

Making planning documents available to the public

Planning Practice Note 74

January 2022

The purpose of this practice note is to assist planning practitioners to meet the requirements for making documents available for inspection by the public under the Planning and Environment Act 1987 (PE Act) while also complying with other legal obligations, particularly in relation to the use and disclosure of personal information.

In this practice note:

- **authority** means the Minister for Planning, a planning authority and a responsible authority (usually a municipal council or the Minister for Planning), and referral authorities (usually Ministers, State government departments and public authorities)
- **document** means a document required to be made available for inspection by the public under the PE Act and includes a register.

Introduction

Purpose of making documents available to the public

The PE Act requires an authority to make various documents available for inspection by the public. This includes submissions to a planning scheme amendment, an application for a planning permit, an objection to the grant of a permit, and a register of applications.

Public access to these documents promotes a transparent and accountable planning system that encourages informed public participation. It allows the public to understand legal rights or obligations, form opinions and actively participate in planning processes.

Complying with privacy and other legislation

An authority must also consider other rights that are protected by other legislation when making documents available under the PE Act.

This is particularly the case with privacy rights because a planning matter can be a delicate or controversial subject for an individual or the broader community.

While the PE Act contains some specific requirements for how an authority must handle personal information, those requirements must be read together with an authority's obligations under the *Privacy and Data Protection Act 2014* (PDP Act).

The PDP Act contains 10 Information Privacy Principles (IPPs) which overlay the requirements of other Acts (including the PE Act) where these obligations can be observed concurrently. If a provision of the PDP Act is inconsistent with a provision of the PE Act, the PE Act provision prevails to the extent of any inconsistency (section 6 of the PDP Act).

An authority should also consider its obligations under the *Freedom of Information Act 1982*, *Health Records Act 2001* and the *Copyright Act 1968* (Cth).



What documents must be made available?

The PE Act requires an authority to make copies of various documents available for inspection by the public, including:

- applications for planning permits and amendments to planning permits
- objections to the grant of a permit
- registers of applications
- submissions to proposed planning scheme amendments
- planning permits
- the *Victoria Planning Provisions* and planning schemes
- proposed and approved planning scheme amendments
- agreements made under section 173 of the Act.

How are documents required to be made available?

Most documents used in planning processes must be made available for inspection by the public in accordance with the public availability requirements set out in Division 6A of Part 9 of the PE Act (sections 197A to 197H).

Unless the PE Act specifies otherwise, a document must be made available for any person to inspect free of charge.

The public availability requirements provide an authority flexibility to make a document available for inspection either:

- at the authority's office during the authority's office hours (section 197B); or
- on the authority's Internet site (sections 197C and 197E).

An authority may choose to:

- make a document available both at its office and Internet site; or
- make different types of documents available at its office or Internet site.

Example

A council may decide to make a copy of a planning permit application available on its Internet site but only make copies of objections to the application available for inspection at its office.

If an authority makes a document available on its Internet site, it must also make the document available for inspection at its office at the request of any person (section 197D). This ensures that people who cannot access documents online are still able to inspect documents.

However, this requirement does not apply if there is an emergency declaration in force and it is not reasonably practical to make the document available in person because of a fact or circumstance arising out of the emergency or serious risk to public health that the declaration relates to (section 197H).

Emergency declaration means:

- a declaration of a state of disaster under section 23 of the *Emergency Management Act 1986*; or
- a pandemic declaration under section 165AB of the *Public Health and Wellbeing Act 2008*; or
- a declaration of a state of emergency under section 198 of the *Public Health and Wellbeing Act 2008*.

If the Minister for Planning makes a document available on an Internet site, any other authority that is required to make the same document available is only required to publish the address of the Internet site where the Minister has published that document (section 197C(2)(b)).



Limits on disclosing personal information

Limits are imposed on what personal information can be disclosed when a document is made available to the public.

The PE Act prohibits the disclosure of certain personal information in a document that is made available on an Internet site. This prohibition does not apply when a document is made available in another way (for example, for physical inspection at an authority's office or emailing an electronic copy to a person).

Regardless of how a document is made available, an authority must also comply with the PDP Act obligations (particularly IPP 2.1) where these do not directly conflict with any requirement of the PE Act.

Documents made available on an Internet site

If an authority makes a document available on its Internet site, the PE Act allows it to disclose the address of the land to which a proposed planning scheme amendment, application, permit or agreement applies.

However, the PE Act prohibits the authority from disclosing any other personal information about any individual without the individual's consent (sections 197F and 197G).

In interpreting this prohibition, an authority should consider the following points:

- 'Personal information' has the same definition as in section 3 of the PDP Act:
'...information or an opinion..., that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion...'
- Personal information includes details such as an individual's name, address, contact details, signature, financial information and their opinions about particular matters.
- Information will be 'personal information' where a person's identity can be reasonably ascertained. This means that simply removing a person's name will not always be sufficient to ensure they cannot be identified.

