



ACCESS TO INFORMATION AND ACCESS TO INFORMATION HELD BY COUNCIL

PURPOSE

The purpose of this policy is to:

1. Provide the public with access to Council documents and information on Council affairs in accordance with the Local Government Act 1993 and the Government Information Public Access Act 2009 (GIPA)
2. Describe Council's principles regarding public access to information and to facilitate the processing of requests for such access.

SCOPE

This policy applies to situations where members of the public seek information from Council or council documents.

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

This policy ensures that Council observes the following legislation when releasing information to the public:

- 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

This policy applies to council staff.



POLICY STATEMENT

PART 1 POLICY GUIDELINES

1. ACCESS TO INFORMATION

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 Council's web site. Such information is also available free of charge, or at the lowest reasonable cost.

The 'Access to Information Guidelines' document associated with this policy identifies the documents and types of information that are available for public access and any restrictions that may apply. (ATTACHMENT 1)

Some documents may require a formal access application 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:

- 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: and
- Any other relevant legislation and guidelines as applicable.

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.

Council also endeavours to release other information in response to an 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.

- 1.1 In accordance with the Government Information Public Access Act 2009, Schedule 5 - Additional open access information — local authorities, the following information is to be provided.
- 1.2 Information contained in the current version and the most recent previous version of the following records is:
 - a) the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA,
 - b) code of meeting practice,
 - c) annual report,
 - d) annual financial reports,
 - e) auditor's report,
 - f) management plan,
 - g) EEO management plan,
 - h) policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors,
 - i) annual reports of bodies exercising functions delegated by the local authority,
 - j) any codes referred to in the LGA.



1.3 *Information contained in the following records (whenever created) is prescribed as open access information:*

- a) returns of the interests of councillors, designated persons and delegates,
- b) agendas and business papers for any meeting of the local authority or any committee of the local authority (but not including business papers for matters considered when part of a meeting is closed to the public),
- c) minutes of any meeting of the local authority or any committee of the local authority, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting,
- d) Departmental representative reports presented at a meeting of the local authority in accordance with section 433 of the LGA.

1.4 *Information contained in the current version of the following records is prescribed as open access information:*

- a) land register,
- b) register of investments,
- c) register of delegations,
- d) register of graffiti removal work kept in accordance with section 13 of the Graffiti Control Act 2008,
- e) register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA,
- f) the register of voting on planning matters kept in accordance with section 375A of the LGA.

1.5 *Plans and policies*

Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:

- a) local policies adopted by the local authority concerning approvals and orders,
- b) plans of management for community land,
- c) environmental planning instruments, development control plans and contributions plans made under the Environmental Planning and Assessment Act 1979 applying to land within the local authority's area.

1.6 *Information about development applications*

Information contained in the following records (whenever created):

- a) development applications (within the meaning of the Environmental Planning and Assessment Act 1979) and any

associated documents received in relation to a proposed development including the following:

- (i) home warranty insurance documents,
 - (ii) construction certificates,
 - (iii) occupation certificates,
 - (iv) structural certification documents,
 - (v) town planner reports,
 - (vi) submissions received on development applications,
 - (vii) heritage consultant reports,
 - (viii) tree inspection consultant reports,
 - (ix) acoustics consultant reports,
 - (x) land contamination consultant reports,
- b) records of decisions on development applications (including decisions made on appeal),
- c) a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).

This clause does not apply to so much of the information referred to in subclause (a) above, as consists of:

- a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
- b) 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.

A local authority must keep the record referred to in 1.6(c).

1.7 *Approvals, orders and other documents*

Information contained in the following records (whenever created) is prescribed as open access information:

- a) applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,
- b) applications for approvals under any other Act and any associated documents received in relation to such an application,
- c) records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,



- d) orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,
- e) orders given under the authority of any other Act,
- f) records of building certificates under the Environmental Planning and Assessment Act 1979,
- g) plans of land proposed to be compulsorily acquired by the local authority,
- h) compulsory acquisition notices, leases and licences for use of public land classified as community land.

2. ACCESS TO OTHER COUNCIL DOCUMENTS

2.1. *Electoral Rolls*

- a) Residential Roll - The Electoral Commissioner is to make the latest copy of the residential roll available for public inspection at any reasonable time during office hours at the office of the Electoral Commissioner and at any other place determined by the Electoral Commissioner.
- b) Non-residential Role - The General Manager is to make the latest copy of the non-residential roll and of the roll of occupiers and rate paying lessees (once it is prepared) available for public inspection at any reasonable time during office hours at the office of the council.

