

Public Access to Council Information

Adoption Date:	25//07/2006
Amendment Date:	24/10/2006, 27/03/2007, 25/08/2009, 26/06/2012, 24/09/2013, 28/06/2018, 13/02/2023, 24/06/2024
Minute Number:	MIN06.938, MIN06.1386, MIN07.383, MIN09.1139, MIN12.671, MIN13.956, MIN18.510, MIN23.50, MIN24.338
Review Date:	01/12/2024
Directorate:	City Performance
Record Number:	POL23/43

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1. Purpose

To articulate Shoalhaven City Council's policy and principles in relation to public access to Council's documents, files and information and the process of managing requests for such access.

2. Statement

The Council authorises the release of information under routine business arrangements. The Council also is authorised, or in some cases is required to, release information under legislation such as the Environmental Planning & Assessment Act 1979 and the Government Information (Public Access) Act 2009 (GIPAA). GIPAA gives all members of the public a legally enforceable right of access to information created, received, and held by Government, including Councils.

2.1. Accessing Information

Any member of the public has a legal right to make application to Council for access to information that the Council holds. The Council also publishes a wide range of information on its website and makes much information available to members of the public on request. The Council will provide copies of requested information in digital form wherever possible. Where copies cannot be made available in digital form, information may be available for viewing in the Nowra Council Administration Building.

There are various avenues for obtaining information from Council. Some information such as advice, opinions, guidance on Council processes and procedures and some documents can be obtained by verbal enquiry over the telephone or counter. Council publishes a significant amount of information on its Website at www.shoalhaven.nsw.gov.au

This policy sets out the documents and types of information that are available to members of the public as a matter of routine, and how to access Council records.

Council will deal with requests for Access to Information in accordance with the GIPAA. All charges are detailed in Council's Fees and Charges.

There is a right of access under GIPAA to documents held by Council unless there is an overriding public interest not to do so. Any applications under GIPAA 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 that Act.

Shoalhaven City Council, in providing the public with access to information it holds, is guided by the following principles:

- open and transparent government
- a presumption in favour of disclosure unless there is an overriding public interest against disclosure
- equitable access to information, including for people with a disability
- a proactive approach to disclosure and dissemination of information
- timely, equitable and impartial processing of reasonable requests for information within relevant legislative and business frameworks, at the lowest reasonable cost
- respect for the privacy of individuals.

2.2. Related Documents and Relevant Legislation

- Government Information (Public Access) Act 2009 (GIPAA)
- Government Information (Public Access) Regulation 2009

- Privacy and Personal Information Protection Act 1998 (PPIPA)
- NSW Privacy Code of Practice (Local Government)
- Health Records and Information Privacy Act 2002 (HRIPA)
- State Records Act 1998 (SRA)
- Local Government Act 1993
- Environmental Planning and Assessment Act, 1979
- Australian Copyright Act 1968
- Companion Animals Act 1998
- Shoalhaven City Council Code of Conduct
- Shoalhaven City Council Privacy Management Plan

PROVISIONS

3. Information Available (No application)

3.1. Open Access information

The Council publishes 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 the open access information is not published on the website, Council will make it available for viewing at the Council Administration Office.

The open access information as defined in Section 18 of GIPAA is:

- Council's Policy documents;
- Council's Information Guide with information about the Council's structure and functions, and listing the type of information that is publicly available;
- Disclosure log of formal access applications where in Council's opinion the information released may be of interest to other members of the public;
- Register of Contracts worth more than \$150,000 between Council and private sector bodies;
- 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 GIPA Regulations 2009 requires that certain other documents held by Council are to be made publicly available for inspection, free of charge. (See Appendix 1)

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 Nowra Administration Office 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 of these documents can be supplied for reasonable copying or scanning charges.

3.2. Open Access information and Copyright

Whilst Council endeavours to make its open access information available to the public on its website and make information available for viewing at Council's Administration buildings, the intellectual property of a large amount of City information available for public access belongs to third parties and is the subject of copyright. Plans and reports submitted with development applications are an example. Access to this information is provided to members of the public in accordance with the GIPAA and other relevant legislation, such as the Environmental Planning and Assessment Act 1979. Copyright laws apply to this information and applicants are advised to seek the consent of the copyright owner before reproducing the information in any way.

