



Hawkesbury City Council

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to
item 064

Access to Information Policy

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Hawkesbury City Council
Policy

Access to Information
Policy

Hawkesbury City Council

EXECUTIVE SUMMARY

Council's Access to Information Policy (the Policy) is intended to describe Council's principles regarding public access to information, and to provide guidance on the processing of requests in accordance with the Government Information (Public Access) Act 2009 (GIPA Act) and other relevant legislation.

The Policy states that Council officials are required to maintain appropriate records of Council activities, and to provide those records to officers processing access to information requests.

There are four methods outlined in the Policy by which Council provides access to information:

- Open Access Information is published on Council's website.
- Proactively released information is information that Council chooses to make publicly available, such as frequently requested information or information of special public interest.
- Informal access requests, which comprise the majority of requests, are the method for members of the public to request non-urgent access to non-sensitive information such as building and development plans and approvals. Informal requests are subject to Council's adopted fees and charges.
- Formal access requests are required to request access to information such as another person's personal information, or other sensitive information such as complaints or compliance investigation notes. Formal requests are usually processed within 20 working days and incur a legislated fee of \$30 per hour of processing time.

The release of Council information through the above four methods is subject to the public interest test process, which is conducted by Council officers.

The Policy outlines a number of review methods, both internally through Council or by external agencies, which are available to applicants who are unhappy with the outcome of their request for information.

All enquiries regarding Access to Information and Privacy legislation can be made through the Council's Corporate Services and Governance Section.



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1. INTRODUCTION

1.1 Title

This policy is to be known as the Council's Access to Information Policy.

1.2 Purpose of Policy

The purpose of the Policy is to describe Council's principles regarding public access to information, and to facilitate the processing of requests for access to information. This Policy is to be read in conjunction with Council's Privacy Management Plan, Council's Information Guide, and other provisions listed below.

1.3 Objectives

- a) To allow members of the public, other organisations, and media organisations to request access to Council information, and be provided with access to that information in line with legislative requirements.
- b) To ensure that the personal, business, research and other information of members of the public and organisations is protected appropriately when this information is requested.
- c) To provide guidelines to staff who may be receiving, utilising, or providing access to Council information, regarding the appropriate handling of that information.
- d) To encourage the culture of open and transparent government and proactive disclosure of information which is promoted by the NSW Information and Privacy Commission (IPC).

1.4 Making and Adoption of the Policy

This Policy is made under the provisions of the *Government Information (Public Access) Act 2009* (GIPA Act) and associated Regulations and Guidelines.

1.5 Reporting Requirements

Council is required by Section 125 of the GIPA Act to prepare an annual report on its obligations under the GIPA Act. The annual report is to be submitted to the Information and Privacy Commissioner by 30 October each year. The information included in this report, and some supplementary information, is also included in Council's Annual Report. This report is prepared by the Manager Corporate Services and Governance.

In addition to the above, Council is required by Section 25 of the GIPA Act to publish on its website a disclosure log recording details of formal access applications decided by Council.

Requirements for the above are explained in more detail in Part 7 of this Policy below.

1.6 Other Government Policy Provisions

- Government Information (Public Access) Act 2009 (GIPA Act)
- Government Information (Public Access) Regulations 2009
- Guidelines, factsheets and other information published by the Information & Privacy Commissioner (IPC)
- Local Government Act NSW 1993 (LGA)
- Privacy and Personal Information Protection Act NSW 1998 (PPIPA)
- Privacy Act 1988
- Health Records and Information Privacy Act 2002 (HRIPA)
- State Records Act 1998 (SRA)
- Copyright Act 1968 (Commonwealth)
- Council's Code of Conduct



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- Privacy Code of Practice (Local Government)
- Council's Privacy Management Plan
- Council's Access to Information Guidelines
- Council's Information Guide
- Council's Privacy Management Plan
- Council's Records Management Operational Management Standard (OMS)

1.7 Approval Arrangements

Approval for release of information under this Policy should be granted by the Manager Corporate Services and Governance, who has delegation to decide access to information applications from the General Manager as the principal officer. If this is not possible, then the approval may be granted by the Director Support Services or the General Manager.

