



**ACCESS TO  
INFORMATION POLICY**

## AMENDMENTS

DATE	AMENDMENT	SOURCE
3 November 2009	Adopted	CS/70 – Access to Information Policy
5 October 2010	Reviewed having regard to commencement of <i>Government Information (Public Access) Act 2009</i> on 1 July 2010	CS/55 – Access to Information Policy
1 March 2011	Reviewed and amended with regard to Division of Local Government Circular 10-30 dated 2 December 2010 which dealt with Councillors' right to access council information.	CS/9 – Councillor's Access to Information
7 June 2011	Reviewed and amended with regard to advice from the Office of the Information Commissioner concerning compliance with the <i>Copyright Act 1968</i> (Cth)	CS/30 – Access to Information Policy and Copyright
3 December 2013	Reviewed to consolidate guidelines and accord with Action Plan for implementation of recommendation of Internal Audit report on records management.	CS/75

## INTRODUCTION

### Policy Statement

Public access to documents and information held by Council is facilitated by the *Government Information (Public Access) Act 2009*; *Government Information (Public Access) Regulation 2009* and the *Local Government Act 1993*, subject to certain restrictions as set out in the Acts and Regulation and summarised in this Policy.

Council is required to comply with the Information Protection Principles prescribed by the *Privacy and Personal Information Protection Act 1998* relating to the management of personal information held by Council.

This Policy should be read in conjunction with Council's Privacy Management Plan, the Privacy Code of Practice for Local Government, together with Council's Publication Guide prepared in accordance with Section 20 of the *Government Information (Public Access) Act 2009*.

### Principles

Mosman Council is committed to being an open and accessible organisation. Managing and providing documents and information to the public is a complex issue having regard to the public interest and the obligations imposed upon Council by a range of legislation relating to privacy and access to Council information.

### Objectives

The objectives of this Policy are to:

- provide the public with a transparent process to access documents and information held by Council
- provide direction to Council staff in managing and providing documents and information to the public
- provide guidelines for managing access to documents and information having regard to the legislative framework
- ensure applicants are advised of exemptions to access and the public interest considerations in determining requests for access to documents and information
- ensure applicants are advised of the rights of review and appeal available under the *GIPA Act*

### Notification of Policy

Council gives notice of its Access to Information Policy on its website, vis:

“Council will, within any limits imposed under the *Privacy and Personal Information Protection Act*, maintain its Access to Information Policy. This provides that Council documents are available for inspection upon written request and on Council's website with some exceptions relating to confidential matters and personal matters, which would constitute an offence against an Act or found an action for breach of confidence.”

### Legislation

The *Government Information (Public Access) Act 2009* (the *GIPA Act*) and the *Government Information (Public Access) Regulation 2009* (the *GIPA Regulation*) provides right of access to certain documents held by Council unless there is an overriding public interest not to do so.

The *Local Government Act 1993 (the LGA)* contains provisions that confer rights of access on members of the public to information and documents, including:

- Section 9 Access to Business Papers of Open Council
- Section 11 Public access to correspondence and reports

The *Copyright Act 1968 (Cth)* governs the copying of information and contains provisions which confer exclusive rights to copyright owners which have the effect of prohibiting publication of copyright material on websites or provision of copies unless the copyright owner has expressly consented.

The *Environmental Planning and Assessment Act 1979 (the EPA Act)* contain provisions which require Council to make development applications (DA) and accompanying information, including plans, publicly available, and provides a right for people to inspect and make copies of the plans during the submission period.

The *Environmental Planning and Assessment Regulation 2000 (NSW) (the EPA Regulation)* provides that councils and other persons using the DA plans and documents in accordance with the *EPA Act* are entitled to claim an indemnity from the person who applied for the DA to cover costs they incur arising from claims they have infringed copyright in the plans and the DA, where these materials were being used in accordance with the *EPA Act*.

