

## **ACCESS TO INFORMATION HELD BY COUNCIL**

### *Objective*

To explain Council's principles regarding access to Council held information and Council documents, together with facilitating the timely processing of requests for such access. This policy is to be read in conjunction with the Guidelines for Access to Information and Council's Privacy Management Plan.

### *Scope*

Applies to all members of the public wishing to access Council information, Councillors and Council employees.

Information in the context of this policy refers to Council documents as per the Definition Section of this policy.

### *Policy*

#### Background


On 1 July 2010, Section 12 of the Local Government Act 1993 (LGA) and Freedom of Information Act 1989 (FOI) were replaced with the Government Information (Public Access) Act 2001 (GIPA) to provide a general right of access to information held by Council.

The introduction of the GIPA Act brings local authorities fully under the provision of open government information access and Privacy and Personal Information Protection Act 1998 (PPIPA).

#### Purpose

To facilitate public access to Council information held in documents in accordance with the provisions of:

- Government Information (Public Access) Act 2009
- Government Information (Public Access) Regulation 2009
- Privacy and Personal Information Protection Act 1998



## Principles

Gilgandra Shire Council is committed to the following principles regarding public access to documents and information:

- Open and transparent government
- Public access to information held by Council, having regard for PPIPA and the GIPA Acts
- Consideration of “public interest” in the assessment of all requests
- A supportive, safe and trusting workplace
- A co-operative teamwork approach
- Community focus and customer service
- Improving our results
- Providing value for money
- Respect for the privacy of individuals
- Proactive disclosure and dissemination of information

## Implementation

The *Guidelines for Access to Information* Council associated with this policy, specifies the documents and types of information that are available for public access and any restrictions that may apply.

Council will assess all requests for access to documents and information in a timely manner and in accordance with the *Guidelines for Access to Information*.

Depending on 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.

## Definition

**Record** has the meaning given to that term in GIPA, being:

*“any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means”*

**Personal information** has the meaning given to that term in PPIPA, being:

*“Personal information is defined to mean information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. This information can be on a database and does not necessarily have to be recorded in a material form”*

Personal information does not “include information about an individual that is contained in a publicly available publication”. Personal information, once it is contained in a publicly available publication, ceases to be covered by PPIPA.

### What Documents are freely Available?

Council will promote disclosure and dissemination of information about its operations, plans and decisions and information that promotes community advancement. There are 4 ways to access government information as they are described as mandatory, proactive, informal and formal release.

Members of the public may inspect, free of charge, the current version of a document(s) listed in Schedule 5, Part 2 of the GIPA regulations – *Open access information of local authorities*. The public may also inspect, free of charge, preceding versions of these documents, if those versions are reasonably accessible. Other Council held documents are also accessible, free of charge, other than those that are exempt from disclosure under Section 14 of the GIPA Act, which may include the following:

- a) where access to the information would, on balance, be contrary to the public interest
- b) any part of a document dealing with personnel matters concerning particular individuals (other than Councillors)
- c) any part of a document that can reveal an individual's personal information
- d) any part of a document that could diminish the competitive commercial value of any information
- e) information which would, if disclosed, prejudice the maintenance of law
- f) matters affecting the security of the Council, Councillors, Council staff or property
- g) that part of a draft or adopted Plan of Management which applies to the location of places and items of Aboriginal significance and is the subject of a resolution of confidentiality
- h) a matter the disclosure of which would constitute an offence against an Act or found an action for breach of confidence
- i) plans and specifications contained in development applications for any residential parts of a proposed building, other than plans that merely show its height and its external configurations in relation to the site on which it is erected, except where the applicant is the owner or the owner's consent has been obtained to view the plans and specifications
- j) 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
- k) information which would, if disclosed, confer a commercial advantage on a person with whom Council is conducting or proposes to conduct business
- l) any part of a document that contains advice concerning litigation or any advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege

## What Documents are not freely Available

For the purposes of this policy, Council has determined that it would be contrary to the public interest to allow access to the following categories of documents:

- a) name and address of a person who has made a complaint to Council regarding the activities of another person or organisation (in this case, only the nature of the complaint will be made available)
- b) tenders and expressions of interest lodged with Council except so much of the tender as is required to be made available under the Local Government (Tendering) Regulation 1993 ie. the name and amount of the successful tenderer and the names of the unsuccessful tenderers and register of government contracts that are established and maintained under Section 27 of the GIPA Act.
- c) Documents containing financial or commercial information regarding a person or organisation, including Council, the disclosure of which, in the opinion of Council's Public Officer, if released could have an unreasonable adverse effect on the person or organisation, may jeopardise Council's position in any future negotiations or could jeopardise Council's ability to obtain such information in the future
- d) The name and address of property owners and property sales information except where:
  - the property owner is the person requesting the information
  - an adjoining owner is requesting the information for fencing or other purposes allowed by statute
  - the information is contained on a public register which Council is required to maintain and make available for inspection in accordance with PPIPA
  - the information is provided in accordance with Section 603 of the LGA (rating information)
  - the information is given out in the course of processing an application before Council
  - the information is required by another government agency to carry out a legitimate function of that agency
  - the information is obtained by inspecting a Council document under this policy
- e) Other documents, the release of which, in the opinion of Council's Public Officer, would, on balance, be contrary to the public interest or would cause an unreasonable diversion of Council resources.

