

# INFORMATION PRIVACY – Frequently Asked Questions



## 1. WHAT IS INFORMATION PRIVACY?

Information Privacy is the right of individuals to determine for themselves when, how and to what extent their personal information is shared with others

The type of information protected by the Privacy and Data Protection Act 2014 is an individual's personal information, ie. information that either identifies you or could identify you.

## 2. WHAT IS PERSONAL INFORMATION?

Personal Information refers to information or an opinion about an individual who is 'reasonably identifiable'. Personal Information can be true or false, verbal, written, photographic, recorded or unrecorded.

Typically 'personal information' may include a name, address, contact details such as a telephone number, Date of Birth, gender, sexuality or race of an individual.

The Privacy and Data Protection Act's definition of 'personal information' is:

'information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion but does not include information of a kind to which the Health Records Act 2001 applies'.

## 3. WHAT IS THE PRIVACY AND DATA PROTECTION ACT 2014?

The Privacy and Data Protection Act 2014 (PDPA) came into effect on 17 September 2014 and repealed the Victorian Information Privacy Act 2000 and the Commissioner for Law Enforcement Data Security Act 2005.

The PDPA gives all Victorians rights to privacy. It protects your personal information and regulates how your information is, collected, used, and disclosed. The Act also ensures that any personal information collected is accurate, is kept in a secure environment and gives you the right to access that information.

The PDPA prescribes ten (10) Information Privacy Principles (IPP's) which all Victorian Public Sector organisations must operate in accordance with. The privacy principles are legal obligations that prescribe what Victorian Public Sector organisations must do when handling your personal information. The IPP's cover the collection, use and disclosure, storage, quality, security, as well as your access and correction rights.

## 4. WHAT ARE THE TEN INFORMATION PRIVACY PRINCIPLES

This is a short summary of the Information Privacy Principles:

1. **Collection** - A government organisation can only collect your personal information if it is necessary to fulfil the organisation's functions.
2. **Use and disclosure** - Your personal information should be used and disclosed for the primary purpose for which it was collected unless it is for a secondary purpose that you would reasonably expect, or for which your consent may be requested. The law also allows some uses and disclosures without consent, such as to protect safety.
3. **Data quality** - Organisations must keep your personal information accurate, complete and up-to-date.
4. **Data security** - Personal information must be protected from misuse, loss and unauthorised access, modification or disclosure.
5. **Openness** - Organisations must have clearly expressed policies on the way they manage personal information. You can ask to have a look at an organisation's privacy policy.

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6. **Access and correction** - You have a right to seek access to your own personal information and to seek corrections if necessary. Access and correction will be handled mostly under the Victorian Freedom of Information Act.
  7. **Unique identifiers** - Unique identifiers, usually a number, can facilitate data matching. Use of unique identifiers by organisations is only allowed under certain conditions, ie. Election information.
  8. **Anonymity** - Where lawful and feasible, you should have the option of transacting with an organisation without identifying yourself.
  9. **Transborder data flows** - If your personal information travels outside Victoria, your privacy protection should travel with it.
  10. **Sensitive information** - This includes your racial or ethnic origin, political views, religious beliefs, sexual preferences, membership of groups or criminal record. The law puts special restrictions on the collection of this information.

## 5. WHAT IS THE VICTORIAN HEALTH RECORDS ACT 2001?

The 'Victorian Health Records Act 2001' protects health information handled by the Victorian public and private sectors.

Health Information is a specific type of 'Personal Information'. Health information is considered personal information that is information or an opinion about the physical or mental health or a disability of an individual. It includes any personal information collected to provide a health service.

The Victorian Health Records Act 2001 prescribes 12 'Health Privacy Principles' (HPP's) that Government bodies must do when handling health records. The first 10 HPP's are consistent with the Information Privacy Principles the additional two principles are summarized below:

11. **Transfer/closure of the practice of a health service provider** – Health service providers that, sell, transfer or close a practice or business must give notice of the transfer or closure to past users of the service.
12. **Making information available to another health service provider** – Health service providers must make health information available to another provider when asked to do so by the subject of the information.

## 6. HOW DOES THE VICTORIAN CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES RELATE TO INFORMATION PRIVACY?

The Victorian Charter of Human Rights and Responsibilities Act 2006 is an agreed set of human rights, freedoms and responsibilities protected by law. Under the Charter, all Victorian government organizations must observe these rights when they create laws, set policies and provide services. This includes the right to privacy

Section 13 of the Victorian Charter of Human Rights and Responsibilities contains the following statement relating to an individuals right to privacy:

'a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with'.

## 7. DOES THE PRIVACY AND DATA PROTECTION ACT APPLY ONLY TO DOCUMENTS?

No. It deals with recorded personal information that can be in many forms including film, video, still photography, audio and of course digital forms for storage display on desk and laptop computers. Personal information can also be recorded on mobile telephones with text capabilities and devices like hand held computers (eg.notebook/ipad).

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## 8. DOES THE PRIVACY AND DATA PROTECTION ACT APPLY TO EMAIL AND WORKPLACE SURVEILLANCE ACTIVITIES?

Yes. Where the surveillance involves the recording of personal information. Victoria's Surveillance Devices Act may also have some applications.

## 9. DOES THE PRIVACY AND DATA PROTECTION ACT APPLY TO PUBLIC REGISTERS?

Yes. As far as it is reasonably practicable, a Victorian public sector agency or council must administer a public register consistently with the Information Privacy Principles in the PDPA.

## 10. ARE THERE ANY EXEMPTIONS UNDER THE PRIVACY AND DATA PROTECTION ACT?

Limited exemptions apply to courts, tribunals, law enforcement agencies and to publicly available information (except public registers).

## 11. DOES THE PRIVACY AND DATA PROTECTION ACT GIVE PRIVACY RIGHTS TO COMPANIES OR DECEASED PERSONS?

No. The Privacy and Data Protection Act only applies to living natural persons, unless the disclosure of a deceased persons personal information has the potential to interfere with the privacy rights of a living person. In contrast, the Health Records Act has provisions dealing specifically with privacy rights of deceased persons and their next of kin.

## 12. WHAT IS CONSIDERED A 'PRIVACY BREACH' UNDER THE PRIVACY AND DATA PROTECTION ACT?

A 'privacy breach' is an act or practice that interferes with the privacy of an individual by being contrary to or inconsistent with, one or more of the Information Privacy Principles or any relevant code of practice.

## 13. WHO CAN I CONTACT IF I BELIEVE MY PRIVACY HAS BEEN BREACHED?

If you believe your privacy has been breached, you should first attempt to resolve the matter with the organisation. If the organisation fails to deal with the complaint to your satisfaction, you can lodge a formal complaint with the Commissioner for Privacy and Data Protection [www.cdpd.vic.gov.au](http://www.cdpd.vic.gov.au)

All complaints must be made in writing.

## 14. WHERE CAN I GET MORE INFORMATION ON PRIVACY ISSUES:

For information on privacy or health information and the Health Records Act in Victoria, contact the Health Services Commissioner on 1300 582 113 or [www.health.vic.gov.au/hsc](http://www.health.vic.gov.au/hsc) or [www.cdpd.vic.gov.au](http://www.cdpd.vic.gov.au)

A copy of Council's Privacy and Personal Information Policy is available by contacting the Governance Unit on 8571 5447 or [www.greaterdandenong.vic.gov.au](http://www.greaterdandenong.vic.gov.au)