

FILE NO: PSC2009-09420

TITLE: ACCESS TO INFORMATION POLICY

POLICY OWNER: GOVERNANCE MANAGER

1. PURPOSE:

1.1 The Access to Information Policy (the 'Policy') ensures Port Stephens Council is committed to the following principles regarding public access to documents and information:

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

2. CONTEXT/BACKGROUND:

- 2.1 From 1 July 2010, the *Government Information (Public Access) Act 2009* (NSW) ('GIPA Act') commenced providing four mechanisms to access Council information – mandatory disclosure, proactive disclosure, informal release and formal access.
- 2.2 Section 12 of the *Local Government Act 1993* (NSW) and the *Freedom of Information Act 1982* (Cth) ceased on 30 June 2010.

3. SCOPE:

- 3.1 Port Stephens Council publishes specific open access information on our website, free of charge unless to do so would impose unreasonable additional costs to Council. Council will facilitate public access through this and other appropriate mediums. Also, Council publishes the inspection documents listed under Schedule 5 of the GIPA Act held by it, unless there is an overriding public interest not to do so. Council will keep a record of all open access information that is not published due to an overriding public interest against disclosure.
- 3.2 Council also makes as much other information as possible publicly available in an appropriate manner, including on the internet. Such information is also available free of charge or at the lowest reasonable cost.

- 3.3 The 'Access to Information Guidelines' as shown at Appendix 1 of this Policy identifies the documents and types of information that are available for public access and any restrictions that may apply.
- 3.4 Some documents may require a formal access application in accordance with the GIPA Act. Council will assess all requests for access to documents and information in a timely manner and in accordance with the 'Access to Information Guidelines' and relevant legislation.
- 3.5 Depending upon the nature of the request and the form of access requested charges may be applied in accordance with Council's Schedule of Fees and Charges and relevant legislation.
- 3.6 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. Council will endeavour to assist in defining the request to a more manageable one.
- 3.7 Council also endeavours to release information in response to an informal request, subject to any reasonable conditions Council may impose having regard to the circumstances of the request, in accordance with the GIPA Act.
- 3.8 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, Council will provide details of the information in a disclosure log for inspection by the public.
- 3.9 The General Manager has authority to approve Guidelines for Information Access, which is to be available to members of the public.

4. DEFINITIONS:

Application	A Formal Access Application made under the GIPA Act.
Disclosure log	A disclosure log published on Port Stephens Council's website, as required by the GIPA Act.
Formal access	An applicant is required to lodge a Formal Access Application under the GIPA Act, if the requested information cannot be provided by way of mandatory release, proactive release or informal release.

GIPA Act	The <i>Government Information (Public Access) Act 2009</i> (NSW)
Informal release	Means a request to access information where a formal access application is not required under the GIPA Act.
Mandatory release	Means information classified as open access information, in accordance with the GIPA Act.
Open access information	Means information that is publicly available unless there is no public interest against disclosure, in accordance with the GIPA Act.
Proactive release	Means government information that Council decides to release outside other release provisions under the GIPA Act.
Public interest	Means considerations under the GIPA Act either in favour of release or against release.
Request for information	An informal request for information under section 8 of the GIPA Act.

5. **POLICY STATEMENT:**

- 5.1 The objective of this Policy is to describe Council's principles regarding public access to information and to facilitate the processing of requests and applications for such access.
- 5.2 The GIPA Act provides greater access to Council records through accessibility on Council's website where possible, and where this does not create an unreasonable additional cost to Council to publish these documents on the website.
- 5.3 This Policy is to be read in conjunction with the Access to Information Guidelines for Local Government.

6. **POLICY RESPONSIBILITIES:**

- 6.1 The Governance Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on this policy.

7. RELATED DOCUMENTS:

- 7.1 *Government Information (Public Access) Act 2009* (NSW)
- 7.2 *Government Information (Public Access) Regulation 2009* (NSW)
- 7.3 *Privacy and Personal Information Protection Act 1998* (NSW)
- 7.4 *Health Records and Information Privacy Act 2002* (NSW)
- 7.5 *State Records Act 1998* (NSW)
- 7.6 *Local Government Act 1993* (NSW)
- 7.7 *Environmental Planning and Assessment Act 1979* (NSW)
- 7.8 *Companion Animals Act 1998* (NSW)
- 7.9 Access to Information Guidelines for Local Government
- 7.10 Code of Conduct

CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website www.portstephens.nsw.gov.au			
EDRMS container No	PSC2009-09420	EDRMS record No	18/180138
Audience	Port Stephens community and Council employees		
Process owner	Governance Manager		
Author	Governance Manager		
Review timeframe	Two years	Next review date	August 2020
Adoption date	23 August 2016		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	16 September 1997	Governance Manager	Original policy adopted by Council.	1282
2	19 October 2004	Governance Manager	Adopted by Council.	375
3	28 March 2006	Governance Manager	Adopted by Council.	462
4	13 July 2010	Governance Manager	Adopted by Council.	208
5	11 February 2014	Governance Manager	Adopted by Council.	016

6	23/8/2016	Governance Manager	Policy formatted into new template. Changes made to legislation references and definitions added. Also included the guidelines.	241
6.1	14/08/2018	Governance Manager	<p>Reviewed the policy, included numbering to each paragraph and updated version control.</p> <p>1.1 – inserted the word 'the policy'.</p> <p>3.1 – delete 'because of' and insert 'due to'.</p> <p>3.7 – delete the word 'other'.</p> <p>4.0 – amended the definition of 'informal request', updated 'mandatory release', 'open access information', proactive release' and inserted 'for information' under the 'Request' definition.</p> <p>7.2 – inserted new clause and re-numbered subsequent numbering 7.3 to 7.9.</p> <p><u>Guidelines update</u></p> <p>1.2 – updated telephone number.</p>	247

APPENDIX 1

Access to Information Guidelines for Local Government**1. Accessing Information**

- 1.1 Port Stephens Council is subject to NSW legislation that requires it to be open and accountable in the exercise of its functions, and to handle personal and health information in a fair and reasonable manner. Council will seek to ensure that legitimate requests for access to information are handled promptly and that members of the public are able to access information, subject to the public interest. In doing so, Council recognises that it must take into account the privacy of others, legal and commercially sensitive information.
- 1.2 These guidelines set out the documents and types of information that are available to members of the public as a matter of routine, and those that will not generally be available for inspection and copying. Where practicable, Council will deal with requests to inspect documents in accordance with the *Government Information (Public Access) Act 2009* (NSW) ('GIPA Act') free of charge but a reasonable photocopying fee may be payable under the GIPA Act and for access to versions of documents that are neither current nor immediately preceding versions of the document and are not reasonably accessible. All charges are detailed in Council's Schedule of Fees and Charges – Council's Fees and Charges are available from the Council website or by contacting Council on 4988 0255.
- 1.3 There is a right of access under the GIPA Act to certain documents held by Council unless there is an overriding public interest not to do so. Any applications under the 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 the relevant considerations under that Act. Charges for formal applications are in accordance with the GIPA Act Fees and Charges and include a \$30 application fee. In some circumstances processing charges may also be applied.
- 1.4 Council also may provide access to information under other legislation. Under the *Privacy and Personal Information Protection Act 1998* (NSW) ('PPIPA') and the *Health Records and Information Privacy Act 2002* (NSW) ('HRIPA'), an individual also has a right to access and amend records held by Council which contain their personal details, matters related to their business affairs and any records containing information about their health. 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. The Act provides for consultation with other affected parties prior to

disclosure of information concerning their personal or business affairs. Under the *State Records Act 1998* (NSW) Council is required to give an access direction (whether the records are open or closed) for all Council's records that are at least thirty (30) years old in what is described as the "open access period". Under the *Environmental Planning and Assessment Act 1979* (NSW) and *Environmental Planning and Assessment Regulations 2000* (NSW) there is a right to access Development Application registers and documents held by Council subject to restrictions set out in section 268(3).

2. Information Available

2.1 Council publishes open access, or mandatory release, information on its website unless there is an overriding public interest against disclosure or to do so would impose an unreasonable additional cost on Council. In respect of the latter the Council will make the information freely available in another format eg. hard copy at the Council Administration Building. The open access information is:

- 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 that councils have 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.

2.2 In addition schedule 5 of the GIPA Act requires that certain documents held by Council, are to 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 offices of the Council during ordinary office hours or at any other place as determined by the Council. Any current and previous documents of this type may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges.

2.3 These documents are:

- Information about Council;
- The model code of conduct prescribed under section 440(1) of the *Local Government Act 1993* (NSW) ('LGA');
- Council's adopted Code of Conduct;
- Code of Meeting Practice;

- Annual Report;
- Annual Financial Reports;
- Auditor's Report;
- Integrated Plans – comprises of the Community Strategic Plan, Delivery Program, Operational Plan, Workforce Strategy, Long Term Financial Plan and the Asset 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 (e.g. Section 355/377 Committees);
- Any codes referred to in the *Local Government Act*;
- Returns of the Interests of Councillors, Designated Persons and Delegates;
- 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.

3. 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.

4. Information about Development Applications

4.1 Development Applications and any associated documents received in relation to a proposed development, ie:

- Home Warranty Insurance documents;
- Construction Certificates;
- Occupation Certificates;
- Structural Certification Documents;

- Town Planner Reports;
- Submissions received on Development Applications – subject to the provision of the *Privacy and Personal Information Protection Act 1998* (NSW);
- 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.

