

## Library Council of New South Wales

### Privacy Guidelines for NSW Public Libraries

The objective of these guidelines is to provide NSW public libraries with information on privacy matters relevant to providing library services.

#### Disclaimer

These guidelines have been provided to NSW public libraries for their information only. These guidelines contain clauses which NSW public libraries may wish to consider when implementing their own privacy policy. The guidelines are not compulsory and the Library Council of NSW recommends that all NSW local authorities seek independent legal advice before implementing a policy based on these guidelines. The Library Council of NSW accepts no responsibility for any loss or damage whatsoever resulting from reliance on these guidelines by any NSW public library.

#### Definitions:

<i>GDA</i>	General Disposal Authority - General retention and disposal authorities authorise the retention and disposal of records common to more than one organisation
<i>HPPs</i>	Health Privacy Principles
<i>HRIP Act</i>	Health Records and Information Privacy Act 2002
<i>IPPs</i>	Information Protection Principles
<i>Personal information</i>	Information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion

**Personal information** can include information that is recorded (e.g. on paper or in a database), but also information that is not recorded (e.g. verbal conversations). It can even include physical things like a person's fingerprints, tissue samples or DNA.

However for the purposes of privacy law, some things are exempt from the definition of "personal information", including:

- information about a person who has been dead for more than 30 years
- information about a person contained in a publicly available publication
- information about an individual's suitability for public sector employment

<i>PIIP Act</i>	Privacy and Personal Information Protection Act 1998
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## **1. Public Library Privacy Statement - Model Preamble**

The XXX Library is subject to the New South Wales Privacy and Personal Information Protection Act 1998 (the PPIP Act) and the Health Records and Information Privacy Act 2002 (the HRIP Act). Both the PPIP Act and the HRIP Act contain privacy principles (the IPPs and the HPPs respectively) and exemptions to those principles – the sum total of which may be referred to as ‘privacy obligations’. In certain circumstances, Local Government in NSW has exemptions to IPPs 2,3,10,11 & 12 and Public Registers as outlined in the Privacy Code of Practice for Local Government. (<http://www.dlg.nsw.gov.au/Files/Circulars/00-44.pdf>).

The XXX Library therefore has privacy obligations which guide how it handles people’s personal and health information.

## **2. Library membership**

### **2.1 What should a model privacy statement on membership application forms say?**

Where personal information is collected privacy laws apply and appropriate notification is required at the time of collection - IPP 3 & HPP 4.

When an agency collects personal information, the agency must tell the person:

- what information is being collected about them
- why their information is needed (i.e. the purpose of collection)
- how their information will be used
- which part of our agency will be storing or using it
- who else it might be disclosed to
- whether they have any choice in whether or not to provide their information
- how they can see and correct their information

#### Example Privacy Statement:

Application for Library membership requires you to provide ‘personal information’ as defined in the Privacy and Personal Information Protection Act 1998. The Library needs this information so that it can process your membership application in order to provide Library services. The supply of this information is voluntary, however without membership some services will not be available.

This information will only be used within XXX Council, unless the library needs to use or disclose your personal information for law enforcement purposes or if otherwise required by law.<sup>1</sup>

The Library is required to collect and retain this information and to record that documentation, supporting your application, where relevant, has been sighted. You have the right to request access to and/or correct any personal information concerning you held by the Library. Routine corrections, changes and enquiries should be directed to XXX.

## **2.2 Do online catalogues with “my account” features need to have a privacy statement?**

Yes, if information collected contains personal information. This statement could be a separate statement incorporated into the library’s general privacy statement and linked via the Website.

## **2.3 Can the library share membership information with libraries offering reciprocal membership?**

This section outlines a procedure for sharing limited personal information of library members between libraries offering reciprocal membership. Implementation of this procedure is **dependent on agreement** between library services to amend membership policies and forms.

