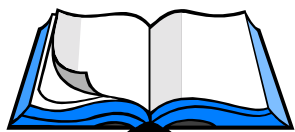


Department of Local Government

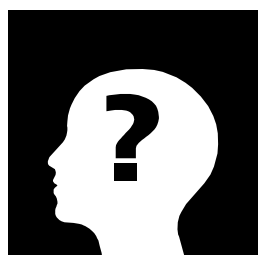
PRIVACY

YOU AND YOUR LOCAL COUNCIL



*How the new privacy laws
affect councils*

*How the new privacy laws
affect you*



*Frequently asked
questions*

PRIVACY, YOU AND YOUR LOCAL COUNCIL

What's the new privacy law about?

The *Privacy and Personal Information Protection Act 1998* (PPIPA) commenced on 1 July 2000. It provides for the protection of personal information and privacy of individuals generally. '**Personal information**' is defined as: "*information or an opinion ... about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.*"

It establishes 12 information protection principles which cover the collection, storage, use and disclosure of (and access to) personal information.

What do councils have to do?

The principal requirements imposed by the new legislation on councils and other public sector agencies are:

- to comply with the information protection principles as modified by relevant exemptions or privacy codes of practice;
- to prepare and report on privacy management plans;
- to comply with the public register provisions;
- to conduct internal reviews of conduct which infringes the information protection principles, privacy codes of practice or public register provisions.

A Privacy Code of Practice for Local Government, (the **Code of Practice**) approved by the Attorney General, has been introduced. The Code of Practice, which covers all councils, has the effect of modifying the application of Part 6 of the PPIPA (the 'public register' provisions) and the application of the information protection principles to local government.

How does PPIPA affect disclosure of information to third parties?

PPIPA only governs the supply of information that constitutes 'personal information'. The disclosure of personal information is also regulated under the *Local Government Act* (LGA) and the *Freedom of Information Act* (FOI Act). Copying of information is governed by the *Commonwealth Copyright Act 1968*.

Disclosure of non-personal information by councils remains governed by LGA and FOI Act. Copying of information is governed by the *Commonwealth Copyright Act 1968*.

What is the difference between 'public registers' and other sources of council information?

PPIPA distinguishes between information held on 'public registers', and other types of personal information held by councils.

The term '**public register**' is defined in the Act as "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)".

Requests by third parties for information will therefore be subject to different tests depending on:

- (i) if the information is 'personal information', and
- (ii) whether or not it is held on a 'public register'.

How accessible are council public registers?

Part 2 of the Code of Practice deals with information sought from councils' public registers; each council may have different types of information held as 'public registers'. For example your council may have general rating or property information held as a 'public register'.

In the past councils could sell information from the rates records in bulk to private businesses, which could use the information to conduct 'direct marketing' campaigns for their products or services. This generated a large number of complaints to the Privacy Commissioner. The sale of this type of personal information by local government to private businesses is not within the spirit of ensuring the privacy of the individual.

In general, personal information may only be disclosed from a public register if for a purpose related to the purpose of the register or the Act under which the register is kept. In some cases the use of bulk-supplied information *may* be for such a purpose. The council may request a statutory declaration to that effect from the person seeking the information.

However, councils may also allow:

- (a) inspection of any part of the register; or
- (b) copying of single entries or pages from the register; or
- (c) copying or purchase of part (or the whole) of the register, as long as the names and addresses of individuals are first deleted.

Councils are therefore prevented from supplying bulk property data to third parties for the purpose of direct marketing while still being able to disclose information for many legitimate reasons.

FREQUENTLY ASKED QUESTIONS

Q1: How do I get access to council information?

A: Determine whether or not you are seeking a 'document' or another form of information such as a verbal opinion. Rights of access to 'documents' under the LGA or the FOI Act may not extend to other forms of information. The word 'document' is defined in s.21 of the Interpretation Act 1987 as meaning any record of information, and includes information held in electronic form.

Next determine whether or not you are seeking 'personal information' and whether the information is on a 'public register' (see above). You may make your request in writing, in person, or by telephone. It may help to make an appointment for detailed requests. Contact your council to check its policy first. Ask to speak to Customer Service or the Public Officer.

Q2: Will there be a fee to access council records?

A: In general access to council records is free, as provided for by s12 of the LGA, although reasonable photocopying charges may be payable. However there may be a fee depending on whether the legislation under which you are seeking to access the records allows a fee to be charged. For example, a fee is payable for applications under the FOI Act. Requests for access to information about yourself, if made under s.14 of PPIPA, may incur a fee also.

