

# Guidelines

## Access to Information

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# **Access to Information Guidelines for Tweed Shire Council**

## **Accessing Information**

Tweed Shire 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.

There is a right of access under GIPAA to certain documents held by Council unless there is an overriding public interest not to do so.

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 test. In doing so, Council recognises that it must take into account the privacy of others, legal and commercially sensitive information.

Any applications under GIPAA 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 the Act.

## **How members of the public may access our information**

Members of the public seeking access to Council information should initially search Council's website, in particular the Right to Information Section.

If the information is not referenced in this website, the public should contact a Council Right to Information Officer.

The Officer will either advise where the information is located or request that an "Informal Access Application" form be lodged with Council and there is no charge for this request, however appropriate photocopying charges of obtained copies of information may apply.

The Officer will discuss the method of supply of the information, including likely timeframe. The Public will also be offered the opportunity to inspect and obtain copies of the information from Council's Murwillumbah Administration Office between the hours of 8.30am to 4.00pm Monday to Friday (except public holidays).

In limited circumstances, a Right to Information Officer will inform an applicant that their access to information will require the lodgement of a "Formal Access Application" with Council. The applicant will be required to pay an application fee of \$30.00 and may be required to pay an additional charge for processing the application (\$30.00/hour).

## **Exemption 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 it's 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 Act.

### **Public Interest Test**

In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the Public Interest Test.

- In accordance with the Government Information (*Public Access*) Act 2009, submission or application letters, including the identifying particulars of the authors, to Council of matters of policy, proposals or advice (eg. development applications, planning instruments, Community Strategic Planning, funding applications, committee membership application) are deemed 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 persons lodging submissions in determining access to the relevant letters or applications.

Sections 13 and 14 of the GIPA Act 2009 provide an exhaustive list of public interest considerations against disclosure, including a comprehensive table. These are the **only** considerations against disclosure that Council will consider in applying the public interest test.

Considerations are grouped under the following headings:

1. Responsible and effective government
2. Law enforcement and security
3. Individual rights, judicial processes and natural justice
4. Business interests of agencies and other persons
5. Environment, culture, economy and general matters
6. Secrecy provisions (in legislation other than those listed in Schedule 1)
7. 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.

Schedule 1 of the GIPA Act 2009 contains 12 categories of information (four of which affect local government) for which there is a conclusive presumption of an overriding public interest against disclosure. These categories are:

1. Information subject to an overriding secrecy law (26 specifically named Acts)
2. Cabinet information (not applicable)
3. Executive Council information (not applicable)
4. Information subject to the direction or order of a court or other body with the power to receive evidence on oath
5. Information subject to legal professional privilege
6. '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)
7. Documents affecting law enforcement and public safety

8. Specific information relating to transport safety
9. Adoption (not applicable)
10. Specific reports concerning the care and protection of children
11. Ministerial Code of Conduct (not applicable)
12. Specific information relating to Aboriginal and environmental heritage.

Generally under GIPAA, 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.

### **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.

### **Rights of Review and Appeal**

Where a member of the public is refused access under a formal application under 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 reviewed by someone more senior than the original decision maker and there is a \$40.00 fee. 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 eight weeks 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 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, but the applicant may make a formal application at any time.