“VIEW ONLY” access will be permitted for copyrighted information. Material such as architectural plans and other Development Application (DA) material can be protected by copyright regardless of whether they are marked as copyrighted. The presence of the notice only highlights the fact that the material is protected by copyright and acts as a reminder.

The copyright owners’ consent is required for any other purpose other than viewing. Obtaining permission from the copyright owner to make copies is the responsibility of the applicant.

Upon receiving the copyright owner’s consent, Council will then provide the document as requested for reasonable copying or scanning charges.

In addition, by agreeing to the Terms and Conditions of Council’s DA Tracking Website you are agreeing to not modify, copy, reproduce, republish, upload to a third party, transmit or distribute in any way the content of that website except as permitted by the Copyright Act 1968.

For more information, the Australian Copyright Council publishes a series of information bulletins on their website at www.copyright.org.au

3.3. Advice/Opinion from Council Officials

Often information in the form of advice, opinion or knowledge is sought from Council officials rather than inspection or acquisition of documents.

Rather than making an application under the GIPAA for this type of information it is recommended to make enquiries directly with Council officials. In some cases, the officer may need to research files or other data sources and information may not be available immediately. Depending on the nature of the enquiry, information might be given immediately in response to a casual phone or counter enquiry, or in a more formal manner in writing.

4. Accessing Council’s Other Information (application required)

4.1. Building Plans and other Property Development Information

Building and Development application information lodged after 18 September 2006 may be viewed on the “DA Tracking” page by following the prompts on Council’s Website.

Where access to the website is unavailable and for those documents lodged prior to September 2006 members of the public can lodge an ‘[Application for Records Search](#)’ to request specific documents including Development Approvals, Building Plans and Occupation Certificates. This application form can be used for access to property files for conveyance purposes by solicitors or conveyancers. It is advantageous for the applicant, if not the current owner of the subject property, to obtain the written consent of the current owner prior to lodgment of the application.

There is no application fee for inspection of documents, however, where a file/s needs to be recovered from offsite (via offsite storage or at the Ulladulla Office) a fee of \$30 will be charged. An hourly processing fee (\$60 per hour) will be charged for the provision of information under an informal GIPA application where the information requested is Development information prior to 2011. It should be noted that Council will not make copies of copyrighted information without the copyright owners’ consent. See Section 3.2

The application form can also be used for other purposes including establishing existing use rights, outstanding conditions of development consent, development rights and subdivision potential (rural).

The current Application for Records Search Form is available on Council’s Website.

4.2. CCTV Footage

Access to and use of recorded material will be facilitated by Council and will only take place:

- i. In compliance with the needs of the police in connection with their law enforcement functions; or
- ii. If necessary for the purposes of legal proceedings; or
- iii. Other lawful requirement

Recorded material will not be sold or used for commercial purposes or the provision of entertainment.

Access to footage by NSW Police is to be in accordance with the Code of Practice CCTV and the Standard operating Procedures CCTV

Any person applying for access to CCTV footage will be required to specify the following details in their application:

- (a) Approximate location footage was taken from; and
- (b) Approximate date and time footage was taken

Council may be limited in providing access to footage to applicants other than the NSW Police due to privacy considerations.

Further information can be obtained at <https://www.shoalhaven.nsw.gov.au/For-Residents/Community-Safety/CCTV-Safety-Cameras>

4.3. Informal Release of Council Information

Section 8 of the GIPAA provides that:

- (1) Council is authorised to release government information held by it to a person in response to an informal request by the person (that is, a request that is not a Formal Access Application) unless there is an overriding public interest against disclosure of the information.
- (2) Council can release government information in response to an informal request subject to any reasonable conditions that it thinks fit to impose.
- (3) Council cannot be required to disclose government information pursuant to an informal request and cannot be required to consider an informal request for government information.
- (4) Council can decide by what means information is to be released in response to an informal request.
- (5) Council can facilitate public access to government information contained in a record by deleting matter from a copy of the record to be released in response to an informal request if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record.

Council retains the discretion to require a formal application to be lodged in appropriate circumstances. Some examples may include where:

- 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, or
- the material is sensitive in nature and requires careful balancing of public interests.

4.4. Requesting Information Informally

There is no application fee for an Informal Access Application however, an hourly processing fee for the provision of information under informal GIPA application where the information requested is Development information from 2010 and prior, and is charged at \$60 per hour. Council may charge a fee for providing copies of documentation made available under GIPAA. Charges are listed in Council's adopted [Fees and Charges](#) and are GST inclusive.

