

ACCESS TO INFORMATION HELD BY COUNCIL POLICY

STRATEGIC POLICY

Responsible Department: Cabonne Services

Responsible Section: Governance & Corporate Performance

Responsible Officer: Department Leader – Governance & Corporate Performance

Objective

This policy seeks to:

- define and manage proactive, informal and formal information requests from the public under the GIPA Act
- provide the public with a straightforward and fully transparent process to access information held by Council at minimal cost and/or delay
- provide access to information wherever possible via Council's website.
- define information which may be restricted from public access
- ensure customers are promptly advised of the information they are entitled to access and with clearly documented reasons if access to information is refused
- advise customers of their rights of review if access to information is refused.

Introduction

Cabonne Council is committed to be an open and accessible organisation. The Government Information (Public Access) Act 2009 ("GIPA Act"):

- authorises and encourages the proactive public release of information held by Council
- gives members of the public an enforceable right to access information held by Council
- provides that access to information held by Council is restricted only when there is an overriding public interest against disclosure.

The GIPA Act is prescriptive in relation to the making of applications for access to information, matters to be considered prior to the release of information, exempt information, timeframes for determination of applications and rights of appeal. In particular, the GIPA Act:

- provides access to Council information in four ways:
 - mandatory proactive release via Council's website (open access information)

- authorised proactive release via Council's website
- informal release subject to an informal access application
- release subject to a formal access application
- prescribes an application fee and processing charges in relation to particular types of applications (refer to Council's Fees and Charges)
- requires a determination of a formal access application within 20 working days of receipt
- requires a written determination of a formal access application to address specific matters
- prescribes an internal review process
- prescribes an external review process to either the NSW Civil and Administrative Tribunal (NCAT) or the Information Commissioner

Policy

Public access to information held by Council is facilitated by GIPA subject to certain restrictions as set out in the Act and summarised in this policy.

The GIPA Act is designed to meet community expectations of more open and transparent government for the people of NSW. The Act encourages local councils and NSW government agencies to make it as easy as possible for members of the public to gain access to government information.

Council is also required to comply with the Information Protection Principles prescribed by the Privacy and Personal Information Protection Act, 1998 ("PPIPA Act") and the Health Privacy Principles prescribed by the Health Records and Information Privacy Act 2002 relating to the management of personal information held by Council.

This policy must therefore be read in conjunction with Council's Privacy Management Policy available for inspection on Council's website.

Accessing Information

Access to information is provided in accordance with the GIPA Act and Regulations. Any member of the public has a legal right to make an application to Cabonne Council for access to information that Council holds. There is a right of access under the GIPA Act to information held by Council unless there is an overriding public interest against disclosure.

While any application will be considered on its merits, Council may refuse to deal with an application for access where dealing with the application would require an unreasonable and substantial diversion of Council's resources, or where the information sought has been the subject of a subpoena or court order and is available to the applicant as a result of having been produced in compliance with the subpoena or court order.

Open Access

Information held by Council that is available as Open Access Information is listed in Section 18 of the GIPA Act and in Schedule 1 of the GIPA Regulation. The Open Access Application Form is available on Council's website and at Council Offices.

Open Access Information is available for inspection at Council offices during normal business hours, free of charge. In addition, Council's website also provides many documents for public viewing unless there is an overriding public interest against disclosure.

The open access documents include:

- Council policies
- an Agency Information Guide with information about Council's structure and functions, 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 having a value of more than \$150,000 that Council has with private sector bodies

Information that is considered Open Access and is archived will be made available as soon as reasonably practical. A copy of a record containing the information can be provided at the cost of photocopying charges as listed in Council's Fees and Charges.

Copies of documents provided by Council are for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright law still applies to each document. The copyright owner's consent is required if any part of the document is used for any other purpose.

Informal Access Application

An Informal Access Application Form is available on Council's website and at Council Offices, to be completed where an applicant seeks access to information not under Open Access Information.

There is no application fee required for an informal access application. A copy of a record containing the information can be provided at the cost of photocopying charges as listed in Council's Fees and Charges.

