



## **9. GOVERNANCE**

Policy 9.11

ACCESS TO INFORMATION HELD

**Version 4**

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### **9.11 ACCESS TO INFORMATION POLICY**

#### **OBJECTIVE:**

The objective of this policy is to outline principles regarding access to information held by Council and to facilitate the processing of requests for such access by the public and Councillors.

#### **POLICY:**

Council is committed to the following principles regarding access to documents and information:

- a) Open and transparent government
- b) Consideration of the overriding public interest in relation to access requests
- c) Proactive disclosure and dissemination of information
- d) Respect for the privacy of individuals

#### ***1. COMMUNITY & COUNCILLOR AWARENESS:***

Council publishes specific open access information on our website which is free of charge unless to do so would impose unreasonable additional costs to Council. A list of documents listed under the Government Information (Public Access) Act 2009 (GIPA Act), Schedule 1: Regulations are also published unless there is an overriding public interest not to do so.

Other information may also be publicly available if sought in an appropriate manner, and this is listed on our website under the GIPA Act disclosure log. Such information will be provided free of charge or at the lowest reasonable cost if photocopying or Council resources are required.

Councillors also have a right to access council information that is reasonably necessary for exercising the function of their civic office, including communicating Council policy and decisions to the community, exercising community leadership and representing the views of residents and ratepayers to Council.

#### ***2. BACKGROUND:***

Applications for documents must be assessed in accordance with the Government Information (Public Access) Act 2009, in a timely manner and in accordance with the 'Access to Information Guidelines' and relevant legislation.

Depending on the nature of a request, and the form of access requested, charges may apply in accordance with Council's Schedule of Fees and Charges and relevant legislation.

Council's Principal Officer has delegated authority to a Right to Information Officer who will assess requests concerning Council's information and will assist the public and Councillors to gain access to information held by Council, determine applications requested and / or amend records in accordance with legislation.

Council will assess requests for access to information with reference to relevant legislation including:

- Government Information (Public Access) Act 2009
- Privacy and Personal Information Protection Act 1998
- Health Records and Information Privacy Act 2002
- State Records Act 1998
- Local Government Act 1993
- Environmental Planning and Assessment (EPA) Act 1979
- Companion Animals Act 1998

Broad requests for access to a large number of unspecified documents which, if processed, would divert substantial Council resources from operational needs may be refused on the grounds that such a diversion of resources is contrary to the public interest. Council will pursue ways to assist in defining the request to become more manageable and Council will endeavour to release alternate information that may sufficiently respond to the informal request.

Where information is released to an applicant under a formal access application, and Council considers that it will be of interest to other members of the public, the information may be provided for future inspection by the public and Councillors, free of charge.

The GIPA Act 2009 promotes openness, accountability and transparency, It allows Council to be proactive in providing information to the public and Councillors.

## **1. Accessing Information**

The Right to Information Officer will deal with requests to inspect documents in accordance with the Government Information (Public Access) Act 2009 (GIPA Act) free of charge but reasonable photocopying fees may apply under the Act.

Council is governed by legislation that requires operations to be open and accountable, and to handle personal information in a fair and reasonable manner.

Council will ensure that legitimate requests for access to information are handled promptly and in a manner that enables members of the public and Councillors to access information which is in the public's interest. It is also recognised that privacy of others, legal and commercially sensitive information, will be handled in a responsible manner.

There is a right of access under the GIPA Act to certain documents held unless there is an overriding public interest not to do so. Any applications under GIPA Act will be processed in accordance with the Act's requirements and a determination made to release the documents or refuse access on the basis of relevant considerations under that Act. Charges for formal applications are in accordance with the fee determined by the GIPA Act.

Council will also provide access to information under the NSW Privacy and Personal Information Protection Act (PPIPA) 1998, and the NSW Health Records and Information Privacy Act (HRIPA) 2002.

An individual has the right to access and amend records held by Council which may contain their personal details, matters relating to their business affairs or their health.

If information held on individuals and is requested documents, files or systems should be made available. The GIPA Act provides for consultation with individuals or relevant third parties prior to the disclosure of information.

A Councillor may have an entitlement to information expressly included in the Model Code of Conduct for Local Councils in NSW (s 440 Local Government Act 1993). Clause 10 of the Model Code provides guidance on the requirement for an officer to provide information to Councillors. It states that Councillor must be provided with sufficient information to carry out their functions. As for an application under the GIPA Act the request must be in writing and determined in an appropriate timeframe as detailed in 5.

## **2. Open Access Information**

Council publishes open access and mandatory releases information on its website unless there is an overriding public interest against disclosure or do so would impose an unreasonable additional cost on Council. Should costs be deemed unreasonable Council will make the information available to the applicant in another suitable format such as viewing a hard copy at the Administration Office.

