

POLICY:	PUBLIC ACCESS TO INFORMATION
DATE ADOPTED:	Director Corporate Services & Finance's Report #1 Policy 5 December 2012 Council 6 February 2013 Minute Book No. 11477
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ORIGINAL ADOPTION:	Director Corporate Services Report #1 Policy 1 December 2004 Council 8 December 2004 Minute Book No 9416
FILE REFERENCE:	11.00006, 11.00003
OBJECTIVE:	To describe Council's principles regarding public access to information and to facilitate the processing of requests for such access. This policy is to be read in conjunction with the Access to Information Guidelines.

Principles

Bathurst Regional Council is committed to the following principles regarding public access to documents and information:

- Open and transparent government,
- Consideration of the in relation to access requests and
- Respect to the privacy of individuals.

Implementation

- The 'Access to Information Guidelines' document associated with this policy identifies the documents and types of information that are available for public access and restrictions that may apply.
- Council will assess all requests for access to documents and information in a timely manner and in accordance with the 'Access to Information Guidelines' and relevant legislation.
- Depending upon the nature of the request and the form of access requested charges may be applied in accordance with Council's Schedule of Fees and Charges and relevant legislation.
- Council will assess all requests for access to information with reference to:
 - Local Government Act 1993,
 - The Privacy and Personal Information Protection Act 1998,

- The Government Information (Public Access) Act 2009,
- The Environmental Planning & Assessment Act 1979,
- The Health Records and Information Privacy Act 2002.

Guidelines

1. Accessing Information

Bathurst Regional 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. 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.

These guidelines set out the documents and types of information that are available to members of the public as a matter of routine, and those that will not generally be available for inspection and copying. Where practicable, Council will deal with requests to inspect documents in accordance with current legislation free of charge but a reasonable photocopying fee may be payable under certain circumstances and for access to versions of documents that are neither current nor immediately preceding versions of the document and are not reasonably accessible. All charges are detailed in Council's Schedule of Fees and Charges.

The GIPA Act 2009 outlines methods of assessing Council information.

The Council can make information available to the public in 4 different ways:

1. Mandatory Release – where Council is required under legislation to make information available free of charge to the public.
2. Proactive Release – Councils are encouraged to release as much other information as possible in an appropriate manner (though this may sometimes result in a cost).
3. Informal Release – Councils are encouraged to release information in response to an informal request subject to reasonable conditions (e.g. may be copying charge involved).
4. Formal Release – Councils may release information in response to a formal request. This is the last resort, if the information is not available in any other way. There is a fee associated with a formal application (currently \$30) and an application form is available on Council's website.

Many of Council's documents are available free of charge to the public either on Council's website (under the public documents section) or by contacting the Corporate Services section of the council at the Civic Centre, 158 Russell Street, Bathurst. Access to some documents may be denied under the Government Information (Public Access) Act 2009 as there may be an overriding public interest against disclosure. Some of these include confidential Council business papers and reports, communications between legal practitioners and the Council, and matters, considered to be so sensitive that the disclosure of them would compromise or detrimentally affect either the Council or another party with whom the Council is dealing. In the first instance members of the public are

encouraged to contact Council's Right to Information Officer to ascertain if the information they seek is publicly available.

Under the NSW Privacy and Personal Information Protection Act (PPIPA) 1998 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. Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the GIPA Act. The Act provides for consultation with other affected parties prior to disclosure of information concerning their personal or business affairs.

2. Documents Available

The types of documents that are available and may be accessed include but are not limited to:

- Management Plans
- Budget;
- Development Applications and associated documents;
- Council's Business Papers;
- Annual Reports;
- Council Policies;
- Council's Publication Guide

Some of the abovementioned information is also available on the Council website at www.bathurst.nsw.gov.au and at Council's Library. No 'Request for Access' form is required to access these documents. Council's Publication Guide which is available on Council's website provides more detail on accessing Council's documents.

Copies of documents provided are given for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright laws still apply to each document. The copyright-owner's consent is required if any part of the document is used for any other purpose.

3. Exemption To Access

Under relevant legislation access to some documents and information held by Council may be restricted if the document or part thereof contains the following types of information:

- Personnel matters concerning particular individuals (other than Councillors);
- The personal hardship of any resident or ratepayer;
- Trade secrets;
- A matter the disclosure of which may:
 - be contrary to law, or
 - give rise to action for breach of confidence;
- That part of a draft or adopted plan of management that is the subject of a resolution of confidentiality under section 36DA of the Local Government Act 1993; or

- Documents which were submitted to or are to be submitted to a 'Closed Session' of a Council or Committee Meeting.

Access to some documents may be considered to be contrary to the public interest under the GIPA Act 2009 and may require lodgment of a formal GIPA Application and third party consultation. These documents include:

- Legal advice*;
- Personnel (individual staff) matters;
- Complaints;
- Individual's details on DA submissions where they claim personal safety issues;
- Council Lease documents;
- Council Contracts;
- Council Tenders; and
- Insurance claims.

* Legal professional privilege may apply to communications between Council and its legal advisers for the purpose of obtaining legal advice, or third parties for the purpose of obtaining legal advice relating to pending or threatened legal action by or against Council. If so, it is not normally available to be inspected or copied.

4. Making an Application

In the first instance members of the public are encouraged to contact Council's Right to Information Officer to ascertain if the information they seek is publicly available.

If it is not publicly available a formal access application may be required. An access form is available on Council's website and must be lodged with the required fee of \$30. Under certain circumstances additional fees may be payable but an applicant will be advised of additional fees before they are incurred.

If a fee for photocopies of documents provided is payable, it will be listed in Council's adopted Fees and Charges and is GST inclusive.

5. Rights of Review and Appeal

There are rights to review a decision made by the Right to Information Officer. A full list of reviewable decisions is set out in s80 of the GIPA Act.

6. Internal Review

If an access application has been refused, there is a general right to seek an internal review of the decision. An internal review must be applied for within 20 working days of the original decision and is subject to a \$40 fee. Internal review involves a senior person in the agency reviewing the decision to reject the access to information application.

7. Role of the Information Commissioner

The Information Commissioner can review a decision to refuse access to information if requested by the applicant, notwithstanding any internal review being undertaken. However, for other persons seeking review, an internal review must first be undertaken. The Information Commissioner also deals with complaints under the GIPA Act.

8. External Review (Administrative Decisions Tribunal)

Applicants also have formal avenues via the New South Wales Administrative Decisions Tribunal to review the decision to refuse access. This application must be made within 8 weeks of the original decision or 4 weeks after a review undertaken by the Information Commissioner.