

Right to Information Policy

Date Adopted: Tuesday, 26 November 2024

Version: 3.1

Policy Objectives

The *Government Information (Public Access) Act 2009* (NSW) ('GIPA Act') promotes an open, accountable, fair, and effective government for the people of New South Wales.

This policy sets out how Maitland City Council complies with its obligations under the GIPA Act, and how a member of the public may exercise the right of access to information held by Council.

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,
- Demonstrate Council's commitment to providing the community with information on the functions of Council in a consistent, open, and transparent manner.

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

Policy Scope

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

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

Policy Statement

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 GIPA Act.

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 GIPA Act, subject to the public interest test and certain restrictions as set out in the Act, and is 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.

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.

Responsibilities

General Manager

The General Manager will delegate responsibilities to staff to determine applications under the GIPA Act.

Right to Information Officer

The Right to Information Officer is responsible for:

- Processing and making decisions about formal information access applications,
- Assisting with the routine publication of open access information, including the contents and annual review of Council's Agency Information Guide, the disclosure log, recording the open access information that is not made publicly available on the basis of an overriding public interest against disclosure, and liaising with internal stakeholders to ensure open access information is updated on a periodic basis,
- Working with relevant staff to provide training, support, and advice in relation to the proactive and informal release of information and compliance with this policy and the 'Right to Information Guidelines',
- Providing advice and assistance to persons who request or propose to request access to information, including understanding their right to access government information, how to access Council information, and how this policy and the 'Right to Information Guidelines' will apply,
- Facilitating compliance with the GIPA Act and Regulations reporting requirements, requests for information by the NSW Privacy Commissioner, and information required for Council's Annual Report,
- Working on Council's response to reviews conducted by the NSW Information Commissioner or the NSW Civil and Administrative Tribunal,
- Implementing, evaluating, and reviewing this policy and the 'Right to Information Guidelines'.

Coordinator Governance and Information Management

The Coordinator Governance and Information Management is responsible for overseeing the activities of the Right to Information Officer.

Public Officer

The Public Officer is responsible for considering and advising appropriate action in relation to contentious information.

Council Staff and Councillors

All Council staff are responsible for:

- Recordkeeping and management of the records that they create, send, or receive.
- Accurately gathering and recording information onto Council's Corporate Information System to record business activities, policy formation, and/or decision-making.
- Complying with requests from the Right to Information Officer to locate and provide all relevant information held in their respective areas in response to a request for information.
- Working collaboratively and providing information relating to access requests to the Right to Information Officer in a timely manner.
- Complying with this policy, 'Right to Information Guidelines', and related legislation and procedures.
- Ensuring that there is no inappropriate release of information to the public.

Councillors are reminded of their obligations regarding access to information in accordance with Council's Code of Conduct.

Access to information

Members of the public have a legally enforceable right to access government information. There is a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure and subject to the restrictions outlined in Schedule 1 of the GIPA Act.

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, how the public interest test will be applied, and the rights of review and appeal if access is refused under a formal access application.

The GIPA Act provides four pathways to access government information:

1. Mandatory Proactive Release,
2. Authorised Proactive Release,
3. Informal Release, and
4. Formal Access.

Council publishes specific open access information on its website, free of charge unless to do so would impose unreasonable additional costs to Council.

Council also makes other government information publicly available in an appropriate manner, including on our website, free of charge or at the lowest reasonable cost to Council. A review will be conducted annually to identify the kinds of government information that should, in the public interest, be made publicly available and that can be made publicly available without imposing unreasonable additional costs on Council.

Where it is practicable to do so, Council will delete matters from a copy of the record in order to make the record publicly available if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record. Council will keep a record of the open

access information that is not make publicly available on the basis of an overriding public interest against disclosure.

Council endeavours to release government information in response to an informal request, subject to any reasonable conditions Council may impose having regard to the circumstances of the request. There is no fee required for an informal information access request.

Some government information may require a formal access application in accordance with the GIPA Act. Council will assess all requests for access to Council information in a timely manner and in accordance with the 'Right to Information Guidelines', relevant legislation, and Council policies. 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 Copyright Act 1968 (Cth)
- The Environmental Planning and Assessment Act 1979 (NSW)
- The Government Information (Public Access) Act 2009 (NSW)
- The Health Records and Information Privacy Act 2002 (NSW)
- The Local Government Act 1993 (NSW)
- The Privacy and Personal Information Protection Act 1998 (NSW)
- The Privacy Code of Practice for Local Government (NSW)
- The State Records Act 1998 (NSW)

And any other relevant legislation, regulations, 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 applicants 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. The disclosure log is published on Council's website.

Rights of Review and appeal

Where an applicant is refused access by Council to information requested under a formal application under the GIPA Act, the applicant has three options of review available:

1. Apply to Council for an internal review.
2. External review by NSW Information Commissioner.
3. External review by NSW Civil and Administrative Tribunal (NCAT).

An application for internal review must be made within 20 working days of the notice of the decision being given to the applicant. The application must be accompanied by the appropriate fee of \$40. The internal review will be undertaken an authorised officer who did not make the original decision and is in a more senior role than the original decision maker. A notice of decision will be issued within 15

working days of receiving the application. This may be extended by up to 10 working days where there is a need to consult.

Alternatively, an independent review may be sought from the NSW Information Commissioner or the NSW Civil and Administrative Tribunal.

A complaint can also be made to the NSW Information Commissioner if there are concerns on how a formal application was handled.

