

A guide to the Information Privacy Principles Instruction for Government school councils and governing councils

This document is currently under review. Please direct any queries about this document to the department's Policy Adviser (Governance) or email decd.sitegovernance@sa.gov.au.

A guide to the Information Privacy Principles Instruction for Government school councils and governing councils

What is the Information Privacy Principles Instruction?

The Information Privacy Principles Instruction is contained in *Premier and Cabinet Circular 12* and governs the collection, storage, use and disclosure of personal information collected by Government agencies. It also provides a right for an individual to access and amend their personal information.

How does the Information Privacy Principles Instruction apply to school councils and governing councils?

The Minister for Education and Child Development (the Minister) has issued an administrative instruction requiring Government school councils and governing councils (Councils) to comply with the Information Privacy Principles Instruction, as amended by Cabinet from time to time, and with some small modifications, as if they were Government agencies. This instruction takes effect from 28 January 2014.

As a consequence, each member of a Council is responsible for ensuring that the information privacy principles are implemented, maintained and observed in respect of all personal information for which their Council is responsible.

The information privacy principles are consistent with the Code of Practice to which all governing council members are already subject. Requiring compliance with the Information Privacy Principles Instruction, as modified, by way of an administrative instruction is designed to provide clarity and guidance to all Council members concerning the use of personal information to which they have access.

What is 'personal information'?

Personal information is information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion. A natural person in this context is a living human being.

Personal information can include combinations of name, address, date of birth, financial or health status, ethnicity, gender, religion, witness statements, alleged behaviours and licensing details. It may also include photographs, biometrics or video footage.

What are the principles that must be applied by Council members when dealing with personal information?

Collection of personal information

Personal information should be collected legally and fairly and should not be collected unnecessarily.

Individuals should be told the purpose for which their personal information is being collected, the legal authority under which it is collected, if applicable, and, in general terms, the Council's usual practices with respect to the disclosure of similar information.

Councils should not collect information that is inaccurate, or, having regard to the purpose of the collection, is irrelevant, out of date, incomplete or excessively personal.

Storage of personal information

Personal information collected by a Council should be stored securely to prevent against loss, misuse or unauthorised access.

Access to records and correction of personal information

Individuals have a right to apply for access to their own personal information, and can seek to have it corrected if they consider it to be incomplete, incorrect, out-of-date or misleading, in accordance with the provisions of the *Freedom of Information Act 1991*.

Use and disclosure of personal information

A Council should only use personal information for the purpose for which it was collected. A Council should not use an individual's personal information for another purpose or disclose it to a third person for another purpose unless:

- the individual would reasonably expect the personal information to be used or disclosed for that secondary purpose, and the secondary purpose is related to the primary purpose of collection; or
- the individual has given consent; or
- the Council reasonably believes that the use is necessary to prevent or lessen a serious threat to the life, health or safety of someone; or
- the Council member disclosing the information reasonably believes that the disclosure is necessary to prevent or lessen a serious threat to the life, health or safety of someone; or
- the use or disclosure is required or authorised by law; or
- the use or disclosure is necessary for enforcing a law, protecting public revenue, or protecting the interests of the Government as an employer; or
- the Council suspects that unlawful activity has been, is being, or may be engaged in, and the use or disclosure is necessary for the investigation of the matter or reporting its concerns to relevant persons or authorities.

If a Council *discloses* personal information in one of the circumstances listed above, it must keep a record of the disclosure and provide it to the Minister if required.

A Council that uses personal information should endeavour to ensure that the information is accurate, complete and up to date.

The information privacy principles are not intended to prevent disclosure of personal information where it is in the public interest to do so, such as a serious threat to the life, health or safety of a child or any other person. It specifically does not prevent the disclosure of information where there is lawful reason to do so, such as a mandatory reporting obligation under the *Children's Protection Act 1993*.

