

Access to Information Policy

Sutherland Shire Council

Document review and approval

This document has been approved by

	Name	Minute No	Date approved
1	Finance, Resources & Management Committee – FIN235-07	1095	25 June, 2007
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3			

Revision history

Version	Author	Date	Revision
1	Manager Administration	18 June, 2007	Original Version
2	Governance Manager	24 May, 2010	Policy updated to reflect new GIPA Act
3	Governance Manager	22 May, 2012	Reviewed by Manager under Annual review process, policy is current however minor amendment made to reflect the change of name of Publication Guide to Agency Information Guide as required under GIPA Act

PART 1 - PRELIMINARY

1. Background and Purpose

- 1.1 The aim of The Government Information (Public Access) Act 2009 (GIPA Act) is to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective. The object of this Act is to open government information, held by State Government departments, State Ministers, courts, public authorities and local authorities, to the public by:
- authorising and encouraging the proactive public release of government information by agencies, and
 - giving members of the public an enforceable right to access government information, and
 - providing that access to government information is restricted only when there is an overriding public interest against disclosure.
- 1.2 The Council is also required to provide an Agency Information Guide on its website which sets out the classes of information available, and a Disclosure Log listing information made available in response to requests for information made under the Act.
- 1.3 Sutherland Shire Council is defined as a local authority under the GIPA Act, as such; Council is required to comply with the Act.

2. Objective

- 2.1 Sutherland Shire Council is committed to the principle of open and transparent government.
- 2.2 The objective of this policy is to describe Council's principles regarding public and Councillor access to information and to facilitate the processing of requests for such access under the Government Information (Public Access) Act 2009. This policy is to be read in conjunction with the *Access to Information Guidelines*.

3. Application

- 3.1 This policy applies to all Councillors, Council staff and members of the public. Organisations such as staff unions and the SSC Employees' Social and Welfare Centre are regarded by the Council as independent for the purposes of GIPA applications.
- 3.2 This Policy applies in conjunction with the *Councillors Access to Information and their Interaction with Staff Policy*. Council's *Code of Meeting Practice* provides an additional procedure for Councillors to obtain access to Council information if the Mayor or General Manager refuses the requested access.

4. Definitions

Agency Information Guide - sets out the kinds of information that council has available and the terms on which it will make the information available, including any charges that may be necessary.

Council - means Sutherland Shire Council

Disclosure Log - a record of information about access applications made to the agency that the agency decides by deciding to provide access (to some or all of the information applied for) if the information is information that the agency considers may be of interest to other members of the public.

Information - means information contained in a record held by Council.

GIPA Act - Government Information (Public Access) Act 2009 a NSW Act.

Personal information - information of private concern to an individual, such as medical history, family or domestic relationships, income, assets, financial records or social welfare entitlements. Information is not “personal” if it merely contains reference to a person’s name.

Register of Contracts - a register of Council contracts that records information about each contract to which the Council is a party that has (or is likely to have) a value of \$150,000 or more.

Right to Information Officer - are those staff members who have been given specific authority and responsibility to meet some of their agency’s day-to-day obligations under the GIPA Act. This includes dealing with formal applications for access to information as each RIO is directed to undertake.

PART 2 - POLICY

5. Available Information

- 5.1 Council is committed to providing, as far as practicable, an open environment which enables members of the public to access non-personal information held by Council without recourse to formal GIPA access applications. Information is made available in the Agency Information Guide and Disclosure Log on the Council's website. Information may also be released administratively on request.
- 5.2 Decisions as to the release of requested information that is not available on the Council's website or in other publications are made within the guidelines of the GIPA Act, taking into consideration the factors relating to exemptions and public interest.

6. Agency Information Guide

- 6.1 Council will develop and publish an Agency Information Guide in accordance with s20 of the GIPA Act. The guide explains the information that the public can access and sets out classes of information and the terms on which Council will make the information available. This will be a living document and requires regular review to ensure it is current and accurate.

7. Responsibilities and decision-making

- 7.1 As the "Principal Officer" under the GIPA Act, the General Manager is responsible for determining the outcome of GIPA applications. The General Manager has delegated this responsibility to the Public Officer and other Council staff as outlined below.
- 7.2 The Right to Information Officers (RIO) are responsible for making initial decisions regarding release of information within the time periods stipulated in the GIPA Act. In this function, the RIO Officers may deal with prospective applicants and liaise with organisational units regarding access to information. The range of tasks that may be assigned to a RIO include:
- Processing and making decisions about formal information access applications
 - Assisting with the routine publication of open access information, including:
 1. the contents and annual review of the agency's Agency Information Guide (ss.20 and 21 GIPA Act)
 2. the agency's policy documents (s.23 GIPA Act)
 3. the disclosure log (ss.25 and 26 GIPA Act)
 4. the register of government contracts
 5. the record of the open access information that is not made publicly available on the basis of an overriding public interest against disclosure (s.6(5) GIPA Act).

