



# **Access to Information Policy**

Public Document

Version: 6 / ECM Document Set ID: 2324076

Adopted by Council on 3 November 2009

Reviewed by Council on 5 March 2024

Ownership: Manager Governance

## TABLE OF CONTENTS

Purpose .....	1
Objectives .....	1
Principles.....	1
Scope .....	1
Responsibilities.....	1
Accessing Information .....	2
Information Available .....	3
Exemptions to Access .....	3
Open Access Information - Personal Information .....	4
Requests to withhold information from publication.....	4
Access to information subject to copyright .....	5
Technical advice .....	6
Fees.....	6
Time Limits .....	6
Disclosure Log.....	6
Rights of Review and Appeal.....	6
Councillor Access to Information .....	7
Reporting .....	7
Related documents .....	7
Review.....	8
Contact.....	8
Amendments.....	8

## Access to Information Policy

---

### Purpose

---

The purpose of this Policy is to set out the principles adopted by Mosman Council (Council) that guide the provision of access to information and the process for managing access requests.

### 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

### Principles

---

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.

In providing access to information, Council 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

### Scope

---

This policy applies to all staff, Councillors and contractors of Mosman Council, and to all members of the public.

### 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 Policy

---

The General Manager will delegate responsibilities to staff to determine applications under the GIPA Act. These delegations are detailed in Council's Register of Delegations of General Manager functions to staff.

Staff, Councillors and contractors of Council are responsible for upholding the principles and processes of this policy as required in their daily work.

The Information Management team within the IT Services business unit provides services in support of this policy, with the oversight of the Manager Governance in matters relating to formal access applications.

## Accessing Information

---

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

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.

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 SR Act Council is required to give an access direction (whether the records are open or closed) for all their records that are at least 20 years old in what is described as the "open access period". Access directions determine public access to State records. Council is also required to develop a plan for the transfer of State records required as State archives to the State Archives Collection.

---

## Access to Information Policy

---

Under the EPA Act and EPA Regulation there is a right to access Development Application registers and documents held by Council subject to restrictions.

### Information Available

---

Council publishes open access, information on its website unless there is an overriding public interest against disclosure.

Council's Information Guide prepared in accordance with Section 20 of the GIPA Act identifies, *inter alia*, the information Council makes publicly available including open access and proactive release information as required under the LG Act and certain documents identified in Schedule 1 of the GIPA Reg. The Information Guide is reviewed administratively from time to time and is published on Council's website.

In addition, from time to time, Council will make as much other information as possible publicly available in an appropriate manner, including on its 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.

### 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.

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.

---

## Access to Information Policy

---

### Open Access Information - Personal Information

---

#### Planning related

Council publishes, for inspection and public consultation, written documentation and plans relating to planning matters including proposed new policies, amendments to existing policies, development applications, modification of consents, review of determinations, voluntary planning agreements and planning proposals.

Applicants, property owners and professional advisors of the above listed applications give authorisation to Council under the application process to the release all documents and plans, including third party plans and internal plans of the proposal for the purposes of notification and beyond. Documents and plans relating to development applications can be accessed through Council's DA Tracker system accessible on Council's website.

The public may access documents and information relating to development applications from the DA Tracker system accessed via Council's website. Users do not need to make an application to access these documents and information but are granted access subject to privacy and copyright disclaimers.

All submissions received as part of a community consultation process will be considered to be open access information and will be made available for release to Councillors, Council staff, contractors or consultants, Local Planning Panel members and the general public in its entirety.

#### Non-planning related

Council also publishes, for inspection and public consultation, written documentation (including but not limited to proposed new or amended policies, plans and strategies).

The public may access documents and information relating to exhibited documents through Council's website and/or Council's Community Engagement hub – Your Voice Mosman. Users do not need to make an application to access these documents and information.

All submissions received as part of a community engagement process will be considered to be open access information and any such submission will be made available for release to Councillors, Council staff, contractors or consultants and the general public in its entirety.

### Requests to withhold information from publication

---

#### 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.

## **Access to Information Policy**

---

All invitations 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.

Requests from authors of planning related submissions to withhold any personal information from publication will be denied by Council as the information is considered open access information and the authors have acknowledged in lodging a submission that any personal information in a submission will be made available for public view. The authors, at the time of lodging, have the option to not include that personal information.

