

6.28 Information privacy

Victorian information privacy laws, the *Information Privacy Act 2000* and the *Health Records Act 2001*, regulate the way government schools can collect, use, disclose, retain and secure personal and health information. This is information or opinion about an individual whose identity is apparent or can reasonably be ascertained from the information. These laws apply to student records and staff files and information held by Victorian government schools and the Department of Education and Early Childhood Development that identifies individuals.

6.28.1 Information Privacy Act

This law establishes standards for the collection, handling and disposal of personal information. An example of personal information is a person's name and address. This law applies to all forms of recorded information about an individual and includes photographs and emails.

The *Information Privacy Act* places special restrictions on the collection, use and disclosure of 'sensitive information'. Sensitive information includes information about an individual's racial or ethnic origin, political views, religious beliefs, sexual preference, and membership of groups or criminal record.

6.28.2 Health Records Act

This Act establishes standards for the collection, handling and disposal of personal information that is health information. Health information is information about the physical, mental or psychological health of a person or information about a person's disability. Health information also includes information about a person's access to health services, the nature of these services and an opinion about a matter relating to a person's health. This type of information does not have to be recorded to be classified as health information.

6.28.3 Privacy objectives

These laws are intended to:

- balance the public interest in the free flow of information, while protecting personal and health information
- empower individuals to manage, as far as practicable, how their personal and health information is used and disclosed.
- promote responsible, open and accountable information handling practices
- regulate personal information handling by applying a set of information privacy principles to personal and health information. These information privacy principles are binding and a contravention of the principles may result in a prosecution.

6.28.4 Information privacy principles

Schools must apply information privacy principles when collecting, using, disclosing, retaining or disposing of personal or health information. The information privacy principles in both acts are broadly consistent.

Details of all the information privacy principles that apply to schools can be found at the Privacy intranet site at:

<https://www.eduweb.vic.gov.au/privacy/>

6.28.5 Privacy and the school community

A school must be reasonable and fair in its treatment of personal and health information, not only for the benefit of its staff and students but also for the good of the school's reputation. The school community, like any other group of consumers, will not condone the failure of a school to protect privacy. A lack of respect for personal or health information can bring both criticism and complaint. The privacy laws provide a guide to information handling and the application of the information privacy principles allows schools to bring their practices into line with community expectations and legal requirements.

A guide has been developed to assist schools to consider information handling practices and to comply with the privacy laws. This guide can be accessed from:

<https://www.eduweb.vic.gov.au/edulibrary/Schools/Privacy/>

6.28.6 Privacy, parents and students

The privacy laws definition of a 'parent' to include a step-parent, adoptive parent, foster parent, a guardian or someone who has custody or daily care and control of the child. A 'child' means a person under the age of eighteen years.

- (a) Schools share the responsibility for the education and welfare of students with parents. In order to make decisions about their child's educational needs parents rely on the school to keep them informed about their child's academic progress, behaviour, educational options and special educational requirements. For example, school reports and assessments allow parents, students and schools to make decisions about a child's educational needs. Privacy laws do not prevent the sharing of such information with parents as this is done for the same purpose that the information is collected, that is to provide an appropriate education for the child.
- (b) Court orders under the Family Law Act may limit a parent's power to receive information about their child. However, unless a court order is made, both natural parents have the same access to information about their child.
- (c) A parent provides personal and health information about a child as well as information about family background and contact details for themselves and other people when enrolling a child in school. A privacy notice, telling parents and students why this information is collected, what it is used for, where it might be disclosed and how they

can access information held about them, must be provided with the enrolment form. A sample privacy notice can be downloaded from the Privacy intranet site at:

<https://www.eduweb.vic.gov.au/privacy/resources.htm>. The notice is also available in languages other than English.