Internal reviews of decisions made under this Policy must be conducted by the Director Support Services or the General Manager.

1.8 Definitions

In this Policy, the following definitions apply:

Contracts register	The register of government contracts that records information about each government contract to which Council is a party that has a value of \$150,000 or more.
Council	Hawkesbury City Council
Council officials	Councillors, members of the staff of Council, committee members, contractors, consultants and volunteers representing Council in an official capacity.
Disclose information	Making information available for release to a party outside of Council, or providing access to information to a party outside of Council.
Disclosure log	The list of decisions made on formal access applications, which is published on Council's website.
Formal access application	A valid access application made under Part 4 of the GIPA Act, which fulfils the requirements of Section 41 of that Act, including payment of a \$30 application fee.
Government information	Information contained in a record held by Council, including hard copy or paper records; electronic records contained in the Electronic Records Management System, other databases, or software programs; audio or visual recordings. Further information on the definition of Council records can be found in Council's Records Management Policy.
Informal access application	A request for information made by a party outside of Council, which is processed under the provisions of Section 8 of the GIPA Act, and is not accompanied by a \$30 application fee.
Information Guide	A document that sets out the types of information that Council makes publicly available and routinely publishes on the website.
Open access information	Information which is mandatorily released by Council to the public, unless there is an overriding public interest against disclosure of the information. Open access information should be published on Council's website, and must be available free of charge in at least one way. Open access information is listed in Part 3 of the GIPA Act.
Person or member of the public	May refer to an individual, a government agency, a business or organisation, or legal representative of any of these.



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Personal factors	Factors particular to an access applicant or third party which may affect a Council official's public interest test, including the identity of the applicant, the applicant's relationship with another person who is subject to the request, or the applicant's motives for requesting the information. Personal factors are optionally provided to Council under Section 55 of the GIPA Act.
Personal information	Any information which can be used to identify a person. Personal information usually includes names, residential and postal addresses, email addresses, phone numbers, photographs, vehicle license plates, and may include other information based on context.
Proactive release of information	Council's ability under Section 7 of the GIPA Act to decide to make publicly available information which is not required to be released as open access information, but is otherwise considered to be of general interest or benefit to the public.
Public interest consideration	A factor affecting whether or not the release of information would be of general interest or benefit to the public, or the applicant of an access application. A public interest consideration can be for or against the release of information. Public interest considerations against release of information must be justified by Section 14, Table 1 of the GIPA Act. There are no limits on public interest considerations in favour of the release of information.
Public interest test	The assessment conducted by a Council official, in which the Council official decides whether the public interest considerations against release of information outweigh the considerations in favour of release of the information. This is the basis upon which the official decides whether or not to provide access to the information.
Records	Records are defined in the Australian Standard on Records Management as "Information created, received, and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transaction of business." More simply, a record is anything which contains information or evidence of a business transaction. Records can include, but are not limited to, hard copy and electronic documents, emails, photographs, minutes, audio or video recordings, diary entries, and file notes.

1.9 Roles and Responsibilities

Authorised Officer	Roles and Responsibilities
Council officers, Councillors, committee members, contractors, consultants and volunteers representing Council in an official capacity	<ul style="list-style-type: none"> • Be familiar with and follow Council's Access to Information Policy at all times • Support Council's commitment to open and transparent government and the proactive release of Council information • Surrender records to the Corporate Services and Governance Department when required for assessment of an access application. • Advise the public of the appropriate methods to request Council information • Protect the <u>privacy and personal information of members of the public</u>
General Manager	<ul style="list-style-type: none"> • Act as the principal officer in accordance with IPC requirements • Undertake internal reviews of formal access applications and privacy complaints as required • Provide leadership to Council in supporting the objects of this Policy and the GIPA Act, including a commitment to open and transparent government and the proactive release of Council information