Council provides a current [Informal Access Application form](#) on its Website. Whilst it is preferred that the application form be submitted, Council will also accept requests by mail or email. Applicants are to describe the requested information in enough detail to allow the Information and Privacy Officer to identify it, and where required provide written authorisations.

Response to informal applications is within 28 days of receipt by Council. If it takes longer than the 28 days, Council staff will provide a reason for the delay and estimate a time for a response.

An applicant who is not given information in response to an Informal Access Application will be informed of their right to make a Formal Access Application under GIPAA.

4.5. Formal Access Applications

If information cannot be accessed through any other ways, a Formal Access Application may be necessary. This should be a last resort under the GIPAA, and only necessary if you are asking for a large volume of information, if providing access would involve an extensive search, or if the information you seek involves personal or business information about third parties who must be consulted before the information can be released.

Applications must be in writing, and accompanied by a \$30 fee. Processing charges of \$30 per hour may also be levied, depending on the type and amount of information sought.

Council charges an hourly processing fee for the provision of information under informal GIPA application where the information requested is Development information from 2010 and prior, and is charged at \$30 per hour.

The current [Formal Access Application form](#) is available on Council's Website.

Council will notify applicants of the decision on a Formal application within 20 Council 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.

4.6. Rights of Review and Appeal for Formal Applications

Where a member of the public is refused access under a Formal Application under GIPAA, the Information & Privacy Officer will provide the applicant with written details of the reasons for refusal. An applicant who has been refused access by Council to information sought under a formal application has three options of review:

1. Applicants can apply to Council for an internal review. This is a review by someone more senior than the original decision maker and there is a \$40 fee. Applicants have 20 working days from receiving notice of a decision to ask for an internal review.
2. 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 40 days from being notified of a decision to ask for this review. Further information on external reviews by the Information Commissioner can be found at the Information and Privacy Commission's website located at www.ipc.nsw.gov.au

3. 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 NSW Civil and Administrative Tribunal (NCAT). If the decision is the subject of review by the Information Commissioner they have 20 working days from notification of the completion of the review of the Information Commissioner. If an applicant hasn't requested a review by the Information Commissioner they have 40 working days from being notified of the decision to request a review by NCAT.

Third parties have the right to seek an internal review of the decision by the agency to release information despite their objections.

An internal review of a decision cannot be applied for more than 20 working days after the decision is made or after a deemed refusal. An agency can agree to accept an application for internal review out of time.

The agency must make a decision on an internal review within 15 working days (the review period) after receiving the application for internal review.

The review period can be extended by up to 10 working days if consultation is required with another person with whom the agency has not previously consulted in relation to the application. The review period can also be extended by agreement with the applicant for review.

4.7. Personal and Health Information

An individual has rights to access and amend the personal and health information held by Council about him or her under the NSW Privacy and Personal Information Protection Act (PPIPA) 1998 and the NSW Health Records and Information Privacy Act (HRIPA) 2002.

Applications will be dealt with without excessive delay with charges and any applicable reductions, being the same as those for personal applications under GIPAA. In determining access to information under the PPIPA & the HRIPA, the exemptions of GIPAA apply in full. Additionally, the conditions and limitations of GIPAA apply to access requests concerning Health Privacy Principles 6, 7, and 8.

4.8. Information from Public Registers

Council holds and maintains many public registers which are accessible on request, and these are listed in Appendix 2. However, PPIPA requires stringent controls over the disclosure of any personal information from these registers. A person wishing to access their own personal information needs to prove their identity.

Council's public registers will be made available for public inspection on request. Copies of multiple entries from those registers may not be provided unless the Council has determined the proposed use of the copied information is consistent with the reason the register is kept.

Not all of Council's registers are public registers. More information about Council's registers can be found in [Councils Privacy Management Plan](#)

We only release property owner details if they are a business, corporation or Government Agency. In compliance with privacy laws, we do not release individual ownership details.

We do however, can forward correspondence from Council to the adjoining neighbour with the owner's consent. If consent is provided, we provide a letter with the requestor's details outlining that we have received an Informal Access Information Request requesting Council provide their contact

details and this is a courtesy notification that they are under no obligation by Council to contact the listed owner and as part of Council's Privacy Management Plan, no details have been provided to the owner. This is a fee of \$30 and is listed in Council's adopted [Fees and Charges](#).

