



**DATE ADOPTED: 26 April 2016**

**VERSION: 2.0**

## **POLICY OBJECTIVES**

The objective of this policy is to:

- Provide the community with an open and transparent process to access information held by Council;
- Provide guidance and direction to staff in making available and providing access to Council information;
- Define those documents which are restricted from public access;
- Ensure applicants are advised of the reasons if access is denied of their right to appeal such refusal available under the Government Information (Public Access) Act 2009 (GIPA).

This policy is to be read in conjunction with Maitland City Council's Right to Information Guidelines.

## **POLICY SCOPE**

This policy applies to all staff, Councillors, volunteers, consultants, and contractors of Maitland City Council.

The Public Officer has responsibility to assist the community in gaining access to Council documents.

All documents and records held by Council are considered to be Government information and are subject to the requirements of the GIPA.

## **POLICY STATEMENT**

### **1. PURPOSE**

The purpose of this policy is to ensure Council staff are aware of their responsibilities and obligations in making available and providing access to Government Information in accordance with the Government Information (Public Access) Act 2009 (GIPA).

Council is committed to providing the community with information on the function of Council in a consistent, open and transparent manner.

Public access to information held by Council is facilitated by the Government Information (Public Access) Act 2009, subject to the public interest test and certain restrictions as set out in the Act 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. The Commonwealth Copyright Act 1968 may apply in some circumstances to limit the copying of certain documents held by Council.

This policy should be read in conjunction with Council's Right to Information Guidelines, relevant legislation and Maitland City Council's related policies and protocols.

## 2. PRINCIPLES

Maitland City Council is committed to the following principles regarding public access to documents and information:

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

## 3. AUTHORITY OF THIS POLICY

This policy is issued under the authority of the General Manager and will be reviewed and amended as required in consultation with Group Managers, Managers & staff of Council.

Ownership of this policy rests with the Group Manager Administration and Governance and responsibility for its implementation rests with the Right to Information Officer.

## 4. RESPONSIBILITIES

As documents and records are created or received consideration needs to be given as to whether they should be made publicly available through proactive release, or if there are valid grounds for withholding access. Maitland City Council will publish open access information on our website, free of charge, unless to do so would impose unreasonable additional costs to Council. Documents originating from Council should be written with the expectation that they may be released in some form at some stage.

Contentious information is that which is sensitive, controversial, likely to be subject to intense media interest or public debate and speculation. In these circumstances the Public Officer should be briefed and the matter referred for their consideration.

All Council staff are responsible for recordkeeping and records management of documents that they create, send, or receive. All Council staff must accurately gather and record information onto Council's electronic document and records management system to record business activities, policy formation, and/or decision-making processes (see Right to Information Guidelines).

All Councillors, staff and delegates of Council are responsible for ensuring compliance with this policy and related legislation and procedures, and that there is no inappropriate release of information to the public. Councillors are reminded of their obligations regarding access to information in accordance with the Code of Conduct.

Maitland City Council will nominate staff responsible for processing the requests from members of the public wishing to access Council information in accordance with the Local Government Act 1993 and the Government Information (Public Access) Act 2009.

## 5. IMPLEMENTATION

Members of the public have an enforceable right to access Government Information. There is a presumption in favour of the disclosure of Council information under the GIPA subject to the restrictions outlined in Schedule 1 of the Act.

The GIPA prescribes four modes for releasing Government Information: (descriptions removed as is included in the guidelines)

1. *Mandatory Proactive Release*
2. *Authorised Proactive Release*
3. *Response to an Informal Request*
4. *Response to a Formal Application*



GIPA provides sanctions and fines for individuals committing offences in regard to Formal Applications such as destroying, concealing or altering information to prevent disclosure and unlawful, deception or misleading behaviour.

The 'Right to Information Guidelines' associated with this policy identifies the types of information that are available for public access and any restrictions that may apply.

Council will assess all requests for access Council information in a timely manner and in accordance with the 'Right to Information Guidelines', relevant legislation and internal procedures. Depending upon the nature of the request and the form of access requested charges may be applied in accordance with Council's fees and charges and relevant legislation.