Authorised Officer	Roles and Responsibilities
Manager Corporate Services & Governance	<ul style="list-style-type: none"> Review Policy at appropriate times in accordance with Council's Code of Conduct and changes to related legislation. Authorise release of information in response to formal and informal access requests Authorise updates to Council's disclosure log Authorise the release of other information in the public interest under proactive release provisions Provide advice to Council officials at a senior level regarding Access to Information and Privacy legislation
Governance Officer	<ul style="list-style-type: none"> Coordinate and process formal and informal access to information requests, including locating information, preparation of the information, third party consultation, conducting the public interest test, and keeping records of information released Maintain Council's disclosure log Provide advice to members of the public regarding Access to Information and Privacy legislation Provide advice to other Council officials regarding Access to Information and Privacy legislation and their responsibilities under this Policy

2. CONTENT

2.1 Principles

Council is committed to the following principles regarding public access to documents and information:

- open and transparent government
- consideration of public interest considerations for and against the release of information
- proactive disclosure and dissemination of information
- respect for the privacy of individuals.

2.2 Responsibilities of Council Officials

Council officers, Councillors, committee members, contractors, consultants and volunteers representing Council in an official capacity must be aware of and comply with the provisions of this Policy.

2.2.1 Maintaining Council records

Council's Records Management Operational Management Standard (OMS) requires all Council officials to follow Council's Records Management Practices, including making records to support the conduct of their activities and registering these records into Council's Records Management System, which is Technology One's CiAnywhere ECM module.

Compliance with the Records Management OMS is essential to uphold Council's ability to provide public access to information.

2.2.2 Surrendering Council records

It is an offence under the GIPA Act to conceal a record in order to prevent that record from being disclosed under an access to information request. Council officials must make records available to the Corporate Services & Governance Branch when the Corporate Services & Governance Branch is in the process of assessing an access to information request. This includes records which have not been registered into ECM, internal records sent between staff members and/or Councillors, and records which have a 'Confidential' classification.



The Corporate Services & Governance Branch will assess which records are relevant to the request and assess the suitability of each record for release. The Corporate Services & Governance Branch will consult with the Manager of the branch or the Councillor who created the records regarding any special considerations applying to the records before deciding the application.

2.2.3 Unauthorised release of information

Council officials should not provide access to Council information without the appropriate authorisation or delegation from the General Manager. This includes making information available for inspection, providing copies of information, and providing verbal information about a record. All requests for information from the public or from other government agencies should be directed to the Corporate Services & Governance Branch.

2.3 Ways to request access to Council information

Council provides access to information in four methods:

- Open Access Information
- Proactive Release of Information
- Informal Access Requests
- Formal Access Requests.

More information about these categories is available in Council's Information Guide.

2.3.1 Open access information

Open Access Information will be published on Council's website where practical. If the information cannot be published on the website, there will be an explanation on Council's Open Access Information page of how to request access to the information. Open Access Information is also available to inspect at Council offices. Inspection of the information is free of charge; however processing fees will apply for copies of the information.

Open Access Information is controlled by Council's Manager Corporate Services and Governance in consultation with other branch Managers who may prepare the information.

2.3.2 Proactive release of information

Proactively released information is information that Council chooses to make publicly available, such as frequently requested information or information of special public interest. Council's commitment to the Principles in Section 1 of this Policy requires Council to regularly consider whether new information can be made proactively available.

Proactive release of information is controlled by Council's Manager Corporate Services and Governance in consultation with other branch Managers who may prepare the information.

2.3.3 Informal access requests

Council is authorised to release information in response to informal requests. However, Council is not required to release information in response to an informal request, or to consider releasing information in response to such a request.

An informal request for access to information is required to be made in writing, including a customer name and contact information.

There is no legislated time frame in which Council must respond to an informal access request. Council will attempt to respond to the request within 20 working days, in line with Council's Customer Contact and Services Standards, however informal requests will be treated with lower priority than formal requests and other projects, at Council's discretion.



There is no facility for an informal access request to be escalated or treated as 'urgent'.

Council may require an informal access request to be re-lodged as a formal access request, depending upon the content of the request.

2.3.4 Formal access requests

Formal access requests will be processed in line with the requirements of the GIPA Act, including a processing time of 20 working days (with optional extensions).

Council requires a formal access request to be lodged if the request is for:

- another person's personal information (such as complainant's details)
- information relating to an insurance claim
- information relating to a companion animal.