Example

An authority decides to make an objection received in relation to a planning permit application available on its Internet site. It removes the name and address of the objector. However, the objection contains details of the objector's previous disputes with the applicant. From this information, the objector's identity would be apparent to the applicant and possibly to others.

- The prohibition applies to the personal information of any individual, including an applicant for a planning permit and any person who makes a submission to a planning scheme amendment or an objection to the grant of a permit.
- The prohibition also applies to personal information of other individuals that may be included in an application, submission, objection or other document.
- The prohibition applies to personal information in any form or other document that the individual gives to an authority .



- An authority will need to consider how it removes personal information from documents that it makes available on its Internet site. This may be done by redacting documents or by structuring forms to make it easier to separate sections containing personal information (also see comments on collection below in terms of limiting the personal information that an authority collects from an individual).
- It is reasonable to assume that most individuals will not agree to their personal information being published on an Internet site if it is not a legal requirement.
- If an authority seeks the consent of an individual to disclose their personal information, it should fully inform the individual of the consequences of this and make it clear that they have a choice of whether to agree or not.
- If an application includes personal information of other another person, such as an architect or consultant, the consent of that person must also be obtained before disclosing their personal information.

Example

An authority redesigns its planning permit application form to include a paragraph at the end stating:

By submitting this form I, the applicant, agree that my personal information will be published on the authority's website to be inspected by members of the public in line with the *Planning and Environment Act 1987*.

This would not constitute valid consent from the individual. Consent in this circumstance requires a clear opt-in model where the individual must make an active and clear choice to agree.

An example of an opt-in model of seeking consent would be if the application form included a paragraph stating the following followed by two tick boxes where the individual can tick either 'yes' or 'no':

The [insert name of authority] cannot publish your personal information (apart from the relevant address) on its Internet site unless you consent to this. Would you like the [insert name of authority] to include your personal information (such as your name and contact details) when publishing this application on its Internet site for inspection by members of the public?

More information about what constitutes valid consent is available from the Office of the Victorian Information Commissioner (OVIC): ovic.vic.gov.au/book/key-concepts/#Consent

- For some processes under the PE Act, an authority may decide to adopt a policy of not disclosing any personal information when publishing documents on its Internet site instead of seeking the individual's consent on a case by case basis.

Documents made available in another way

The prohibition in sections 197F and 197G of the PE Act only apply to disclosing personal information on an Internet site. The prohibition does not apply when an authority:

- makes a document available for inspection at its office;
- provides a physical copy of a document to a person, including by post or another way; or
- emails an electronic copy of a document to a person.

However, an authority must still comply with IPP 2.1 under the PDP Act which regulates the use and disclosure of personal information.

IPP 2.1 states that personal information can only be used and disclosed:

- for the primary purpose for which it was collected;
- for related secondary purposes that individuals would reasonably expect; or
- in accordance with another exception.

When deciding what personal information to disclose in a document, an authority should consider the purpose of making the document available for inspection and whether the disclosure is required to fulfil this purpose. This is because:

- the information made available to the public should be consistent with the purpose for which it was collected
- a disclosure of personal information may be an interference with privacy if it goes beyond what is required or expected.



Example

An authority receives an application for a planning permit that contains personal information about the former owners of the land, including their name, details of the sale of the land to the applicant and particulars of the former owner’s mortgage over the land contained in the land title.

It is likely that making this information available for inspection would constitute an unauthorised disclosure of the former owner’s personal information under IPP 2.1 because it was not for the primary purpose for which the information was collected (assessing and making a decision on the application).

In addition, someone in the former owner’s position would not reasonably expect this information to be made available for inspection. It is not sufficiently relevant to the planning application and therefore goes beyond what is required to enable a person to understand the application and participate in the application process.

Before making a copy of the application available for inspection, the authority should have reviewed the information provided and redacted the former owner’s personal information.

While an individual’s name and address may be appropriate to disclose depending on the circumstances, an authority should usually not disclose contact details such as a phone number or email address.

What if personal information is inappropriately disclosed?

If personal information is inappropriately disclosed either by being published on an Internet site, by being made available for inspection in person, or by a copy being provided to a person, it is likely that this would also constitute an interference with privacy under the PDP Act.

Example

An authority receives an objection in relation to an application for a planning permit which contains personal information about the objector including their name, property address, email address and phone number. The authority makes the objection available on request to the applicant and other objectors.

It is likely that the disclosure of the objector’s phone number and email address would be an unauthorised disclosure of the objector’s personal information under IPP 2.1 because it was not for the primary purpose and goes beyond what the objector would reasonably expect.

An Individual can make a complaint to the Office of the Victorian Information Commissioner (OVIC) to seek redress for any harm they feel they had suffered as a result of the breach. If OVIC cannot resolve a complaint, the complainant can have the matter referred to the Victorian Civil and Administrative Tribunal.

