



Privacy and information management framework

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Supporting Documents

Information and Privacy Commission NSW Fact Sheet: Information Protection Principles (IPPs) for agencies	May 2020
Information and Privacy Commission NSW Fact Sheet: The Health Privacy Principles (HPPs) guidance for agencies and organisations	August 2019
Information and Privacy Commission NSW Fact Sheet: How to access your personal information from government agencies	February 2019
Information and Privacy Commission NSW Fact Sheet: Privacy complaints: Your review rights	September 2020
Information and Privacy Commission NSW Fact Sheet: Your review rights under the GIPA Act	November 2019
Information and Privacy Commission NSW: Data Breach Guidance for NSW agencies	September 2020

1. Purpose and scope

The purpose of this Privacy and Information Management Framework is to outline the type of information held by the Health Care Complaints Commission (**the Commission**) and our obligations concerning collection, storage, use and disclosure of that information.

It also explains when individuals may request access to certain information we hold, and the processes for complaints, requests, and reviews relating to our obligations.

This Framework incorporates the Commission's Privacy Management Plan, which we are required to have under the *Privacy and Personal Information Protection Act 1998 (PIIP Act)*, outlines our non-disclosure obligations under s99B of the *Health Care Complaints Act 1993 (HCC Act)*, and explains our obligations under the *Government Information (Public Access) Act 2009 (GIPA Act)*.

This Framework applies to all Commission staff, contractors, consultants, interns and volunteers.

Public Interest Disclosures and State Records obligations are outside the scope of this Framework.

2. About the Commission

The Commission has a unique and central part to play in maintaining the integrity of the NSW health system, with the overarching consideration of protecting the health and safety of the community.

The Commission was established by the HCC Act in 1993 as an independent body to deal with complaints about all health service providers in NSW, including:

- registered health practitioners, such as medical practitioners, nurses, dentists and pharmacists
- unregistered health practitioners, such as naturopaths, massage therapists, counsellors and alternative health care providers
- health organisations, such as public and private hospitals, pharmacies and medical centres.

Our strategy is to do this through:

- Informing the public about options for raising concerns about their experiences in the health system and implementing processes to respond to the needs of people making complaints.
- Seeking feedback from our consumers to inform processes and service provision - through the Commission's Inquiry Service, online materials, stakeholder engagement and outreach programs, and our consumer feedback survey processes.
- Receiving, assessing and resolving complaints about health service providers.
- Working with the health professional councils to ensure that practitioners maintain high professional standards. Practitioners who are below the required professional standards are directed into programs designed to ensure they meet those standards and that the public is not at risk from any impairments or skill gaps they may have.
- Providing a resolution service where there is a need for a supported process to bring parties to a complaint together to better understand and resolve the issues.
- Investigating and prosecuting serious complaints that raise significant issues of public health and safety.
- Making recommendations to public and private health services where investigations show that there are procedures or practices that need to improve, and monitoring/auditing implementation.
- Analysing complaints data to identify complaint patterns or system-wide issues.
- Contributing to the development of health regulation, policies and practices nationwide.

3. Types of information held by the Commission

When exercising our range of statutory and administrative functions, as outlined above, the Commission collects and receives information that falls within one or more of the following categories:

- Personal information.
- Health information.
- Commission information.
- Employee information.
- Government/Parliament information.
- Office information.

Personal information

This is information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. Exceptions to this definition include information that is contained in publicly available publications, and health information¹.

For example, the Commission holds the names and contact details of complainants and health care providers to exercise our complaint handling statutory functions.

Health information

This is personal information:

- a) that is information or an opinion about an individual's physical or mental health or disability, their express wishes about the future provision of health services to them, or a health service that has or will be provided to them
- b) collected to provide, or in providing, a health service to an individual, or
- c) about an individual collected in connection with the donation, or intended donation, of an individual's body parts, organs or body substances.

Certain genetic information, and healthcare identifiers, are also 'health information'².

For example, the Commission holds health records of individuals to enable us to conduct our statutory complaint handling functions.

Commission information

This is information obtained or created when exercising complaint handling functions (inquiry, assessment, resolution, review, investigation, legal) under the *Health Care Complaints Act 1993* and the *Health Practitioner Regulation National Law (NSW) 2009*. Given the nature of the Commission's role and function, the majority of this information will also be personal and health information.

Employee information

This is information about Commission staff relating to their employment. Some of this information will also be personal and health information. For example, COVID-19 vaccination status.

Government/Parliament information

This is information from or about government agencies (other than Commission information) or the NSW Parliament. It is usually not personal or health information, but there may be other obligations to keep it secret or confidential. For example, it may be Cabinet-in-Confidence.