Other forms of legislation or documents which have an impact upon access to documents include:

- Privacy Code of Practice for Local Government – public registers
- *Privacy and Personal Information Protection Act 1998 – (the PIPP Act)*
- *Health Records and Information Privacy Act 2002 – (the HRIP Act)*
- *State Records Act 1998 - (the SRA)*

## **Responsibilities**

The Public Officer has a responsibility to assist the public in gaining access to public documents of the Council (*Section 343 LGA*).

# **Access to Information Guidelines**

## **Accessing Information**

Mosman Council is subject to NSW legislation that requires it to be open and accountable in the exercise of its functions, and to handle personal and health information in a fair and reasonable manner. Council will seek to ensure that legitimate requests for access to information are handled promptly and that members of the public are able to access information, subject to the public interest. In doing so, Council recognises that it must take into account the privacy of others, legal and commercially sensitive information.

These guidelines set out the documents and types of information that are available to members of the public as a matter of routine, and those that will not generally be available for inspection and copying. Where practicable, Council will deal with requests to inspect documents in accordance with the *GIPA Act* free of charge however a reasonable photocopying fee may be payable under the Act and for access to versions of documents that are neither current nor immediately preceding versions of the document and are not reasonably accessible. All charges are detailed in Council's Pricing Policy.

There is a 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 that Act.

Council also may provide access to information under other legislation. Under the *PPIP Act* and the *HRIP Act*, an individual also has a right to access and amend records held by Council which contain their personal details, matters related to their business affairs and any records containing information about their health. Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the *GIPA Act*. The Act provides for consultation with other affected parties prior to disclosure of information concerning their personal or business affairs. Under the *State Records Act 1998 (the SRA)* Council is required to give an access direction (whether the records are open or closed) for all their records that are at least thirty (30) years old in what is described as the "open access period". Under the *EPA Act and EPA Regulation* there is a right to access Development Application registers and documents held by Council subject to restrictions set out in s.268(3).

### Information Available

Council publishes open access, or mandatory release, information on its website unless there is an overriding public interest against disclosure or do so would impose an unreasonable additional cost on Council. In respect of the latter the Council will make the information freely available in another format eg hard copy at the Council Administration Office. The open access information is:

- Council's policy documents
- a publication 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
- a register of contracts worth more than \$150,000 that councils have with private sector bodies
- a 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 the *GIPA Regulation* requires that certain documents held by Council, are to 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 the offices of the Council during ordinary office hours or at any other place as determined by the Council. Any current and previous documents of this type may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges.

These documents are:

1. Information about Council
  - The model code of conduct prescribed under section 440(1) of the *LGA*
  - Council's adopted Code of Conduct
  - Code of Meeting Practice
  - Annual Report
  - Annual Financial Reports
  - Auditor's Report
  - Integrated Planning and Reporting - Community Strategic Plan, Delivery Program and Operational 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 *LGA*
- Pecuniary Interest Returns of Councillors, Designated Persons and Delegates
- Agendas, Business Papers and Minutes of Council/Committee meetings (except meetings that are closed to the public)
- Division 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, eg:

- 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 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

The public may access documents and information relating to development applications from its Development Application register using the DA Tracker service on Council's website. Users do not need to make application to access these documents and information but need to accept terms and conditions prior to being granted access. Users may print off documents (excepting plans).

## 4. Approvals, Orders and Other Documents

- Applications for approvals under part 7 of the *LGA*
- Applications for approvals under any other Act and any associated documents received
- 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 *LGA*
- Orders given under the Authority of any other Act
- Records of Building Certificates under the *EPA Act*
- 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

In addition, from time to time Council will make as much other information as possible publicly available in an appropriate manner, including on their website. The information will be available free of charge or at the lowest reasonable cost. Such other information includes frequently requested information or information of public interest that has been released as a result of other requests.

