

GIPA ACT GUIDELINES

Procedure 5.3.1

Policy No. and Title	5.3	Access to Information Policy
Procedure	5.3.1	GIPA Act Guidelines
Version	2	
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1 INTRODUCTION

Kempsey Shire Council has identified that information and its management and protection are critical to the business of effective local government. Council is the custodian of archival and community records and uses information provided by residents, ratepayers and others to assist in the delivery of services and make informed decisions. Council has developed this policy and procedures to ensure that the above Acts are applied and that access to and protection of information and intellectual property are dealt with as prescribed.

Information should be freely available about Council policies and services and in accordance with legislative requirements. This approach needs to be balanced with a need for caution and common sense to protect information about individuals, businesses etc. from unwarranted disclosure.

Principles

- Openness and accountability.
- Transparency of decision making.
- Appropriate access to information about individuals and others.
- Provision of documents available for public inspection within the framework of various acts and regulations.
- Identification of documents and registers that are freely available to inspect or copy.

2 GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009

Set out below is a summary of the *Government Information (Public Access) Act 2009* (the GIPA Act) as they apply to Kempsey Shire Council. These guidelines set out what information Council can disclose and how.

2.1 Overview

The *Government Information (Public Access) Act 2009* (known as the GIPA Act) came into effect on 1 July 2010 and replaced the *Freedom of Information Act (FOI)* and Section 12 of the *Local Government Act 1993*.

The objects of the GIPA Act are to:

- Authorise and encourage the proactive release of information.

- Give members of the public an enforceable right to access information.
- Provide that access to information is only restricted when there is an overriding public interest against disclosure.

2.2 What is classed as 'information'?

The words 'document' or 'record' are taken in this procedure to include any paper or other material on which there is writing; and paper and other material on which there are marks, symbols or perforations having a meaning for a person qualified to interpret them, and any disc, tape or other article from which sounds, images or messages are capable of being reproduced.

2.3 Who can ask for information?

Anyone can ask for information held by Council including:

- Members of the public wanting to get access to general information.
- Individuals' wanting to know what information is held about them in a government file.
- Organisations helping people access their information.
- Academics doing research.
- Special interest groups seeking information.
- Media agencies obtaining information for stories/reports.
- Government agencies seeking information from another government agency.

People, organisations, groups or agencies can request information for a variety of reasons including to:

- Obtain personal information.
- Support a legal case.
- Conduct research and analysis.
- Public reports and media stories.
- Ensure transparent and accountable government.

2.4 Is there any information that cannot be given out?

Sometimes there is an overriding public interest against disclosing certain information. Generally, Council must not publish and must refuse requests to disclose information in the 12 categories listed. Formal applications for 'excluded information' are invalid under the Act.

- 1 Information subject to an overriding secrecy law (26 specifically named Acts).
- 2 Cabinet information.
- 3 Executive Council information.

- 4 Information subject to the direction or order of a court or other body with the power to receive evidence on oath, or to Parliamentary privilege.
- 5 Information subject to legal professional privilege.
- 6 'Excluded information' (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information, information in relation to specific functions about ranking and assessment of students completing the HSC).
- 7 Documents affecting law enforcement and public safety.
- 8 Specific information relating to transport safety.
- 9 Specific information in relation to adoption procedures and records.
- 10 Specific reports concerning the care and protection of children.
- 11 Information contained in the Register of Interests kept in relation to the Ministerial Code of Conduct.
- 12 Specific information relating to Aboriginal and environmental heritage.

2.5 Public interest test

Under the GIPA Act, all government agencies, including Council, must disclose or release information unless there is an overriding public interest against disclosure. When deciding whether to release information, staff must weigh the factors in favour of disclosure against the public interest factors against disclosure.

Unless there is an overriding public interest against disclosure, Council must provide the information. There are some limited exceptions to this general rule, for example where dealing with an application would constitute a significant and unreasonable diversion of Council's resources.

Applying the public interest test

The public interest test involves three steps:

- 1 Identifying the relevant public interest considerations for disclosure.
- 2 Identifying any relevant public interests against disclosure.
- 3 Assessing whether the public interest against disclosure outweighs the public interest in favour of disclosure.

