

# Public Access to Information Policy

<b>Reference number:</b>	POL 108
<b>Approval date:</b>	17 October 2022
<b>Policy owner:</b>	Chief Operating Officer
<b>Next review:</b>	September 2029

Members of the public have a right to access government information held by Wagga Wagga City Council (Council). The Government Information (Public Access) Act 2009 (GIPAA) extends the right of the community to have access to information held by State Government departments and local and public authorities with a view to achieving more open, accountable, fair and transparent government.

Council, as a local authority, is subject to the GIPAA and accordingly acknowledges the right of the public to obtain information about Council's structure, plans and policies, information about development applications and any other information as prescribed by the Act and any accompanying regulations and guidelines.

## Purpose

This policy is in place to ensure Council is proactively releasing appropriate information to members of the public. Open access information is published on the Council Website or provided at the Customer Service Counter. As part of the commitment to GIPAA, Council endeavours to release open access information at the request of the customer within 20 days of the request.

The policy provides direction and guidance to Council staff managing and releasing requests for information under the Government Information Public Access (GIPA) Act.

Council aims to:

- Maintain the highest possible integrity for services provided by the Council.
- Uphold commitment to transparency and integrity
- Facilitate the public's right to access Council information under the GIPAA.
- Authorise and encourage proactive release of Council information.
- Publish open access information on the Council Website to enable easy access to members of the public
- Proactively release open access information at the Customer Service Counter when requested
- Provide the public with an enforceable right of access to information.
- Restrict access to information only when there is an overriding public interest against disclosure as prescribed by GIPAA.

## Scope

This Policy applies to all Council officials and members of the public wishing to access Council information.

## Policy Provisions

### Reporting Requirements

Council must prepare an annual report as at 30 June each year on its obligations under the GIPAA and submit it to the responsible Minister. A copy of the report must also be provided to the Information and Privacy Commission New South Wales addressed to the Information Commissioner.

### Responsibility

There are specific delegations associated with releasing information under the Government Information Public Access (GIPA) Act 2009. In order to release information under the Act you must have the relevant delegation assigned. Releasing Council information falls under the below delegation:

*2.05 - To disclose of Council records pursuant to the Government Information (Public Access) Act 2009 (GIPA) and in accordance with any other legal obligation of any other Act or Regulation and any resolution of the Council.*

### Review procedures

This policy must be reviewed every two years by the policy owner in accordance with the review schedule noted above.

### Breaches of this Policy

Breaches of this policy will be investigated in accordance with the appropriate mechanism including but not limited to Council's Code of Conduct.

### Content

Council is committed to providing, as far as possible, an open, accountable and transparent environment, which enables members of the public to access Council records. Council will seek to ensure that legitimate requests for access to information are addressed promptly to facilitate and encourage access to information at the lowest reasonable cost, subject to the need to protect the privacy of individuals, commercially sensitive information and information the disclosure of which would not be in the public interest.

### Access to Information

Under the GIPAA, a person seeking access to Council information has a right to be provided with access unless there is an overriding public interest against disclosure of the information.

In accordance with *Part 2, Division 1* of the GIPAA, access to government information may be exercised in four ways:

## **1. Mandatory release**

Council publishes open access information, defined in Section 18 of the GIPAA, on its website at [www.wagga.nsw.gov.au](http://www.wagga.nsw.gov.au)

The following publications constitute open access information:

- Agency Information Guide - provides the community with the structure and functions of Council and details on how each function affects them. In the guide it identifies what information is publicly available to members of the public, how to access government information and how to be involved in Council's decisions making processes
- Disclosure log of formal access applications where in Council's opinion the information released may be of interest to other members of the public
- Register of contracts worth more than \$150,000 that Council has with private sector bodies
- Additional open access information

## **2. Authorised proactive release**

Council may choose to release additional information, not considered mandatory, which may be of interest to the general public. Any proactive release must be exercised in an appropriate manner by or with the authority of Council's principal officer, free of charge (or at the lowest reasonable cost), unless there is an overriding public interest against disclosure of the information.

## **3. Informal release**

In addition to mandatory release information, Schedule 1 of the GIPAA regulations defines other documents for Local Government that are classified as open access. These documents must be made publicly available for inspection, free of charge unless there is an overriding public interest against disclosure of the information.

## **4. Formal access application**

In some limited circumstances, people seeking access to government information will need to submit a formal request if the information:

- Is of a sensitive nature that requires careful consideration in terms of overriding public interest for and against disclosure.
- Contains personal or confidential information where consultation with other agencies or third parties is required
- Would involve an unreasonable amount of time and/or resources to provide the information requested.
- Procedural information on how to make an access application is available on Council's website. Please refer to Council's most recent fees and charges to view the costs associated with Formal Access Applications.

Council has 20 working days to process a formal request for information, the 20 days commences on the first full day after the application is received.

## **Fees and Charges**

For all fees and charges associated with access to Council information please refer to Council's Fees and Charges Schedule located on the Wagga Wagga City Council website.

### **Exemptions to access**

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

Council will not classify information as exempt unless there are clear reasons for doing so. If documents contain exempt information in part, only this information will be withheld, and the remaining information will be made available under the Act.