7.4 The Governance Manager coordinates the RIO Officers and assists them in the above duties and is also responsible for

- Working with relevant staff to provide training, support and advice to staff in relation to the release of information, including:
 1. the type of information that should be released
 2. how to apply the public interest test
 3. the manner in which such information should be released
 4. whether conditions should be imposed in response to an informal request for information
 5. reporting functions and obligations.
- Working on the agency's response to reviews conducted by the Information Commissioner or the Administrative Decisions Tribunal, and
- Facilitating agency compliance with the *GIPA Act* and *GIPA Regulation* reporting requirements

7.5 The Manager - Administration, as Public Officer, is responsible for formal internal reviews of decisions made by the RIO Officers, if requested by the applicant, or directed by the Information Commissioner.

7.6 The Manager – Administration and the Governance Manager will have the responsibility of responding to requests for informal access to information and determining appropriate conditions and fees for such release.

7.7 Unit Managers and officers in charge of individual organisational units are responsible for establishing procedures to locate information held in their areas. In the event that information cannot be located, a written explanation of what steps have been taken to locate the information must be provided to the RIO Officer.

8. Applications for access to information

8.1 Applications for information not already available by other means must be made on the “**access to information**” application form available on the Council website or at Council’s Customer Service Centre.

8.2 Applications will be processed in the order that they are received and within the timeframes set out in the GIPA Act.

8.3 Council will, within 5 working days of receiving an access application, make a decision as to the validity of an application in accordance with s41 of the GIPA Act. Council will notify the applicant, in writing, whether the application is valid or invalid.

9. Charges

- 9.1 Where formal applications under the Act are made, Council will apply application, processing and advanced deposit charges as specified in the GIPA Act. Any application fee paid by an applicant counts as a payment of the first hour of any processing charge payable by the applicant.
- 9.2 Council may decide an applicant is entitled to a 50% reduction in any processing charge imposed on them if Council is satisfied that the applicant is suffering genuine financial hardship. In this situation any application fee paid by an applicant counts as a payment of the first two (2) hours of any processing charge payable by the applicant.
- 9.3 Any discount offered to an applicant will apply only to the processing charge, not the application fee.
- 9.4 Council may refuse to allow a discount if the applicant is making the application on behalf of another person in order to obtain the discount.
- 9.5 Council may on occasion require an applicant to make an advance payment (advance deposit) of up to 50% of the amount that Council estimates to be the total processing charge for dealing with the application. In accordance with s68(2) of the GIPA Act 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 Council.

10. Review and Appeal

- 10.1 The Right to Information Officer will provide to the applicant reasons for decisions not to release information, or to give only partial access to information.
- 10.2 The applicant can request an internal review which will be done by the Public Officer or another officer acting in the position of Public Officer
- 10.3 Alternatively external review by the New South Wales Information Commissioner or the Administrative Decisions Tribunal is also available.

11. Information concerning the identity of complainants to Council

- 11.1 Council has, in addition to Privacy legislation, adopted the policy - Disclosure of Names of Complainants in regards to the release of complainant's details. Under this policy the names of people who complain to Council remain confidential. All requests for access to information are subject to this policy. A copy of this policy can be obtained from Council's website.

Section 13 of the Government Information (Public Access) Act 2009 states the following:

*There is an **overriding public interest against disclosure** of government information for the purposes of this Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.*

- 11.2 Council believes that information relating to the identity of complainants is obtained by Council in confidence. If it was disclosed, the trust placed in Council would be significantly eroded. This would restrict the flow of information which is necessary for Council to effectively perform its roles. In the absence of any other factors in favour of release Council believes that these factors outweigh any public interest in releasing the information.
- 11.3 Council will perform a public interest test on each individual access application to determine if the details of complainants will be released to the applicant. This public interest test will be performed in accordance with s14 of the GIPA Act.

12. Release of information under the Companion Animals Act

- 12.1 Council receives a number of requests for information relating to companion animals. These come from a variety of sources including – owners, neighbouring properties and victims of attacks. When determining these types of requests, Council will undertake a public interest test. Part of this test will involve a consideration of the requirements under Section 89 of the Companion Animals Act. This section relates to the confidentiality of certain information and makes it an offence to disclose information obtained in the course of exercising the responsibilities under the Act. This includes information gathered by authorised officers in the course of their enforcement functions.
- 12.2 Section 14 of the Government Information (Public Access) Act 2009 states the following:

*There is a public interest consideration **against disclosure** of information if disclosure of the information by any person could (disregarding the operation of this Act) reasonably be expected to constitute a contravention of a provision of any other Act or statutory rule (of this or another State or of the Commonwealth) that prohibits the disclosure of information, whether or not the prohibition is subject to specified qualifications or exceptions.*

- 12.3 Council believes that it would generally be against the public interest to release information considered to be confidential under s 89 of the Companion Animals Act. However the public interest test will be applied to each individual case before a determination is made.