Council will endeavour to release other information in response to an informal request, subject to any reasonable conditions as Council thinks fit to impose. However, notwithstanding the lodgement of an informal application, Council may require a formal access application to be submitted where the information sought:

- is of a sensitive nature that requires careful weighing of the considerations in favour of and against disclosure, or
- contains personal or confidential information about a third party that requires consultation, or
- would involve an unreasonable amount of time and resources to produce.

### **Access to information subject to copyright**

Copies of documents provided are given for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright laws still apply to each document. The copyright owner's consent is required if any part of the document is used for any other purpose.

Copyright protected material submitted to Council is not to be published, copied or distributed unless Council has copyright owner's express consent to do so. Such material however may be viewed by the public.

Copyright protected material submitted to Council as part of a Development Application (DA) may be published, copied or distributed during the submission period for the DA only (having regard to the indemnities offered from copyright infringement by cl.57 of the *EPA Regulation*) and in accordance with Council's ECM User Guide on 'Handling Plans and Copyright Protected Documents for Development Applications'.

Accordingly, this Policy provides that without copyright owner's consent:

- DA notification plans will be available and printable on the Council's website only during the DA submission period
- Other plans not showing the internal configurations and specifications of residential developments and other documents associated with the DA and being identified as copyright protected material will be available and printable on the Council's website only during the DA submission period
- Plans showing the internal configurations and specifications of residential developments will be available on a 'view only' basis on the Council's website only during the DA submission period
- All DA documents except plans showing the internal configurations and specifications of residential developments may be viewed outside of the DA submission period on Council's



public access terminals in the Civic Centre upon application under the *GIPA Act*. No copyright protected material may be printed

- Public access to hard copy DA files may be provided upon application under the *GIPA Act* and will be vetted to ensure that plans showing the internal configurations and specifications of residential developments are not made available outside of the submission period for the DA. No copyright protected material may be copied from the file. Hard copy files will only be provided if they are yet to be digitised and not in use by staff

Any other identified copyright protected material relating to matters other than DAs will not be published on the Council's website under the *GIPA Regulation*.

### **Resident/Public Submission letters**

In accordance with Schedule 1 of the *GIPA Regulation*, submission letters concerning development applications are open access information and are publicly available.

Submission letters (including the identifying particulars of the authors) to Council on matters of policy or proposals (other than development applications) including LEP/DCP changes, draft management plans, matters on exhibition and other public consultations are deemed to be for the purpose of public process and are therefore available for inspection. Council will give consideration to the "public interest" and requests for confidentiality by submitters in determining access to submission letters.

All invitation for public submissions will include a statement that their submissions including identifying particulars will be made public. The provisions of the *GIPA Act* may, after due process, result in submissions marked confidential by the writer being released to an applicant.

### **Plans showing internal configurations and specifications of residential developments**

The *EPA Act* provides for access to all documents associated with a development application. Schedule 1[3](2)(a) to the *GIPA Regulation* states that the open access requirements do not apply to internal floor plans or specifications for any residential parts of a proposed building, other than plans showing the height and external configuration of the site. Whilst Council does not have to make such internal floor plans or specifications publicly available, it has applied the public interest test and determined that there is no overriding public interest against disclosing the plans that outweighs the general presumption in favour of release.

It was further determined that the public benefit ends upon determination of the development application and such internal plans should then be no longer publicly available. However, having regard to the provisions of the *EPA Act* which require Council to make DAs publicly available during the submission period only, access to such internal plans should end at the close of the submission period for the DA.

This Policy provides for public access to plans showing internal configurations and specifications of residential developments however such plans may only be copied upon production of owner's consent and subject to copyright laws and further subject to public access being limited to the submission period for the DA.

### **Disclosure of information not publicly available**

Council staff when registering a document or information in ECM, will apply a classification to that 'document' that will determine whether the document is publicly available. Any documents classified as not publicly available or confidential will not be identified or visible when the public view the file on either ECM or DA Tracker.