The GIPAA provides an exhaustive list of public interest considerations against disclosure and these are the only considerations against disclosure that Council will utilise when applying the public interest test

### **Access to information by Councillors**

Councillors have a right to access information that is reasonably necessary for exercising the functions of their civic office during their current term of office.

Councillor requests for access to information must be provided in writing to the General Manager or the relevant Director in accordance with the Provision of Information to and interaction between Councillors and staff Policy (POL\_089).

Councillors may also apply for information as a member of the general public by making either a Formal or Informal application with payment of the associated fees and charges.

### **Privacy considerations**

The GIPAA recognises privacy as a key principle against disclosure - *Section 14 (2)*. Where an application for access to information involves the disclosure of personal information about a person other than the applicant, Council must gain permission from that other person before providing access to the information requested.

All applications for amendment of Council's records will be dealt with under PPIPA.

### **Copyright**

A large amount of information which is available for public access belongs to third parties and is the subject of copyright. These can include plans and reports submitted with development applications. Access to this information is provided to members of the public in accordance with GIPAA and other relevant legislation, such as the Environmental Planning and Assessment Act 1979. As copyright laws apply to this information, Council must first seek the approval of the copyright owner before it reproduces this information, and applicants are encouraged to seek the consent of the copyright owner before reproducing, distributing or amending the information provided to them in any way.

### **Rights of Review**

In accordance with the GIPAA, any member of the public who is dissatisfied with Council's decision in regard to a formal application for information may lodge a request for review.

Under the Act there are three options for review of a Council decision:

**1. Internal review**

This is a review by someone within Council more senior than the original decision maker. An application for internal review must be made within 20 working days of receiving Council's decision. Please refer to Council's most recent Fees and Charges schedule to see fee associated.

**2. Review by the Information Commissioner**

If an applicant is not satisfied with the internal review, or chooses not to have one, they can request a review by the Information & Privacy Commissioner. Applicants have eight weeks from being notified of a decision to ask for this review.

**3. Review by the Administrative Decisions Tribunal**

If an applicant is not satisfied with the decision of the Information & Privacy Commissioner or the internal review or if they do not wish to exercise these options, applicants can apply to the NSW Civil & Administrative Tribunal (NCAT). Applicants must apply for this review within 8 weeks of Council's decision or if a review by the Information & Privacy Commissioner has been undertaken, four weeks after the decision from that review.

It is noted that there are no rights of review in respect of informal applications. The applicant may make a formal application, accompanied by the relevant fees and charges, at any time.

## Legislative Context

- NSW Government Information (Public Access) Act 2009
- NSW Local Government Act NSW 1993 (LGA)
- NSW Local Government Regulations
- NSW Privacy and Personal Information Protection Act NSW 1998 (PPIPA)
- NSW Privacy Code of Practice (Local Government)
- NSW Health Records and Information Privacy Act 2002 (HRIPA)
- NSW State Records Act 1998 (SRA)
- Federal Copyright Act 1968

## Related Documents

- Code of Conduct
- POL 095 Privacy Policy
- Privacy Management Plan
- Councillors Records and Document Management Policy
- Agency Information Guide
- Provision of Information to and interaction between Councillors and staff Policy

## Definitions

Term	Definition
Council	Wagga Wagga City Council
Council Officials	Includes Councillors, members of the staff of Council, administrators, council committee members, conduct reviewers and delegates of Council.
Disclose Information	Making information available for release or providing access to publicly available information.
GIPAA	The Government Information (Public Access) Act 2009.
Formal Access Application	A valid application for access to government information as prescribed under Part 4 of the GIPAA.
Open Access Application	Records containing government information which is publicly available.
Government information	<p>Information contained in a record held by Council includes:</p> <ul style="list-style-type: none"> <li>any paper or other material on which there is writing.</li> <li>any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them.</li> </ul> <p>any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).</p>
Disclosure log	A list of documents released as a result of a decision about a valid Formal Application for access under the Act, which is published on Council's website.
Contracts register	A register of government contracts that records information about each government contract to which Council is a party that has a value of \$150,000 or more.
Agency information guide	Provides the community with the structure and functions of Wagga Wagga City Council and details on how each function affects them. In the guide it identifies what information is publicly available to members of the public, how to access government information and how to be involved in Council's decisions making processes.
Personal information	Information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion (definition from NSW Privacy and Personal Information Protection Act 1998).

Term	Definition
Against disclosure	There is an "overriding public interest against disclosure" of government information for the purposes of GIPAA 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.
Informal release	An agency is authorised to release government information held by it to a person in response to an informal request by the person (that is, a request that is not an access application) unless there is an overriding public interest against disclosure of the information.

## Revision History

Revision number	Council resolution	Council meeting date
1	Res No: 08/093	31 March 2008
2	Res No: 09/077	27 July 2009
3	Res No: 10/0166	28 June 2010
4	Res No: 12/276	24 September 2012
5	Res No:13/224.1	26 August 2013
6	General Manager approval	August 2016
7	E-Team	25 July 2017
8	Res No: 17/279	28 August 2017
9	General Manager Approval	10 April 2019
10	Res: 22/354	17 October 2022