2.2. *Candidate Information Sheets*

- a) The returning officer is to make each candidate information sheet available for public inspection at any reasonable time during office hours at the office of the returning officer and at any other place determined by the returning officer.
- b) An electoral official at each polling place is to ensure that a copy of each candidate information sheet is displayed at the polling place

2.3. *Other Council Documents*

- a) The council must allow inspection of documents other than those listed in 1.1 free of charge unless, in the case of a particular document, it is satisfied that allowing inspection of the document would be contrary to the public interest, or contrary to PPIPA principles.
- b) It is irrelevant to consider inspection of a document as contrary to the public interest simply if the inspection of the document may:
 - (i) cause embarrassment to the council or to councillors or to employees of the council, or
 - (ii) cause a loss of confidence in the council, or



- (iii) cause a person to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.

3. COPIES OF DOCUMENTS

- 3.1. The right to inspect documents in section 1.1 includes the right to take away a copy of the document. Accordingly, Council must have a copy of all relevant documents available for copying by council staff or by the person requesting it.
- 3.2. People requesting to inspect other documents may request a copy of the document to take away. The printed document can be taken away either free of charge or on payment of reasonable copying charges, as council chooses.

4. RESTRICTION OF ACCESS TO INFORMATION

Under GIPAA 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:

- 1. Information subject to an overriding secrecy law
- 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 GIPAA, 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.

- 4.1. If the General Manager or any other member of the staff decides that access to a document or other information held by the council should not be given to the public or a councillor, the staff member must



provide the Council with written reasons for the restriction and the reason/s must be publicly available.

- 4.2. The Council must review any such restriction no later than 3 months after it is imposed.
- 4.3. After a period of three months, or a period of three months after the most recent review, a person may request Council to conduct a further review of the restriction. If a request is made under these circumstances, Council must conduct the review. A review is not required if the restriction concerned has been removed.
- 4.4. The Council must remove the restriction if, at any time:
 - a) it finds that there are no grounds for the restriction, or
 - b) access to the relevant document is obtained under the Government Information Public Access Act 2009 (GIPA)

5. PRIVACY

- 5.1 Council must not allow the inspection of a document, or section of a document containing:
 - a) personnel matters concerning members of staff or particular individuals (other than councillors)
 - b) the personal hardship of any resident or ratepayer,
 - c) trade secrets
 - d) a matter the disclosure of which would:
 - constitute an offence against an Act, or
 - found an action for breach of confidence
 - e) that part of a draft or adopted plan of management that is the subject of a resolution of confidentiality under section 36DA of the *Local Government Act 1993* regarding to places and items of Aboriginal significance.
 - f) the personal details of complainants. In these circumstances the nature of the complaint will still be heard unless such release is in breach of state or commonwealth law. This relates only to complaints as defined in Hunter's Hill Council Complaints Handling Policy and does not include submissions to applications for development.
- 5.2 A person does not have the right to inspect:
 - a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected; or
 - b) 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.

5.3 With respect to disclosures to third parties, section 1.1 and section 2.3 (a) of this policy will override the PPIPA, except in relation to public registers and when the information is of a nature described in Section 5.1 and 5.2 of this policy.

5.4 The other 'Information Protection Principles' in PPIPA continue to apply to Councils' operations, such as information collection, storage and internal use.

6. TRAINING

The General Manager is responsible for training and educating relevant staff on Council's obligations under the LGA, PPIPA and the GIPAA.



RELATED RESOURCES

Hunter's Hill Council Communication Policy (CORP.S-Pol.20)

Hunter's Hill Council Privacy Code of Practice (CORP.S-Pol.08)

Hunter's Hill Council Code of Conduct (CORP.S-Pol.03)

Hunter's Hill Council Code of Meeting Practice (CORP.S-Pol.04)

Hunter's Hill Council Complaints Handling Policy (CORP.S-POL.22)

POLICY OWNER

The policy authority is the General Manager.

AUTHORISATION AND REVIEW

Next Review Date

This policy should be reviewed in 2011, or with any change to relevant legislation or relevant Council policy.

Version Control Table

Date	Version	Res. No.	Key Changes	Author
26.06.2006	1.0	263/06	Adoption of policy by council	D. McFadyen
15.06.2010	1.1	164/10	Amendments changes to legislation	D. McFadyen



ATTACHMENT 1

Access to Information Guidelines for Local Government

Accessing Information

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.

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 (GIPAA) 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.

There is a right of access under the GIPAA to certain documents held by Council unless there is an overriding public interest not to do so. Any applications under GIPAA 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 GIPAA 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 (PPIPA) 1998 and the NSW Health Records and Information Privacy Act (HRIPA) 2002, 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 GIPAA. 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 (EPA) Act 1979 and Regulations 2000 there is a right to access Development Application registers and documents held by Council subject to restrictions set out in s.268 (3).