However, files viewed on the public access terminals in the foyer of the Civic Centre will identify documents not publicly available and the reason for being not publicly available, noting that complaints are specifically excluded from identification. Documents classified as not publicly available (excepting complaints) will appear on the list of documents searched for providing a précis containing only the document number and the reason why it is not publicly available based on the classification it is given; and the date of the document. For example:

Doc. No. 2345678 not publicly available - Legal advice	30/07/2009
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Should an applicant viewing the files on the public access terminals wish to access any of the not publicly available documents identified on the list, staff will review the document/s to ensure that the classification is correct and still appropriate. The ability of staff to review classifications on the spot will depend upon the number of documents identified and available resources. If the classification remains correct and the applicant still requires access, then the applicant will need to make a formal access application under Section 9 of the *GIPA Act* which may require consultation with other parties.

### Access to paper based files

As from 1 October 1998 Council ceased placing "hard copy" documentation on its physical (paper) files. Information is now stored electronically in Council's document management system and public access monitors are available in the Civic Centre foyer to allow public access. Documentation prior to October 1998 will be made available to view in hard copy. However, paper based files may be digitised before being made available electronically in order to preserve their integrity. Information after that date will be accessible via the public access terminals. Records staff are available to assist applicants in searching for documentation on the computer.

Where a digitised paper based file is not available, applicants viewing 'hard copy' documentation on a physical paper file will need to produce a photo identification to be retained by Council staff for the duration of the viewing session.

As some files are stored off site or are in use by Council officers, it may take up to five working days for a file to be made available for viewing. Photocopies from a file can be arranged (subject to relevant legislation/copyright and fees in accordance with Council's Pricing Policy).

### 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 the Council's resources.

Council will always explain to the applicant its reasons for applying an exemption. Council will not classify information as exempt unless there are clear reasons for doing so. Where documents contain exempt information, any remaining information contained within the requested document will be available under the *GIPA 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 an exhaustive list of public interest considerations against disclosure. These are the **only** considerations against disclosure that Council will consider in applying the public interest test.

Considerations are grouped under the following headings:

- responsible and effective government
- law enforcement and security
- individual rights, judicial processes and natural justice
- business interests of agencies and other persons
- environment, culture, economy and general matters
- secrecy provisions (in legislation other than those listed in Schedule 1)
- exempt documents under interstate Freedom of Information legislation

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
- that any 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 any factors personal to the applicant.

Under the *GIPA Act* there are 12 categories of information (eight of which appear to affect local government) for which there is a conclusive presumption of an overriding public interest against disclosure. These eight are:

1. Information subject to an overriding secrecy law (26 specifically named Acts)
2. Information subject to the direction or order of a court or other body with the power to receive evidence on oath
3. Information subject to legal professional privilege
4. 'Excluded information' (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information and information in relation to specific functions of the Public Trustee)
5. Documents affecting law enforcement and public safety
6. Specific information relating to transport safety
7. Specific reports concerning the care and protection of children
8. Specific information relating to Aboriginal and environmental heritage

Generally under the *GIPA Act*, Council must not publish and must refuse requests to disclose information in the above categories. Formal applications for 'excluded information' are invalid under the Act.

In dealing with informal applications Council will apply a similar decision making framework.

On balance, it can be expected that documents and information relating to some matters will not be made publicly available, noting however that applications for access would be treated on their merits in light of the public interest considerations and privacy principles. Examples of documents and information that may not be made publicly available include:

- Defamatory or possibly defamatory documents and information
- Intimidatory or inflammatory documents
- Data and lists of documents accessed by the public through systems reports in the course of viewing files electronically (As this information can contain personal information, requests to obtain copies of this information may be refused under privacy principles. Merge data lists containing names and addresses created after 1 August 2009 are classified as not publicly available. Data created prior to this date may be classified as publicly available; however the public may not be provided with a copy of that data)
- Complaints and investigation of complaints (The identity of complainants should not be revealed unless the complainant has provided written consent to do so. The substance of the complaint will be made known to the person being complained about in accordance with

principles of natural justice. However, the identity of a complainant will sometimes become evident during an investigation)