Step 1: Identify relevant public interest considerations for disclosure

The GIPA Act provides examples of factors that Council may consider in favour of disclosure. These are:

- Promoting open discussion of public affairs, enhancing government accountability or contributing to positive and informed debate on issues of public importance.

- Informing the public about the operations of Council and, in particular, our policies and practices for dealing with members of the public.
- Ensuring effective oversight of the expenditure of public funds.
- The information is personal information of the person to whom it is to be disclosed.
- Revealing or substantiating that Council (or a member of Council) has engaged in misconduct or negligent, improper or unlawful conduct.

This is not a complete list, and Council may identify other factors in favour of disclosure without advance notice.

The Information Commissioner may also issue guidelines on additional considerations favouring disclosure.

Step 2: Identify relevant public interests against disclosure

The Act provides an exhaustive list of public interest considerations against disclosure. These are the considerations against disclosure that Council may 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.
- Exempt documents under interstate Freedom of Information legislation.

The Act says that in applying the public interest test, Council is not to take into account:

- That disclosure might cause embarrassment to, or loss of confidence in Council.
- That any information disclosed might be misinterpreted or misunderstood by any person.

Council must consider any submissions made by an applicant in relation to public interest considerations, as well as any factors personal to the applicant.

Step 3: Assess whether the public interest against disclosure outweighs the public interest in favour of disclosure, giving appropriate weight to each consideration

The identification of one or even several public interest considerations against disclosure is not sufficient justification to refuse to provide information. Council will make their decision after balancing the relevant

considerations for and against disclosure. In each case, Council will consider a range of factors, including:

- The nature and context of the information.
- In the case of an informal or formal request, any factors special to the applicant.
- The relevant weight of public interest considerations for and against disclosure.

Council should refuse to disclose information only where, on balance, there is an overriding public interest against disclosure. Where the factors are evenly balanced, the presumption in favour of disclosure stands, and information should be published or released.

2.6 How is information accessible?

Under the GIPA Act, there are 4 ways that government information will be released:

- 1 Open access information
- 2 Proactive release
- 3 Informal access
- 4 Formal access

Open access information

Open access information is information that Council must make readily available, unless there is an overriding public interest against disclosure. Open access information includes:

- Publication Guide
- Disclosure Log
- Register of Contracts
- Register of documents not made publicly available
- Code of meeting practice
- Annual report
- Annual financial reports
- EEO management plan
- Council policies
- Pecuniary interest register
- Agendas and minutes of any meeting of Council or committee of Council
- Land register

- Register of delegations
- Register of graffiti removal work
- Register of current declarations of disclosures of political donations
- Register of voting on planning matters
- Plans of land proposed to be compulsorily acquired
- Plans of management for community land
- Compulsory acquisition notices
- Leases and licences for use of public land classified as community land
- Adopted policies concerning approvals and orders
- Environmental planning instruments, Development Control Plans and Contributions Plans
- Development Applications
- Records of decisions of Development Applications
- Applications for approval, e.g. water, sewer, OSM, rural address, Section 68 approvals, tree lopping
- Orders given under any Act, e.g. water, building, vegetation, weeds, rangers
- Details of submissions and complaints
- Records of building certificates.

Section 6 of the GIPA Act states that open access information must be publicly available on Council's website, unless to do so would impose an unreasonable additional cost. In this case, the information must be freely available in some other format that we consider appropriate. For further information on how information will be available, please see the Information Matrix at *Appendix A*. Council can apply a charge for open access information, provided that it is free in at least one other way.

Proactive release

Council is encouraged to proactively release as much information as possible, in an appropriate manner and free of charge (or at the lowest reasonable cost). This information will be made available on Council's website intermittently.

Informal access

Any information that is held by Council can be released under informal access so long as there is not an overriding public interest against disclosure. Council is releasing information informally whenever we provide information over the telephone, over the counter, by email or by fax, without needing an application form to be filled in.

If an overriding public interest against disclosure exists, information can be

released by deleting the controversial information, such as the personal information about someone else. Council can also release the information subject to any reasonable conditions and in any format that we consider appropriate.

