



"People's power in action"

## PRIVACY & CONFIDENTIALITY POLICY

### 1. PURPOSE

To outline a framework for Moqhaka Local Municipality to responsibly manage the information provided to the Municipality by individual and organizations in accordance with the National Privacy Principles (NPP) contained in the Privacy Amendment (Private Sector) Act 2000 and Information Privacy Principles (IPP).

### 2. SCOPE

This policy applies wholly to Moqhaka Local Municipality's employees.

### 3. POLICY STATEMENT

Moqhaka Local Municipality acknowledges and respects the privacy of individuals and organisations and supports the National Privacy Principles contained in the Act. Accordingly Moqhaka Local Municipality will only collect information with prior knowledge and consent.

- Only use the information provided for the purposes for which it was collected.
- Not disclose information to a third party without consent of the Municipal Manager or his delegated nominee.
- Not disclose information to other institutions and authorities except if required by law or other regulation.
- Remove information from records when it is no longer required (except where archiving is required). The information held on a client or client organisation will be up-to-date, relevant, non-obtrusive and objective. Moqhaka Local Municipality will take reasonable steps to correct inaccurate, incomplete or out-of-date information on a regular basis.
- Have processes and policies to protect the information that Moqhaka Local Municipality has under its control from:

- (a) Unauthorised access
- (b) Improper use
- (c) Alteration
- (d) Unlawful or accidental destruction and accidental loss

#### 4. DEFINITIONS

**4.1 Personal Information** is defined by the Privacy Act as “information about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion” which is maintained electronically, on video or in written/printed form; and/or verbal information given to an employee about an individual. Although exempt under the Act, Moqhaka Local Municipality includes employee records under this policy.

**4.2 Individuals** as defined by Moqhaka Local Municipality are only the employees. Although the Privacy Act only relates to individuals, Moqhaka Local Municipality will apply the same principles to the collection of information about organisations and businesses. Where this policy refers only to individuals it applies equally to Organisations / businesses.

**4.3 Sensitive Information** means personal or health information or an opinion about an individual's:

- Racial or ethnic origin
- Political opinions
- Membership of a political association
- Religious belief or affiliations
- Philosophical beliefs
- Membership of a professional or trade association
- Membership of a trade union
- Sexual preferences or practices
- Criminal records
- Status

**4.4 Health information** means information or opinion about:

- The health or a disability (at any time) of an individual.
- An individual's expressed wishes about the future provision of health services to him or her.
- A health service provided, or to be provided, to an individual; that is also personal information
- Other personal information collected to provide, or in providing, a health service.
- Other personal information about an individual collected in connection with the donation, intended donation, by the individual of his or her body parts, organs or body substances.

**4.5 Employee Record**, in relation to an employee, means a record of personal information relating to the employment of the employee. Examples of personal information may include all or any of the following:

- Engagement, training, discipline or resignation of the employee
- Termination of the employment of the employee
- Terms and conditions of employment of the employee
- Employee's personal and emergency contact details
- Employee's performance and conduct
- Employee's hours of employment
- Employee's salary or wages
- Employee's membership of a professional or trade association
- Employee's trade union membership
- Employee's recreation, long service, sick, personal, maternity, paternity or other leave
- Employee's taxation, banking or superannuation affairs

## **5. Responsibilities**

- 5.1 The Director: Corporate Services is responsible for the effective implementation of this policy.
- 5.2 The Human Resources Manager is responsible for maintaining this policy, work instructions and associated documents on the Moqhaka Local Municipality server.
- 5.3 All employees are responsible for complying with this policy.
- 5.4 Employee is responsible for seeking a documented exemption from the Municipal Manager in any situations where they are unable to follow policy or procedure.

## **6. Procedures**

### **6.1 Practice Guidelines**

The following guidelines establish the professional practice framework for all areas of activity within Moqhaka Local Municipality.