Council will assess requests for access to information with reference to:

- The Commonwealth Copyright Act 1968
- The Environmental Planning & Assessment Act 1979
- The Government Information (Public Access) Act 2009
- The Health Records and Information Privacy Act 2002
- The Local Government Act 1993
- The Privacy and Personal Information Protection Act 1998
- The Privacy Code of Practice for Local Government
- The NSW State Records Act 1998

And any other relevant legislation and guidelines as applicable.

Broad requests for access to a large number of unspecified documents which, if processed, would divert substantial Council resources from dealing with other requests or from performing other Council functions, may be refused on the ground that such a diversion of resources is contrary to the public interest. Council will endeavour to assist in defining such requests to make them more manageable.

Where information is released to an applicant under a formal access application and Council considers that it will be of interest to other members of the public, Council will provide details of the information in a disclosure log for inspection by the public.

## **6. MONITORING AND BREACHES**

Maitland City Council's requests for access to information are subject to review by the NSW Information Commissioner and the Administrative Decisions Tribunal.

Internal reviews may be conducted upon determined Access to Information requests in accordance with The Government Information (Public Access) Act 2009.

Regular monitoring of compliance with the policy, relevant legislation and Maitland City Council policies, and procedures will be undertaken and documented by the responsible officer for this policy.

Breaches of this policy are considered to be breaches of Maitland City Council's Code of Conduct and therefore invoke the relevant sanctions outlined in that Code. Persons in breach of any legislation may be subject to relevant criminal action.



## **POLICY DEFINITIONS**

- Record:** The Government Information (Public Access) Act 2009 provides the following definition:  
“(1) ‘Record’ means any document or other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means.  
(2) A reference in this Act to a record includes a reference to a copy of the record.  
(3) For the purposes of the definition of ‘record’ in this Act, the knowledge of a person is not a record”
- Access:** In accordance with the Government Information (Public Access) Act 2009, access may be defined as the provision of a document to a person via the following means:  
“(1) by providing a reasonable opportunity to inspect a record containing the information,  
(2) by providing a copy of a record containing the information,  
(3) by providing access to a record containing the information, together with such facilities as may be appropriate to the kind of record concerned,  
(4) by providing a written transcript of the information in the case of information recorded in an audio record or recorded in shorthand or other encoded format”
- Government Information:** In accordance with the Government Information (Public Access) Act 2009 provides the following definition:  
“Government information” means information contained in a record held by an agency”



## POLICY ADMINISTRATION

BUSINESS GROUP:	Administration & Governance
RESPONSIBLE OFFICER:	Group Manager Administration & Governance
COUNCIL REFERENCE:	Ordinary Council Meeting 26 April 2016 Item 11.3
POLICY REVIEW DATE:	Three (3) years from date of adoption
FILE NUMBER:	130/1 & 35/31/1/1
RELEVANT LEGISLATION	<ul style="list-style-type: none"> <li>• Government Information (Public Access) Act 2009 (GIPA)</li> <li>• Commonwealth Copyright Act 1968</li> <li>• Environmental Planning and Assessment Act 1979 (EP&amp;A)</li> <li>• Environmental Planning and Assessment Regulation 2000</li> <li>• Health Records and Information Privacy Act 2002 (HRIPA)</li> <li>• Privacy and Personal Information Protection Act 1998 (PIPPA)</li> <li>• Privacy Code of Practice for Local Government</li> <li>• Local Government Act 1993</li> <li>• State Records Act 1998</li> </ul>
RELATED POLICIES / PROCEDURES / PROTOCOLS	<ul style="list-style-type: none"> <li>• Right to Information Guidelines</li> <li>• Privacy Management Plan</li> <li>• Code of Conduct</li> <li>• Provision of Information to &amp; Interaction between Councillors and staff</li> <li>• Copyright Policy &amp; Protocol</li> </ul>

## POLICY HISTORY

VERSION	DATE APPROVED	DESCRIPTION OF CHANGES
1.0	28/6/2011	New policy adopted
2.0	26 April 2016	Policy review