There is no legislated timeframe for the processing of informal applications; however, Council aims to process all applications within 30 working days. Complex requests may take longer and, in these cases, Council will contact the applicant and advise an expected timeframe.

An applicant who is not given information in response to an Informal Application will be informed of their right to make a Formal Access Application under the GIPA Act.

Formal Access Application

A Formal Access Application Form is available on Council's website and at Council Offices.

Council retains the discretion to require a formal release application in appropriate circumstances, for example:

- searching for and retrieving the information sought would require a significant diversion of resources
- the material contains information about a third party that cannot be deleted easily or without rendering the information useless, and consultation would need to occur

- the material is sensitive in nature and requires public interest test considerations.

The Formal Access Application requirements to be completed for a valid application must:

- be in writing and sent to or lodged at Council
- clearly indicate that it is an access application made under the GIPA Act
- be accompanied by a fee of \$30.00
- state a postal address in Australia as the address for correspondence in connection with the application
- include such information as is reasonably necessary to enable the information applied for to be identified.

Council is required to acknowledge formal applications within 5 working days and make its decision within 20 working days of receipt of the formal application. This period can be extended by up to 15 working days if consultation is required or records are required to be retrieved from archives. A request for an advance deposit may also extend the statutory time period.

Any determination to refuse access will include reasons for the decision. If charges are payable, access will be given to the information only when the payment has been received.

In accordance with GIPA Part 4 Division 2, Council may transfer an application to another agency where the other agency is known to hold the information and the information relates more closely to the functions of that agency, or where Council does not hold the information and the other agency is known to hold it.

Appeal rights will also be included in the letter of determination.

Review Rights

There are a number of review rights under the GIPA Act outlined in Part 5 if an applicant is refused access to information:

- internal review by Council's Public Officer
- external review by the Information Commissioner
- external review by the NCAT

Internal Review

Application for internal review must be made within 20 working days after the notice of decision being given to the applicant and must be accompanied by an application for internal review and a fee of \$40.00.

The review will be undertaken by Council's Public Officer who was not involved in making the original decision. A determination from an internal review will be issued within 15 working days. This may be extended by up to 10 working days where there is a need to consult with new third parties.

External Review by the Information Commissioner

An access applicant can appeal directly to the Information Commissioner. They do not first have to have an internal review of the decision. If the person seeking review is not the access applicant, you must seek an internal review before applying for review by the Information Commissioner.

Applicants have 40 working days from being notified of the decision to ask for a review by the Information Commissioner.

External Review by the NSW Civil and Administrative Tribunal

Applicants do not have to have the decision reviewed internally, or by the Information Commissioner, before applying for review by the NCAT.

Applicants have 40 working days from being notified of the decision to apply to the NCAT for review. If the applicant has applied for review by the Information Commissioner, they have 20 working days from being notified of the Information Commissioner's review outcome to apply to the NCAT.

Agency Information Guide

Under the GIPA Act, Council is required to have an Agency Information Guide which must include information about Council, its structure, functions, policies and detail Council information that is made publicly available.

This needs to be developed within 6 months of the commencement of the Act and reviewed and adopted at least every twelve months. Council must notify the Information Commissioner before adopting or amending its Agency Information Guide. Council's Agency Information Guide is accessible on Council's website.

Councillors' Access to Information

The LGA requires that councillors as a group direct and control the council's affairs, allocate resources, determine policy, and monitor its performance. As individuals, councillors also communicate council policy and decisions to the community, exercise community leadership and represent the views of residents and ratepayers to council.

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

The entitlement of a councillor to access information is expressly included in the Model Code of Conduct for Local Councils in NSW (section 439 LGA). Clause 10 of the Model Code provides guidance on the requirements for staff to provide information to councillors. It states that councillors must be provided with sufficient information to carry out their functions.

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 also act reasonably.

When making a request councillors should precisely detail the information and nature of the information on the Councillor Access to Information Request form. See annexures.

