

BACKGROUND

Wollongong City Council is committed to be an open and accessible organisation. The *Government Information (Public Access) Act 2009* (GIPA):

- authorises and encourages the proactive public release of information held by Council;
- gives members of the public an enforceable right to access information held by Council, and
- provides that access to information held by Council is restricted only when there is an overriding public interest against disclosure.

The GIPA is prescriptive in relation to the making of applications for access to information, matters to be considered prior to the release of information, exempt information, timeframes for determination of applications and rights of appeal. In particular, the GIPA:

- provides access to Council information in four ways:
 - mandatory proactive release via Council's website (open access information)
 - authorised proactive release via Council's website
 - informal release subject to an informal access application
 - release subject to a formal access application
- prescribes an application fee and processing charges in relation to particular types of applications (refer to *Council's Fees and Charges*)
- requires a determination of a formal access application within 20 working days of receipt
- requires a written determination of a formal access application to address specific matters
- prescribes an internal review process
- prescribes an external review process to either the Administrative Decisions Tribunal or the Information Commissioner.

OBJECTIVE

This policy seeks to:

- provide the public with a straightforward and fully transparent process to access information held by Council at minimal cost and/or delay;
- provide access to information wherever possible via Council's website, Customer Service Centre and Council's Central and Branch Libraries;
- define information which may be restricted from public access;
- ensure customers are promptly advised of the information they are entitled to access and with clearly documented reasons if access to information is refused; and
- advise customers of their rights of review if access to information is refused.

POLICY STATEMENT

Public access to information held by Council is facilitated by GIPA subject to certain restrictions as set out in the Act and summarised in this policy.

Council is also required to comply with the Information Protection Principles prescribed by the *Privacy and Personal Information Protection Act, 1998* relating to the management of personal information held by Council.

This policy must therefore be read in conjunction with Council's *Privacy Management Plan* and the *Privacy Code of Practice for Local Government* which are available for inspection on Council's website.

POLICY REVIEW AND VARIATION

- 1 Council is to have opportunity to review and adopt, at least once during its Term, each Council policy.
- 2 A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

STATEMENT OF PROCEDURES

1 Information available to be accessed under this Policy

GIPA facilitates access to Government Information. In relation to Council, Government Information is defined as information contained in a record and held by Council and includes any record of information stored in Council's paper document archive facilities or Electronic Document Management Systems including documents, files, file notes, emails, maps, plans, drawings and photographs.

There is a right of access under the GIPA to information held by Council unless there is an overriding public interest against disclosure. While any application will be considered on its merits, Council may refuse to deal with an application for access where dealing with the application would require an unreasonable and substantial diversion of Council's resources or where the information sought has been the subject of a subpoena or court order and is available to the applicant as a result of having been produced in compliance with the subpoena or court order.

Council is required to publish open access information on its website unless there is an overriding public interest against disclosure or to do so would impose an unreasonable additional cost to Council. This open access information includes:

- Council policies
- a publication guide with information about Council structure and functions, 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 having a value of more than \$150,000 that Council has with private sector bodies
- a register of open access information that Council does not make publicly available on the basis of an overriding public interest against disclosure.

In addition, Government Information (Public Access) Regulation 2009 requires that certain other information held by Council is to be made publicly available for inspection, free of charge. The public is entitled to inspect this information, as listed in Schedule 1, either on Council's website (unless there is an unreasonable additional cost to Council to publish this information on the website) or at the offices of the Council during ordinary office hours or at any other place as determined by the Council. Any current and previous versions of information of this type may be inspected by the public free of charge. Depending on the information sought, an appointment may be required.

Any application will be processed in accordance with the requirements of the GIPA and a determination made to release information, or refuse access, on the basis of provisions in the Act. Application fees and processing charges are in accordance with those set out in the Act.

Copies of documents provided by Council are for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright law still applies to each document. The copyright owner's consent is required if any part of the document is used for any other purpose. Fees and charges may apply to the copying of documents in accordance with Council's Fees and Charges.

2 Information not available for Public Inspection

The GIPA provides for public access to most of Council's information however, there are some categories of information which are specifically exempt from access. This information includes information where there is an overriding public interest against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

The GIPA provides that there is an overriding public interest against disclosure of information as set out in section 14 and Schedule 1 of the Act in the following categories:

- 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
- legal professional privilege
- aboriginal and environmental heritage

3 Commonly requested Documents

The following table sets out Council's position in relation to particular categories of documents to which public access is most commonly sought:

