



# **POLICY – PUBLIC ACCESS TO COUNCIL INFORMATION**

Adopted by Council 13 February 2019, Resolution No 2019/014

## **1. POLICY OBJECTIVE**

The purpose of this Policy is to describe standards regarding public access to information and to assist in the processing of requests for such access.

## **2. POLICY PRINCIPLES**

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

- Open and transparent government
- Consideration of the overriding public interest test in relation to access requests
- Proactive disclosure and dissemination of information
- Respect for the privacy of individuals

## **3. POLICY SCOPE**

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

## **4. LEGISLATION AND REFERENCES**

### ***Commonwealth Acts and Australian Standards***

Copyright Act 1968

### ***NSW Acts, Codes and Practice Notes***

Privacy and Personal Information Protection Act 1998

Privacy and Personal Information Protection Regulation 2014

Health Records and Information Privacy Act 2002

Local Government Act 1993

Government Information (Public Access) Act 2009

Government Information (Public Access) Regulation 2018

Anti-Discrimination Act 1977

State Records Act 1998

Workplace Surveillance Act 2005

Public Interest Disclosures Act 1994

Environmental Planning and Assessment Act 1979

### ***Associated Documentation***

Narromine Shire Council Information Guide – Government Information (Public Access) Act 2009

Narromine Shire Council's Privacy Management Plan

## 5. DEFINITIONS

**Government Information** – means information contained in a record held by an agency.

**Personal information** – has the meaning given to that term in PIPPA being: Personal information is defined to mean information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) Whether the information or opinion is true or not; and
- (b) Whether the information or opinion is recorded in a material form or not.

## 6. ACCESSING INFORMATION

Council will deal with requests to inspect documents in accordance with the Government Information (Public Access) Act 2009 (GIPA). There is right of access under the GIPA Act to certain documents held by Council unless there is an overriding public interest not to do so. Any applications under the GIPA Act will be processed in accordance with the Act's requirements and a determination made to release the documents or refuse access on the basis of the relevant considerations under the Act. Charges for formal applications are in accordance with the GIPA Fees and Charges and include a \$30 application fee.

Council will also provide access to information under the NSW Privacy and Personal Information Protection Act (PPIPA) 1998, the NSW Health Records and Information Privacy Act (HRIPA) 2002, the Environmental Planning and Assessment Act 1979, the Local Government Act 1993 and the State Records Act 1998.

An individual has the right to access and amend records held by Council which may contain their personal details, matters relating to their business affairs or their health.

If information is held on individuals, request for documents, files or systems should be made under the GIPA Act. The Act provides for consultation with the individuals or relevant third parties prior to the disclosure of information.

## 7. INFORMATION AVAILABLE

Council publishes specific open access, or mandatory release information on its website unless there is an overriding public interest against disclosure or to do so would impose an unreasonable additional cost to Council. If costs are deemed to be unreasonable, Council will make the information available to the applicant in another format such as viewing a hard copy at Council's Administration Office.

Information identified as "Open Access Information" and is available on Council's website is:

- An information 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

Section 18 of the GIPA Act and Schedule 1 of the Government Information (Public Access) Regulation 2018 deems that certain documents held must 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 Council's Administration Office during ordinary office hours. Copies can be supplied for reasonable copying charges.

'Open' Informal Access documents are:-

**Information About Council**

- Council's current Information Guide
- Council's policy documents
- Council's disclosure log of access applications
- Council's register of government contracts
- Council's 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
- Such other government information as may be prescribed by the regulations as open access information
- Council's Code of Conduct
- Council's Code of Meeting Practice
- Council's Annual Report
- Council's Annual Financial Reports
- Council's Auditor's Reports
- Council's Management Plan
- Council's EEO Management Plan
- Council's Policy For Payment of Expenses and Provision of Facilities to Mayor and Councillors
- Annual reports of bodies exercising functions delegated by Council
- Any codes referred to in the LGA.
- Returns of the Interests of Councillors, Designated Persons and Delegates (this document is available for inspection at Council's offices only, and not on the website, in accordance with the Information Commissioner's guidelines)
- Agendas and Business Papers For Council and Committee Meetings (but not including business papers for matters considered when any part of a meeting is closed to the public)
- Minutes of Council and Committee Meetings, 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
- Reports by the Chief Executive of the Office of Local Government presented to a meeting of Council in accordance with section 433 of the LGA.
- Council's land register
- Councils' register of investments
- Council's register of delegations
- Council's register of graffiti removal work kept in accordance with Section 13 of the Graffiti Control Act 2008
- Council's register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA
- Council's register of voting on planning matters kept in accordance with section 375A of the LGA

