

## 1 Policy History

Revision No.	Council Meeting Date	Minute No.	Adoption Date
1	08/03/2011	0063	08/03/2011
2	09/06/2015	15/161	09/06/2015
3	24/09/2019	19/302	25/10/2019
4	28/11/2023	23/275	02/01/2024

## 2 Policy Objective

To establish the principles that apply and describe Griffith City Council’s approach to, disclosure of information and rights of public access to documents.

## 3 Policy Statement

This policy applies to Councillors, Council officers, volunteers, contractors and their employees.

Griffith City Council is committed to the following principles regarding public access to information:

- Open and transparent government
- A presumption in favour of disclosure unless there is an–overriding public interest against disclosure
- Proactive disclosure and dissemination of information
- Respect for the privacy of individuals
- Openness and transparency in the conduct of its public functions
- Provision of access to Council documents unless disclosure in a particular case would be contrary to the public interest.
- Timely, equitable and impartial processing of reasonable requests for information within relevant legislative frameworks at the lowest reasonable cost.

Any member of the public has a right to make an application to Council for access to information that Council holds.

### Legislative Context

Griffith City Council is subject to NSW legislation that requires it to be open and accountable in the exercise of its functions.

Public access to documents and information held by Council is facilitated by the Government Information (Public Access) Act 2009, the Government Information (Public Access)



Regulation 2018 (GIPA Regulation) and the Local Government Act 1993, subject to certain restrictions as set out in the Acts and Regulations.

The GIPA Act and GIPA Regulation provide rights of access to certain documents held by Council unless there is an overriding public interest not to do so.

Council is required to comply with the Information Protection Principles prescribed by the Privacy and Personal Information Protection Act 1998 (PPIPA) and Council's Privacy Management Plan relating to the management of personal information held by Council.

Under the PPIPA and the NSW *Health Records and Information Privacy Act (HRIPA) 2002*, an individual also has a right to access and amend records held by Council which contain their personal details, matters related to their business affairs and any records containing information about their health.

Under the State Records Act 1998 Council is required to give an access direction (whether the records are open or closed) for all their records that are at least thirty (30) years old in what is described as the "open access period".

The Environmental Planning and Assessment Act 1979 (EPA Act) and Environmental Planning and Assessment Regulation 2000 contain provisions which require Council to make development applications and accompanying information, including plans, publicly available and provides a right for people to inspect and make copies of the plans during the submission period.

In assessing applications for information, Council must take into consideration the Copyright Act 1968 (Cth) which governs the copying of information and contains provisions which confer exclusive rights to copyright owners which have the effect of prohibiting publication of copyright material on websites or provision of copies unless the copyright owner has expressly consented.

### **Accessing Information and Making an Application**

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 need to protect the privacy of others, commercially sensitive information and information the disclosure of which would not be in the public interest.

The public may obtain access to information as follows:

- (a) by searching the Council's website to see if the information sought is already available
- (b) by contacting Council's Customer Service Centre on 1300 176 077 and requesting the information. Council will advise whether the information requested:
  - (i) is open access, or mandatory release information that is readily available and where and how to get the information
  - (ii) should be made available as part of a proactive release of information

- (iii) can be disclosed through an informal release, for example where no third party personal information is involved
- (iv) requires a formal access application, for example because consultation with a third party is required.

There are four pathways for accessing information (in accordance with the *Government Information (Public Access) Act 2009 (GIPA)*).

### **Mandatory Proactive Release (Open Access)**

Open access (mandatory proactive release) information is published on Council's website or made available in other formats for the public to view free of charge, unless there is an overriding public interest against disclosure. This type of information includes:

- Council policies
- Council meeting agendas and minutes,
- Disclosure Log,
- Contracts Register,
- Information Guide and
- Annual Reports.

Copies can be supplied (subject to compliance with Copyright law) at an amount specified in Council's adopted Revenue Policy.

Schedule 1 of the GIPA Regulation 2018 requires that the following additional documents are to be provided as open access information by Council:

#### **1 Information about Council**

- The Model Code of Conduct and Procedures
- Code of Meeting Practice
- Annual Report
- Annual Financial Reports
- Auditor's Report
- Community Strategic Plan
- Delivery Program and Operational Plan
- EEO Management Plan
- Councillors' Payment of Expenses and Provision of Facilities Policy
- Annual Reports of Bodies Exercising Functions Delegated by Council {
- Any Codes referred to in the Local Government Act
- Returns of the Interests of Councillors, Designated Persons and Delegates
- Agendas and Business Papers for Council and Committee meetings (except meetings that are closed to the public)
- Minutes of any Council and Committee meetings
- Reports by the Chief Executive of the office of local Government presented at a Council Meeting in accordance with section 433 of the LGA
- Council's Land Register
- Register of Investments
- Register of Delegations

- Register of Graffiti removal works
- Register of current Declarations of Disclosures of Political donations
- Register of Voting on Planning Matters.

## 2 Plans and Policies

- Local Policies adopted by Council concerning approvals and orders
- Plans of Management for Community Land
- Environmental Planning Instruments, Development Control Plans and Contribution Plans.

