

COUNCIL
POLICY

ACCESS TO INFORMATION

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1. Purpose

To establish the principles that apply and Council's approach to, disclosure of information and rights of public access to documents.

Council is subject to NSW legislation regarding disclosure of information, in particular the Local Government Act (LGA), the Government Information Public Access Act (GIPA) and the Environmental Planning and Assessment Act. It also is subject to the NSW Privacy and Personal Information Protection Act (PPIPA) and Health Records Information Privacy Act (HRIP) that establish standards for information handling practices for personal and health information.

The Commonwealth Copyright Act may apply in some circumstances to limit the copying of certain documents held by the Council.

2. Policy statement

Council is committed to:

- Openness and transparency in the conduct of its public functions.
- Proactive disclosure and dissemination of information about operations, plans and decisions or information that will enhance quality of life and economic development of the community.
- Provision of access to Council documents unless disclosure in a particular case would be contrary to the public interest.

3. Principles

Council will promote disclosure and dissemination of information about operations, plans and decisions, and information that promotes community advancement on its website wherever practicable, and will facilitate public access through this and other appropriate mediums.

Documents required by law to be available for public inspection will be posted on the website, unless internet access poses an unacceptable risk of interference with privacy through potential data gathering and matching techniques or unless to do so would impose unreasonable additional costs on Council.

Any person is entitled to have information about their place of residence suppressed from documents available for inspection where disclosure would endanger personal safety, or removed from any register available for public inspection in accordance with the PPIPA.

Other Council documents not posted on the website will be available for inspection unless disclosure on balance is contrary to the public interest.

Copying of some documents may be restricted where the Copyright Act imposes limitations.

Council's Guidelines on Access to Information (attached) list the types of documents available including public registers available for inspection.

The Guidelines also list the categories of documents not available because of legislative restrictions or because disclosure is likely to be contrary to the public interest. Documents of this kind include those that contain information about the personal affairs of other ratepayers, commercially sensitive information, or information which if disclosed would have an adverse effect on Council's law enforcement or other functions, such as the identifying particulars of complainants.

Inspection of Council documents which are specified as Open Access Information as outlined in Clause 18 of the GIPA Act, is free of charge, or on payment of reasonable copying charges. Fees for Formal Applications are outlined in the attached Guidelines.

Broad requests for access to a large number of unspecified documents which, if processed, would divert substantial Council resources from dealing with other requests, or from performing other Council functions may be refused on the grounds that such a diversion of resources is contrary to the public interest (Clause 60 GIPA Act).

Any member of the public may also lodge a formal application under the GIPA Act, which will be dealt with in accordance with the Act's provisions. Formal applications will not be required where documents are otherwise available in accordance with this policy and associated guidelines.

Any individual also has a right to know what personal or health information Council holds about him or her, to access that information in accordance with the provisions of the NSW Privacy and Personal Information Protection Act and the NSW Health Records and Information Privacy Act, and to amend that information in certain circumstances.

Guidelines on Information Access - To be read in conjunction with Council's Access to Information Policy

Introduction

These guidelines set out the documents and types of information that are available to members of the public on a proactive basis, and those that will not generally be available for inspection and copying. These guidelines relate not only to written information, or information held within another format, such as within a computer system but also any records of information given out face to face, or via a telephone or email.

Council is committed to proactive dissemination of information about the conduct of its public functions and information that will assist community advancement.

Documents required to be available for public inspection as open access information will, where practicable, be made available on Council's website, unless to do so would impose unreasonable additional costs on Council.

Council will deal with informal requests to inspect other documents in accordance with the GIPA Act free of charge but charges may apply for photocopies, and for any additional services which go beyond the provision of access to identified documents.

The rights of access under the GIPA Act are the specified documents listed in Schedule 5 Government Information (Public Access) Regulation 2009 of the Act, and to other documents held by the Council unless disclosure is, on balance, contrary to the public interest.

While any application will be considered on its merits Council may refuse access where:

- a. dealing with the application would require an unreasonable and substantial diversion of the Council's resources,
- b. the Council has already decided a previous application for the information concerned (or information that is substantially the same as that information) made by the applicant and there are no reasonable grounds for believing that the Council would make a different decision on the application,(clause 60)

Any applications will be processed in accordance with the Act's requirements and a decision made to provide access to the documents, or not to provide access based on public interest considerations of the GIPA Act. Charges for formal GIPA applications are set out in Council's Schedule of Fees and Charges.

An individual also has rights to access and amend the personal and health information held by Council about him or her under the NSW Privacy and Personal Information Protection Act (PPIPA) and the NSW Health Records and Information Privacy Act (HRIPA). Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the GIPA Act which provides for consultation with any other affected parties prior to the possible provision of access to information concerning their personal or business affairs.

Privacy Legislation and Access to Council Information and Documents

The privacy acts referred to above also apply to the collection, storage, use and disclosure of personal and health information by Council. The acts set out principles for the handling of this type of information.