- Documents that deal with personnel matters concerning particular individuals (including Council staff personnel files)
- Documents that deal with the personal hardship of any resident or ratepayer
- Documents that deal with trade secrets (such as secret production processes or technical information of value to commercial competitors)
- Documents, the disclosure of which would constitute an offence against an Act or found an action for breach of confidence (such as contracts containing confidentiality clauses)
- Documents subject to legal professional privilege (that is, communications and documents brought into existence for the dominant purpose of obtaining legal advice or in connection with legal proceedings or on matters of potential liability of Council)
- Documents that relate to a matter that was received or discussed at a meeting of Council when the meeting was closed to the public
- Personal/client files kept in Council's Library/Local Studies Collection for safekeeping

The above list of documents that may not be publicly available is not meant to be exhaustive or definitive, but indicative only of the circumstances where public access may not be granted.

### Accessing Information and Making an Application

The public may obtain access to information as follows:

- by searching the Council's website to see if it is already available
- by contacting Council and requesting the information. 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**, for example because consultation with a third party is required

### Councillor Access to Information

Councillors' right of access to Council information is dealt with in the Protocol for Interaction between Councillors and Staff annexed to Council's adopted Code of Conduct. This provides for Councillor access to all Council files, records or other information identified in Schedule 1 of the *GIPA Regulation*, or which relate to a matter currently before the Council.

Councillors who have a personal (as distinct from civic) interest in a document of Council have the same rights as any other person, and such requests for access to information by Councillors should be made in accordance with this Policy.

### Technical advice

Technical advice regarding a matter not currently before Council may require the making of an appointment with the relevant officer, as the officer may not be available at the time of viewing files. Records staff are unable to provide advice on the content of files or related technical matters.

### Fees

To make an informal request for access to information under the *GIPA Act* Council may require the completion of an 'Application to Access Council Information (GIPA Act)' form available on Council's web site. No fee is required on application.

To make a formal request for access to information under the *GIPA Act*, the 'Application for Formal Access to Council Information (Section 9 GIPA Act)' must be completed. The Formal Application fee is \$30.00 and processing charges may be applicable (there is no GST in relation to these charges). An acknowledgement of such application will be provided by Council within five working days.

If a fee for photocopies of documents provided under the *GIPA Act* is payable, it will be listed in Council's Pricing Policy and is GST inclusive.

### Time Limits

In respect of formal applications, Council will notify applicants of the decision on an application within 20 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.

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

### Disclosure Log

Formal access applications will be published on a disclosure log on Council's website where, in the Council's opinion, the information released may be of interest to other members of the public and reported upon annually.

### Rights of Review and Appeal

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

- I. 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.
- II. 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 eight weeks from being notified of a decision to ask for this review.
- III. 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 Administrative Decisions Tribunal (ADT)**. If the applicant has already had a review by the Information Commissioner they have four weeks from notification of the decision to make this application. If they haven't had a review by the Information Commissioner they have eight weeks from notification of the decision to make this application.

It is noted that there are no rights of review in respect of informal applications, however the applicant may make a formal application at any time.

### **Reporting**

Formal access applications have to be reported annually to the Information Commissioner within four months of the end of the reporting year (30 June).

## **REVIEW**

This policy will be reviewed annually to ensure that it:

- meets the objectives of the legislation
- has regard to guidelines issued by the Information Commissioner
- facilitates access to information

## **FURTHER CONTACT**

Any enquiries in relation to this policy may be directed to Council's Manager Governance on 9978 4000 or [council@mosman.nsw.gov.au](mailto:council@mosman.nsw.gov.au)

Further information relation to access to government information is also available from the Office of the Information and Privacy Commission on 1800 472 679 or [pcinfo@ipc.nsw.gov.au](mailto:pcinfo@ipc.nsw.gov.au)