



## Access to Information Policy

<b>Policy</b>	2G
<b>Officer Responsible</b>	Director Corporate Services
<b>Last Review Date</b>	19/09/2022

**Strategic Policy**

## **1. Principles**

Blayney Shire 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. Community Awareness**

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 for inspection documents listed under Schedule 5 of the Government Information (Public Access) 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 because of an overriding public interest against disclosure.

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. Background**

Applications for documents will be assessed in accordance with the Government Information (Public Access) 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.

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.

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 dealing with 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, subject to any reasonable conditions Council may impose having regard to the circumstances of the case.

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.

The General Manager has authority to approve Guidelines for Information Access, which is to be available to members of the public.

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

Council will deal with requests to inspect documents in accordance with the Government Information (Public Access) Act 2009 (GIPA) free of charge but reasonable photocopying fees may apply under the Act. It is governed by legislation that requires its 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 the members of the public 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 by Council 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 the relevant considerations under that Act. Charges for formal applications are in accordance with the GIPA Fees and Charges and include an application fee specified in Council's Schedule of Fees & Charges.

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

## **5. Information Available**

Council publishes open access, or mandatory release, 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 Council's Office.

Information identified as 'Open Access Information' and is available on Council's website 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 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 5 of the GIPA Act requires that 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 Offices of Council during ordinary office hours. Any current and previous document may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges.

## **6. 'Open' Informal Access documents**

'Open' Informal Access documents are:

### **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
- Payment of Expenses and the Provision of Facilities to the Mayor and Councillors Policy
- Annual Reports of Bodies Exercising Functions Delegated by Council

- Any Codes referred to in the Local Government Act
- 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

### **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

### **Information about Development Applications**

- Development Applications and any associated documents received in relations to a proposed development:
- 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 on Development Applications including decisions on appeals
- Records describing general nature of documents that Council decides to exclude from public view including internal specifications and configurations, and commercially sensitive information

### **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 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 that 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 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/ or resources to produce.

## **7. 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, reasons 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)
- 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 applicant in relation to public interest considerations, as well as particulars personal to the applicant. 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.

The eight 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
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.

## **8. Accessing Information and Making an Application**

The public may obtain access to information as follows:

- Council's website
- Written request to Council for the information and 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*, and accompany the required fee and photocopying charges.

To make an informal request for access to information under the GIPA Act Council may require the completion of an 'Informal Access to Information Request' form but no fee is required with this application.

To make a formal request for access to information under GIPA Act, the 'Formal Access to Information' Request Form must be completed. The Formal Application fee as detailed in Council's Schedule of Fees & Charges is payable and processing charges may be applicable. GST does not apply in relation to these charges. Council will acknowledge receipt of formal access applications within five working days.

If a fee for photocopy is required the applicant will be notified under the GIPA Act of the amount payable. Charges will be as per Councils' Schedule of Fees and Charges and GST is payable.

## **9. Time Limits**

Council will acknowledge receipt of formal access applications within five working days and further notify applicants of the decision on an application within 20 working days, unless the applicant agrees to extend the time.

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 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' and 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.



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

Where a member of the public is refused access of a formal application under GIPA Act, staff will provide details of the reasons for refusal to the applicant in writing. An applicant who has been refused access by Council to information requested under a formal request has three options of review available:

### **Internal Review:**

Application to Council for an internal review. This is review will be conducted by someone more senior than the original decision maker and the application will be accompanied by a fee prescribed in Council's Schedule of Fees & Charges (GST exclusive).

Applicants have 20 working days from notification that their original application has been reused to ask for an internal review.

### **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.

Applicants have eight weeks from notification that their original application has been reused to ask for a review.

### **Review by the Administrative Decisions Tribunal (ADT).**

If an applicant is not satisfied with the decision of the Information Commissioner or an internal review by the Agency 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 four weeks from notification of the decision to make this application. If they haven't had a review by the Information Commissioner they have eight weeks 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.

### **End of Policy**

<b>Adopted:</b>	<b>14/02/2011</b>	<b>1102/011</b>
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