Office information

This is information about entities that the Commission contracts with, such as IT software providers. It is usually not personal or health information, but may be protected by contractual confidentiality.

4. How the Commission collects, stores, uses and discloses information

4.1 Collection

In compliance with the Information Protection Principles (IPPs) and the Health Privacy Principles (HPPs), the Commission collects personal and health information only for a lawful purpose, in connection with our statutory or administrative functions, and only where reasonably necessary³.

¹ S4 PPIP Act

² S6 HRIP Act

³ S8 PPIP Act

When collecting personal or health information, we will take reasonable steps to ensure that the information is relevant, accurate, complete, up-to-date and not excessive and that the collection does not unreasonably intrude into the personal affairs of the individual.

As an investigative agency, much of the work of the Commission is exempted from the general obligations under the IPPs and HPPs to collect information directly from the person concerned, and/or inform the individual we have collected their personal or health information. This is because doing so might detrimentally affect (or prevent the proper exercise of) our complaint handling functions or our investigative functions⁴. For example, the Commission may collect your medical records from a health care provider you have complained about, to enable us to assess or investigate your concerns.

Where our complaint handling or investigative functions are not likely to be impacted, we will:

- Collect personal or health information directly from the person to whom it relates, unless it is unreasonable or impractical to do so.
- Take reasonable steps to inform persons that we will collect/have collected their personal or health information, why we are collecting it, what we will do with it, and who else might see it.

4.2 Storage

All information held by the Commission is kept securely, disposed of appropriately, and retained only so long as is required.

The Commission protects information from unauthorised access, use, modification or disclosure through a range of information management practices including:

- annual information security assessments
- regular staff training and Code of Conduct
- complaint handling practice manuals and procedures
- up-to-date information management policies, including this Framework.

The Commission does not keep any public registers of personal or health information.

4.3 Use and disclosure

Before using any personal or health information we hold, we will take reasonable steps 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.

We will only use or disclose personal and health information for the purpose that it was collected or a directly related purpose, unless:

- We do so in accordance with section 99B of the HCC Act.
- We seek the individual's consent.
- Where doing so is necessary to prevent or lessen a serious and imminent threat to a person's life or health.
- It is reasonably necessary for us to exercise our complaint handling and investigative functions.
- Other law authorises or requires us to do otherwise.

Section 99B of the HCC Act provides for disclosure of information which we have obtained in the course of exercising our functions under the HCC Act (Commission information) to certain persons or bodies where the Commission considers the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information and the privacy of any person to whom the information relates, having regard to the principle that, in the exercise of functions under the HCC Act, the protection of the health and safety of the public must be the paramount consideration. Information can be disclosed under section 99B to persons or bodies such as:

⁴ S9 and S24 PPIP Act

- the Minister
- a court or tribunal
- other health service regulators in Australia
- other government agencies, including those in other jurisdictions in Australia
- police or other investigative agencies.

The Commission also has mandatory disclosure obligations including:

- Any information we become aware of to the Independent Commission Against Corruption if it amounts to a matter we suspect, on reasonable grounds, concerns or may concern corrupt conduct.
- To the NSW Police Force or other appropriate authority any information if we know or believe a serious indictable offence or child abuse offence has been committed and the information may be of material assistance in securing the offender’s apprehension, prosecution or conviction.
- Making open access information publicly available on our website unless there is an overriding public interest against its disclosure.
- Complying with the GIPA Act when responding to valid access applications made under that Act (noting however that the complaint handling functions of the Commission are excluded from the GIPA Act, see GIPA Act applications below).

5 How to access or correct your information, or seek a review

As an investigative agency, the Commission is exempted from the requirement to provide access to, or make amendments to, personal information about an individual, at their request, if doing so might detrimentally affect (or prevent the proper exercise of) our complaint handling or investigative functions. Such requests will be considered on a case-by-case basis, after carefully balancing the range of affected interests.

To make a request to view or amend your own personal or health information, you, or someone authorised to act on your behalf, can contact the officer of the Commission with whom you have been dealing with, or you can contact the Commission’s Privacy Officer via email to hccc@hccc.nsw.gov.au.

We will advise, as soon as reasonably practical, whether access or amendment is permitted. If we are not permitted to provide access to, or amend, personal or health information we will explain why.

If you are not satisfied with our decision, or you think we are taking an unreasonable time to respond, you have the right to seek an internal review, or an external review to the Information and Privacy Commission NSW (IPC). Before seeking an internal review, we encourage you to contact us to ask for an update on your request or to clarify any aspects of our decision.