The types of information that are suitable for informal release include:

- Routine information.
- Personal information about the applicant.
- Small amounts of information that is easily accessible.

Formal access

Council may also release information subject to a formal access application being made. Formal application forms may be found on Council's website.

Applications must be made in writing, contain sufficient information to enable the information requested to be identified, and be accompanied by a \$30 application fee (Subsidies apply in certain restricted circumstances). Council then have 20 working days to decide the application (although this time can be extended up to a maximum of 15 days if the records need to be retrieved from archives or a third party needs to be consulted).

A person who makes an access application has a legally enforceable right to be provided with the information requested unless there is an overriding public interest against disclosure.

Decisions made regarding access applications are subject to internal review as well as to external review by the Information Commissioner and/or the NSW Civil and Administrative Tribunal.

2.7 The review process

Formal access applicants have a right to request a review of a decision regarding the release of information if they disagree with any of the following decisions as set out under the GIPA Act:

- a) A decision that an application is not a valid access application.
- b) A decision to transfer an access application to another agency, as an agency initiated transfer.
- c) A decision to refuse to deal with an access application.
- d) A decision to provide access or to refuse to provide access to information in response to an access application.
- e) A decision that information is not held by Council.
- f) A decision that information applied for is already available to the applicant.
- g) A decision to refuse to confirm or deny that information is held by Council.
- h) A decision to defer the provision of access to information in response to an access application.

- i) A decision to provide access in a particular way in response to an access application (or a decision not to provide access in the way requested by the applicant).
- j) A decision to impose a processing charge or to require an advance deposit.
- k) A decision to refuse a reduction in a processing charge.
- l) A decision to refuse to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment.
- m) A decision to include information in a disclosure log despite an objection by the access applicant (or a decision that the access applicant was not entitled to object).

There are generally 3 options to have a decision reviewed:

2.7.1 Internal Review

Applicants have 20 days from receiving notice of a decision to ask for an internal review.

An Internal Review Application Form may be found on Council's website.

If the General Manager of Council or the Mayor made the decision, applicants cannot ask for an internal review, but they can ask for an external review (see below).

An internal review must be carried out by a more senior officer than the person who made the original decision. The review decision must be made as if it was a fresh application.

There is a \$40 fee for an internal review application, except if the decision is 'deemed refusal' because Council did not process the application within the time frame. In this case, a review fee cannot be charged.

The application for review must be acknowledged by Council within 5 working days of receiving it.

Council must decide the internal review within 15 working days (this can be extended by 10 days if Council has to consult with a third party or by agreement with the applicant).

2.7.2 External review by the Information Commissioner

If an applicant disagrees with any of the above decisions they can apply for a review by the Information Commissioner. The applicable form titled 'Application for External Review by the Information Commissioner' can be completed online at <https://www.ipc.nsw.gov.au/form/application-for-external-review>.

If the person applying for an external review is the initial applicant, they do not have to have an internal review of the decision before asking the Information Commissioner to view it.

If the initial applicant isn't the one applying for an external review, then the new applicant must seek an internal review before applying for a review by the Information Commissioner.

An applicant has 8 weeks from being notified of the decision to ask for a review by the Information Commissioner.

On reviewing the decision, the Information Commissioner can make recommendations about the decision to Council.

Note: The Information Commissioner cannot be asked to review a decision that has already been reviewed by the NSW Civil and Administrative Tribunal.

2.7.3 External review by the NSW Civil and Administrative Tribunal

If an applicant disagrees with any of the decisions listed above, they can ask for a review by the NSW Civil and Administrative Tribunal (NCAT). The decision does not have to be reviewed internally or by the Information Commissioner before applying for a review by the NCAT.

An applicant has 8 weeks from being notified of the decision to apply to the NCAT for a review. If, however, the applicant has applied for a review by the Information Commissioner, they have 4 weeks from being notified on the Information Commissioner's review outcome to apply to the NCAT.

VARIATION

The General Manager reserves the right to review, vary or revoke this procedure which will be reviewed periodically to ensure it is relevant and appropriate.