Council may also require a formal access request under other circumstances, such as if the request will involve retrieval of a large number of documents or files.

For the application to be considered valid, the application must comply with the requirements of Section 41 of the GIPA Act, meaning that it must:

- be in writing
- include a \$30 application fee upon lodgement
- include a postal address within Australia
- contain enough detail to allow the required information to be identified.

2.4 Restrictions on access to information

Before deciding to release information through any of the four methods outlined above, Council will take into account a number of considerations about whether or not it is appropriate to release the information.

2.4.1 Public Interest Test

The Public Interest Test will be conducted by the Corporate Services & Governance Branch, with each formal and informal access request undergoing individual evaluation. The Public Interest Test will be informed by the GIPA Act, the *Government Information (Public Access) Regulation 2009* (Regulation) and associated publications.

The GIPA Act maintains that there is a general public interest consideration in favour of releasing information, and Council will take this into account, as well as any other considerations in favour of releasing information which Council finds relevant.

The only public interest considerations against disclosure of information which may be considered are listed in Section 14, Table 1 of the GIPA Act. Section 6 of that Table allows Council to consider provisions of other Acts which may prohibit disclosure of information.

Schedule 1 of the GIPA Act provides a list of information for which it is conclusively presumed that there is an overriding public interest against release.

Applicants and other members of the public are entitled to make submissions regarding why the release of information may or may not be in the public interest, and Council will consider these submissions as part of its assessment.



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
- any information might be misinterpreted or misunderstood by any person.

Council generally does not consider it to be in the public interest to release information which is to be used for marketing purposes, for example lists of addresses in order to distribute promotional material, or enquiries from property developers and real estate agents in order to negotiate sale of properties.

2.4.2 Third party consultation

Upon receipt of a request for a person's personal, business, or financial information, Council will take appropriate steps to consult with that person in writing regarding the request. Where the person cannot be located or is otherwise not contactable, the information will not be released.

If the person objects to their information being released, Council will take this into account during its assessment. If Council decides that it is overall in the public interest to release the information despite the objection, the person will be informed, and will have the opportunity to request a review of the decision, before the information is released.

2.4.3 Personal factors

Council reserves the right to consider personal factors surrounding a request for information, such as the identity of the applicant and the applicant's motives for requesting the information.

Both applicants and other members of the public are entitled to make submissions regarding personal factors pertaining to an application. However, Council is not required to investigate or validate allegations raised in this way.

2.4.4 Copyright

Council acknowledges that our customers require access to copyrighted material in order to conduct normal business, such as preparing development applications.

Some information, such as reports prepared by professional consultants, is protected by the *Australian Copyright Act 1968*. Plans are also protected by the Copyright Act under the definition of 'artistic works'. Where possible, Council will still attempt to provide access to these documents. However, before copies of these documents are provided, applicants will be required to sign a declaration acknowledging that copyright laws apply to the documents.

Customers who access copyright materials on Council's Development Application Tracker are also required to agree to terms and conditions before accessing the website.

Copies of documents provided to applicants will also be identified as protected by copyright with one of Council's digital stamps.

2.4.5 Excluded information

Council's Records Management System may contain information or copies of information from other agencies which are included in Schedule 2 of the GIPA Act ('excluded information'). All Schedule 2 information is included within Schedule 1 of the GIPA Act, meaning that it is conclusively presumed that there is an overriding public interest against release of the information.

If Council receives an application for excluded information of another agency, Council will consult with the other agency before deciding whether or not to release the information. If the other agency does not consent to release of the information, the information will not be released.



2.4.6 Information available through other means

Council may refuse to provide access to information that is available through other means or from other agencies. If the information is available from another Council department or another agency, the applicant will be directed on how to apply for the information through that department or agency.

2.4.7 Requests for technical advice

The Council official processing an access to information request is only able to provide advice regarding the existence of information in Council's Records Management System, and is not able to provide technical advice on the content or interpretation of the information. Where possible, the Corporate Services & Governance Branch will advise the customer to which Council department they should direct technical enquiries.

The Corporate Services & Governance Branch may also consult with other departments in order to obtain comments to include in response to a formal access request, in order to assist the applicant to interpret the information. However, this is not required under the GIPA Act.