<i>Information about Development Applications</i>	These files are classified as "open access information" and Council relies upon the indemnity provided by the applicant pursuant to the Environmental Planning and Assessment Act 1979 to publish development applications and associated information to its website during the notification period. Residential floor plans are only published with the consent of the applicant. For access to these files outside of the notification period an informal access application is required.
<i>Development Consents</i>	Consents are 'open access information' - those determined post 1 August 2013 are available on Council's website. Consents determined prior to this date are available via Customer Service staff or by online request.
<i>Submissions</i>	Copies of submissions, including details as to the author, can be made available upon lodgement of an informal access application, particularly where Council's notification letters to affected property owners and public advertisements include advice that Council will permit public inspection of such submissions. Council's notification letters and advertisements are specifically worded accordingly.
<i>Letters of Complaint</i>	In accordance with decisions of the Administrative Decisions Tribunal, Council will not reveal the identity of complainants. However, the substance of the complaint may be released in accordance with the principles of natural justice.
<i>Building Certificates</i>	View only access is available. Section 149G of the <i>Environmental Planning and Assessment Act, 1979</i> requires the consent of the owner of the building prior to a copy being given to a member of the public. Fees Apply
<i>Development Applications lodged with the Department of Planning and Environment</i>	Applicants should apply direct to the Department of Planning and Environment for inspection of these DAs. GIPA Schedule 4 S12 defines Government Information and prescribes that even though the agency* has access to a record the information is not to be regarded as government information held by the agency if the public generally has access to the record (eg on the internet).

- Agency is defined in GIPA as: "A government department, a Minister, a public authority, a public office, a local authority, a court a person or entity that is an agency pursuant to regulations under clause 5 of schedule 4."

Authorised Council officers have strictly limited access to Roads and Maritime Service motor vehicle ownership records and the Office of Local Government's Companion Animals Register of animal ownership. Inquiries in relation to these and other government records should be directed to the relevant government agency.

4 Application Procedure

All customers are required to complete the appropriate application form when requesting access to information held by Council that has not been made available through proactive release (open access). There are two methods of seeking access to information under the GIPA: informal and formal applications.

Council retains the discretion to require a formal release application in appropriate circumstances, for example:

- searching for and retrieving the information sought would require a significant diversion of resources;
- the material contains information about a third party that cannot easily be deleted or without rendering the information useless, and consultation would need to occur;
- the material is sensitive in nature and requires public interest test considerations.

Online application forms for both informal and formal applications are available on the Council website and printed forms are available in public contact areas of Council or mailed out on request. Council will determine which cases require a formal application.

Council is required to acknowledge formal applications within 5 working days and make their Decision within 20 working days of receipt of the formal application. This period can be extended by up to 15 working days if consultation is required or records are required to be retrieved from archive.

Council will advise the applicant in writing of the information being made available and if any information is exempt from public access, reasons will be given for the exemption. Applicants will be advised how access will be granted; in most cases an electronic copy of the information will be provided. In some cases access may only be granted by inspection of the record. Paper files will only be made available for inspection under the supervision of a staff member. Council's Fees and Charges include relevant charges for copying of information.

In accordance with GIPA Part 4 Division 2 Council may transfer an application to another agency where the other agency is known to hold the information and the information relates more closely to the functions of that agency or where Council does not hold the information and the other agency is known to hold it.

Appeal rights will also be included in the letter of determination.

There is no legislated timeframe for the processing of informal applications; however Council has an internal performance indicator to process all applications within 30 working days. Complex requests may take longer and in these cases Council will contact the applicant and advise an expected timeframe.

5 Internal Review

If a person is dissatisfied with a determination made by Council in relation to a Formal Access application, they may apply for an internal review of the determination. An application for internal review must be made within 20 working days after the notice of the determination is given and must be accompanied by a fee of \$40.00. The internal review must be undertaken by a staff member more senior than the person who made the original determination.

SCHEDULE 1

Information which is available to the public in accordance with the GIPA Regulations 2009.

1 Information about Council

- The model Code of Conduct prescribed under section 440(1) of the Local Government Act
- Council's 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 and Provision of Facilities to the Mayor and Councillors
- Annual Reports of Bodies Exercising Functions Delegated by Council (eg Section 355/377 Committees)
- Any Codes referred to in the Local Government Act
- Agendas, Business Papers and Minutes of Council/Committee meetings (except meetings that are closed to the public)
- Office of Local Government, NSW Department of Premier and Cabinet 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 associated documents received in relation to a proposed development, eg:

- Home Warranty Insurance documents
- Construction Certificates
- Occupation Certificates
- Structural Certification Documents
- Town Planner Reports
- Heritage Consultant Reports
- Tree Inspections Consultant Reports
- Acoustic Consultant Reports
- Land Contamination Consultant Reports
- Records of decisions on Development Applications including decisions on appeals
- Records describing the general nature of documents that Council decides to exclude from public view after application of public interest test considerations

4 Approvals and Other Documents

- Applications for approvals under part 7 of the Local Government Act
- 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
- Plans of land proposed to be compulsorily acquired by Council
- Compulsory Acquisition Notices
- Leases and Licences for use of Public Land classified as Community Land

SUMMARY SHEET	
Responsible Division	Governance and Information
Date adopted by Council	11 December 2017
Date of previous adoptions	28 October 2013, 27 July 2010, 27 May 2008
Date of next review	October 2020
Responsible Manager	Customer Service Manager
Authorised by	Manager Governance and Information