



# Privacy, Confidentiality & Freedom of Information

## Category: Knowledge Management Policy and Procedure

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### POLICY

#### *Privacy*

The Acts by which BCH are governed are outlined below. All BCH staff must comply with the provisions of the relevant acts in relation to all client information collected, used, kept or disclosed in the course of their work.

Victoria's [Health Records Act 2001](#), contains eleven Health Privacy Principles, covers the handling of all health information held by health service providers in the State public sector or state funded bodies. With the exception of client *access* to health information the majority of BCH's functions fall under this jurisdiction.

Victoria's [Information Privacy Act 2000](#) concerns all other types of personal information. It does not however relate to client related personal information, as this information is utilised for the provision of health services, is covered under the [Health Records Act 2001](#). The Information Privacy Act contains a set of ten Information Privacy Principles similar to the Health Privacy Principles of the Health Records Act 2001.

The [Freedom of Information Act 1982](#) (FOI) is Commonwealth legislation which provides a legally enforceable right of access by the community, including clients, to information held by Ballarat Community Health Centre. Certain exemptions apply. Examples of exemptions would include documents affecting: public interest; national security, defence or international relations; legal proceedings; personal privacy etc. Precise details may be found in Section 32, 33 or 38 of the Freedom of Information Act. If a decision is made to refuse access to health information under one of these sections an individual has the right to apply to the Health Services Commissioner for conciliation.

All requests for access to client records or other documentation should be made under the Freedom of Information Act 1982 and all requests should be referred to the Chief Executive Officer. (Note: FOI takes precedence over the Health Records Act 2001 regarding access issues).

There are special laws regarding the *disclosure* of health related information and these are stated in Section 141 of the [Health Services Act 1988](#).

The Health Privacy Principles and Information Privacy Principles to be found within the Health Records Act 2001 and Information Privacy Act 2000 respectively are based upon the ten National Privacy Principles set out in the Commonwealth's [Privacy Act 1988](#). Whilst the content of these Principles are essentially all the same Commonwealth legislation is generally referred to only in programs that are Commonwealth funded (e.g. Community Aged Care Programs; Carer Respite Centre Programs). As the majority of BCH programs and services are State funded, BCH is guided predominantly by and subject to the State's Health Records Act 2001 and Information Privacy Act 2000 in most privacy and confidentiality issues.



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## SCOPE

This policy is applicable to all BCH staff, contractors or persons carrying out activities on behalf of BCH irrespective of their employment status.

## RESPONSIBILITIES

All staff will be responsible for maintaining the confidentiality of consumer information and to respect a consumer's right to privacy.

## DEFINITIONS

### *Confidentiality*

For the purposes of this policy confidentiality is defined as the limitation of the access, communication, movement and storage of private and personal information, whether related to clients, staff, volunteers, students, contractors or external third parties.

### *Personal information*

Is information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

### *Health information*

Is personal information about an individual collected by a health service provider in the course of providing a health disability, palliative or aged care service. This includes not only information about an individual's health, disability or services received but also other information such as an individual's employment details, financial details and next of kin, even though these details do not relate to the individual's health or disability.

### *Private information*

Includes information or an opinion about an individual's:

- State of health
- Racial or ethnic origin
- Political, philosophical or religious opinions, beliefs or affiliations
- Membership of a professional or trade association or union
- Sexual preferences or practices
- Criminal record



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### PROCEDURES

#### *Privacy*

Staff are required to inform clients of the following facts:

- Why they are collecting personal and/or sensitive information about them and how the information will be used.
- What information is held about them and who else will receive the information.
- That they have the right to access this information under the [Freedom of Information Act 1982](#) (unless exempted) and to correct that information if it is wrong.
- That they have a right to appoint an advocate of their choice to act/speak for them on their behalf or that BCH will provide an appropriately authorised representative to advocate for them if they so wish.
- That information may only be disclosed to another party by the BCH staff with their consent (unless exempted by law). In the case of disclosure of written information, (e.g. referral to another service provider) consent must be in writing.
- Privacy brochure must be handed out and explained if necessary

#### *The Health Privacy Principles*

To comply with State legislation the eleven Health Privacy Principles (HPP's) outlined in Section 19 (Schedule 1) of the [Health Records Act 2001](#) must be adhered to. Following is a summary of these principles but for full details the Health Records Act 2001 must be referred to.

#### *HPP1 Collection of health information*

Only collect information that is necessary for the performance of BCH activities/services and ensure consent is obtained.

Information must be collected in a manner that is fair, lawful and unobtrusive, takes into consideration cultural differences and is sensitive to the individual's circumstances.

Information should be collected directly from the client wherever possible. There are only limited circumstances when information would need to be collected from a source other than the individual concerned. These are:

- In order to prevent harm to another individual
- With consent, as part of professional assessment
- During emergency or disaster conditions (bushfires, floods etc) In these circumstances BCH staff will seek to verify with the individual the information received and collected from other sources as soon as possible once the emergency has subsided.
- Where a client is impaired in his/her ability to provide the necessary information because of age, intellectual disability, mental illness or medical condition.