2.4.8 Requests from Council officials

The rights and responsibilities of Councillors with regard to access to information are detailed in Council's 'Policy for the Provision of Information and Interaction Between Councillors and Staff.'

Council officials other than Councillors are required to have access to Council's Records Management System in order to perform their functions as Council officials. Council officials who require access to information for reasons of personal interest are required to lodge a formal or informal access request, which will be processed in accordance with this Policy.

Council officials requesting access to internal records such as personnel records of other Council officials are required to lodge a formal access request, which will be processed by the Corporate Services & Governance Branch in consultation with the Manager Human Resources.

2.4.9 Refusal of access

Council will attempt to provide access to as much information as is possible within the constraints of the public interest test and other relevant considerations. Sensitive information may be redacted from a record in order to allow the remaining parts of the record to be released.

In cases where no substantial information from a record can be released, Council will provide basic information about the record, such as the date the record was received or created and the format of the record.

If the disclosure of existence of a record would not be in the public interest, Council will make the decision to refuse to confirm or deny that the information is held by Council.

2.4.10 Repeated requests for the same information

In cases where a person (or a person's legal representative) makes a request for information, where a request by the same person for the same or substantially similar information has already been decided, and there is no reason to believe that Council would make a different decision on the new application, Council reserves the right to refuse to process the new application.



2.5 Processing fees

All processing fees for a formal or informal access request must be paid before access to the information is provided.

2.5.1 Formal access requests

Formal access requests will incur processing fees of \$30 per hour, charged at 15 minute intervals. The application fee will cover the first hour of processing. Council may require a 50% advance deposit to be paid before processing a formal access request, if the request is expected to take more than 4 hours to process.

A 50% discount in processing fees (not including the application fee) is available to not-for-profit organisations and holders of concession cards. No other discounts or waivers of fees are permitted.

Formal access requests are not subject to the archive retrieval fees or per-page processing fees outlined below.

2.5.2 Informal access requests

When files need to be retrieved from the Kingswood Government Records Repository (GRR), the applicant will be required to reimburse Council for the cost of the retrieval. Council may choose to waive the archive retrieval fee when the requested information was not located on the file.

Electronic copies and hard copies of documents are subject to processing fees accrued per page, based on page size. If multiple copies are required (such as both email and hard copies), customers will be required to pay for each method of copying requested. As an alternative, any quantity of documents may be loaded onto a CD for a fixed price. These fees are listed in Council's Operational Plan.

2.5.3 Requests from other government agencies

Processing fees will not apply to informal requests lodged by other government agencies in order to conduct government business. Other government agencies may also apply for access to Council information under the provisions of their own respective Acts.

2.5.4 Requests from not-for-profit organisations

Council will consider waiving processing fees for informal requests lodged by charities and other not-for-profit organisations, depending upon the volume of information requested and the time required to prepare that information. Formal access requests will be processed with a 50% discount as outlined above.

2.6 Forms of Access

Where possible, Council will provide information to customers in the customers' preferred format. The informal and formal access request forms allow customers to choose their preferred method of access.

2.6.1 Inspection of information

Open access information is required to be available for inspection at Council offices. As some types of open access information, such as public registers, require time and space to assemble and transport in hard copy format, inspection of information for formal and informal access requests is by appointment only.

Where open access information has been digitised, it is preferred for customers to inspect the information electronically rather than requesting printed copies.

Inspections are to be conducted in Council's interview rooms in the foyer only.



Preparing Council files for inspection often takes longer than to scan or copy the relevant pages and forward these to the customer. This causes delays in the processing of other applications by Council staff. In addition, customers usually request copies of information from the files after the inspection has been conducted. For this reason, inspection of files is not Council's preferred method of access, and Council reserves the right to refuse inspection as a method of access if preparing the files for inspection would cause an unreasonable diversion of Council resources.

2.6.2 Copies of documents

Council is able to provide hard copies of documents to customers, which can be sent by post or collected from the front counter once payment of the processing fee has been made. If documents are to be collected from the front counter, customers are required to advise when they will be attending Council's Customer Service Centre to ensure that the documents are available.