6 Internal and external reviews

If you consider we have not complied with our obligations under this Framework or the PPIP Act or the HRIP Act, you can ask the Commission to conduct an internal review. If you are not satisfied with the outcome of our review, or you do not wish to seek an internal review from us, you can contact the Information and Privacy Commission NSW (IPC) for an external review.

Applications for internal review must be in writing, and should be made within six months from the time you first became aware of the conduct you wish to seek a review about. The Commission has discretion to accept or decline applications for internal review that are older than six months.

Applications for internal review should be addressed to the Privacy Officer and sent via email to hccc@hccc.nsw.gov.au with the email title ‘privacy review’.

We aim to acknowledge receipt of your request within 5 working days, and we will conduct the review as soon as is reasonably practicable, and aim to do so within 60 days. We are required to notify the IPC that we have received an internal review request.

Request an external review by contacting the IPC on:

1800 472 679
ipcinfo@ipc.nsw.gov.au
www.ipc.nsw.gov.au

If you are not satisfied with the outcome of a review, you also have a right to an external review from the NSW Civil and Administrative Tribunal. More information can be found on their website:

<https://ncat.nsw.gov.au/ncat/case-types/administrative-review-and-regulation/privacy-of-personal-information.html>

Detailed IPC factsheets about internal and external reviews are **attached** to this Framework.

7 GIPA Act applications

Public Sector Agencies in NSW have a legal obligation under the GIPA Act to assist citizens with obtaining access to most government information openly and freely, unless there is an overriding public interest consideration against disclosure.

The Commission is required to comply with our GIPA Act obligations, however a significant amount of information we hold is excluded from the scope of that Act.

Section 43 of the GIPA Act provides that provides that applications for access to an agency's 'excluded information' cannot be made, and if made, they are invalid. 'Excluded information' is defined as:

The Health Care Complaints Commission—complaint handling, investigative, complaints resolution and reporting functions (including any functions exercised by the Health Conciliation Registry and any function concerning the provision of information to a registration authority or a professional council (within the meaning of the *Health Care Complaints Act 1993*) relating to a particular complaint).

In practice, this means that any Commission information which is obtained or created when exercising complaint handling functions (inquiry, assessment, resolution, review, investigation, legal) will be exempt from the GIPA Act as 'excluded information'. This would include, for example, medical records, health care provider responses, clinical advice received, and internal Commission triage and assessment briefs.

Information that is not excluded would include information related to corporate matters such as staffing and finance.

Applications may be made for access to information held by the Commission that is not 'excluded information'. To lodge a GIPA Act request, you can do so via email to hccc@hccc.nsw.gov.au with the email title 'GIPA Act application'.

GIPA Act applications attract a \$30 application fee, which can be waived upon request, at the Commission's discretion.

8 Other information access requests

The Commission also receives informal information access requests from individuals, who often request access to documents the Commission has previously sent them, or that they have previously sent to the Commission.

To request copies of such documents, it is best to contact the officer of the Commission with whom you have been dealing, or you can make a request via email to hccc@hccc.nsw.gov.au, with the email title 'request for information'.

Given the Commission's complaint handling and investigative functions, and our non-disclosure obligations set out at s99A of the HCC Act, there are certain types of information that cannot routinely be shared. As outlined in 'GIPA Act applications' above, Commission information which is obtained or created when exercising complaint handling functions will not be released, unless the Commission considers it is in the public interest to do so. If you have questions about whether Commission information, such as a health care provider's response to a complaint, may be able to be released, it is best to contact the officer of the Commission with whom you have been dealing.

The Commission also shares information with other government agencies, including the NSW Ombudsman, the NSW Police Force, and the NSW Independent Commission against Corruption, under various Memoranda of Understanding, and in accordance with section 99B of the HCC Act (as outlined above). Such information is only shared where the Commission considers the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information and the privacy of any person to whom the information relates. Often this will be de-identified Commission information, and will not include the personal or health information of individuals. Requests for information can be made via email to hccc@hccc.nsw.gov.au, with the email title 'request for information'.

9 Data breaches by the Commission

As outlined at 4.2, above, the Commission has information security management systems in place to ensure the information we hold is not accessed or disclosed inappropriately. Should a data breach occur, the Commission complies with the IPC's voluntary reporting scheme for serious data breaches. (This scheme is likely to become mandatory in 2022-23). More information can be found in the attached *Data Breach Guidance for NSW agencies*.

10 Reviewing this Framework

The Commission will review this Framework, and the incorporated Privacy Management Plan, every three years. This review will be brought forward should there be any relevant legislative or administrative change that significantly affects our privacy and information management practices.

11 Information management Flowchart

The following chart depicts how requests for information are managed by the Commission:

