



Draft

Access to Council

Information

Policy



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Document Control

Policy	Access to Council Information Policy	Policy Number	TBA
Author/Reviewer	Executive Director Corporate & Community	Review Period and Date	Reviewed within 12 months of election/4 yearly - September

This policy shall be reviewed: -

- This policy shall be reviewed within 12 months of an election, and thereafter at four yearly intervals at least, to ensure it meets all statutory requirements and the needs of Council. It may also be reviewed at other times as determined by Council.
- This policy commences as from the last date of adoption by Council as listed in the document history and replaces all previous versions.

Document History

Date	Status	Version	Resolution	Description
24 May 2017	Draft	0.1		Presented to Hilltops Council for endorsement, public exhibition 28 days



1. INTRODUCTION

Hilltops Council is committed to being open, transparent and accountable by providing access to Council information under the Government Information (Public Access) Act 2009. The Government Information (Public Access) Act 2009 (GIPA Act) commenced on 1 July 2010.

The object of the GIPA Act is to open government (ie: Council) information to the public by:

- authorising and encouraging the proactive release of information,
- giving members of the public an enforceable right to obtain government information, and
- only restricting access to Council information when there is an overriding public interest against disclosure.

This policy has been prepared with reference to the **GIPA Act Compliance Guide** developed for Government Agencies by the Office of the Information Commissioner in March 2012.

2. OBJECTIVE

The objective of this policy is to state Council's procedures and protocols providing public access to information as governed by the Government Information (Public Access) Act 2009.

With this policy, Council seeks to:

- provide guidance to both staff and the public on which Council documents the public may access.
- ensure that decisions on public access to Council's documents are consistent.
- provide a practical framework for consistent and efficient consideration of applications received by Council under the GIPA Act for access to documents.

3. APPLICABILITY

This policy applies to all applications from members of the public (which includes Councillors and staff in their private capacity) to access information from Hilltops Council under the GIPA Act 2009.

It also applies to those Council employees receiving and responding to those applications.

4. LEGISLATION and other REFERENCES

- Government Information (Public Access) Act 2009; **(the Act)**
- Government Information (Public Access) Regulation 2009
- Privacy and Personal Information Protection Act 1998
- Copyright Act 1968 (Cwth)

5. DEFINITIONS

GIPA Government Information Public Access

LG Local Government

NCAT Civil and Administrative Tribunal

OIC Office of the Information Commissioner



6. PRINCIPLES of COMPLIANCE

The six key principles nominated by the Information Commissioner are:

1. Identify and assess the agency's right to information obligations.
2. Have written policy and procedures to support the right to information practice, endorsed and promoted by senior management.
3. Align the right to information policy to the agency's strategic and business objectives.
4. Allocate sufficient resources to develop, implement, maintain and improve the agency's right to information system.
5. Ensure all staff know about the policy and can easily gain access to it.
6. Ensure senior management review and monitor the effectiveness of the agency's right to information system.

In consideration of these principles, Council undertakes to:

- respond to requests quickly and fairly.
- be guided by the principles of procedural fairness and natural justice.
- give informative reasons for decisions about access applications, including options for review.
- train all authorised staff on how to deal with requests for information according to the GIPA Act.

7. PUBLIC INTEREST

There is a general public interest **in favour of disclosure**.

There is an overriding public interest **against disclosure** of government (ie: Council) information 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.

When deciding whether to release information, staff must apply the **public interest test** and weigh up public interest considerations for disclosure and public interest considerations against disclosure, then assess whether the public interest against disclosure outweighs the public interest in favour of disclosure, on a case by case basis.

7.1 Considerations for Disclosure

Section 12 of the Act provides that there is no limit to the public interest considerations in favour of disclosure that Council can take into account when applying the public interest test.

Examples include:

- promoting open discussion of public affairs
- enhancing Council accountability
- contributing to positive and informed debate on issues of public importance
- informing the public about the operations of Council
- ensuring the effective oversight of expenditure of public funds
- personal information is disclosed to the person concerned
- disclosure reveals or substantiates misconduct, negligence, improper or unlawful conduct of Council



7.2 Considerations for Non-disclosure

Under Section 14 of the Act, it is to be conclusively presumed that there is an overriding public interest against disclosure of any of the Council information described in Schedule 1 of the Act, summarised as follows:

- Information subject to an overriding secrecy law
- Information subject to the direction or order of a court or other body with the power to receive evidence on oath
- Information subject to legal professional privilege
- Documents affecting law enforcement and public safety
- Specific information relating to transport safety
- Specific reports concerning the care and protection of children
- Specific information relating to Aboriginal and environmental heritage

The only other considerations against disclosure that Council may consider in applying the public interest test are those also provided in Section 14 of the Act. These considerations are grouped under the following headings:

- Responsible and effective government
- Law enforcement and security
- Individual rights, judicial processes and natural justice
- Business interests of agencies and other persons
- Environment, culture, economy and general matters
- Secrecy provisions
- Exempt documents under interstate Freedom of Information legislation.

8. HOW to ACCESS INFORMATION

There are four ways to access Council information under the GIPA Act.

8.1 Open Access Availability

Council must make the following information publicly available as open access information:

- Current Council information guide
- Information about Council tabled in Parliament
- Policy documents
- Disclosure log of access applications
- Register of Council contracts of \$150,000 and over
- record of open access information not made publicly available
- Information prescribed as 'open access information' by regulations (see Appendix A)

Copies of information not available on Council's website will be provided free of charge.

8.2 Proactive Release

Agencies are authorised to make any information held by an agency publicly available proactively unless there is an overriding public interest against disclosure.

This means that Council can identify information that may be of interest to the general public and make this information publicly available unless there is an overriding public interest against disclosure. Photocopying charges will apply.



8.3 Informal Application

Council may release information in response to informal requests unless there is an overriding public interest against disclosure.

This is to allow the public to request information without the need of a formal application. The information may be inspected free of charge however, copies of documents may incur charges and it should be noted that this form of access does not allow for the applicant to seek any type of review of their determination.

8.4 Formal Application

Under the GIPA Act, people have an enforceable right to access Council information. The public can exercise their right to request Council information that is not released proactively or informally by submitting an access application.

Access applications are written applications for Council information accompanied by a fee and must be assessed within set timeframes.

Access applications may be transferred between agencies.

9. DETERMINATION of APPLICATIONS

9.1 General

Council must act in accordance with the principles set out in Section 15 of the Act when it applies the public interest test.

Section 15 provides that agencies are to:

- exercise their functions so as to promote the object of the GIPA Act
- take into consideration any guidelines issued by the Information Commissioner
- consider as irrelevant whether disclosure of information will result in embarrassment or loss of confidence in the Council
- consider as irrelevant whether disclosure of information might be misinterpreted or misunderstood
- consider as relevant that disclosure in response to an access application cannot be made subject to any conditions.

Section 55 of the Act provides that, in applying the public interest test, agencies can consider the **personal factors** of the application as a factor against (or for) disclosure in limited circumstances

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 Council's resources**.

9.2 Copyright

Copyright issues may arise when requests are made for copies of documents held by Council. The Commonwealth Copyright Act 1968 takes precedence over State legislation. Therefore, the right to copy documents under the GIPA Act does not override the Copyright Act. Nothing in the GIPA Act or Regulations permits Council to make information available in any way that would constitute an infringement of copyright.

Access to copyrighted documents will be granted by way of inspection only, unless the copyright owner's written consent is provided. Where authority is unable to be obtained, copies of copyright material will not be provided.

Copyright material includes, but is not limited to, plans/drawings, consultant reports and survey reports.



9.3 Third Party Consultation

Third party consultation must be taken when the Application to access information includes:

- Personal information about a person, or
- Concerns the person's business, commercial, professional or financial interest, or
- Concerns research that has been, is being, or is intended to be, carried out by or on behalf of the person, or
- Concerns the affairs of a government of the Commonwealth or other State (and the person is that government).

If the third-party objects to the release of their information, they must show evidence consistent with the GIPA Act as to why to restrict the release of information. The evidence provided by the third party will be taken into account; however, in any event the decision to release information rests with Council.

10. RIGHTS of REVIEW

People can apply for an **internal review** of a Council decision about an access application if they are unhappy with the outcome.

An internal review should be conducted as if the original decision had not been made and by a person who is no less senior than the original decision-maker.

An internal review is not available to an applicant if the principal officer of the agency (ie: the General Manager) made the original decision or either the OIC or the NCAT has reviewed the original decision.

Alternatively, an aggrieved person may seek an **external review** by either the OIC and/or the NCAT.

A third party must seek an internal review before seeking an external review by the OIC, unless an internal review is not available (for example, if the General Manager made the reviewable decision). Alternatively, a third party can go straight to the NCAT to seek a review.

Sections 80 to 112 provide further information about reviews.

11. PRIVATE SECTOR CONTRACTS

For Council contracts with private sector entities where the private contractor will be providing services to the public on their behalf, Council must ensure it has an immediate right of access to certain information contained in the records of the private contractor.

To ensure compliance with the GIPA Act, Council should include appropriate contractual provisions in the contract with the private contractor.

Section 121 of the Act describes the information held by private contractors to which Council must have a right of immediate access, as well as the information to which Council does not have to have an immediate right of access.

12. REPORTING

Council must prepare an annual report to be tabled in Parliament in relation to its obligations under the GIPA Act and provide a copy of the report to the Information Commissioner. The annual report must comply with section 125 of the GIPA Act.