For more information on OVIC’s privacy complaint process see:

<https://ovic.vic.gov.au/privacy/privacy-complaints-at-ovic-guide-for-respondents>



Other privacy considerations

Only collect personal information that is necessary

IPP 1.1 requires that an organisation only collects personal information where it is necessary for one or more of its functions or activities.

The PE Act and Regulations stipulate the objectives or purpose for collecting the information and may also prescribe the types of information required.

An authority should ensure that it only collects personal information that is necessary to perform its functions as part of the planning process. For example, an authority should ensure that any template form it makes available (such as an application form or objection form) only requests personal information that it requires to carry out its planning functions.

Limiting collection of personal information in this way should also make it easier to avoid disclosing unnecessary personal information when carrying out the public availability requirements.

An authority may also consider reviewing its checklists to advise prospective applicants and proponents to not include personal information in the documents submitted with their applications or requests.

Set expectations for those providing personal information

An authority should ensure that individuals who provide personal information as part of the planning process are aware of why the information is needed and how it will be used and disclosed.

It is especially important that individuals are clearly informed that their information may be made available to the public where this is the case. This is likely something they may not have expected to occur. Knowing about this allows an individual to choose whether to proceed with participating in the planning process or to raise any concerns with the authority and explore their options.

Under IPP 1.3 of the PDP Act an authority must take reasonable steps to ensure individuals are aware of the following either before or at the time of collecting personal information:

- The purposes for which the personal information is being collected.
- To whom the information may usually be disclosed, including that members of the public will be able to access the information.
- Any law that requires particular information be collected.
- What the consequences are (if any) of not providing all or part of the information.
- That the person can access the information collected about them.

This is known as a 'privacy collection notice' and an authority should ensure it is included on any form used to collect personal information from an individual. It may also be useful to have guidance about how personal information will be handled as part of the planning process on relevant webpages on the authority's Internet site.



Example privacy collection notices for the permit application process

If the document will be published on an Internet site:

Your [application / submission / objection] and the personal information on this form is collected by [responsible authority name] for the purposes of the application process as set out in the Planning and Environment Act 1987 (PE Act).

If you do not provide your name and address, [responsible authority name] will not be able to consider your [application / submission / objection].

Your [application / submission / objection] will be published on [responsible authority] Internet site [insert address of responsible authority] and be available at the [responsible authority] office for any person to inspect on request in accordance with the public availability requirements in the PE Act. Copies may also be made available on request to any person for the relevant period set out in the PE Act.

Your personal information will not be disclosed on the [responsible authority] Internet site without your consent except in accordance with the PE Act. You must not submit any personal information or copyright material of any other individual without their informed consent.

You can request access to your personal information by contacting [the area of the responsible authority that holds the information].

If the document will not be published on an Internet site:

Your [application / submission / objection] and the personal information on this form is collected by [responsible authority name] for the purposes of the application process as set out in the Planning and Environment Act 1987 (PE Act).

If you do not provide your name and address, [responsible authority name] will not be able to consider your [application / submission / objection].

Your [application / submission / objection] will be available at the [responsible authority name] office for any person to inspect on request in accordance with the public availability requirements in the PE Act and copies may be made available on request to any person for the relevant period set out in the PE Act.

You can request access to your personal information by contacting [the area of the responsible authority that holds the information].



Secure personal information against misuse or unauthorised access

An authority also has an obligation under IPP 4.1 to take reasonable steps to protect personal information it holds from misuse, loss, unauthorised access, modification and disclosure.

An authority should:

- take reasonable steps to reduce the likelihood of personal information that it makes available to the public from being misused
- make any person inspecting a document aware that all information is provided for the purposes of the PE Act and may only be used for those purposes.

Example of a notice to a person who inspects a document on an Internet site

If a document is made available on an Internet site, an authority should seek express agreement from the person seeking to inspect the document that the use of the document is limited to the purposes under the PE Act.

Users could be asked to click their agreement to the following condition before they are able to access the document:

The information contained in the [name of document] is provided for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By entering this Internet site you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination or distribution of this information is strictly prohibited.

If you have any questions, please contact [insert contact details].

Other legislative obligations

Copyright Act 1968

The *Copyright Act 1968* (Cth) prevents the unlawful reproduction of documents without the permission of the owner. In general, an author of a document owns the copyright in that document. If a plan is reproduced to obtain professional advice or as part of a legal process (for example, a VCAT review), specific exemptions under the Copyright Act may apply to enable the plans to be reproduced in those limited circumstances.

An authority should take reasonable steps to ensure that:

- the person providing the document has authority to use it and understands how it will be used and reproduced
- any person given a copy of a document is aware that the document may only be used for the limited purposes of the planning process set out in PE Act.

Example copyright notice

This document has been copied and made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited. If you have any questions, please contact [insert contact details].

Freedom of Information Act 1982

The *Freedom of Information Act 1982* gives members of the public rights of access in relation to documents about their personal affairs. Anyone is entitled to lodge a freedom of information request.



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