- 6.1.1 Moqhaka Local Municipality regards having the confidence of individuals / organisations as a privilege.
- 6.1.2 Individual / organisations access to information about them is a right.
- 6.1.3 The collection and storage of unnecessary information of individuals / organisations is considered a breach in privacy and is inappropriate.
- 6.1.4 The formation of, or expression of a professional assessment / opinion must be recorded with care. Sensitive information will only be recorded with the individual / organisations consent unless:

- The collection is required by law
  - The collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
    - (a) Is physically or legally incapable of giving consent to the collection.
    - (b) Physically cannot communicate consent to the collection.
  - If the information is collected in the course of the activities of a not-for-profit organisation, the following conditions apply:
    - (a) The information relates solely to the employees of Moqhaka Local Municipality or to individuals / organisations who have regular contact with it in connection with its activities.
    - (b) At or before the time of collection the information, Moqhaka Local Municipality undertakes to the individuals / organisations whom the information concerns, that Moqhaka Local Municipality will not disclose the information without the individual's consent.
  - The collection is necessary for the establishment, exercise or defence of a legal or equitable claim.
- 6.1.5 All individuals / organisations have the right to be informed on who has access to their information.
- 6.1.6 Individuals have a right to challenge the accuracy of personal information recorded about them.
- 6.1.7 At, or before, the time (or, if that is not practicable, as soon as practicable after) is reasonable to expect that individuals / organisations will be made aware of the:
- Nature of the contents of the information
  - Identity of the organization and how to contact it
  - Individuals / organisations right to make reasonable requests to access that information
  - Purpose for which the information is collected
  - Period of time for which the information is kept
  - Organisations (or types of organisations) to which Moqhaka Local Municipality usually discloses information of that kind
  - Any law that requires the particular information to be collected
  - Main consequences (if any) for the individual if all or part of the information is not provided.
- 6.1.8 Employees have the right to request access to information held by Moqhaka Local Municipality about them in writing to the Municipal Manager. Moqhaka Local Municipality will provide access to this information within 30 days and any costs related to access to the information will be borne by Moqhaka Local Municipality.

- 6.1.9 Where confidential information is to be provided to third parties, the written consent of the individual / organization must be obtained or it must be identified as a requirement in the organisations contract with Moqhaka Local Municipality.
- 6.1.10 The release of non-identifying information must be checked prior to release to ensure the information is truly non-identifying.
- 6.1.11 Formal and informal team-briefing within Moqhaka Local Municipality is considered a professional contract which is based on professional ethics of confidentiality.
- 6.1.12 Wherever it is lawful and practicable, individuals must have the option of not identifying themselves.
- 6.1.13 All employees shall adhere to a Code of Conduct which identifies the need to maintain privacy and confidentiality of information.

## **6.2 Use of and Disclosure of Personal Information**

- 6.2.1 Where Moqhaka Local Municipality may use this information in the public domain, written consent is to be obtained. Individuals will not be photographed or filmed without seeking prior permission which outlines the proposed use of the photograph or film.
- 6.2.2 A legal requirement to disclose personal information may override NNP and IPP.

Situations where this may occur include the following:

- When serious criminals acts are known;
  - Where there is serious risk of abuse or physical harm to the individual or other person including the organisations employees;
  - Suspected abuse or neglect;
- 6.2.3 In the event that a legal need for disclosure arises in practice, the employee will inform and discuss the issue with their supervisor (where practicable) prior to making a decision to breach privacy and confidentiality.

## **6.3 Third party access to information**

- 6.3.1 Where employees who are performing a service for Moqhaka Local Municipality have access to personal information (such as access to Moqhaka Local Municipality database, server) they will be required to sign a non-disclosure and confidentiality agreement with Moqhaka Local Municipality.

## **6.4 Client information management**

- 6.4.1 All employees files are to be kept in lockable filing cabinets when not in use.

- 6.4.2 Employees files are to be accessed only by staff members providing a service to that employee and confidentiality will be adhered to at all times.
- 6.4.3 Files may not leave the office unless for a genuine work related purpose. The files must be carried in a secure fashion and not left unattended. Employees files must be in a non-identifiable format.
- 6.4.4 Employees may in writing access their files upon request as per the conditions contained in the Privacy Information to Access Procedure.

## **7. Legislative Context**

- 7.1 Privacy Amendment (Private Sector) Act 2000
- 7.2 National Privacy Principles
- 7.3 Information Privacy Principles
- 7.4 Municipal Systems Act
- 7.5 Moqhaka Local Municipality Code of Conduct for Municipal Employees

## **8. POLICY REVIEW**

This policy will be reviewed annually and revised as and when necessary.

## **9. AUTHORITY**

Formulation Policy : Director: Corporate Services

Authorization Policy : Council

Ownership & Maintenance Manager : Director: Corporate Services