Copyright

Copyright issues may arise when requests are made for copies of documents held by Council. The Commonwealth Copyright Act 1968 takes precedence over State legislation. Therefore, the right to copy documents under the GIPA Act does not override the Copyright Act. Nothing in the GIPA Act or Regulations permits Council to make government information available in any way that would constitute an infringement of copyright.

Access to copyrighted documents will be granted by way of inspection only unless the copyright owner's written consent is provided. Where authority is unable to be obtained, copies of copyright material will not be provided.

Copyright material includes, but is not limited to, plans/drawings, consultant reports and survey reports.

Responsibilities

General Manager: responsible for overall control and implementation of the policy. Ensuring councillors are provided with the necessary information they require in order to make informed decisions and to carry out their civic duties affectively.

Deputy General Managers & Department Leaders: responsible for compliance with the Government Information (Public Access) Act and responding to applicants for an internal review under Part 5 of the Government Information (Public Access) Act.

Department Leader – Governance & Corporate Performance, Risk & Legal Coordinator, Senior Executive Assistant – Office of the General Manager and Governance Officer: responsible for responding to formal access applications under Part 4 of the Government Information (Public Access) Act.

References

Government Information (Public Access) Act 2009
Government Information (Public Access) Regulation 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 Act 1979
Companion Animals Act 1998

History

Minute No.	Summary of Changes	New Version Date
08/10/17	Adopted by Council	20/10/08
10/02/17	Ratified by Council	15/02/10
10/08/23	Amended for Implementation of GIPA Act 2009 – Adopted by Council	23/08/10
10/12/25	Amended to include the Administration Officer as an additional Right to Information Officer and to include reference to Councillor's access to information as per DLG Circular 10-30	20/12/10
11/06/14	Adoption reaffirmed at June Council meeting	27/06/11
13/09/30	Readopted as per s165(4)	17/09/13
18/07/14	DLG changed to OLG. Changes made to policy names in Related Documents and throughout document. Minor typographical errors corrected. Updated 10 working days to one week or two working days when received via email for responses to customer service requests. Readopted as per s165(4)	24/07/18
22/10/11	Full review of policy in line with the GIPA Act	27 October 2022



INFORMAL ACCESS REQUEST FORM

[Section 18 Government Information (Public Access) Act 2009 & Schedule 5 - Government Information (Public Access) Regulation 2009]

THIS FORM IS TO BE USED FOR ACCESS AND/OR DISCLOSURE OF DOCUMENTS HELD BY THE COUNCIL WITHIN FILES OR STORED ELECTRONICALLY ON COUNCIL'S RECORDS MANAGEMENT SYSTEM

Contact the Council on phone 02 6392 3200; email council@cabonne.nsw.gov.au; fax 02 63 923260 or Mail on PO Box 17 Molong NSW 2866

APPLICANT'S DETAILS

Surname Given Names Title (Mr/Mrs/Ms)

Postal Address.....

.....Postcode.....

Telephone Number (H)..... (W) (M)..... Fax

Number..... E-mail

IS THE INFORMATION ABOUT YOUR PERSONAL INFORMATION? YES / NO

I REQUIRE ACCESS TO THE FOLLOWING INFORMATION:

.....

IF THE INFORMATION IS ABOUT PROPERTY: PROPERTY DETAILS

Street Address

Lot No DP or SP No Application No

Building Name: Approx Age of Building

Description of development.....

COPYING CHARGES

Copy charges apply in accordance with Council's adopted fees and charges.

Applicant advised of estimated copying charges of \$..... YES / NO / NOT REQUIRED

DOCUMENT INSPECTION / DELIVERY DETAILS

Inspect at Molong / Cudal / Canowindra Council office only Circle one item.

OR

Forward by Mail / Fax / E-mail Circle one item.

OWNER'S OR ARCHITECT'S CONSENT IS REQUIRED FOR REQUESTS FOR COPIES OF (DEVELOPMENT & BUILDING APPLICATION & CONSTRUCTION CERTIFICATE) PLANS & ALSO FOR COPIES OF BUILDING CERTIFICATES

Owner's or Architect's Name

Signature of Applicant Date

PRIVACY & PERSONAL INFORMATION PROTECTION NOTICE

Purpose of collection: Public access to Council's documents.