13. Contract Reporting

- 13.1 Council will develop and maintain a register of contracts 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.
- 13.2 The GIPA Act (s29 – s31) sets out the information that will be required to be published and the details of each contract must be added to the register within 60 days of the contract becoming effective.
- 13.3 Council will also be required to include a copy of any contracts with a value of \$5 million or more in the register.
- 13.4 Council will not include in the register of contracts, or in the copy of any contract placed on the register of contracts, any information in relation to the following:
- the commercial-in-confidence provisions of a contract, or
 - details of any unsuccessful tender, or
 - any matter that could reasonably be expected to affect public safety or security, or
 - any other information in relation to a contract that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure of the record.

PART 3 - ADMINISTRATION

14. Related and Associated Legislation, Council Policy and Procedures

14.1 Relevant Legislation & Guidelines

Access to information held by Council, is subject to the following legislation and State Government Guidelines:

- Government Information (Public Access) Act, 2009
- Privacy and Personal Information Protection Act, 1998
- Health Records Information Privacy Act 2002
- Environmental Planning & Assessment Act 1979
- Copyright Act 1968
- Other legislation as applicable

14.2 Policies

- Disclosure of Names of Complainants
- Councillors' Access to Information and Their Interaction with Staff
- Sutherland Shire Council Privacy Management Plan
- Code of Meeting Practise
- Use, Storage and Retrieval of digital images
- Code of Conduct for Councillors, Staff and Delegates of Council
- Customer Response Policy and Procedures.
- CCTV code of practice

14.3 Procedures

- Access to Information Guidelines

15. Responsibilities

15.1 The Responsible Officer for the Policy is the Governance Manager.

16. Review Date

16.1 Council's Agency Information guide will be updated every 12 months with the policy to be updated as required.

17. Privacy Statement

17.1 In applying for access to information held by Council, applicants will need to complete an Access to Information Application Form. In completing this form, applicants will provide personal information to Council such as their name, address and phone number. This information will be used by Council to assess your application and contact you regarding its status.

- 17.2 Your personal information will only be accessed by authorised officers of Council including the people responsible for determining your application. Any personal information provided in this application form will be handled in accordance with the Privacy and Personal Information Act and Council's Privacy Management Plan. Details of this plan are available on Council's website.

18. Record Keeping

- 18.1 All record keeping conforms to provisions of the State Records Act 1998, *Government Information (Public Access) Act 2009*, *Local Government Act 1993*, *Environmental Planning and Assessment Act 1979* and the *Privacy and Personal Information Protection Act 1998*.

19. Breaches and Sanctions

- 19.1 All staff are required to adhere to this policy in regard to providing access to information to the community and Councillors. Any Councillor or staff member acting outside this policy and or the Access to Information Guidelines will be subject to the process as outlined for breaches in the Policy - Councillors' Access to Information and their Interaction with Staff or Council's Staff Disciplinary Policy.
- 19.2 All staff are required, when dealing with access applications, to fully comply with the requirements of Part 6, Division 2 of the *Government Information (Public Access) Act 2009*. It is an offence under the Act to do any of the following:
- Make a reviewable decision in relation to an access application that the officer knows to be contrary to the requirements of this Act.
– s116 Maximum penalty: 100 penalty units.
 - Direct an officer of an agency who is required to make a decision in relation to an access application to make a reviewable decision that the offender knows is not a decision permitted or required to be made by this Act, or
 - Direct a person who is an officer of an agency involved in an access application to act in a manner that the offender knows is otherwise contrary to the requirements of this Act.
– s117 Maximum penalty: 100 penalty units.
 - A person (the offender) who influences the making of a decision by an officer of an agency for the purpose of causing the officer to make a reviewable decision that the offender knows is not the decision permitted or required to be made by this Act is guilty of an offence.
- s118 Maximum penalty: 100 penalty units.
 - A person who in connection with an access application knowingly misleads or deceives an officer of an agency for the purpose of obtaining access to government information is guilty of an offence.
- s119 Maximum penalty: 100 penalty units.

- A person who destroys, conceals or alters any record of government information for the purpose of preventing the disclosure of the information as authorised or required by or under this Act is guilty of an offence.
- s120 Maximum penalty: 100 penalty units.