

BALRANALD SHIRE COUNCIL	ACCESS TO INFORMATION POLICY	Doc No	
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GENERAL MANAGER	Council 21st February 2017 Minute No: 02.17.3924	February 2019	

POLICY OBJECTIVE

The objective of this policy is to describe Council's principles regarding public access to information and to facilitate the processing of requests for such access. This policy is to be read in conjunction with the Access to Information Guidelines.

Policy Statement:

Balranald 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

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. Council also publishes for inspection documents listed under Schedule 1 of the Government Information (Public Access) Regulation 2009 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.

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.

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 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.

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.

The Access to Information Guidelines and the Publications Guide are to be available to members of the public.

Responsibilities:

This policy applies to members of the public wishing to access Council information and all Council officials.

References:

Government Information (Public Access) Act 2009

Appendices:

- a. Access to Information Guidelines

*Adopted by Council
Refer Minute No.*

Authorisation:

Status	Committee		
	Manex		
Owner	Director Corporate and Community Development		
EDRMS Doc. ID	332827		
Superseded Policy			
Date of Adoption/ Amendment	Revision Number	Minute Number	Review Date

Related Council Policy / Procedure

Access to Information Guidelines – see attached

Access to Information Guidelines

1. Accessing Information

Balranald Shire Council is subject to various legislation that requires it to be open, accountable, fair and effective 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 granted, 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.

These guidelines set out the documents and types of information that are available to members of the public as a matter of routine, those that will require an application form and those that will not generally be available for inspection or copying.

Requests to inspect documents that are deemed 'open access' in accordance with the Government Information (Public Access) (GIPA) Act 2009 will be available free of charge via the Council website where possible. Copies from Council will be available on request but subject to a reasonable photocopy fee. All charges are detailed in Council's Schedule of Fees and Charges.

There is a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure of documents held by Council under GIPA Act subject to the restrictions outlined in schedule 1 of the Act.

There are additional rights of access to documents not classed as 'open access' held by Council under the GIPA Act. Applications will be processed in accordance with the Act's requirements and a written determination made to release the documents or refuse access on the basis of exemption provisions contained within the Act.

Charges for Access applications are in accordance with the GIPA Act Processing charges and advanced deposits set out in Part 4, Division 5 of the Act and include a \$30 application fee. In certain circumstances processing fees as detailed in Council's Schedule of Fees and Charges will be charged.

Under the NSW Privacy and Personal Information Protection (PPIPA) Act 1998 and the NSW Health Records and Information Protection (HRIP) Act 2002, an individual has the 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 filing systems that include information about other persons, any request should be made under the GIPA Act. 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 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).

The Access to Information Matrix forms part of Council's publication guide and provides information on specific documents held by Council.

2. Information Available

Council publishes open access, or mandatory release, information on its website unless there is an overriding public interest against disclosure or doing so would impose an unreasonable additional cost on Council. In respect of the latter the Council will make the information freely available in another format e.g. hard copy at the Council Administration Office. The open access information 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 councils have 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 1 of the Government Information (Public Access) Regulation 2009 requires that certain documents held by Council, are to 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 the Council during ordinary office hours. Any current and previous documents of this type may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges.

These documents are:

a. Information about Council

- The model code of conduct prescribed under section 440(1) of the Local Government Act
- Council's adopted Code of Conduct
- Code of Meeting Practice
- Annual Report
- Annual Financial Reports
- Auditor's Report
- Management Plan
- EEO Management Plan
- Policy concerning the Payment of Expenses and Provision of Facilities to the Mayor and Councillors
- Annual Reports of Bodies Exercising Functions Delegated by Council (e.g. Section 355/377 Committees)
- Any Codes referred to in the Local Government Act
- Returns of the Interests of Councillors, Designated Persons and delegates.

- Agendas, Business Papers and Minutes of Council/Committee meetings (except meetings that are closed to the public)
- Division of Local Government, NSW Department of Premier and Cabinet 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

b. 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

c. Information about Development Applications

Development Applications and any associated documents received in relation to a proposed development, e.g.:

- 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 the general nature of documents that Council decides to exclude from public view after application of public interest test considerations

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

In addition, from time to time Council will make as much other information as possible publicly available in an appropriate manner, including on their website. The information will be available free of charge or at the lowest reasonable cost. Such other information includes frequently requested information or information of public interest that has been released as a result of other requests.

Council will endeavour to release other information in response to an informal request, subject to any reasonable conditions as Council thinks 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 resources to produce.

3. 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 its reasons for applying an exemption. Council will not classify information as exempt unless there are clear reasons for doing so. Where documents contain exempt information, any remaining information contained within the requested document 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 interstate Freedom of Information legislation.

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 any 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 any factors personal to the applicant.

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 (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 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.

In dealing with informal applications Council will apply a similar decision making framework.

4. Accessing Information and Making an Application

The public may obtain access to information as follows:

a) by searching the Council's website to see if it is already available; or
b) by contacting Council and requesting the information. 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, for example because consultation with a third party is required.

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 which can be found on the Balranald Shire Council website: www.balranaldshire.nsw.gov.au. No fee is required on application.

To make a formal Access to Information Application under the GIPA Act, the 'Formal Access to Information Application' form which can be found on the Balranald Shire Council website: www.balranaldshire.nsw.gov.au must be submitted to Council. The Formal Application fee is \$30.00 and processing charges may be applicable (there is no GST in relation to these charges). An acknowledgement of such application will be provided by Council within five working days.

If a fee for photocopies of documents provided under the GIPA Act is payable, it will be listed in Council's adopted Fees and Charges and is GST inclusive.

5. Time Limits

In respect of formal applications, Council will notify applicants of the decision on an application within 20 working days, unless the applicant agrees to extend the time. Council may also extend the time by up to 15 working days where consultation with a third party is required 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'. 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.

6. Rights of Review and Appeal

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

- a. Applicants can apply to Council for an internal review. This review is undertaken by someone more senior than the original decision maker and a \$40 fee applies. Applicants have 20 working days from receiving notice of a decision to ask for an internal review.
- b. If an applicant is not satisfied with the internal review, or does not want one, they can ask for a review by the Information Commissioner. Applicants have eight weeks from being notified of a decision to ask for this review.
- c. If an applicant is not satisfied with the decision of the Information Commissioner or the internal reviewer 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.