4.9. Subpoenas and other Legal Discovery

Council has a legal obligation to comply with legal orders such as subpoenas, notices and other directions issued in respect of proceedings in courts and tribunals. A limited number of exemptions or privileges apply to the production of documents.

All legal orders should be referred to Council's Information & Privacy Officer who can be met with between the identified business hours found on Council's website. Council's Information & Privacy Officer has responsibility to receive and co-ordinate the gathering and production of documents required for the purposes of discovery or for production to courts and tribunals.

4.10. Public submissions on development applications

Council publishes submissions it receives on any development application lodged on or after 18 September 2006 on its website. This includes subdivision applications and applications to modify existing consents made under section 4.55 of the NSW Environmental Planning and Assessment Act.

The Council has resolved that submissions in response to Development Applications are published in their entirety and may be viewed on the "DA Tracking" weblink by following the prompts. However, there may be circumstances where Council has acceded to a request to suppress publication of a submission or made a decision not to publish a particular submission in full or part for another reason.

4.11. Identity of Complainants

Complaints provide a valuable source of information to Council and allow staff to perform their regulatory and enforcement roles more effectively. In accordance with decisions of the Administrative Decisions Tribunal, Council will not compromise the position of trust it holds with the local community or reveal personal information by divulging the identity of complainants without their permission, unless required to do so under law. Council will however reveal the substance of a complaint to the person being complained about in accordance with the principles of natural justice.

Applications for the name of a complainant will only be considered under a Formal Access Application. Whilst GIPAA provides a right of access to Council's documents, Council will consult with complainants and where an objection to the disclosure of identifying information is received, Council will not disclose that information unless it is believed that lawful obligation exists for such disclosure.

4.12. Public Register Access by Fire Service Brigades and Other Community Groups

Community groups are to submit their request access to registers using the Access to Public Registers Application form.

Fees and Charges associated with the provision of this information shall be determined by the CEO having regard to Council's adopted fees and charges.

In granting access to information, Council must be satisfied that:

- a) The personal information (if requested) is necessary for the exercise of the particular organisation's essential functions; and
- b) The personal information will only be used by the organisation in the exercise of their essential functions; and
- c) Disclosure would not be contrary to the public interest or legislative requirements.

Council will also provide information to the Rural Fire Service in accordance with the current Service Agreement.

4.13. Disclosure of Information to the Media

Other than information gained through authorised official public comment, media releases and those documents listed as Open Access Information, the Media may only obtain information by GIPAA application.

4.14. Disclosure of Information to Police and Law Enforcement Agencies

Council will cooperate with law enforcement agencies and will respond to any legal requirement or obligation to provide information or documents in a timely manner.

4.15. Disclosure of Information to Other Government Agencies

Council will cooperate with other government agencies in providing access to information where required or permitted by law. If the request is for access to personal information held by Council the requesting agency may be required to provide details of its powers to seek the information.

Council may provide information to another government agency or public utility where requested in writing and where it is satisfied that the information is reasonably necessary for the other agency's functions. Such agencies are normally subject to the same obligations under Privacy and Personal Information Protection Act 1998 or Health Records and Information Privacy Act 2002 in relation to that information as is Council.

4.16. Personal Information about Council Employees

Personal information about employees of Council is not available to the general public.

4.17. Information about Tenders and Contracts

Information about the name and price of a successful tenderer is publicly available on the finalisation of the tender and contract.

Under GIPAA Council is required to keep a register of contracts (Contracts Register) that records information about each contract to which Council is a party that has (or is likely to have) a value of \$150,000 or more. Council's Contracts Register is available on the Website <https://www.shoalhaven.nsw.gov.au/Council/Access-to-Information/Contracts-Register>.

Any request for additional information or access to other documents concerning tenders and contracts will be processed on receipt of a Formal Access Application. Information provided by the tenderer may be commercially sensitive and will be treated accordingly by Council.

4.18. Information About Insurance Claims

Information about insurance claims is not publicly available. Any request for information about insurance related matters will require the lodgment of a Formal Access Application form.

4.19. Information about Animals and Animal Ownership

Information held by the Council concerning companion animals must be handled in accordance with the Companion Animals Act, 1998 and cannot otherwise be disclosed to the public.

