

POLICY NAME

Government Information
(Public Access) (GIPA) Policy

DATE ADOPTED

20 May 2021

REVIEW DATE

31 March 2024

COUNCIL MINUTE NUMBER

Not Applicable

RELATED DOCUMENTS

Privacy Management Plan
Information Guide

RESPONSIBLE DEPARTMENT

Legal services

POLICY TYPE

Organisational - adopted by General Manager

BACKGROUND

Penrith City 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.

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 and Customer Service Centre
- 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.

POLICY STATEMENT

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 object of 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 Plan and the Privacy Code of Practice for Local Government which are 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 application to Penrith City 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
- a publication guide with information about Council 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
- a register of open access information that Council does not make publicly available on the basis of an overriding public interest against disclosure.

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.

Copyright


Information contained on Council's records is subject to copyright.

If copyright consent has been obtained from a copyright owner or if it is a special access request, the information can be copied and released.

Council will inform all applicants if information is subject to copyright. If an applicant still requires a hard copy of the information, Council will seek consent of the copyright owner.

There may be certain circumstances where Council is not taken to have breached the provisions of the *Copyright Act 1968*. For example, Council is not taken to have breached copyright in a literary, dramatic, musical or artistic work by anything done for the purposes of a judicial proceeding (see s.43(1) of the Copyright Act 1968).

Document Control

Policy History	Date
Version 1 adopted by the General Manager, Warwick Winn 	20 May 2021