Role of the Information and Privacy Commission NSW

The Information and Privacy Commission NSW ('IPC') is an independent statutory authority that administers legislation dealing with privacy and access to government-held information in New South Wales.

As part of its function, the IPC:

- promotes and protects privacy and information access rights in NSW and provides information, advice, assistance and training for agencies and individuals on privacy and access matters,
- reviews the performance and decisions of agencies and investigates and conciliates complaints relating to public sector agencies, health service providers (both public and private) and some large organisations that deal with health information,
- provides feedback about the legislation and relevant developments in the law and technology.

For more information about the IPC and to access useful resources to assist public sector agencies and citizens with information access laws in NSW:

Phone: 1800 472 679

Email: ipcinfo@ipc.nsw.gov.au

Website: www.ipc.nsw.gov.au

Reporting Requirements

Council is required to report annually on four categories of information concerning its obligations under the GIPA Act. That information is:

- Details of how the agency carried out the review required by section 7(3) of the GIPA Act of its program for the proactive release of the information it holds. An agency must also report on any information the agency made public during the reporting year as a result of the review.
- The total number of formal access applications an agency received during the reporting year, including withdrawn applications (but not invalid applications).
- The total number of formal access applications an agency received during the reporting year that the agency refused, either wholly or partly, because the application was for information for which there is conclusive presumption of an overriding public interest against disclosure (information listed in Schedule 1 to the GIPA Act).
- Statistical information about formal access applications received by an agency during the reporting year required to be included in the eight tables in Schedule 2 to the GIPA Regulation.

Compliance with GIPA Act and This Policy

Council will put in place appropriate mechanisms to monitor the effectiveness of this policy and for ensuring compliance with the GIPA Act.

Any non-compliance with the GIPA Act or this policy will be handled in accordance with our incident and breach management protocol. Intentional breaches of the GIPA Act or this policy may result in disciplinary action and criminal penalties.

A staff member who destroys, conceals, or alters any record of government information for the purpose of preventing the disclosure of the information as required by the GIPA Act will be guilty of an offence under the GIPA Act. This offence carries a maximum penalty of \$11,000.

The NSW Information Commissioner monitors, audits, and reports on the exercise by agencies on their functions under, and compliance with, the GIPA Act. Council will provide any information and assistance as requested in order for NSW Information Commissioner to perform their functions.

Council's decisions for access to information are subject to review by the NSW Information Commissioner and the NSW Civil and Administrative Tribunal.

Training and Awareness

Appropriate training and/or briefings will be provided on a periodic basis and on induction to staff and Councillors on Council's access to information obligations under the GIPA Act. This training will be supplemented by resources available on the staff intranet.

The Right to Information Officer will be available to provide assistance and advice to staff on their responsibilities and obligations in relation to the GIPA Act, this policy and the 'Right to Information Guidelines'.

Accessibility of this policy

This policy will be made publicly available on Council's website as well as our staff intranet.

Policy Definitions

Access:	In accordance with section 72 of the GIPA Act, access may be defined as the provision of government information to a person in any of the following ways: “(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 necessary to enable the information to be read, viewed, or listened to (as 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.”
Contentious information	Information that is sensitive, controversial, likely to be subject to intense media interest or public debate and speculation.
Formal access	An applicant is required to lodge a formal access application in accordance with the GIPA Act if the requested information cannot be provided by way of mandatory release, proactive releases, or informal release.

Government information:	Information contained in a record held by an agency, as defined in section 4 of the GIPA Act.
Informal	A request to access information where a formal access application is not required under the GIPA Act.
Mandatory release	Information classified as open access information, in accordance with the GIPA Act and Regulations.
Open access information	Information that is publicly available, unless there is an overriding public interest against disclosure, in accordance with the GIPA Act.
Proactive release	Government information that Council decides to release outside other release provisions under the GIPA Act.
Record:	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, as defined in the GIPA Act.

Policy Administration

BUSINESS GROUP:	Customer and Digital Services
RESPONSIBLE OFFICER:	Manager Enterprise Architecture
COUNCIL REFERENCE:	26 November 2024 – Item 11.8
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"> • Copyright Act 1968 (Cth) • Environmental Planning and Assessment Act 1979 (NSW) • Environmental Planning and Assessment Regulation 2000 (NSW) • Government Information (Public Access) Act 2009 (NSW) • Government Information (Public Access) Regulation 2018 (NSW) • Health Records and Information Privacy Act 2002 (NSW) • Local Government Act 1993 (NSW) • Privacy and Personal Information Protection Act 1998 (NSW) • Privacy Code of Practice for Local Government (NSW) • State Records Act 1998 (NSW)
RELATED POLICIES / PROCEDURES / PROTOCOLS	<ul style="list-style-type: none"> • Code of Conduct • Copyright Policy • Privacy Management Plan • Privacy Policy • Right to Information Guidelines

Policy History

VERSION	DATE APPROVED	DESCRIPTION OF CHANGES
1.0	28 June 2011	New policy adopted

2.0	26 April 2016	Policy review
3.0	28 November 2023	Periodic review. Updates include amendments to ensure compliance with the GIPA Act, revisions to sections on Responsibilities, Access to Information, Compliance, Definitions, and Policy Administration, new sections on Rights to Review and Appeal, Role of IPC, Reporting Requirements, Training, and Accessibility.
3.1	26 November 2024	Update to reflect change to Council organisational roles, and reference Privacy Policy.