Section 89 (7) of the Act provides that the name of a registered owner can be disclosed to a person bringing legal action against the owner in respect of the animal's behaviour in limited circumstances. This is considered a lawful function of this Act.

4.20. Council's Information and Privacy Officer

The Information & Privacy Officer is available for consultation about any matter relating to access to documents and all Council staff are encouraged to consult with the Information & Privacy Officer on access issues.

Under this policy, where there is any doubt about providing access to documents, the Information Officer's advice must be sought before access is granted.

Each section of the Council, with consultation with the Information and Officer, has a responsibility to ensure that documentation as identified under Open Access is available on Council's website unless to do so would interfere unreasonably with the operations of Council, would result in Council incurring unreasonable costs, would be detrimental to the proper preservation of the record, or would involve an infringement of copyright.

The Information & Privacy Officer will make a final determination on the release of any document not listed under Open Access and advise the applicant accordingly. If the Information & Privacy Officer determines that the document is not available informally and that access is to be denied, the Information & Privacy Officer will advise the applicant in writing of the reasons for refusal and that if they wish, they can seek to obtain access to the specified document(s) under the provisions of a Formal Access Application.

The Information & Privacy Officer will deal with any request resulting from the above, made under GIPAA. In cases where the Information & Privacy Officer is not available enquiries may be directed to the Governance Coordinator or the Public Officer.

Contact Details

Shoalhaven City Council
Information & Privacy Officer
PO Box 42
NOWRA NSW 2541

Telephone: 1300 293 111
Email: council@shoalhaven.nsw.gov.au

4.21. Find out more about rights to information

Information & Privacy Commission NSW

- Go to www.ipc.nsw.gov.au
- Email ipcinfo@oic.nsw.gov.au
- Mail GPO Box 7011, Sydney NSW 2001
- Call 1800 472 679 between 9am to 5pm, Monday to Friday (excluding public holidays).

5. Implementation

The Business Assurance & Risk Department has the principal responsibility to implement this policy and associated procedures. All Council officials who provide or are required to provide Council information to the public also have a responsibility to implement the provisions of the policy.

6. Review

When information practices are reviewed from time to time, the Public Access to Council Information Policy will also be reviewed to ensure that the Policy is up to date.

Appendix 1 – Additional Open Access Information

Information which is available in accordance with Schedule 1 of Government Information (Public Access) Regulations 2009.

1. 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)
- Office 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

2. 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

3. 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 made on or after 1 July 2010 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

However, this clause does not apply to so much of the information referred to, as consists of—

(a) 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

(b) 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, or

(c) development applications made before 1 July 2010 and any associated documents received (whether before, on or after that date) in relation to the application.

(3) A local authority must keep the record

4. Approvals, Orders and Other Documents

- Applications for approvals under part 7 of the Local Government Act 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 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 Local Government Act
- 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
- Performance improvement orders issued to a council under Part 6 of Chapter 13 of the Local Government Act.

Appendix 2 – List of Council’s Public Registers

A public register is defined in section 3 of the PPIPA as

“a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee)”.

The public registers required to be held under the following Acts are:

Local Government Act:

- Section 53 - Land Register
- Section 113 - Records of Approvals;
- Schedule 3 (6) - Register of Pecuniary Interests;
- Section 328A - Register of current Declarations of Disclosures of Political donations

Environmental Planning and Assessment Act 1979 [EPA]:

- Section 4.58 – Register of consents and certificates
- Section 6.25 – Record of building certificates

Protection of the Environment Operations Act 1997 [POEO]:

- Section 308 – Public register of licences held

Government Information (Public Access) Act 2009

- Disclosure Log of Access Applications
- Contracts Register for Contracts \$150,000 and above

Government Information (Public Access) Regulation 2009

- 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 – Shoalhaven City Council exceeds the requirement to hold a register for voting on planning matters it records voting both for and against each item resolved by Council.

These registers can be found at the following at the following link:
<https://www.shoalhaven.nsw.gov.au/Council/Access-to-Information>

*Note — this is purely indicative. Council may, by virtue of its own practice, hold other public registers, to which PPIPA applies.

Members of the public may enquire only in accordance with the primary purpose of any of these registers. The primary purpose for each of these public registers is set out in Council’s Privacy Management Plan.