### **What information can be shared between libraries?**

Except in extraordinary circumstances, personal information about members can only be shared between libraries if:

- (i) the information to be shared is not “health information”, and
- (ii) the information to be shared is not “sensitive personal information” (information about a person’s ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership or sexual activities), and
- (iii) the library disclosing the information (the first library) has notified the member that the information in question will be disclosed to the second library, and
- (iv) the collection of the information by the second library is reasonably necessary for a lawful purpose directly related to a function or activity of the library, and

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<sup>1</sup> If reciprocal membership provisions are implemented (see 2.3 and 2.4), the following statement should be used:

This information will only be used within XXX Council, unless you apply for reciprocal membership of another library, or if the library needs to use or disclose your personal information for law enforcement purposes or if otherwise required by law.

- (v) the second library has been authorised by the member to collect that information from the first library.

Therefore exactly what personal information may be shared will depend upon whether the sharing is really necessary in the first place, what type of information is involved, what privacy statement has been given to the person, and what authorisation they have signed.

By way of example, confirmation of membership status (including whether the person has unreturned loans) may be considered reasonably necessary in the context of an application for reciprocal membership, but a list of the titles of books borrowed would not be.

#### **2.4 What is the recommended process for reciprocal membership applications?**

The Local (first) Library will need to give the applicant a privacy statement (see example below). The Reciprocal (second) Library will need the applicant's authorisation to collect their personal information from the first library.

Example privacy statement for use by the first library:

The Library may need to supply limited personal information to other libraries if you apply for reciprocal membership of another Library. The information provided will be limited to confirmation of your membership of our Library, and whether or not you have unreturned loans.

Example authorisation for use by the second library:

I am already a member of XXX library. To allow YYY Council to check my suitability for reciprocal membership of YYY library, I authorise YYY Council to collect personal information about me from XXX library, namely whether or not I am a current member, and whether or not I have unreturned loans.

#### **2.5 In the case of children, what information can be given to their parent / carer?**

Information about children (under 18's) – whether about their membership, borrowing records, overdue books, home address or any other information – should only be disclosed to a person claiming parent / guardian / carer status without the child's consent if:

- (i) the child lacks the capacity to make decisions about their own personal information, and
- (ii) you are confident that the person seeking the information (or to whom you wish to disclose the information) is their parent or legal guardian.

There is no legally defined age at which children are presumed to obtain capacity to make decisions about their own personal information, although 15 or 16 would be fairly typical.

When disclosing to a parent or legal guardian, disclose only to the person listed on the original application form, unless the person can demonstrate that they have guardianship rights (e.g. by way of court order). If they do not already know them, do not disclose a child's home address or contact details to non-custodial parents.

### **3. Circulation records**

#### **3.1 What information can be shared between libraries in the case of defaulting borrowers?**

See 2.3 and 2.4 above.

#### **3.2 What information can be kept re: histories of items borrowed?**

What was borrowed, by whom, when, and when returned.

#### **3.3 What is 'best practice' for managing histories?**

Retain for a minimum period of 2 years, then destroy  
GDA10 – Local Government Records – Section 3.8.2 – Library and Public Information Access:

Records of collections management, such as control and tracking records, including operation of special collections such as mobile libraries, toy, video, audio collections

#### **3.4 What information can be given to parents / guardians requesting information about their child / teenagers' borrowing?**

See 2.5 above.

Be particularly wary of disclosing information about teenagers' borrowings without first seeking the child's consent. You can only disclose if either (i) the child consents, or (ii) you determine that the child lacks the capacity to make the decision for themselves.

## **4. Reference enquiries**

### **4.1 Are reference enquiries an official record [eg. emails received / letters?]**

Yes. Retain for a minimum period of 1 year, then destroy  
GDA10 – 3.8.7 - Records of research services and inquiries

### **4.2 What restrictions exist for records of information sought or received?**

Privacy principles apply where personal information combined with reference enquiries is involved.

## **5. CCTV footage**

### **5.1 Installing CCTV**

CCTV can be installed in most public areas or in staff areas. However CCTV cannot be installed in bathrooms or change rooms.

If the cameras are being installed for the purposes of staff surveillance then all the notification provisions of the Workplace Surveillance Act 2005 must be met. These include signs at each entrance to the premises, ensuring the cameras are clearly visible, and providing 14 days prior written notice to staff before installation.

If the cameras are being installed for other reasons (eg. they may be required in some areas such as certain parts of stack for security and insurance purposes), and that surveillance incidentally records the activities of staff, then an agreement with staff can be made, in order to avoid the need for notification. However it may be easier to apply the same notification provisions as if you were conducting staff surveillance.