Requests from authors of non-planning related submissions to withhold from publication any information they consider to be confidential or privileged including their address or contact details, will generally be denied for the same reasons as requests from authors of planning related submissions. However, should an author specifically request certain information not be published, at the time of lodging the submission, indicating the reason/s why this information should not be made publicly available, Council will apply the public interest test to determine the request.

Council reserves the right to remove or redact submissions (or petitions) if it becomes aware of submissions containing potentially defamatory material or third-party information that is not already in the public domain.

### **Development application floor plans**

Requests from applicants and owners to withhold development application floor plans (showing internal configuration of residential developments) from publication following determination of the application will be denied by Council. Council has applied the public interest test to the publication of floor plans both before and after the determination of a development application and finds that the considerations that affected residents be able to understand the building use, and to act should the use change override the considerations against disclosure.

### **Other information**

All other requests to withhold from publication, information contained in any other record, will be considered and determined by application of the public interest test.

### **Personal Safety**

Council will otherwise only withhold personal information required to be published under the *Local Government Act 1993* should a person provide evidence to Council that disclosure would place or places the personal safety of the person or of members of the person's family at risk as provided for under Section 739(1) of the *Local Government Act 1993*.

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

---

The intellectual property of certain Council information available for public access belongs to third parties and is the subject of copyright. Access to this information is provided to the public in accordance with the *GIPA Act* and other relevant legislation, such as the *EPA Act*.

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.

Copyright protected material may however be viewed by the public.

## Access to Information 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

---

Most access requests have no associated costs. Any costs associated with access requests, such as application, printing and file retrieval fees are listed in Council's Schedule of Fees and Charges available on our website.

### Time Limits

---

Informal access applications are processed within 10 working days from receipt in accordance with Council's Customer Service Charter.

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.

### Disclosure Log

---

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

### Rights of Review and Appeal

---

Where a member of the public is refused access under a formal application under section 41 of 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.

1. Applicants can apply to Council for an **internal review**. This is a review by someone more senior than the original decision maker. 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 working days from being notified of a decision to ask for this review.
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 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.



## Access to Information Policy

---

There are no rights of review in respect of informal applications, however the applicant may make a formal application at any time.

## Councillor Access to Information

---

Councillors' right of access to Council information is dealt with in the Protocol for Interaction between Councillors and Staff. This provides for Councillor access to all Council files, records or other information identified in Schedule 1 of the GIPA Reg, 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.

## Reporting

---

Formal access applications are reported annually to the Information Commissioner within four months of the end of the reporting year. This report is also included in Council's statutory Annual Report.

## Related documents

---

The Policy should be read in conjunction with the following Council policies and documents:

- Access Council Information webpage
- Code of Meeting Practice
- Community Engagement Policy
- Complaints Management Policy
- Customer Service Charter
- Disability Inclusion Action Plan 2022-26
- Information Guide (s20 GIPA Act)
- Privacy Management Plan
- Protocol for Interaction between Councillors and Staff
- Records and Information Management Policy
- Schedule of Fees and Charges

The Policy should be read in conjunction with the following documents/legislation:

- Companion Animals Act 1998 – **CA Act**
- Copyright Act 1968 (Cth)
- Environmental Planning and Assessment (EPA) Act 1979 - **EPA Act**
- Government Information (Public Access) Act 2009 – **GIPA Act**
- Government Information (Public Access) Regulation 2018 – **GIPA Reg**
- Health Records and Information Privacy Act 2002 – **HRIP Act**
- Information Access fact sheets issued by the Information and Privacy Commission
- Information Access Guidelines issued by the Information and Privacy Commission
- Local Government Act 1993 - **LG Act**
- Privacy Code of Practice for Local Government issued by IPC
- Privacy and Personal Information Protection Act 1998 – **PPIP Act**
- State Records Act 1998 – **SR Act**

## Access to Information Policy

---

### Review

---

This policy will be reviewed every four years or as directed by the Executive team.

### 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 Information and Privacy Commission on 1800 472 679 or [pcinfo@ipc.nsw.gov.au](mailto:pcinfo@ipc.nsw.gov.au)

### Amendments

---

Date	Amendment	Reference
3 November 2009	Adopted	CS/70
5 October 2010	Reviewed having regard to commencement of <i>Government Information (Public Access) Act 2009 on 1 July 2010</i>	CS/55
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
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 (Cth)</i>	CS/30
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
5 March 2024	General review to update and refocus.	CS/6