13. NOTICES

Any notification given by Council under the GIPA Act must comply with specified requirements.

Notifications issued by Council must comply with section 126 of the GIPA Act.



14. FEES and CHARGES

The following charges apply as stipulated by the Act:

- Formal application: - \$30
- Processing Time: - first hour free, then \$30 per hour thereafter, or;
 - for personal information, first 20 hours free, then \$30 ph.
 - for pensioners, full-time students or non-profits, 50% less.
- Internal Review: - \$40

15. PROCESSING and APPEAL TIMES

- Informal Applications - 20 working days
- Formal application - 20 working days, or;
 - extra 10 -15 working days for third party consultation
- Internal Review - apply within 20 working days of (deemed) refusal
- External Review (to OIC) - within 40 working days of decision
- External Review (to NCAT) - within 40 working days of Council decision, or;
 - within 20 working days of OIC decision

16. NON-COMPLIANCE

There are individual and Council offences for any decisions made that are contrary to the GIPA.

Penalties may be imposed if Council employees are proven to act unlawfully, conduct direct unlawful action, improperly influence a decision of the decision maker, misled or deceive, conceal or destroy information.

Non-compliance with this policy by staff may also result in disciplinary action.



APPENDIX A – OPEN ACCESS INFORMATION by REGULATION

The following government information held by Council is prescribed by the GIPA Regulation 2009 (Schedule 1) as **Additional open access information**:

A. Information about Council

- 1 Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:
 - a) the model code and the code of conduct adopted under section 440 (3) of the LG Act
 - b) code of meeting practice
 - c) annual report
 - d) annual financial reports
 - e) auditor's report
 - f) management plan
 - g) EEO management plan
 - h) policy concerning the payment of expenses incurred by, and the provision of facilities to, Councillors
 - i) annual reports of bodies exercising functions delegated by Council any codes referred to in the LG Act
- 2 Information contained in the following records (whenever created) is prescribed as open access information:
 - a) returns of the interests of Councillors, designated persons and delegates
 - b) agendas and business papers for any meeting of Council or any committee of Council (but not including business papers for matters considered when part of a meeting is closed to the public)
 - c) minutes of any meeting of Council or any committee of Council, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting
 - d) Departmental representative reports presented at a meeting of Council in accordance with section 433 of the LG Act.
- 3 Information contained in the current version of the following records is prescribed as open access information:
 - a) land register
 - b) register of investments
 - c) register of delegations
 - d) register of graffiti removal work kept in accordance with section 13 of the Graffiti Control Act 2008
 - e) register of current declarations of disclosures of political donations kept in accordance with section 328A of the LG Act
 - f) the register of voting on planning matters kept in accordance with section 375A of the LG Act.

B. Plans and policies

Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:

- a) local policies adopted by Council concerning approvals and orders
- b) plans of management for community land
- c) environmental planning instruments, development control plans and contributions plans made under the Environmental Planning and Assessment Act 1979 applying to land within Council's area.



C. Information about Development Applications

- 1 Information contained in the following records (whenever created) is prescribed as open access information:
 - a) development applications (within the meaning of the Environmental Planning and Assessment Act 1979) and any associated documents received in relation to a proposed development including the following:
 - (i) home warranty insurance documents
 - (ii) construction certificates
 - (iii) occupation certificates
 - (iv) structural certification documents
 - (v) town planner reports
 - (vi) submissions received on development applications
 - (vii) heritage consultant reports
 - (viii) tree inspection consultant reports
 - (ix) acoustics consultant reports
 - (x) land contamination consultant reports
 - b) records of decisions on development applications (including decisions made on appeal)
 - c) a record that describes the general nature of the documents that Council decides are excluded from the operation of this clause by subclause 2
- 2 This clause does not apply to so much of the information referred to in subclause 1(a) as consists of:
 - a) The plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
 - b) Commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.

D. Approvals, orders and other documents

- 1 Information contained in the following records (whenever created) is prescribed as open access information:
 - a) applications for approvals under Part 1 of Chapter 7 of the LG Act and any associated documents received in relation to such an application
 - b) applications for approvals under any other Act and any associated documents received in relation to such an application
 - c) records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals
 - d) orders given under Part 2 of Chapter 7 of the LG Act, and any reasons given under section 136 of the LG Act
 - e) orders given under the authority of any other Act
 - f) records of building certificates under the Environmental Planning and Assessment Act 1979
 - g) plans of land proposed to be compulsorily acquired by the local authority
 - h) compulsory acquisition notices
 - i) leases and licences for use of public land classified as community land.
 - j) Performance improvement orders issued to Council under Part 6 of Chapter 13 of the LG Act