### **5.2 Handing over CCTV evidence to police**

Under the Workplace Surveillance Act 2005, the Library can only disclose CCTV footage to a law enforcement agency in relation to an offence, if related to a civil or criminal proceedings, or if it is reasonably necessary to avert an imminent threat of serious violence or substantial damage to property.

In addition, under the Privacy and Personal Information Protection Act 1998, personal information (such as CCTV footage) can only be disclosed by the Library in certain circumstances, such as :

- where required by subpoena or by search warrant or other statutory instrument, or
- in connection with proceedings for an offence or for law enforcement purposes, or
- to a law enforcement agency for the purposes of ascertaining the whereabouts of a missing person, or
- if it is reasonably necessary in order to investigate an offence where there are reasonable grounds to believe that an offence may have been committed, or
- if the Library is lawfully authorised or required to disclose the footage under another Act, or
- the Library believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of any person.

Therefore, in order to comply with both Acts, the Library can only disclose CCTV footage to a third party if:

- the Library is required to do so by subpoena or by search warrant or other statutory instrument, or
- the Library believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of any person, or
- the disclosure is to a law enforcement agency and it is necessary for the investigation or prosecution of a criminal offence.

### **5.3 Can the Library ask a third party eg. school principal to identify students in footage?**

As a school principal is not a “law enforcement agency”, the Library can only disclose CCTV footage to a school principal if:

- the Library is required to do so by subpoena or by search warrant or other statutory instrument, or
- the Library believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of any person.

If the Library wishes to identify students who have committed an offence, the footage should instead be referred to the local police.

## **6. Home library service clients**

### **6.1 Can we collect information about next of kin / emergency contacts?**

Yes, so long as that information is reasonably necessary for carrying out the service’s functions.

Where the client has the capacity to make decisions about the handling of their own personal information (e.g. if the client is physically housebound but is mentally capable), the client should be asked to provide the contact details of an appropriate contact person, to be contacted in case of some emergency. The client should be able to change their nominated person at any time.

Where the client has temporary or impending incapacity to make decisions about the handling of their own personal information (e.g. if the client is in the early stages of dementia), the client should be asked to (a) provide the contact details of an appropriate contact person, to be contacted in case of some emergency, and (b) nominate a 'substitute' decision-maker in the need arises in the future, to assist in nominating books to be borrowed for the client, and accepting responsibility for returning books on time. The client may wish to nominate the same person for both roles, or two different people. The client should be able to change their nominated contact person and/or substitute person at any time.

Where the client already and permanently lacks the capacity to make decisions about the handling of their own personal information (e.g. if the client has advanced dementia), then the 'next best person' should be approached on their behalf. See Privacy NSW's Best Practice Guide, *Privacy and People with Decision-Making Disabilities*, for detailed guidance on determining capacity, who to approach and in what circumstances.

The nominated or chosen 'substitute' decision-maker should agree in writing to be the contact person in case of some emergency, as well as to assist in nominating books to be borrowed, and accepting responsibility for returning books on time.

## **6.2 Can we disclose histories of items borrowed?**

If the client (or, if the client lacks capacity, their substitute decision-maker) has consented, the client's preferences and history of items borrowed could be disclosed to those Library staff or volunteers involved in choosing items for that client. The consent form should be incorporated into the application form when first joining the service.

## **7. Community information directories**

- ***Collecting information***
- ***Statement about use of information***
- ***Publishing information in print***
- ***Publishing information online***

Where personal information is collected privacy laws apply and appropriate notification is required at the time of collection. When an agency collects personal information, the agency must tell the person:

- what information is being collected about them
- why their information is needed (i.e. the purpose of collection)
- how their information will be used
- which part of our agency will be storing or using it
- who else it might be disclosed to
- whether they have any choice in whether or not to provide their information
- how they can see and correct their information

Consent should be sought to publish personal information whether in print or online - this could be done through a 'release' form.

## **8. Local studies collections**

### **- *Personal papers – release, publication, public access***

Information kept in library collections is exempt from PPIP Act under the Privacy and Personal Information Protection Regulation 2005.