Information identified as 'Open Access Information' and is available on Council's website includes:

- Council's policy documents;
- a publication guide with information about the Council's structure and functions, and listing the type of information that is publicly available;
- a disclosure log of formal access applications where in Council's opinion the information released may be of interest to other members of the public
- a register of contracts worth more than \$150,000 (GST inclusive) that Council has with private sector bodies
- a record of 'Open Access Information' that Council does not make publicly available on the basis of an overriding public interest against disclosure

In addition Schedule 1 of the GIPA Act Regulations certain documents held must be made publicly available for inspection, free of charge. The public is entitled to inspect these documents either on Council's website (unless there is an unreasonable additional cost to Council to publish these documents on the website) or at the Administration Office of Council during normal office hours. Any current and previous versions of the documents may also be inspected by the public free of charge.

Copies may be supplied for reasonable copying charges as shown in Councils adopted Fees and Charges.

'Open' Informal Access documents are:

1. Information about Council
  - The model code prescribed under section 440 (1) of the LGA
  - Councils adopted Code of Conduct

- Code of Meeting Practice
- Annual Report
- Annual Financial Reports
- Auditor's Report
- Management Plan
- EEO Management Plan
- Policy concerning the Payment of Expenses Incurred by, and the Provision of Facilities to, Councillors
- Annual Reports of Bodies Exercising Functions Delegated by Council
- Any Codes referred to in the LGA
- Returns of the Interests of Councillors, Designated Persons and Delegates
- Agendas and Business Papers for any meeting of Council or any Committee of Council
- Minutes of any meeting of Council or any Committee of Council
- Departmental Representative Reports presented at a meeting of Council
- Land Register
- Register of Investments
- Register of Delegations
- Register of Graffiti removal works
- Register of Current Declarations of Disclosures of Political Donations
- Register of Voting on Planning Matters

2. Plans and Policies

- Local Policies adopted by Council concerning approvals and orders
- Plans of Management for Community Land
- Environmental Planning Instruments, Development Control Plans and Contribution Plans

3. Information about Development Applications

Development Applications and any associated documents received in relation to proposed developments:

- Home Warranty Insurance documents
- Construction Certificates
- Occupation Certificates
- Structural Certification Documents
- Town Planner Reports
- Submissions received on Development Applications
- Heritage Consultant Reports
- Tree Inspections Consultant Reports
- Acoustic Consultant Reports
- Land Contamination Consultant Reports
- Records of decisions made on or after 1 July 2010 on Development Applications including decisions on appeals
- Development applications made before 1 July 2010 and any associated documents received

- Records describing general nature of documents that Council decides to exclude from public view including internal specifications and configurations, and commercially sensitive information
4. Approvals, Orders and Other Documents
- Applications for approvals under part 7 of the LGA
  - Applications for approvals under any other Act and any associated documents received
  - Records of approvals granted or refused, any variation from Council Policies with reasons for the variation, and decisions made on appeals concerning approvals
  - Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA
  - Orders given under the Authority of any other Act
  - Records of Building Certificates under the Environmental Planning and Assessment Act 1979
  - Plans of land proposed to be compulsorily acquired by Council
  - Compulsory Acquisition Notices
  - Leases and Licenses for use of Public Land classified as Community Land

Copies of documents provided to the public and Councillors are done so for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright laws still apply to each document and the copyright / owner's consent is required if any part of the document is used for any other purpose.

Council may include 'other' documents on the website which are frequently requested and deemed to be in the public's interest as a result of a previous request under the GIPA Act. Council will endeavour to release this information in response to an informal request, subject to any reasonable conditions as Council sees fit to impose. However, notwithstanding the lodgement of an informal application, Council may require an individual or Councillor to submit a formal access application for the information sought if the information:

- is of a sensitive nature that requires careful weighing of the considerations in favour of and against disclosure, or
- contains personal or confidential information about a third party that requires consultation, or
- would involve an unreasonable amount of time and / or resources to produce

### **3. Exemptions to Access**

Council may refuse a request for information if there is an overriding public interest against disclosure or if searching for the requested information would require unreasonable and substantial diversion of the Council's resources.

Council will always explain, to the applicant, being a member of the public or a Councillor, the reason / s for applying an exemption.

Council will not classify information as exempt unless there are clear reasons for doing so. If documents partly contain exempt information, this information will be withheld and the remaining information will be available under the Act.

In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the Public Interest Test.

The GIPA Act provides an exhaustive list of public interest considerations against disclosure. These are the only considerations against disclosure that Council will consider in applying the public interest test.

Considerations are grouped under the following headings:

- responsible and effective government
- law enforcement and security
- individual rights, judicial processes and natural justice
- business interests of agencies and other persons
- environment, culture, economy and general matters
- secrecy provisions (in legislation other than those listed in Schedule 1: Regulations)
- Exempt documents under Freedom of Information legislation in all Australian States except NSW

In applying the public interest test, Council will not take into account:

- that disclosure might cause embarrassment to, or loss of confidence in, the Council;
- that information disclosed might be misinterpreted or misunderstood by any person.

Council will consider any submissions made by an individual or a Councillor in relation to public interest considerations, as well as particulars personal to the applicant.

Under the GIPA Act there are 12 categories of information, 8 of which affect local government, for which there is a conclusive presumption of an overriding public interest against disclosure.