Note: provisions in the Information Privacy Principles Instruction concerning the use and disclosure of personal information were amended in 2013 to promote the protection of children. An Information Sheet has been developed by State Records of South Australia to assist agencies in understanding and complying with these amendments and contains useful examples. This Information Sheet, *Amendments to the Information Privacy Principles Instruction*, issued on

31 October 2013, is available on the State Records of South Australia website at <http://www.archives.sa.gov.au/content/privacy-guidelines-infosheets>

Responsibilities in relation to committees, employees and contracted service providers of a Council

Committees

Committees that are appointed by a Council are required to comply with the Information Privacy Principles Instruction. For the purposes of the Information Privacy Principles Instruction, anything done by a committee appointed by a Council, is deemed to have been done by the Council. Disclosure of personal information to a committee member for the purposes of the activities of the committee is not considered to be disclosure outside of the Council.

Employees

For the purposes of the Information Privacy Principles Instruction, anything done by a person employed by a Council in the performance of his or her duties is deemed to have been done by the Council. Disclosure of personal information to a person employed by the Council, in the performance of their duties, is not considered to be disclosure outside of the Council.

Contracted service providers

The Information Privacy Principles Instruction requires personal information handled by contracted service providers undertaking a service on behalf of a Council, to be treated the same way it would be treated if the Council was delivering the service itself. If a Council intends to enter into a contract for service which will necessitate the disclosure of personal information to the contracted service provider, the Council must include conditions in the contract to ensure that the information privacy principles are complied with as if the contracted service provider were a member of the Council, and must include provisions in the contract that enable audit and verification of compliance with these obligations.

Note - Standard Council contract forms are being updated to reflect the application of the Information Privacy Principles Instruction

Part V Division 5 of the *Department for Education and Child Development Administrative Instructions and Guidelines (Schooling Sector) Section 5: School Councils, Affiliated Committees and Related Matters* (AIG Section 5) requires that Councils use standard contract forms when entering into an agreement for services with a contractor or when employing a person.

The standard contract forms contained within AIG Section 5 are currently being updated to include appropriate clauses that will require compliance by a contracted service provider or employee of Council with the Information Privacy Principles Instruction. Further advice will be provided to Councils in relation to the update of contracts currently in place with contractors and employees, in order to reflect the application of the Information Privacy Principles Instruction.

If a Council is currently considering entering into a new contract with a contracted service provider or employee, please contact the Office of the Chief Education Officer in the Department for Education and Child Development on telephone 8226 0041 for further advice.

The Privacy Committee of South Australia

The Privacy Committee of South Australia (the Committee) makes recommendations to the Government and other persons or bodies on the measures that should be taken to improve

individual privacy protection. It is also responsible for keeping itself informed as to the extent that the Information Privacy Principles Instruction is being implemented.

The Committee may at any time appoint a person to investigate the nature and extent of a Council's compliance with the principles and report back to the Committee.

Council members must provide the Committee with any information that it requires, and must comply with any requirements determined by the Committee concerning the provision of that information.

Further information

This information sheet is provided to Councils for general guidance only. Councils are advised to seek formal advice on the application of the Information Privacy Principles Instruction to their particular situation.

For further information on how the Information Privacy Principles Instruction applies to Government school councils and governing councils, please contact the Office of the Chief Education Officer in the Department for Education and Child Development on telephone 8226 0041.

Resources

The Administrative Instructions and Guidelines that apply to Councils can be accessed on the Department for Education and Child Development website at: <http://www.decd.sa.gov.au/sitegovernance/>, by clicking on 'Support' in the left hand column.

The full text of the Information Privacy Principles Instruction can be accessed on the Department of the Premier and Cabinet website at: <http://dpc.sa.gov.au/premier-and-cabinet-circulars>. (Please note that the Information Privacy Principles Instruction is contained in *Premier and Cabinet Circular 12* or *PC012*.)

Further information on privacy in South Australia and the application of the information privacy principles is also available on the State Records of South Australia website at: <http://www.archives.sa.gov.au/privacy>

Acknowledgement

The development of this guide for Government school and governing councils has been informed by materials produced by State Records of South Australia.