure that the personal information held by the Council :

- (a) is accurate, and
- (b) 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 the personal information in accordance with a request by you, Council must take such steps as are reasonable to attach to the information in such a manner as is capable of being read with the information, any statement provided by you.

If your personal information is amended, you are entitled under the Privacy and Personal Information Protection Act 1998 (“the Act”), if it is reasonably practicable, to the have recipients of that information notified of the amendments made by Council.

Council may refuse to process your application in part or in whole if:

- ◆ there is an exemption to section 15 of the Act; or
- ◆ a Code of Practice may restrict alteration.

Enquires concerning this application should be made to