Full details of the acts and Council's obligations are set out in the Privacy Management Plan.

It is not a breach of the privacy principles to disclose personal or health information where this is in accordance with the acts, (e.g. where disclosure is consistent with the purpose for which the information was collected, or where the person was aware that particular information is usually disclosed) or where another act or law requires, permits or contemplates disclosure.

Disclosure of documents required to be made available for public inspection by the GIPA Act, Local Government Act, the Environmental Planning and Assessment Act or any other act, of disclosure under the GIPA Act is not contrary to privacy legislation.

Where access to other documents is requested and a judgment needs to be made about whether disclosure, on balance, is contrary to the public interest, privacy may be a consideration if personal information about another person is involved. Relevant factors include the nature of the information, and the degree to which disclosure involves significant privacy issues, and any public interest that would be advanced by disclosure. Council may need to be able to explain considerations taken into account in deciding to disclose personal information to someone other than the person concerned.

Council Documents Available for Inspection

The following documents are available for inspection as required by Schedule 5 Government Information (Public Access) Regulation 2009 and can be accessed via Council's website or by contacting either Council's Right to Information Officer or Council's Customer Service Section on 9911 6555:

1. Information about Council

1. Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:
 - a. the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA,
 - b. code of meeting practice,
 - c. annual report,
 - d. annual financial reports,
 - e. auditor's report,
 - f. FuturesPlan20, delivery plan, budget and operating plan,
 - g. EEO management plan,
 - h. policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors,
 - i. annual reports of bodies exercising functions delegated by Council,
 - j. any codes referred to in the LGA.
2. Information contained in the following records:
 - a. returns of the interests of councillors, designated persons and delegates,
 - b. agendas and business papers for any meeting of Council or any committee of Council (but not including business papers for matters considered when part of a meeting is closed to the public),
 - c. minutes of any meeting of Council or any committee of Council, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting,
 - d. Departmental representative reports presented at a meeting of the local authority in accordance with section 433 of the LGA.
3. Information contained in the current version of the following records:
 - a. land register,
 - b. register of investments,
 - c. register of delegations,
 - d. register of graffiti removal work kept in accordance with section 13 of the *Graffiti Control Act 2008*,
 - e. register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA,
 - f. the register of voting on planning matters kept in accordance with section 375A of the LGA.

2. Plans and policies

Information contained in the current version and the most recent previous version of the following:

- a. policies adopted by Council concerning approvals and orders,
- b. plans of management for community land,
- c. environmental planning instruments, development control plans and contributions plans made under the **Environmental Planning and Assessment Act 1979** applying to land within the local authority's area.

3. Information about development applications and planning matters

1. Information contained in the following records (whenever created)
 - a. development applications (within the meaning of the **Environmental Planning and Assessment Act 1979**) and any associated documents received in relation to a proposed development including the following:
 - i. home warranty insurance documents,
 - ii. construction certificates,
 - iii. occupation certificates,
 - iv. structural certification documents,
 - v. town planner reports,
 - vi. submissions received on development applications and planning matters,
 - vii. heritage consultant reports,
 - viii. tree inspection consultant reports,
 - ix. acoustics consultant reports,
 - x. land contamination consultant reports,
 - b. records of decisions on development applications (including decisions made on appeal),
 - c. a record that describes the general nature of the documents that the council decides are excluded from the operation of this clause by subclause (2).
2. This clause does not apply to so much of the information referred to in subclause (1) (a) as consists of:
 - a. the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
 - b. commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.

4. Approvals, orders and other documents

Information contained in the following records (whenever created):

- a. applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,
- b. applications for approvals under any other Act and any associated documents received in relation to such an application,
- c. records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,
- d. orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,
- e. orders given under the authority of any other Act,
- f. records of building certificates under the **Environmental Planning and Assessment Act 1979**,
- g. plans of land proposed to be compulsorily acquired by the local authority,
- h. compulsory acquisition notices,
- i. leases and licences for use of public land classified as community land.

Public Registers

In addition to registers mentioned above, Council maintains other registers which are required by law to be available for public inspection.

Where the public register contains personal or health information, Council is required to ensure that access by a member of the public is for a purpose consistent with the purpose for which the register exists. The Local Government Code of Practice issued under the Privacy and Personal Information Protection Act (PPIPA) permits Council to provide access to such registers by way of inspection on Council premises and for the copying of an entry or page in the register without regard to the purpose of the person who seeks access.

Council reserves the right to seek to satisfy itself about the purpose of access and to require a statutory declaration from the person seeking access that personal information will only be used for a specified lawful purpose.

In the case of an application for a certificate of an entry in the Rates Record under Section 603 of the LGA, a charge is payable.

Access to Other Documents Held by Council

Other Council documents are available for inspection under the GIPA Act unless disclosure is, on balance, contrary to the public interest. Any application must be received in writing and will be processed promptly and within the agreed timeframe.