2.6.3 Copies in CD format

Council is also able to provide electronic copies of documents on a CD, which can be sent by post or collected from the front counter once payment of the processing fee has been made. If documents are to be collected from the front counter, customers are required to advise when they will be coming in to ensure that the CD is available.

2.6.4 Electronic access

Copies of documents can be sent to customers by email, as long as the total file size of the documents does not exceed Council's email size limit of 10MB. If an email address is included on the application form, then this will be treated as the preferred method of communication.

2.7 Reporting requirements

2.7.1 Disclosure log

Council is required by Section 25 of the GIPA Act to keep a record of access applications where:

- the application is a formal application
- the application is valid
- the information requested is not personal information of the applicant
- Council decided to release some information in response to the application
- the information may be of interest to other members of the public.

Council will use the above criteria to determine whether an application will be included in the disclosure log, which is published on Council's website.

There is a general presumption that an application will be included in the disclosure log, unless there is an overriding public interest consideration against inclusion.

The disclosure log contains the following information:

- determination date
- Council reference number
- description of information requested
- description of information released
- how to access the information.

Council may also decide to include a direct link to some or all of the information that was released.



Applicants and other members of the public are entitled to make a submission about whether or not they feel that information should be published in the disclosure log. Submissions must be based on one or more of the following grounds:

- the information includes personal information about the application (or a deceased person whom the applicant is representing)
- the information concerns the applicant's business, commercial, professional or financial interests
- the information concerns research that has been, is being, or is intended to be, carried out by or on behalf of the applicant.

Council may also choose to consider objections based on other grounds, such as those listed in Section 14, Table 1 of the GIPA Act, however is not required to do so. Council will conduct the public interest test in order to decide whether or not the information will be included in the disclosure log.

2.7.2 Annual report

As required by Section 125 of the GIPA Act, Council will submit an annual report to the IPC regarding its obligations under the GIPA Act. This annual report includes information such as the number of formal access requests processed in the financial year, and any steps which have been taken to allow additional information to be released as open access information. This report is also included in Council's Annual Report under the *Local Government Act 1993*.

2.8 Review rights

Section 80 of the GIPA Act contains a list of decisions which are reviewable decisions:

- a decision that an application is not a valid access application.
- a decision to transfer an access application to another agency, as an agency-initiated transfer.
- a decision to refuse to deal with an access application (including a deemed refusal).
- a decision to provide access to information in response to an access application.
- a decision to refuse to provide access to information in response to an access application.
- a decision that information is not held by Council.
- a decision that information applied for is already available to the applicant.
- a decision to refuse to confirm or deny that information is held by the agency.
- a decision to defer the provision of access to information in response to an access application.
- a decision to provide access to information in a particular way in response to an access application (or to refuse to provide access in a particular way).
- a decision to impose a processing charge or to require an advance deposit.
- a decision to refuse a reduction in a processing charge.
- a decision to refuse to deal with an access application because an applicant has failed to pay an advance deposit within the required time.
- a decision to include information in the disclosure log despite an objection by the applicant (or a decision that the applicant was not entitled to object).

An applicant or third party may request for any of the above reviews to be conducted by Council as an internal review, or by the IPC or the NSW Civil and Administrative Tribunal (NCAT) as an external review.

Requests for an internal review by Council are required to be in writing, received within 20 working days of the date the decision was made, and accompanied by an application fee of \$40. No fee is payable for a review of a decision to refuse to deal with an application if the decision was a deemed refusal because Council did not decide the application within time. There are no further processing fees applicable to an internal review.

An applicant may request a review by IPC or NCAT without first requesting an internal review by Council.



A third party must have an internal review completed by Council before requesting an external review by IPC or NCAT.

An internal review by Council must be completed by a Council official who is not less senior than the official who made the decision being reviewed. The internal review will usually be conducted by the Director Support Services or the General Manager, and will be completed within 15 working days (with optional extensions) of the request being received.

Council will supply records to the IPC or NCAT as requested during the course of an external review.

2.9 Review of this Policy

This Policy will be reviewed annually by the Manager Corporate Services and Governance as part of the review required by Section 7 (3) of the GIPA Act.