### **Plans and Policies**

- Local policies adopted by Council concerning approvals and orders
- Council's plans of management for community land
- Environmental planning instruments, development control plans and contribution plans made under the Environment Planning and Assessment Act 1979 applying to land within Council's area

### **Development Applications**

- Development applications (within the meaning of the Environmental Planning and Assessment Act 1979) and associated documents received in relation to a proposed development including the following:-
  - 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 made after 1 July 2010 on development applications (including decisions made on appeal)
- The above does not apply to information that consists of
  - The plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
  - Commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret
  - Development applications made before 1 July 2010 and any associated documents received (whether before, on, or after) that date in relation to the application

### **Approvals, Orders and Other Documents**

- 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 Council
- Compulsory acquisition notices
- Leases and licences for use of public land classified as community land
- Performance improvement orders issued to Council under Part 6 of Chapter 13 of the LGA

## 8. 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 Council's resources. Council will explain to the applicant the reasons for applying any exemption.

Council will not classify information as exempt unless there are clear reasons for doing so. If documents partly contain exempt information, this information will be withheld and the remaining information 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 a list of public interest considerations against disclosure. These are the only considerations against disclosure that Council will consider in applying the Public Interest Test:-

- 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 the interstate Freedom of Information legislation

In applying the Public Interest Test, Council will not take into account:-

- that disclosure may cause embarrassment to, or a loss of confidence in, the Council
- that the 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 particulars personal to the applicant.

Under the GIPA Act, **Schedule 1**, there are 16 categories of information for which there is a **conclusive** presumption of an overriding public interest against disclosure:-

- Information subject to overriding secrecy laws
- Information referred to as "Cabinet information"
- Information referred to as "Executive Council information"
- Information that would constitute contempt of court or contravene any order or direction of a person or body having power to receive evidence on oath or infringe the privilege of Parliament
- Information subject to legal professional privilege
- "Excluded information" of an agency
- Documents affecting law enforcement and public safety
- Specific information relating to transport safety
- Specific information relating to adoption
- Specific reports concerning the care and protection of children
- Information contained in the Register of Interests kept by or on behalf of the Premier pursuant to the Code of Conduct for Ministers of the Crown adopted by Cabinet

- Specific information relating to Aboriginal and environmental heritage
- Information about complaints to the Judicial Commission
- Information about authorised transactions under Electricity Network Assets (Authorised Transactions) Act 2015
- Information about authorised transactions under Land and Property Information NSW (Authorised transaction) Act 2016
- Information provided to High Risk Offenders Assessment Committee

**Schedule 2** of the GIPA Act also includes the following “excluded information”:-

- Judicial and prosecutorial information
- Complaints handling and investigative information
- Competitive and market sensitive information
- Other information (specific information relating to NSW Trustee and Guardian functions, Department of Education and Training functions, Universities functions, NSW Electoral Commission (complaint handling, auditing, investigative and prosecuting functions) and the Commissioner of Victims Rights functions)

Formal applications for ‘excluded information’ are invalid under the Act. Council cannot publish and must refuse requests to disclose information in the above categories.

## **9. ACCESSING INFORMATION AND MAKING AN APPLICATION**

The public may obtain access to information as follows:-

- Council's website
- Written request to Council for the information and 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, and accompany the required fee and photocopying charges

To make a formal request for access to information under the GIPA Act, the “GIPA Act 2009 Access Application Form” must be completed (**Annexure A**). The Formal Application fee is \$30.00 and processing charges may be applicable. GST does not apply in relation to these charges. Council will acknowledge receipt of formal access applications within five working days. If a fee for photocopying is required, the applicant will be notified under the GIPA Act of the amount payable. Charges will be as per Council's Schedule of Fees and Charges and GST is payable.

## **10. TIME LIMITS**

Council will acknowledge receipt of formal access applications within five working days and further notify applicants of the decision on an application within 20 working days, unless the applicant agrees to extend the time.

Council may extend the time by up to 10 working days where consultation is required with a third party 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.

If Council does not decide the applicant's access application within the above timeframes, it is deemed 'refused' and Council will refund the application fee and the applicant may seek an internal or external review of this refusal. This will not apply if an extension of time has been arranged.

