



Manly Council

Access to Information GIPA Guidelines

August 2013

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1. ACCESSING COUNCIL INFORMATION

Manly 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 need to protect the privacy of others, commercially sensitive information and information the disclosure of which would not be in the public interest.

The Information and Privacy Commission (**IPC**) (formerly the Office of the Information Commissioner) has published 5 Guidelines under sections 12(3) and 14(3) of the *Government Information (Public Access) Act 2009 (GIPA Act)*. Council is required to have regard to these Guidelines in accordance with section 15(b) of the GIPA Act. These Guidelines can be downloaded from the IPC's website at http://www.ipc.nsw.gov.au/privacy/ipc_resources/gipa_guidelines.html.

Council's Access to Information 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 and the NSW *Local Government Act 1993 (LGA)* free of charge, but a reasonable photocopying fee may be payable. All charges are detailed in Council's Schedule of Fees and Charges.

There is a right of access under the GIPA Act and the LGA to documents held by Council subject to the restrictions outlined in the Act. Any GIPA Act applications will be processed in accordance with the GIPA Act's requirements and a determination may be made to provide access the information or refuse access on the basis of an overriding public interest against disclosure or because of conclusive presumption of an overriding public interest against disclosure.

Charges for formal GIPA Act access applications are in accordance with the prescribed GIPA Act fees and charges and include a \$30 application fee.

Under the *Privacy and Personal Information Protection Act 1998 (PPIP Act)* and the *Health Records and Information Privacy Act 2002 (HRIP Act)*, 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 GIPA Act provides for consultation with other affected parties prior to disclosure of information concerning their personal or business affairs.

2. OPEN ACCESS INFORMATION

Council must make the government information that is its open access information publicly available unless there is an overriding public interest against disclosure of the information.

Open access information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate.

At least one of the ways in which an agency makes open access information publicly available must be free of charge. Access provided in any other way can be charged for.

Council must facilitate public access to open access information contained in a record by deleting matter from a copy of the record to be made publicly available if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record and it is practicable to delete the matter.

Council must keep a record of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure. The record is to indicate only the general nature of the information concerned.

Nothing in the GIPA Act or the regulations requires or permits Council to make open access information available in any way that would constitute an infringement of copyright.

The GIPA act and the regulations prescribe the following information as open access information:

- Agency Information Guide;
- information about the agency contained in any document tabled in Parliament by or on behalf of the agency, other than any document tabled by order of either House of Parliament;
- the agency's policy documents;
- the agency's disclosure log of access applications;
- the agency's register of government contracts;
- the agency's record (kept under section 6) of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure;
- the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA;
- code of meeting practice;
- annual report;
- auditor's report;
- management plan;
- EEO management plan;
- policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors;
- annual reports of bodies exercising functions delegated by the local authority;
- any codes referred to in the LGA;
- returns of the interests of councillors, designated persons and delegates;
- 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);

- 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;
- Departmental representative reports presented at a meeting of the local authority in accordance with section 433 of the LGA;
- land register;
- register of investments;
- register of delegations;
- register of graffiti removal work kept in accordance with section 13 of the *Graffiti Control Act 2008*;
- register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA;
- the register of voting on planning matters kept in accordance with section 375A of the LGA;
- local policies adopted by the local authority concerning approvals and orders;
- plans of management for community land;
- 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;
- home warranty insurance documents;
- construction certificates;
- occupation certificates;
- structural certification documents;
- town planner reports;
- submissions received on development applications;
- heritage consultant reports;
- tree inspection consultant reports;
- acoustics consultant reports;
- land contamination consultant reports;
- records of decisions on development applications (including decisions made on appeal);
- applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application;
- applications for approvals under any other Act and any associated documents received in relation to such an application;
- records of approvals granted or refused, any variation from local 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 the local authority;
- compulsory acquisition notices;
- leases and licences for use of public land classified as community land.

3. MAKING A FORMAL APPLICATION TO ACCESS COUNCIL INFORMATION

An access application must comply with the following formal requirements:

- be in writing;
- specify it is made under the GIPA Act;
- state an Australian postal address;
- be accompanied by the \$30 fee; and
- provide sufficient detail to enable the agency to identify the information requested

In making an application, a person may include any other additional information they think is relevant to the public interest test and may request a discount of processing charges. An access application may be amended or withdrawn at any time.

An application will be **invalid** if it seeks access to excluded information of an agency or does not meet the formal requirements for an access application. Where an invalid application is made, agencies must notify the applicant of the fact (with reasons) and assist the applicant in making it valid.

4. RIGHTS OF REVIEW AND APPEAL OF DECISION

Council can refuse your request if:

- the information you have asked for is already publicly available,
- you have not paid a deposit,
- your request would take an unreasonable amount of time to process,
- there is an overriding public interest against disclosure.

You have three options if you have been refused access to information:

- **Internal review:**
You have **twenty (20) working days** from the time the decision is sent to you to ask for an internal review of the decision by Council. This is review by someone more senior than the original decision maker and there is a \$40 fee. Council must acknowledge your application within **five (5) working days** of receiving it. Council must decide the internal review within **fifteen (15) working days** (this can be extended by **ten (10) working days** if the agency has to consult with a third party, or by agreement with you).
- **Review by the Information Commissioner:**
If you are not satisfied with the internal review, or do not want one, you can ask for a review by the Information Commissioner. You have **forty (40) working days** from the time the decision was sent to you to ask for this review.
- **Review at the Administrative Decisions Tribunal:**
If you disagree with any of the decisions listed above, you can ask for a review by the Administrative Decisions Tribunal (ADT). You do not have to have the decision reviewed internally, or by the Information Commissioner before applying for review by the ADT. You have **forty (40) working days** from the time the decision is sent to you to apply to the ADT for review. However, if you have applied for review by the Information Commissioner, you have **twenty (20) working days** from being notified of the Information Commission's review outcome to apply to the ADT.

5. GUIDELINES HISTORY

Date of Issue	Action	Author	Checked by
25 May 2010	First Draft prepared	Records Manager	Manager Administration
30 June 2010	Edits following GIPA Team Mtg	Office Manager	Manager Administration
24 June 2013	Updated to incorporate amendments to GIPA Act and to provide clarity	In-house Solicitor	General Counsel
29 August 2013	Update as per IPC Recommendations	In-house Solicitor	Manager Corporate Governance