

FENCES AND PRIVACY

In suburban and country Victoria, fences take many forms and serve several purposes. They conceal and they divide. Fences preserve privacy, both by obscuring views and preventing access into property. Fences need maintenance and opinions may differ about urgency and cost. For years the law has juggled the issues that can arise between neighbours on each side of a fence.

Local councils, with their ratepayer databases containing personal information about property owners, are a natural source of details for people with an interest in fencing, especially for contractors wanting to serve a fencing notice on an absent property owner.

The Information Privacy Act, enforceable from 1 September 2002, sets new standards for the collection and handling of personal information by local and state government. The Information Privacy Act contains 10 Information Privacy Principles (IPPs) for collection, use and disclosure, management and transfer of personal information.

This information sheet gives guidance to councils as they apply the IPPs to balance two public interests: the public interest in efficient, orderly fence construction and maintenance; and the public interest in respect for ratepayers' personal information.

Relevant law

Under section 6 of the Fences Act 1968 (Vic) any person wanting to compel any other person to construct or join in or contribute to the construction of a dividing fence may serve on the other person a Notice to Fence. The notice must be in writing specifying the boundary to be fenced and the kind of fence to be constructed.

Where the case allows, a person may send a notice by registered post to the occupier of the land at the address shown in the rates record of the municipal council [Fences Act, section 9(1) (b)]. The occupier of land may be absent from Victoria or unable to be found. Land requiring fencing may be unoccupied.

Guidance

IPP 2 contains eight exceptions to the basic rule that personal information should only be used and disclosed for the primary purpose for which it was collected.

Under IPP 2.1(a), personal information may be disclosed for a secondary purpose related to the primary purpose of collection where an individual would reasonably expect the organisation to use or disclose the information for that secondary purpose.

In the present context, the primary purpose for councils to collect personal information about property owners is to charge for services provided by council. Rates are based on property values. Councils' databases on ratepayers need to contain a description of properties, their value, and the names and addresses of property owners.

Paying rates and dealing with fencing issues are part of the responsibilities of property ownership. In most circumstances, disclosure of the name and address of a property owner for the purpose of facilitating lawful fencing activity by a requester with a legitimate interest in that property owner's fence, will be a disclosure for a secondary purpose that the property owner would reasonably expect.

But such disclosures should be kept to the minimum necessary to fulfil the secondary purpose and should not, for example, include disclosure of property value or other personal information that may be in the database because it is necessary for council to collect, hold and use it to fulfil council's functions or activities.

The Information Privacy Principles emphasise accountability. They oblige organisations to take reasonable steps to protect personal information from misuse. In this context, before councils give requesters access to a property owner's contact details, councils may require requesters to provide at least the following:

- their own name and contact details;
- if they are not themselves the neighbour but instead an agent such as a fencing contractor, proof that they are authorised to act on behalf of the neighbour of the property owner whose contact details are being requested;
- appropriate details of the property affected by the proposed fence;
- a written assurance that the contact details will be used solely to facilitate a specific fencing matter, will not be retained, copied or disseminated for unrelated purposes and will be kept secure; and
- written acknowledgement that council has informed the requester about the IPPs.

Where councils find out about a breach of a written assurance, councils should consider restricting or denying future similar requests by the person responsible. This would be consistent with IPP 4 (data security) and would deter improper use of personal information disclosed to facilitate a fencing matter.

Over time, councils should give ratepayers notice that disclosure of contact details to facilitate specific lawful fencing activity will occur. That is consistent with IPPs 1 and 5. It will ensure that people's expectations are progressively better informed.