Q3: Can council allow public inspection of the register of pecuniary interests?

A: Yes. By s.12(1) of the LGA and the Code of Practice, anyone can look at the pecuniary interest register, which is the "register of returns" lodged by councillors and designated persons under s.449 of the LGA. You are also able to copy a single entry or a page from the pecuniary interest register. The Code of Practice specifically states that "a council should not require any person to provide a reason for inspecting the council's pecuniary interest register".

Q4: I want to find out information about a particular member of staff and wish to see their personnel file. Can I access their personnel file?

A: No. You do not have the right to inspect documents relating to personnel matters concerning particular individuals under s.12 of the LGA. The PPIPA would also usually prevent access to this type of documentation as it is personal information. However there are some exceptions, such as the provision of employment references; see the Privacy Code of Practice for Local Government for more details.

Q5: I want to see the council's register of delegations. Can I do so?

A: Yes. Under s.12(1) of the LGA, council must allow inspection of the register of delegations. Disclosure in accordance with these specific legislative provisions does not breach the PPIPA as a result of the exemption afforded by section 25 of the PPIPA.

Q6: Payments to council - will my details be included in the council business paper?

A: The Local Government & Shires Associations (LGSA) have provided advice to councils to the effect that cheque warrants should not be included in the business paper as they will invariably contain information that is "personal information" covered by PPIPA. The LGA does not require the cheque warrant to be included in council's business paper. For further detail see LGSA weekly circular No 50/00 dated 15/12/00 at www.lgsa.org.au.

Q7: I need to contact the owner of my neighbouring property, but they don't live there. How can I contact them?

A: Details of property ownership are held by the council, or the Land Titles Office. If the council holds this information on a 'public register' you may be told the property owner's contact details (the Code of Practice allows you to view or copy a single record). If not on a 'public register', you will normally be allowed to have the information under s12(6) of the LGA subject to the public interest test.

Q8: If I make a written submission with respect to a development application, what happens to my personal details?

A: The council should, when seeking submissions to a development application, advise how the personal information will be used and disclosed. The council's policy may be to make objections available to the applicant and/or include them in the council business paper if the matter goes before council for determination. Alternatively, council's policy may be to only present the issues in any report to council. You should be aware that objectors' letters may be kept on property files, which might be inspected by third parties in the future. Whatever approach council takes it should make this known so that you as a potential objector are aware of the situation.

In some cases it may be beneficial for the council to know who has made the objection so that the matters raised can be discussed and perhaps jointly addressed with the applicant. Of course you may choose to make an anonymous objection. This may however limit the opportunity for council and/or the applicant to discuss your concerns and reach a satisfactory outcome for all involved.

Alternatively, you may include your name and/or address in your submission, but request that the General Manager under s.739 of the LGA ensures that any material to be made available for public inspection is prepared so as to omit your address. (However note that this is only available if you consider that the disclosure would place or places your personal safety or that of your family at risk, and must be verified by a statutory declaration.)

You could also make an argument to the council that your details should not be disclosed to third parties on the grounds of the 'public interest' (s.12(6) of the LGA). However the council will need to determine what the 'public interest' is afresh, each time a request for access by a third party is made.

Q9: Can council allow public inspection of the register of development applications and determinations (including for complying development certificates)?

A: Yes. Section 100(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) establishes the register of development applications and determinations, including for complying development certificates. Section 100(2) requires council to make the register available for public inspection.

Clauses 264 and 265 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) set out what information should be contained in the register, and clause 268 requires council to make the register publicly available.

The Department is of the view that third party access to the register of development applications and determinations to examine specific records is "a purpose relating to the purpose of the register", and that there is therefore no inconsistency between the PPIPA and the EP&A Act. Consequently, public inspection must continue to be permitted with respect to specific records.

A person's right to inspect the register does not however extend to plans and specifications for any residential parts of a proposed building other than plans that show the height and external configuration of the building in relation to the site. Nor does it extend to commercial information likely to prejudice the applicant's commercial position or likely to reveal a trade secret (s. 12(1A) LGA, and cl. 56 and cl.268(3) of the EP&A Regulation).

Personal information may be suppressed on a public register (that is, not available for disclosure to third parties) under s.58 of the PPIPA.

Q10: My neighbour has lodged a development application. What information can I get about it?

A: Under s. 12(1) of the LGA council must allow inspection of specific development applications and “associated documents”. Usually this will include the application, an extract of the plans showing what is being proposed and the statement of environmental effects if applicable.