## **11. PROCESSING CHARGES**

Council may impose a processing charge for dealing with an access application at a rate of \$30 per hour for each hour of processing time for the application. The application fee of \$30.00 paid by an applicant counts as payment towards any processing charge payable by the applicant. Access to government information granted in response to an access application may be made conditional on payment of any processing charge imposed for dealing with the application.

Council may give notice to an applicant requiring the applicant to make an advance payment of a processing charge referred to as an "advance deposit". The period within which the application is required to be decided stops running from when the decision to require an advance deposit is made until payment of the advance deposit is received by the agency.

## **12. RIGHTS OF REVIEW AND APPEAL**

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

### **Internal Review**

Application to Council for an internal review. This review will be conducted by someone more senior than the original decision maker and the application will be accompanied by a \$40.00 fee. Applicants have 20 working days from notification that their original application has been refused to ask for an internal review.

### **Review By The NSW Information Commissioner**

If an applicant is not satisfied with the internal review, or does not wish one to be conducted, they can ask for a review by the NSW Information Commissioner. Applicants have 40 working days from notification that their original application has been refused to ask for a review.



**Review By The NSW Civil and Administrative Tribunal (NCAT)**

If an applicant is not satisfied with the decision of the Information Commissioner or an internal review by Council or if they do not want to take these options they can apply to the NCAT. If the applicant has already had a review by the Information Commissioner they have 20 working days from notification of the decision to make this application. If they have not had a review by the Information Commissioner they have 40 working days from notification of the decision to make this application.

<b>Prepared By</b>	<b>Adopted By Council</b>	<b>Version No</b>	<b>Review Date</b>
Corporate & Community Services Department	19 April 2011 (Res No 2011/170)	1.0	12 months
Corporate & Community Services Department	12 June 2013 (Res No 2013/202)	2.0	24 months
Corporate Community & Regulatory Services Department	14 December 2016 (Res No 2016/381)	3.0	24 months
General Manager's Department	13 February 2019 (Res No 2019/014)	4.0	4 Years

**Annexure A**

# Government Information (Public Access) Act 2009 ACCESS APPLICATION FORM

Please complete this form to apply for formal access to government information under the *Government Information (Public Access) Act 2009 (GIPA Act)*. If you need help in filling out this form, please contact the Executive Manager Corporate Governance on 6889 9999 or visit our website at [www.narromine.nsw.gov.au](http://www.narromine.nsw.gov.au)

## 1. Your details

**Surname:** ..... **Title:** Mr / Ms / Other .....

**Given names:** .....

**Postal address:** .....

**Postcode:** .....

**Day-time telephone:** ..... **Facsimile:** .....

**Email:** .....

Do you have special needs for assistance with this application:

.....  
.....

I agree to receive correspondence at the above email address.

## 2. Proof of identity

*Only required when an applicant is requesting information on their own behalf.*

**When seeking access to personal information, an applicant must provide proof of identity in the form of a certified copy of any one of the following documents:**

Australian driver's licence with photograph, signature and current address

Current Australian passport

Other proof of signature and current address details

## 3. Government Information

Please describe the information you would like to access in enough detail to allow us to identify it.

*Note: If you do not give enough details about the information, the agency may refuse to process your application.*

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 .....  
 .....  
 .....  
 .....  
 .....  
 .....

Are you seeking personal information? **Yes / No** (circle one)

**4. Form of access**

How do you wish to access the information?

- Inspect the document(s)  A copy of the document(s)
- Access in another way (please specify .....

**5. Application Fee**

I attach payment of the **\$30 application fee** by cash / cheque / money order (circle one).

*(Note: please do NOT send cash by post)*

**6. Disclosure log**

If the information sought is released to you and would be of interest to other members of the public, details about your application may be recorded in Council's 'disclosure log'. This is published on Council's website.

Do you object to this? **Yes / No** (circle one)

**7. Discount in processing charges**

You may be asked to pay a charge for processing the application (\$30 / hour). Some applicants may be entitled to a 50% reduction in their processing charges. If you wish to apply for a discount, please indicate the reason:

- Financial hardship – please attach supporting documentation (eg a pension or Centrelink card).

**AND / OR**

Special benefit to the public – please specify why below:

.....  
.....

Applicant's signature: .....

Date: .....

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Please post this form or lodge it at:- 124 Dandaloo Street, Narrromine, NSW, 2821

*General Information about the GIPA Act is available by calling the Information and Privacy Commission on 1800 472 679 or visit the IPC's website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)*

**Office Use Only**

*Date Application Received* .....

*File reference* .....