Local Government categories are:

1. Information subject to an overriding secrecy law (26 specifically named Acts).
2. Information subject to the direction or order of a court or other body with the power to receive evidence on oath.
3. Information subject to legal professional privilege and/or any information contained in a document that was, in response to a court order, not compelled by a court to be produced on the grounds of privilege
4. 'Excluded information' (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information and information in relation to specific functions of the Public Trustee
5. Documents affecting law enforcement and public safety.

6. Specific information relating to transport safety
7. Specific reports concerning the care and protection of children
8. Specific information relating to Aboriginal and environmental heritage.

Generally under the GIPA Act, Council cannot publish, and must refuse requests to disclose information in the above categories. Formal applications for 'excluded information' are invalid under the Act.

In dealing with informal applications Council will apply a similar decision making framework.

Section 60(3A) provides a non-exhaustive list of factors that decision-makers may take into account when deciding whether an application would involve an unreasonable and substantial diversion of Council's resources. Council may, without limitation, take the following factors into consideration:

1. The estimated volume of information involved in the request;
2. The agency's size and resources; and
3. The required period for deciding the application.

Section 60(3B) provides that any consideration under subsection (3A) must, on balance, outweigh:

1. The general public interest in favour of the disclosure of government information, and
2. The demonstrable importance of the information to the applicant, including whether the information is personal information that relates to the applicant, or could assist the applicant in exercising any legal rights.

Council can refuse an application on the grounds that the information is already available to the applicant where:

4. the information has already been provided to the applicant and there is no reason to believe they are no longer in possession of the information, or
5. the information is publicly available on a website, or
6. the information is available under a standing rule or order of the Legislative Council or Legislative Assembly.

Where an agency makes the decision to refuse access on the grounds that the information is already available to the applicant, section 59(2) requires the agency to provide a reason for this decision in its notice of decision to the applicant.

#### **4. Accessing Information**

The public and Councillors may obtain access to information as follows:

- Council's website
- A written request to Council which will be determined and a reply provided as to whether the information requested:



- is *open access*, or *mandatory release* information that is readily available and where and how to get the information
- should be made available as part of a *proactive release* of information
- can be disclosed through an *informal release*, for example where no third party personal information is involved
- Requires a *formal access application*, accompanied by the required fee and photocopying charges.

To make an informal request for access to information of Council will require the public and / or Councillors to complete an 'Access Application' form (with the informal request box ticked) but no fee is required with this application.

To make a formal request for access to information, complete the 'Access Application' form (with the formal request box ticked) . The Formal Application fee is defined in the GIPA Act and does not include GST. The legislation requires that a discounted processing charge be applied for pensioners, students and non-profit organisations, upon providing evidence of eligibility for a discount.

Council will acknowledge receipt of formal access application within five working days.

If a fee for photocopy is required the applicant will be notified of the amount payable and this amount will include GST. Charges will be calculated as per Councils current Schedule of Fees and Charges, applicable at the time of lodgement of the application.

## **5. Time Limits**

As stated in 4) Council will acknowledge receipt of formal access applications within five working days and further notify applicants of its decision within 20 working days that is unless the applicant agrees to extend the time.

Informal applications will be assessed within 20 working days.

Council may extend the time by up to 15 working days where consultation is required with a third party or if Council needs to retrieve records from archives.

If access is deferred by Council, then the applicant will be notified, provided a reason for the deferral and given the date that the access will be provided. A decision to defer access to formal applications is reviewable (see Rights of Review and Appeal).

If Council does not decide the applicant's formal access application within the above timeframe, it is deemed 'refused' and Council will refund the application fee and the applicant may seek an internal or external review (see Rights of Review and Appeal) of this refusal. This will not apply if an extension of time has been arranged or payment of an advance deposit is pending.

## **6. Rights of Review and Appeal**

Where a member of the public or a Councillor is refused access of a formal application, the Right to Information Officer will provide details of the reasons for refusal to the applicant in writing. An applicant who has been refused access by Council to a formal access application has three options of review available:

### **1. Internal Review:**

Applicants have 20 working days from the date they are notified that their original application has been refused to ask for an internal review.

A request for an internal review must be submitted to Council on a completed application form and payment of the appropriate fee under GIPA Act.

This review will be conducted by the Principal Officer.

### **2. Review by the Information Commissioner**

If an applicant is not satisfied with the internal review, or does not wish one to be conducted, they can ask for a review by the Information Commissioner.

The Information Commissioner has 40 working days from the day on which all necessary information relating to a review application has been received by the Information Commissioner, to complete the review of a decision and make any recommendations.

### **3. Review by the NSW Civil and Administrative Tribunal (NCAT).**

If an applicant is not satisfied with the decision of the Information Commissioner, or an internal review by Council, or they do not want to take these options they can apply to the NSW Civil and Administrative Tribunal (NCAT).

If the applicant has already had a review by the Information Commissioner they have 4 weeks from notification of the decision to make this application. If they haven't had a review by the Information Commissioner they have 8 weeks from notification of the decision to make this application.

There are no rights of review in respect of informal applications, but the applicant may wish to make a formal application to Council.

It should be noted that the NSW Ombudsman and the Division of Local Government also have a complaint handling procedure should issues arise.

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