As with the register of development applications and determinations, your right to inspect development applications is subject to the limitation imposed by s.12(1A) of the LGA (see Q.9 above). You should also note that there are different rules in respect of some proposals such as complying developments. In addition it should be remembered that the Commonwealth Copyright Act 1968 applies to house plans and designs, and therefore copying by third parties may be restricted.

Disclosure in accordance with these specific legislative provisions does not breach the PPIPA as a result of the exemption under s.25 of PPIPA. However personal information may be suppressed on a public register (that is, not available for disclosure to third parties) under s.58 of PPIPA.

Q11: I'm interested in purchasing a house, but development consent has just been granted for a block of flats next door. What can I find out about the development consent?

A: By s.12(1) of the LGA council must allow inspection of development applications and “associated documents” (see Q.10). In particular, cl.268 of the EP&A Regulation requires council to make available for free public inspection certain records, including:

- ☑ a copy of the development application;
- ☑ a brief description of the development;
- ☑ a copy of any recommendations made by council staff;
- ☑ any conditions attached to the consent;
- ☑ the duration of the consent and commencement date for building; and
- ☑ the result of any appeal.

Your right to inspect a development application is subject to the limitation imposed by s. 12(1A) of the LGA and cl. 268(3) of the EP&A Regulation (see Q.9 for more detail).

Q12: Can I get information from Council about rates payable on land that I am interested in purchasing? Is a fee payable for this information?

A: Yes. Under s.603 of the LGA any person may apply to council for a certificate in respect of a parcel of land as to the amount payable for rates, charges or otherwise. This certificate will usually not include any personal information about the owner of the property, unless the land was sold for unpaid rates and charges. The council may charge \$45 for this certificate (fee current as at the 2000-2001 financial year).

Q13: I want to know the valuations of various properties near a property I am interested in purchasing. Can I get this from council?

A: Yes. If you are seeking to obtain the official land valuation for a particular property and/or the most recent sales prices for properties in the area, then this is not personal information and therefore it is not affected by PPIPA.

You can request the information under s12(6) of the LGA. In deciding whether to allow you access the council must consider whether on balance it would be contrary to the public interest.

Q14: Can professional valuers find out who owns a property?

A: There is an argument that allowing professional property valuers access to personal information contained in council rating records or other similar public registers should be regarded as being for a purpose related to the purpose of the register. The main argument to support this is that valuers need access to property information to provide a basis for their valuations because courts have held that the best evidence of market value is that of sales of comparable properties. Names and addresses are required to ascertain whether the transaction was entered into at arm's length or between related parties, as this will reveal how reliable the sale price is as an indication of value. See the LGSA Weekly Circular No 50/00 dated 15/12/00 for further details at www.lgsa.org.au.

Q15: A dog in my street just bit my daughter and tore her clothes. Can I find out who owns the dog?

A: Yes. If the dog is listed on the council's old Dog Act register, the Code of Practice allows any person to inspect a publicly available copy of a public register in council premises, and copy a single entry or a page of the register.

If the dog is listed on the NSW Companion Animals register, which is not a 'public register', the *Companion Animals Act 1998* and *Regulation 1999* override PPIPA. Under the *Companion Animals Act*, the council can only disclose this information to you "for the purpose of bringing legal proceedings".

You or your lawyer will first need to prove that:

- the behaviour of an animal has caused a problem (eg. dog attack; dog running on road causing cyclist to fall and injure herself)
- that 'behaviour' has been reported to the council or the police
- you want to bring legal proceedings against the owner of the animal in respect of that problem (not for some other reason such as pursuing a debtor)
- you or your lawyer have requested the name of the animal owner in writing from the council.

For more information see the *Companion Animals Act* s.89, the *Companion Animals Regulation* cl.30, PPIPA s.25, and the Privacy Code of Practice for Local Government.

Q16: What can I do if I think the council is not handling my personal information appropriately?

A: If you believe that your personal information has been disclosed to a third party, or used by the council itself, other than in accordance with the PPIPA or the Privacy Code of Practice for Local Government, you may request from the council an internal review of the council's conduct. You should make your request within six months of first becoming aware of council's conduct. Your complaint must be in writing and addressed to council's Privacy Contact Officer.

If, following the internal review, you remain unsatisfied, you may appeal to the Administrative Decisions Tribunal of New South Wales. The Tribunal hears the matter afresh and may impose its own decision. For conduct occurring after 1 July 2001 the Tribunal may also award damages of up to \$40,000 for a breach of an information protection principle.

It is emphasised that the views expressed above are those of the Department and should not be regarded as being in the nature of legal advice. You should seek and be guided by your own legal advice with respect to any matters that require clarification or interpretation of the law.