- (d) The information provided on the enrolment form must only be used for the purposes for which it was collected or for a directly related purpose. Disclosure of contact details and family information for another unrelated purpose requires a parent's consent, or in the case of a secondary school child, the consent of the parent and child unless the particular circumstances fall within one of the exceptions discussed in 6.28.7.
- (e) Often, health information about a student is provided by parents or the student so that the student can be properly cared for while at school. This information can be shared with staff, only to the extent that they need to know it.
- (f) In some circumstances, information regarding a student's identity and medical condition needs to be provided to all staff so that staff are aware of the medical needs of that student in the event of an emergency. The process found at 4.5.5.1 where consent is required to display student information should be followed.
- (g) On the other hand, a parent may be required to disclose a medical condition of a child, such as a child's Hepatitis C status, to the principal of the school. But generally, there will be no need to disclose this information to other staff - such information must therefore be kept confidential.
- (h) Counselling services are health services and counselling records are confidential health records. Confidentiality of information disclosed during a counselling session must be maintained unless:
 - a law requires the disclosure of information, or
 - if withholding this information may cause someone to suffer serious and imminent threat to life, health, safety or welfare or
 - the student consents to disclosure of his or her information.
- (i) Career counselling, where advice and support is given to students to assist in their educational and training choices, is not a health service.
- (j) A person has the capacity to consent when they have the mental ability and maturity to understand the nature and effect of what they are consenting to and the consequences of providing or withholding consent. Assessment of a student's capacity to provide consent relies on professional judgment. Generally, it would be expected that a secondary school student would have the capacity to consent to the use of their personal or health information, unless they had a relevant impairment that may prejudice this capacity.
- (k) Each school requires a privacy policy, endorsed by the school council and identifying how school staff will manage personal and health information. This policy must be made available to anyone who asks. Good practice would see a copy of the privacy policy placed on the

school website. An example of a school privacy policy can be accessed from:

<https://www.eduweb.vic.gov.au/edulibrary/Schools/Privacy/suggestions>

Note: There are 10 *Privacy Bulletins* which explore the interaction of the information privacy principles and health privacy principles in a school environment. The bulletins were developed in consultation with relevant stakeholders. They can be accessed from the Department's Privacy Intranet site:

<https://www.eduweb.vic.gov.au/privacy/resources.htm>

- (l) Transferring student information between Victorian government schools is allowed under the Victorian privacy laws as long as parents are informed of the process and the schools transfer files by meeting existing Departmental standards. For more information on transfer of student information go to:

<https://www.eduweb.vic.gov.au/edulibrary/Schools/Circulars/2005/>

6.28.7 Privacy exceptions

Personal and health information can be disclosed for a purpose other than for which it was collected and without the person's consent when the disclosure is:

- necessary to lessen or prevent a serious and imminent threat to a person's life, health or safety, or to public health, safety or welfare,
- required, authorised or permitted by law or for law enforcement purposes, or
- to be used for research or the compilation of statistics in the public interest, in certain limited circumstances. Any research in schools must first be approved by the Office for Policy, Research and Innovation.

For further information see Section 6.18 Research in schools.

6.28.8 Privacy laws and other laws

The privacy principles create rights and obligations regarding individuals' personal and health information. However, these rights and obligations apply only to the extent that these do not contradict the provisions of any other Act of Parliament.

- (a) In most cases there will be no contradiction as the relevant action is likely to fall within one of the exceptions contained in the principles.
- (b) The principles permit collection, use or disclosure of information where there is another law that requires, authorises or permits a school or school staff to collect, use or disclose that information. For example, where disclosure of a student's personal or health information is required under the *Children, Youth and Families Act 2005*. For further information see Section 4.6.6 Child abuse and neglect.

- (c) Most information recorded by schools is retained and disposed of according to disposal schedules (Records authorities) and standards issued under in the *Public Records Act 1973*. The privacy laws are subject to these schedules and standards. For further information see Section 6.29 Archives and records management..