None of the documents defined in this policy requires Council to retain documents for any period beyond that specified in the General Records Disposal Schedule for Local Government under the State Records Act.

## How will Council protect Access to Information?

Information which is exempt, will be removed from the file prior to viewing. The applicant will be advised of the nature of the documents removed and the reason for removal. Where the document has been removed, the reason why release of the document is not considered to be in the public interest will be provided.

## What Documents will not be Copied?

Copies of documents are available on request for a fee, except for the following documents, which cannot be copied:

- residential roll of electors
- resumes of candidates for election
- plans of buildings and developments, unless the approval of the copyright owner has been obtained, or where the plans of a proposed building show only its height and external configuration in relation to the site
- bulk property information such as development consent registers, sales registers etc unless the information is required by a government agency for statistical or other purposes consistent with the legitimate functions of that agency

Documents defined in this policy eg. complaints, tenders and legal advice, which are more than 15 years old may be released at the discretion of the Public Officer.

## Handling of Personal Information

Where Council invites or requests any person or organisation to provide information to Council including applications, submissions, comments or objections, the person or organisation must be advised of the existence of this policy, the purpose for which the information is being collected by Council and the possibility that the information they provide to Council may be made available to a third party, subject to the public interest. Applicants may not alter documents in any way. However, an applicant may request that a document containing their personal information be altered in accordance with Section 15 of the PPIPA or Division 4 of the HRIPA.

In addition to the exemptions contained within Section 14 of GIPA Act, Council has determined that it is not in the public interest to supply the personal information of complainants (as defined under Council's Privacy Management Plan), however, the subject of the complaint will be released unless such release would breach Section 14 of the GIPA Act subject to:

- a) this exemption relates to 'complainants' only and does not cover submissions to development applications
- b) this is intended to protect the identity of complainants but allow access to the nature of the complaint. Where release of the nature of the complaint may also provide information, which would be protected under the Privacy Act, the details of the complaint will not be released.

Applications for access to personal information in accordance with Sections 13 and 14 of the PPIPA, shall be dealt with as applications under this policy.

The name and address of a person who has lodged an objection or submission to a development application is available for access under this policy.

## Processing - Time, Fees and Charges

Fees applicable to this policy shall be determined and form part of the Scheduled Fees and Charges annually adopted by Council.

The processing time for access to information under the GIPA Act will be:

- acknowledgement of an application within 48 hours
- informal access applications being made within 20 working days or longer depending if information is stored off-site
- formal access applications within 20 working days (statutory requirement).

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.

## Refusal of Applications

Applications for access to Council held information will generally be limited to 2 applications per matter in any 6 month period. The Public Officer has the right to refuse access to information, should the quantity of applications exceed the quantity specified or no new information has been received and placed on the file since the previous application. Any rejection of subsequent applications in the period may be subject of an appeal to the General Manager.

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 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.

The refusal of access to a record in accordance with informal access under the GIPA Act, does not prevent the applicant from applying for formal access to the record under the Government Information (Public Access) Act 2009.

Where access to information is restricted in accordance with this policy, the applicant will be advised in writing of the nature of the restricted information and the reason for the restriction. In accordance with GIPA, Council may review reasons for any restrictions imposed on access to information, every 3 months.

*Relevant Legislation*

Privacy Act 1988  
 Copyright Act 1968  
 Privacy and Personal Information Protection Act 1998  
 Privacy and Personal Information Protection Regulation 2000  
 Health Records and Personal Protection Act 2000 (HRIPA)  
 Local Government Act 1993  
 Government Information (Public Access) Act 2009 (Sections 9 and 10)  
 Government Information (Public Access) Regulation 2009  
 Anti-Discrimination Act 1977  
 State Records Act 1998  
 Workplace Surveillance Act 2005  
 Protected Disclosures Act 1994  
 Environmental Planning and Assessment Act 1979

*Associated Documents*

GIPA Access Application (available on Council's website: [www.gilgandra.nsw.gov.au](http://www.gilgandra.nsw.gov.au))  
 Informal Access Application (available on Council's website: [www.gilgandra.nsw.gov.au](http://www.gilgandra.nsw.gov.au))  
 Publication Guide – Government Information (Public Access) Act 2009 (available on Council's website: [www.gilgandra.nsw.gov.au](http://www.gilgandra.nsw.gov.au))

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