The client should be notified about the purpose for the collection of information, what is done with the information and that they have a right to gain access to it.



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### *HPP2 Use and disclosure*

Only use or disclose information for the primary purpose for which it was collected or for a directly related secondary purpose that the person would reasonably expect. Otherwise consent is generally required. Information may only be disclosed without consent if required by law or other purpose as stated in HPP2 of the Health Records Act.

### *HPP3 Data quality*

BCH must ensure that information is accurate, complete and up-to-date and relevant to the functions performed.

### *HPP4 Data security*

BCH must take reasonable steps to protect the information it holds from misuse, loss, unauthorised access, modification and/or disclosure.

Safeguards must be appropriate to the sensitivity of the personal information being stored or transmitted. Some information, such as medical records or financial details, will always be deemed sensitive. However, any information can be sensitive, depending on its context. (e.g. the address of a client experiencing domestic violence). Highly sensitive information will require a higher level of protection.

Methods of protection include:

- Physical measures (e.g. locked filing cabinets)
- Organisational measures (e.g. providing access to information in accordance with the HPP's)
- Training measures (e.g. making sure staff are adequately trained in the handling of personal information and ensuring that guidelines are readily available if required).
- Technological measures (e.g. use of passwords, lockable screen savers, firewalls and encryption).

BCH shall appoint a Privacy Contact Person for the agency. All issues, concerns or complaints in relation to breaches of the BCH Privacy & Confidentiality Policy should be raised with that person.

### *HPP5 Openness*

BCH must have clearly expressed policies on its management of health information and the steps that an individual must take in order to obtain access to their health information. This information must be available to anyone that asks for it.



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### *HPP6 Access and correction*

Clients have a right to seek access to the health information held about them and to correct it if it is incorrect or misleading. Access may generally be obtained under the Freedom of Information Act 1982, via the Chief Executive Officer.

However there are a number of exemptions to the provision of access to a client's health information including:

- Doing so would pose a serious threat to the life or health of any person
- Doing so would have an unreasonable impact on the privacy of other individuals.
- The information relates to existing legal proceedings between the organisation and the individual.

### *HPP7 Identifiers*

BCH may only assign a number to identify a person if the assignment is reasonably necessary to carry out and of its functions efficiently.

BCH staff must not adopt, use or disclose any numeric identifier that has been assigned by a Commonwealth Government agency (e.g. Tax File Number / Medicare number).

### *HPP8 Anonymity*

The option must be given to all clients to transact with BCH anonymously where possible (e.g. Needle Syringe program).

### *HPP9 Transborder Data flows*

BCH staff must only transfer personal information to a recipient outside of the State of Victoria if it is consented to and the information will have protection.

### *HPP10 Transfer/Closure of Health Service Provider*

In the event that BCH were to be sold, closed down or transferred, notice of the event should be given to past service users and publicised locally. Clients should be informed as to the manner in which their health information will be dealt with.

### *HPP11 Making Information Available to Other Health Service Providers*

If consented to or requested by a client BCH must make their information available to another health service provider upon that request.



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### CONFIDENTIALITY

The highest possible standards of confidentiality will be maintained in relation to all information provided by clients, staff, volunteers, students and external third parties associated with BCH. This relates to verbal, written or audio-visual information.

The aim is to:

1. Record only essential information
2. Ensure the security of personal information to prevent breaches of confidentiality.
3. Limit access to that information only to those who have it

### ***1. RECORDING ONLY ESSENTIAL INFORMATION***

Client Information

General information conveyed by a client can only be communicated or recorded when doing so is in the best interests of the client or is mandated.

*Mandated material includes:*

- Health Records Act 2001 'Health Privacy Principles'
- DHS reporting fields in SWITCH client database
- HACC Minimum Data set requirements
- Other Program specific requirements which apply from time to time

*The information to be recorded will include:*

- Assessment of the client, which includes initial presentation, identified issues, case formulation and intervention goals
- Contact data such as dates, client's emotional/mental state (if significant); major interventions
- Statistical information required by funding bodies
- Data from three-monthly reviews, which includes progress and change of goals.
- Closure summary which includes reasons for discharge and a brief summary of goals achieved.

Note: Information which a client states should not be recorded or repeated must not be recorded or communicated and must remain in confidence with the worker unless:

- it is a mandated exception, or
- if the information needs to be disclosed to a senior clinician to facilitate effective treatment of the client, in which case efforts will be made to de-identify the client.

The two mandated exceptions are:

1. When information disclosed is of a past or present criminal offence, such as disclosure of a serious offence against another person such as rape or murder.
2. The client discloses an intention to harm themselves or another person or you think there is a serious likelihood of intent to harm themselves or other person.

***Written Communications***



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Written communications may be documents sent to or received from a client or agency regarding working with a client.

The same principles apply to content recorded in written communications as per any other communication i.e. information must only be recorded on a need to know basis or purpose for which the client may reasonably expect.