The request should specify the documents sought, with a reference to any time or date limitations. Any application will be considered on its merits and considered in the light of the obligation to make documents available unless public interest considerations favour the withholding of the document(s).

Information and Documents Not Usually Available

Information about the name of a property owner is in the public domain through internet access to the register maintained by the NSW Land and Property Information Service.

Council holds information about property ownership for the purpose of carrying out its functions. Council policy is not to make available information about the name of a property owner except in emergency circumstances or where the enquirer can establish a clear need to know. Council will not supply bulk property data to third parties for the purposes of direct marketing.

Documents listed below will not usually be available because they are excluded from the right to access by an express provision in the LGA, or Council has concluded that disclosure of such documents, or documents containing information of the kind indicated would, in the usual case, be contrary to the public interest.

Law Enforcement authorities (NSW Police, Federal Police, WorkCover NSW, Australian Tax Office, Australian Crime Authority) will be required to provide an official request to Council and information will only be provided in person and only after provision of suitable photo identification.

Documents Not Available Because of Provisions in LGA

The following information will not be available:

- Papers submitted to Council for consideration in a closed session.
- Documents containing information about personnel matters concerning particular individuals, the personal hardship of any resident or rate payer, trade secrets or other sensitive commercial information, or where disclosure would found an action for breach of confidence.
- Documents that contain information the release of which would constitute an offence against an act.

Other Documents Not Available

- Documents or parts of documents which would reveal the identifying particulars of persons who provide information to Council in connection with its law enforcement and regulatory responsibilities, or who otherwise contact Council about matters of interest or concern, including complaints about other persons conduct or activities, and matters that require investigation by Council.
- Documents which reveal confidential communications between the Council and its legal advisers, documents that are exempt from disclosure through legal professional privilege or documents which have been prepared by Council officers or others for the dominant purpose of use in proposed or anticipated legal proceedings.
- Documents, the release of which are likely to endanger the life or safety of any person, or the security of any building or structure, or which would prejudice the conduct of a lawful investigation by Council or another authority.
- Documents concerning Council functions or operations where disclosure would have a prejudicial effect on Council's property or financial interests, or would otherwise have an adverse effect on its regulatory functions, or its capacity to operate in an efficient and effective manner.

Large General Requests for Access to Documentation

Broad, general requests for a large number of documents, for example all documents of a certain kind, or documents held on a number of different Council files, or which otherwise require a substantial allocation of Council resources, may be refused after consideration of the public interest factors involved by Council's Public Officer/ Right to Information Officer. The Officer may, in the light of an assessment of the work involved in identifying, locating, collating and assessing a large number of Council documents, conclude that access should be refused on the grounds that the substantial diversion of Council resources necessary to deal with the application would, on balance, be contrary to the public interest. The Public Officer/Right to Information Officer shall, in reaching such a decision take into account the following:

- an assessment of the work and time involved in responding to the application.

- the extent to which the work involved in dealing with the request would result in Council resources being diverted from dealing with other access requests, or from other important functions.
- the nature of the documents requested and any public interests to be advanced by disclosure generally, or disclosure to the particular applicant. Council acknowledges there is a public interest in disclosure of documents about Council operations and the exercise of its functions, and in a particular applicant gaining access to documents where there is a strong and justifiable right to know.

However the right to access documents free of charge to an individual also requires consideration of the effect the processing of such an application may have on the rights of others, and on the efficient and effective use of Council resources in the interests of all ratepayers.

Refusal of Access

Where access to documents is refused under the GIPA Act, Council will advise the applicant in writing of the reasons for the decision. In the case of refusal on grounds that dealing with the request would involve the substantial diversion of Council resources, the Public Officer/Right to Information Officer will provide details to the applicant in writing, including an estimate of the time involved in responding to the application and consideration of the other factors mentioned in these guidelines however before doing so will give the applicant a reasonable opportunity to amend the application.

Any applicant dissatisfied with Council's handling of a request for documents under GIPA Act may seek a review in accordance with Sections 82 - 88 of the GIPA Act and may also seek a review of reviewable decisions through either the Information Commissioner or the Administrative Decisions Tribunal.

Copyright

Copyright issues may arise when requests are made for copies of documents held by the Council. The Commonwealth Copyright Act (1968) takes precedence over State legislation. Therefore the right to copy documents under GIPA does not override the Copyright Act.

If Council commissions a report etc from a consultant it will be under the terms of the contract whether it can be copied. With regard to documents supplied with development applications, Council's development application form includes a statement whereby applicants give their permission to allow documents included with a development application to be accessed under the GIPA Act.

Access to Information by Councillors and Administrators

The process for access to information by Councillors and Administrators is outlined in Clause 10 of Council's Code of Conduct.

GIPA Act

Access to the GIPA Act is available from the website of the Office of the Information Commissioner of NSW at the following link:
http://www.informationcommissioner.nsw.gov.au/lawlink/oic/ll_oic.nsf/pages/information_commissioner_legislation