However, it is advisable that libraries have their own policy/procedure about disclosing information from personal papers which will identify material of a sensitive / confidential nature not for release until year 2XXX. Often there are stipulations at time of deposit that must be adhered to.

## **9. Photographing clients in the library**

### **9.1 Taking photographs of children**

Consent from parent/guardian required and preferably in writing. If consent is only verbal, make a written file-note immediately.

### **9.2 Using photographs in publicity or on the library's website**

Consent needed preferably in writing. If child, from parent/guardian. If consent is only verbal, make a written file-note immediately.

## **10. Internet use**

### **10.1 Bookings records**

Retain for a minimum period of 2 years, then destroy  
GDA10 – Section 23.14.1

Bookings - Records relating to bookings including requests for loan of plant and equipment to other organisations.

## **10.2 Warning signs [eg. using online banking with personal information]. Is this a privacy issue?**

In terms of privacy obligations, Libraries are only responsible for the personal information that the Library collects or holds – not what users of a PC may find out about previous users. Libraries should be aware of the risk that they are inadvertently collecting personal information about PC users through the Library's anti-virus software, creation of automatic backup tapes, cookies and the like. Public-use PCs should be configured to avoid collection of personal information about the users (including saving passwords or copies of documents worked on), and if any collection is occurring, users should be notified.

While not strictly required, it may also be a responsible approach to place signs on or near public-use PCs, reminding users to take care to protect their logins and passwords when logging in to websites such as online banking or email accounts.

## **11. Library surveys**

### **11.1 Should surveys include a privacy statement?**

Yes if collecting personal information, which includes information that may reasonably identify a person.

### **11.2 What would a model privacy statement say?**

This will depend on how the information was going to be used. The statement must explain:

- what information is being collected about them
- why their information is needed (i.e. the purpose of collection)
- how their information will be used
- which part of our agency will be storing or using it
- who else it might be disclosed to
- whether they have any choice in whether or not to provide their information
- how they can see and correct their information

If personal information is going to be provided to a third party then this should be made clear in the privacy statement, and the agreement/contract with the third party should stipulate that NSW privacy laws must be complied with and an indemnification for the Library should be included in the agreement/contract.

## **12. Library mailing lists / emailing lists**

- ***Consent to be placed on mailing list needed.***

The application form should include an opt-in option (ie. tick this box if you wish to go on our mailing list). The information provided should be specific about the mailing list (i.e. to receive information about XXX Library services), and should also stipulate whether or not personal information will be provided to any other third parties.

## **13. Staff requesting ID from members of the public**

- ***Can staff request identification from library users for membership applications, using library equipment, borrowing rare or valuable items, or when library rules have been violated?***

Yes, but only if

- (i) it is reasonably necessary in the circumstances to identify the person (e.g. this may not be necessary for the use of equipment such as copiers), and
- (ii) if the uses of the identification information are spelled out in a privacy statement on the application, borrowing or equipment hire form, and
- (iii) government-issued identification numbers (such as driver's licence number, Medicare card number, etc) are not copied or adopted as part of your member records, and
- (iv) any copies taken are held securely, and securely destroyed as soon as equipment / materials are returned without damage.

## **14. Police request for borrowers information**

### **14.1 Do police require a court order or subpoena before they can access borrowers records?**

Although there are other circumstances which might allow disclosure of borrowing records, asking police for a court order or subpoena is the safest approach to this issue.

### **14.2 What would be appropriate words on police access to records for a model privacy statement?**

See 2.1 above

## 15. Library notice boards - missing persons

- ***We have recently had an email request from a woman in Victoria who is looking for her sister who is a missing person. The library has been asked to display a poster of the missing woman in case library staff can identify her. Our usual practice is to explain that we are unable to verify or give out personal details about library members to other members of the public.***

Whether you are being asked to display a poster or disclose personal information about a member, only ever deal with police requests in relation to missing persons. Requests from other people cannot be verified and may involve harassment or stalking of someone who is not actually 'missing'.

Information about a Library member can be disclosed to a law enforcement agency – not a relative - for the purposes of ascertaining the whereabouts of a missing person.

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