5. 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* (NSW)
- 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

5.1 It should be noted that there is other legislation that can apply to the release of Council records such as, but not limited to, the *Privacy and Personal Information Protection Act 1998* (NSW) and *Copyright Act 1968* (Cth). Council's Right to Know officers will consider all relevant legislation applicable to any request for information.

5.2 Copies of documents provided are given for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright laws still apply to each document. The consent of copyright owners is required for documents where copyright applies such as documents on development applications. This information would generally be available for inspection however may not be able to be copied.

- 5.3 In addition, from time to time Council will make as much other information as possible publicly available in an appropriate manner, including on their website. The information will be available free of charge or at the lowest reasonable cost. Such other information includes frequently requested information or information of public interest that has been released as a result of other requests.
- 5.4 Council will endeavour to release other information in response to an informal request, subject to any reasonable conditions as Council thinks fit to impose. However, notwithstanding the lodgement of an informal request, Council may require a formal access application to be submitted where the information sought:
- 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 resources to produce.

6. Exemptions to Access

- 6.1 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.
- 6.2 Council will always explain to the applicant its reasons for applying an exemption. Council will not classify information as exempt unless there are clear reasons for doing so. Where documents contain exempt information, any remaining information contained within the requested document will be available under the Act.
- 6.3 In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the Public Interest Test.
- 6.4 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.
- 6.5 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);
- exempt documents under interstate Freedom of Information legislation.

6.6 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 any information disclosed might be misinterpreted or misunderstood by any person.

6.7 Council will consider any submissions made by an applicant in relation to public interest considerations, as well as any factors personal to the applicant.

6.8 Under the GIPA Act there are 12 categories of information (eight of which appear to affect local government) for which there is a conclusive presumption of an overriding public interest against disclosure. These eight are:

- Information subject to an overriding secrecy law (26 specifically named Acts);
- Information subject to the direction or order of a court or other body with the power to receive evidence on oath;
- Information subject to legal professional privilege;
- 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);
- Documents affecting law enforcement and public safety;
- Specific information relating to transport safety;
- Specific reports concerning the care and protection of children;
- Specific information relating to Aboriginal and environmental heritage.

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

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

7. Accessing Information and Making an Application

7.1 The public may obtain access to information as follows:

- by searching the Council's website to see if it is already available
- by contacting Council and requesting the information. Council will advise 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*, for example because consultation with a third party is required.

7.2 To make an informal request for access to information under the GIPA Act, Council may require the completion of an 'Informal Access Request Form'. No fee is required on application.

7.3 To make a formal application for access to information under the GIPA Act, the 'Formal Access Application Form' should be completed. The Formal Application fee is \$30.00 and processing charges may be applicable (there is no GST in relation to these charges). An acknowledgement of such application will be provided by Council within five working days.

7.4 If a fee for photocopies of documents provided under the GIPA Act is payable, it will be listed in Council's adopted Fees and Charges and is GST inclusive.

8. Time Limits

8.1 In respect of formal applications, Council will notify applicants of the decision on an application within 20 working days, unless the applicant agrees to extend the time. Council may also extend the time by up to 15 working days where consultation with a third party is required or if Council needs to retrieve records from archives.

8.2 If access is deferred by Council, then Council will notify the applicant and include the reason for deferral and the date on which the applicant will be given access. A decision to defer access is reviewable (see Rights of Review and Appeal). If Council does not decide the applicant's access application within the above timeframes, it is deemed 'refused'. Council will refund the application fee and the applicant may seek 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.

9. Rights of Review and Appeal

- 9.1 Where a member of the public is refused access under a formal application under the GIPA Act, staff will provide details of the reasons for refusal to the member of the public in writing. An applicant who has been refused access by Council to information requested under a formal application for access to information under the GIPA Act has three options of review available.
- 9.1.1 Applicants can apply to Council for an **internal review**. This is review by someone more senior than the original decision maker and there is a \$40 fee. Applicants have 20 working days from receiving notice of a decision to ask for an internal review.
- 9.1.2 If an applicant is not satisfied with the internal review, or does not want one, they can ask for a **review by the Information Commissioner**. Applicants have eight weeks from being notified of a decision to ask for this review.
- 9.1.3 If an applicant is not satisfied with the decision of the Information Commissioner or the internal reviewer or if 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 four weeks from notification of the decision to make this application. If they have not had a review by the Information Commissioner they have eight weeks from notification of the decision to make this application.
- 9.2 It is noted that there are no rights of review in respect of informal requests, but the applicant may make a formal application at any time.