## 3 Information about Development Applications

- Development Applications and any associated documents received in relation to a proposed development, eg:
  - Home Warranty Insurance documents
  - Construction Certificates
  - Occupation Certificates
  - Structural Certification Documents
  - Town Planner Reports
  - Submissions received on Development Applications
  - Heritage Consultant Reports
  - Tree Inspections Consultant Reports
  - Acoustic Consultant Reports
  - Land Contamination Consultant Reports
  - Records of decisions on Development Applications made on or after 1 July 2010 including decisions on appeals
  - Records describing general nature of documents that Council decides to exclude from public view including:
    - 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
    - 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, or
    - development applications made before 1 July 2010 and any associated documents received in relation to the application.

## 4 Approvals, Orders and Other Documents

- Applications for approvals under Part 1 Chapter 7 of the LGA
- Applications for approvals under any other Act and any associated documents received in relation to such an application
- Records of approvals granted or refused, any variation from Council local Policies with reasons for the variation, and decisions made on appeals concerning approvals
- Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA
- Orders given under the Authority of any other Act

- Records of Building Certificates under the Environmental Planning and Assessment Act 1979
- Plans of land proposed to be compulsorily acquired by Council
- Compulsory Acquisition Notices
- Leases and Licenses for use of Public Land classified as Community Land
- Performance Improvement Orders issued to Council under Part 6 Chapter 13 of the LGA.

In accordance with GIPA legislation, Council will publish a record of the open access information that is not made public due to an overriding public interest against disclosure.

### **Authorised Proactive Release**

The GIPA Act authorises Council to go beyond the minimum requirements for mandatory disclosure of information and make any information it holds publicly available unless there is an overriding public interest against disclosure of the information.

Council will make as much information as possible publicly available in an appropriate manner, including on its website. The information will be available free of charge or at the lowest reasonable cost. Such other information includes frequently requested information or information of public interest that has been released as a result of other requests.

### **Informal Release**

Information that is not available as mandatory or authorised proactive release may be provided through an informal release, subject to any reasonable conditions that Council may wish to impose. Applications for an informal release can be made in writing using the Access to Information Request Form (GC-FC-301) available on Council's website. Council will endeavour to meet these requests within a five day period having regard to circumstances of the case and availability of staff.

### **Formal Release**

Information not made available by mandatory, proactive or informal release, and where the information sought is of a sensitive nature or contains personal information about a third party; applicants can make a request to access the information by completing a Formal Access to Information Request Form (GC-FO-302) available on Council's website.

Council may require a formal access application to be submitted where the information sought:

- is of a sensitive nature that requires careful weighing of the considerations in favour of and against disclosure, or
- contains personal or confidential information about a third party that requires consultation, or
- would involve an unreasonable amount of time and resources to produce.

Formal applications must be in writing and accompanied by a \$30 fee. \$ Additional



processing costs may apply in accordance with Council's adopted Revenue Policy. A written acknowledgement of such application will be provided by Council within five working days.

In respect of formal applications, Council will notify applicants of the decision on an application within twenty (20) working days, unless the applicant agrees to extend the time. Council may also extend the time by up to fifteen (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 formal 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.

### **Exemptions 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 its 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 GIPA Act.

In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the Public Interest Test. The GIPA Act provides an exhaustive list of public interest considerations against disclosure. 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
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.

Council will consider any submissions made by an applicant in relation to public interest considerations, as well as any factors personal to the applicant.

Under the GIPA Act (Schedule 1) there are 16 categories of information for which there is a conclusive presumption of an overriding public interest against disclosure.

These are:

1. Overriding secrecy laws
2. Cabinet information
3. Executive Council information
4. Contempt
5. Legal Professional Privilege  
5A Privilege generally
6. Excluded information
7. Documents affecting law enforcement and public safety
8. Transport safety
9. Adoption
10. Care and protection of children
11. Ministerial Code of Conduct
12. Aboriginal and environmental heritage
13. Information about complaints to Judicial Commission
14. Information about authorised transactions under Electricity network Assets Act 2015
15. Information about authorised transaction under Land and Property Information NSW Act 2016
16. Information provided to High Risk Offenders Assessment Committee.

Generally under the GIPA Act 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.

### **Rights of Review and Appeal – Formal Applications**

Where a member of the public is refused access under a formal application under the 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 a review by someone more senior than the original decision maker and a fee will apply. Applicants have

twenty (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 40 working days 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 **NSW Civil and Administrative Tribunal (NCAT)**. If the applicant has already had a review by the Information Commissioner they have 20 working days from notification of the decision to make this application. If they haven't had a review by the Information Commissioner they have 40 working days 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.

As with all matters dealt with by Local Government there are also complaint handling functions administered by the NSW Ombudsman and the Office of Local Government.

## 4 Definitions

NCAT – NSW Civil and Administrative Tribunal

EPA – NSW Environmental Planning and Assessment Act 1979

HRIPA – NSW Health Records and Information Privacy Act 2002

GIPA Act – Government Information (Public Access) Act 2009

LGA – Local Government Act 1993

PPIPA – NSW Privacy and Personal Information Protection Act 1998

## 5 Exceptions

None

## 6 Legislation

Government Information (Public Access) Act 2009

Government Information (Public Access) Regulation 2018

Local Government Act 1993

NSW Privacy and Personal Information Protection Act 1998

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2000



NSW Health Records and Information Privacy Act 2002  
Copyright Act 1968  
Privacy Code of Practice for Local Government  
State Records Act 1998

## **7 Related Documents**

Council's Privacy Policy GOV-CP-602  
Council's Information Guide  
Council's Privacy Management Plan

## **8 Directorate**

Economic & Organisational Development