

Introduction

Wollondilly Shire Council welcomes enquiries from the public seeking access to information and will provide such access in accordance with the requirements of the *Government Information (Public Access) Act 2009* (GIPAA). Council is in accord with the new right to information system in New South Wales and aims to foster responsible and representative government that is open, accountable fair and effective.

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.

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 GIPA Act free of charge but a reasonable photocopying fee may be payable under the 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.

Right to Access Information

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.

Council also may provide access to information under other legislation. Under the *NSW Privacy and Personal Information Protection Act 1998* (PPIPA) and the *NSW Health Records and Information Privacy Act 2002* (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* Council is required to give an access direction (whether the records are open or closed) for all their records that are at least thirty (30) years old in what is described as the "open access period". Under the *NSW Environmental Planning and Assessment Act 1979* (EPA) and *NSW Environmental Planning and Assessment Regulation 2000* there is a right to access Development Application registers and documents held by Council subject to restrictions set out in s.268(3)

Information Available

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 e.g. hard copy at the Council administration office.

Open Access Information

The open access information is:

- Councils register of government contracts worth more than \$150,000 that Council has with private sector bodies
- Councils policy documents
- Councils current 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 record of open access information that Council does not make publicly available on the basis of an overriding public interest against disclosure

In addition the *Government Information (Public Access) Regulation 2009* 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.

These documents are:

1. Information about Council

- The model code of conduct prescribed under section 440(1) of the Local Government Act
- 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 Fees, 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)
- Division 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 Application

Development Applications and any associated documents received in relation to a proposed development e.g.:

- Home Warranty Insurance documents
- Construction Certificates
- Occupation Certificates
- Structural Certification Documents
- Town Planner Reports
- Submissions received on Development Application
- Heritage Consultant Reports
- Tree Inspections Consultant Reports
- Acoustic Consultant Reports
- Land Contamination Consultation 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, 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 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 copyright-owner's consent is required if any part of the document is used for any other purpose.

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.

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 application, 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 or 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

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 provide an explanation to the applicant its reasons for applying an exemption. Council will not classify information as exempt unless there are reasons for doing so. Where documents contain exempt information, any remaining information contained within the requested document will be available under the Act.

In determining whether there is an overriding public interest against the disclosure of the information, Council will 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)
- exempt document under interstate Freedom of Information legislation

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

Council will consider any submissions made by an applicant in relation to public interest considerations.

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 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
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 must not 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.

Access to Information Available

The public may obtain access to information as follows:

- by searching Councils 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 you can 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

To make an informal request for access to information under the GIPA Act Council requires the completion of an 'Informal Access to Information' request form. This is available on Councils website, by mail or on request from Councils administration centre located in the Frank McKay Building. There is no fee required on application.

To make a formal request for access to information under the GIPA Act, the 'Formal Access to Information' request form should be completed. This is available on Councils website, by mail or on request from Councils administration centre located in the Frank McKay Building. A fee of \$30.00 must be paid when lodging the form 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 (5) working days.

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

Time Limits

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.

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.

Rights of Review and Appeal

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 request for access to information under the GIPA Act has three options of review available.

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.
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 40 working days from being notified of a decision to ask for this review.
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 Administrative Decisions Tribunal (ADT)**. If the applicant has already had a review by the Information Commissioner they have 20 working days from notification of the decision to make this application. If they haven't had a review by the Information Commissioner they have 40 working days from notification of the decision to make this application.

It is noted that there are no rights of review in respect of informal applications, but the applicant may make a formal application at any time.

Form of Release

There are four (4) ways Council will release information under the GIPA Act.

Mandatory Release

By publishing specific open access information on its website, free of charge.

Proactive release

Council will make as much other information as possible publicly available in an appropriate manner, including on the internet. The information will be available free of charge or at the lowest reasonable cost. For example, frequently requested information or information of public interest may be made readily available.

Informal release

Council is authorised to release other information in response to an informal request, subject to any reasonable conditions it may impose.

Formal release

Council may release information in response to a formal access application. This is the last resort, if the information is not available in any other way.

Council will generally disclose information in response to a valid formal access application for information that is held by it and not otherwise available to the applicant. Council can 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 its resources.

Councillors Access to Information

Councillors have a right to access Council information that is reasonably necessary for exercising their functions of their civic office, including roles which extend beyond decision making at formal meetings.

When making a request for information, Councillors should draft the request carefully and should precisely detail the information, or the nature of the information, sought. It is expected that Councillors will act reasonably in making a request for information.

When dealing with a request by a Councillor for information, the General Manager must act reasonably. Given that a Councillor may need the information to perform their public duty, if a request is to be denied, reasons for the refusal must be identified.

Any information that is given to a particular Councillor in the pursuit of their civic duties should also be available to any other Councillor who requests it.

Councillors may request access to Council information by providing a written request to the General Manager.

Councillors may also apply for information by making an Access to Information application with payment of the associated fees and charges.

Copyright

A large amount of information which is available for public access belongs to third parties and is the subject of copyright, such as plans and reports submitted with development applications. Access to this information is provided to members of the public in accordance with the GIPA Act and other relevant legislation, such as the Environmental Planning and Assessment Act 1979. Copyright laws apply to this information and applicants are advised to seek the consent of the copyright owner before reproducing the information in any way.