6.28.9 Duty of care and privacy

- (a) The duty of care owed by a teacher to the student requires the teacher to take reasonable steps to protect students in their care from the risk of injury that could have been reasonably foreseen. This may involve disclosing personal or health information to others that the teacher feels is necessary to fulfil his or her duty of care.
- (b) The privacy laws provide a guide to what are reasonable steps to take in relation to handling information.
- (c) The privacy laws are consistent with a school's or a teacher's duty of care. The privacy laws recognise and permit collection, use or disclosure of information, which is necessary for schools and teachers to protect the welfare of students in accordance with their duty of care.
- (d) A key element of duty of care is that the processes and procedures used are documented and records kept.
- (e) The information privacy principles that regulate the quality, retention and security of personal information support the duty of care function.

6.28.10 Access

The privacy laws do not change the individual's right to access their information that is held by a government school. The individual's right to access remains via a request made under the *Freedom of Information Act 1982*. See 6.21 Freedom of Information.

The *Information Privacy Act 2000* and the *Health Records Act 2001* encourage organisations to be open and transparent about what personal and health information they hold about individuals. Schools should provide individuals with informal access to any personal or health information about them held by the school, when this is appropriate. However, if records hold information disclosed by a third party, or can identify a third party, or contain information that may cause harm to the individual or others, the person seeking access should be asked to make a request under the Freedom of Information Act.

For further information, see section 6.21.1 Requirements of the *Freedom of Information Act 1982* in relation to schools.

6.28.11 Staff records

The same information privacy principles apply to staff records and staff have the same rights over their personal and health information.

6.28.12 Complaints

- (a) In the first instance, if a person complains that a member of school staff has breached their privacy then the principal should attempt to resolve the complaint. All Regional Offices have a nominated Regional Privacy Coordinator who can be contacted if there are any queries about managing the complaint. Schools and regions that receive privacy complaints are encouraged to contact the Privacy Officer, 9637 3601, to assist with ensuring an appropriate outcome.
- (b) Should a complaint be made to the Victorian Health Services Commissioner about 'an interference with health privacy' by a school this will be sent to the Department's Privacy Officer who will in turn inform the region and school.
- (c) Should a complaint about 'an interference with information privacy' by a school be made to the Victorian Privacy Commissioner and the complainant has already approached the school, this will most likely be referred to the Secretary of the Department.
- (d) The Department's Privacy Officer is required to investigate all allegations about a breach of privacy. If the complainant is not satisfied with the Department's investigation and response, the complaint can then be taken to the Victorian Privacy Commissioner. In most circumstances the Regional Director or Regional Privacy Coordinator will be informed about the investigation.

6.28.13 Compliance

Strategies for compliance with the Privacy Acts include:

- Nominate a person for the management and review of information privacy within that school
- conducting a privacy audit to work out the sort of information the school collects, how it is used and with whom it is shared
- developing a privacy policy—schools should have a clearly defined policy to deal with privacy and access to information issues. This should address a wide range of issues such as the use of student photographs, electronic devices and confidentiality
- examining the school's data security arrangements
- ensuring all staff, including volunteers, are privacy aware and compliant with school privacy policy
- establishing an effective complaints process in liaison with the regional office and treating all privacy complaints in the strictest confidence.

Resources to support all of the above activities can be found at the Privacy Intranet site at::

<https://www.eduweb.vic.gov.au/privacy/resources.htm>

6.28.14 Summary

Collect

Collect only the information you need and be clear about the purpose for which you are collecting it.

Inform

Tell the person why you need it and how you will handle it.

Disclose

Disclose only as necessary for the primary purpose of collection, unless a secondary purpose is directly related to the primary purpose of collection and disclosure would be reasonably expected or is with the person's consent.

Access

Provide the person with access to their information on request, unless there are concerns that information contained in files may cause harm to the individual or others. If this is a concern the person seeking access should be asked to make a request under the Freedom of Information Act. For further information see section 6.21.1.

Security

Keep personal and health information secure and safe from unauthorised access.

Contact

Privacy Officer

Department of Education and Early Childhood Development

Telephone: 9637 3601

Intranet: <https://www.eduweb.vic.gov.au/privacy/>

Email: privacy.enquiries@edumail.vic.gov.au