Intended recipients: Council staff and is publicly available under the Government Information Public Access Act 2009.

Supply: Voluntary, a consequence of non provision is that insufficient information will be provided.

Access / Correction: Requests for access / correction of information under the Government Information (Public Access) Act or Privacy & Personal Information Protection Act 1998, contact the Council's Public Access Coordinator.

Storage: This form will be placed on a relevant file and/or will be saved on Council's main records management database when the request has been processed and the enquiry is completed.

OFFICE USE ONLY

Request received by..... Location (Canowindra, Cudal, Molong) Date.....
(name) (Circle one)

Total Fees Total Fees Paid..... Receipt Number.....

Referred to..... Department..... Date.....

Completed by..... Completed date.....



PO BOX 17
MOLONG NSW 2866

Government Information (Public Access) Act 2009 ACCESS APPLICATION

Please complete this form to apply for formal access to government information under the *Government Information (Public Access) Act 2009* ("GIPA Act"). If you need help in filling out this form, please contact the Right to Information Officer on 6392 3221 or visit our website at www.cabonne.nsw.gov.au.

Your details

Surname: Title: Mr / Ms / Miss / Mrs

Other names:

Postal address: Postcode:

Day-time phone: Facsimile:

Email:

The questions below are optional and the information will only be used for the purposes of providing better service.

Place of birth: Main language spoken:

Aboriginal or Torres Strait Islander: Yes / No (circle one)

Do you have special needs for assistance with this application:

.....

.....

☐ I agree to receive correspondence at the above email address.

Government information

Please describe the information you would like to access in enough detail to allow us to identify it.

Note: If you do not give enough details about the information, the agency may refuse to process your application.

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Are you seeking personal information? **Yes / No** (circle one)

Form of access

How do you wish to access the information?

- ☐ Inspect the document(s)
- ☐ A copy of the document(s)
- ☐ Access in another way (please specify).....

Application Fee

I attach payment of the **\$30 application fee** by cash / cheque / money order (circle one).
(Note: please do NOT send cash by post)

Disclosure log

If the information sought is released to you and would be of interest to other members of the public, details about your application may be recorded in the agency’s ‘disclosure log’. This is published on the agency’s website.
Do you object to this? **Yes / No** (circle one)

Discount in processing charges

If you are given access to the information sought, you may be asked to pay a charge for processing the application (\$30 / hour). Some applicants may be entitled to a 50% reduction in their processing charges. If you wish to apply for a discount, please indicate the reason:
☐ Financial hardship – please attach supporting documentation (e.g. a pension or Centrelink card).

AND / OR

- ☐ Special benefit to the public – please specify why below:
-
-
-
-

Applicant’s signature:
Date:



COUNCILLORS' ACCESS TO INFORMATION REQUEST FORM

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Please deliver to Council's Canowindra, Cudal or Molong, offices; email council@cabonne.nsw.gov.au; fax 02 63 923260 or post to PO Box 17 Molong NSW 2866

COUNCILLOR'S DETAILS

Surname Given Names Title (Mr/Mrs/Ms)

Postal Address

..... Postcode

Telephone Number (H) (W) (M)

Fax Number E-mail

I require access to the following information required to carry out my civic duties:

DOCUMENT INSPECTION / DELIVERY DETAILS

Inspect at Molong / Cudal / Canowindra Council office only

Circle one item.

OR

Forward by Mail / Fax / E-mail

Circle one item.

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Storage: This form will be placed on a relevant file and/or will be saved on Council's main records management database when the request has been processed and the enquiry is completed.

Note: Councillors may lodge a formal Access Application under the Government Information (Public Access) Act 2009 if the Information is not provided in response to this request.

OFFICE USE ONLY

Request received by Location (Canowindra, Cudal, Molong) Date

(name) (Circle one)

Request approved or if not Reason for refusal:

Completed by Completed date