### *Video/Audio recordings*

- Video/audio recordings can only occur with the written prior approval of the client and can only be utilised for the purposes of supervision, peer review and teaching
- Video/audio tapes of client sessions can only be viewed by the treating practitioner, the immediate clinical supervisor and clinical peers as approved by the CEO
- Such recordings must be destroyed upon completion of the agreed purpose
- Tapes must be kept for no longer than one month after the date of the client's approval

### *Verbal Communication*

Only information necessary to enable another professional to perform their required duties may be communicated (i.e. on a need to know basis).

### *Disclosure*

Section 141 of the Victorian Health Services Act 1988 prohibits Community Health Centres (including their current and former employees, board members and proprietors) from disclosing information which would identify a current or past patient or client and which was obtained as a result of being such a body or person, unless an exception applies, it is permitted by other law or the patient has consented.

### *Staff/Student /Volunteer/Contractor Information*

General information conveyed by a staff member student/volunteer/contractor can only be communicated or recorded when doing so is in the best interests of the staff member, is mandated or is essential for the smooth operations of the Centre.

In terms of personnel files, such information will include:

- Curriculum vitae of the staff member/student/volunteer
- Reports from Police checks
- Payroll details
- Leave records
- Records of any disciplinary action
- Contracts and payments

Information from personnel files comes under the jurisdiction of the Information Privacy Act 2000 and can only be communicated in the following circumstances:

- Information necessary to enable other professionals within the agency to perform their required duties. This is very limited and strictly on a need to know basis, with the guiding principle being the less information, the better.

**An example of this may be:** Where an employee has a disability such as a severe visual impairment which may require safety precautions to be taken by other staff. It does not include



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any current or previous disability which does not impact on the capacity of the person to perform his/her required duties, or create any potential Occupational Health and Safety concerns.

- Where the staff member has been engaged in illegal or unethical activity which may require certain relevant information to be passed on to Police or a professional body.

### *Third Party Information*

Third parties include:

- People tendering for contracts
- Individuals applying for positions in the agency (e.g. information contained in recorded interviews/resumes).
- General members of the community who may raise an issue or concern with the agency.

Such information should be kept only for the duration of the need (e.g. for the duration of the tendering, recruitment or grievance process). At the conclusion of this process information should be shredded and appropriately disposed of.

## 2. ENSURING SECURITY

There are strict guidelines related to the storage, movement and management of client and personnel files.

## 3. LIMITING ACCESS

### *Client Files*

Health information may only be used or disclosed for the primary purpose for which it is collected or for a secondary purpose directly related to the primary purpose which the client would reasonably expect (HPP2 of Health Records Act).

If the files are to be viewed by parties who would not normally have access to the file (e.g. external auditor) reasonable steps should be taken to de-identify the information, otherwise consent should be obtained.

For most other purposes permission from the client should be obtained. It is important to note that the client does have a right to refuse to give consent and that this should be respected.

The only situations in which a client's file may be accessed by any external person without the client's consent is if the file is subpoenaed by a court or as per any other exemption mentioned in Health Privacy Principle 2 of the Health Records Act. In such instances the matter must be referred to the CEO for action.

For precise details please refer to Health Privacy Principle 2 (Use and Disclosure) of the Health Records Privacy Act 2001.

### *Personnel Files*



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Personal information may only be utilised for the primary purpose for which it is collected. The only people who may have access to the personnel files (in addition to the person about whom the file is kept) are the CEO, the Finance and HR managers and the relevant line manager.

Personal information found within personnel files may only be disclosed to other parties for a secondary purpose if it is a purpose that the person would reasonably expect. An example of this may be a request by an Accreditation body to access personnel files in order to validate work practices. In this instance reasonable steps should be taken to de-identify the information, otherwise consent should be obtained.

The only other occasions consent is not required is if the information is required by law or for any other exemption mentioned in Information Privacy Principle 2 (Use and Disclosure) of the Information Privacy Act 2000. In such instances the matter must be referred to the CEO for action

For most other purposes consent is generally required. It is important to note that the employee does have a right to refuse to give consent and that this should be respected. For precise details please refer to Information Privacy Principle 2 (Use and Disclosure) of the associated documents

### ASSOCIATED DOCUMENTS

- [BCH Privacy & Confidentiality Policy](#)
- [BCH Client Assessments, Intake and Referrals Policy](#)
- [Health Records Act 2001](#)
- [Information privacy Act 2000](#)
- [Freedom of Information Act 1982](#)
- [Health Services Act 1988](#)
- [Information Privacy Act 2000](#)



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## POLICY HISTORY

Adapted From	BCH Privacy & Freedom of Information BCH Privacy & Confidentiality
Distribution:	All Staff
Authorised by:	Chief Executive Officer
Policy Legislative Base	Health Records Act 2001, Health Privacy Principles, Information Privacy Act 2000, Freedom of information Act 1982, Health Services Act 1988, Privacy Act 1988
Related Policies	
First Approved Date	10/01/2005 BCH Privacy & Freedom of Information & BCH Privacy & Confidentiality *merged into one policy 10/01/2008
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