

ATTACHMENT A

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**ACCESS TO INFORMATION POLICY
ADOPTED BY COUNCIL ON
14 FEBRUARY 2011**

Access to Information Policy

Resolution of Council

14 FEBRUARY 2011

ITEM 6.5 ACCESS TO INFORMATION POLICY – ADOPTION (S075895)

It is resolved that Council adopt the Access to Information Policy, as show at Attachment A to the memo dated 9 February 2011 from the Director Legal and Governance and circulated prior to the meeting of Council.

Carried unanimously.

The Access to Information Policy, as adopted by Council, is as follows:

BACKGROUND

On 1 July 2010 the Government Information (Public Access) Act 2009 (GIPA Act) replaced the Freedom of Information Act 1989 (FOI Act). The GIPA Act is designed to meet community expectations of more open and transparent government for the people of NSW. The Act encourages local councils and NSW government agencies to make it as easy as possible for members of the public to gain access to government information.

The State Records Act 1998 sets a management framework for government records, including council records.

PURPOSE

The purpose of this policy is to describe City of Sydney's principles regarding public access to information and the process of managing requests for such access.

SCOPE

This policy applies to all staff of the City of Sydney who are responsible for managing requests for access to information from members of the public.

PRINCIPLES

The City of Sydney is committed to the following principles regarding public access to information:

- open and transparent government;
- consideration of the overriding public interest in relation to access requests;
- proactive disclosure and dissemination of information;
- respect for the privacy of individuals.

The majority of access requests have no associated costs. All charges that may be incurred are listed in the City's Schedule of Fees and Charges available on our website.

PROCEDURES

Accessing Information

Any member of the public has a legal right to make application to the City of Sydney for access to information that the City holds. The City also publishes a wide range of information on its website and makes information available to members of the public.

Under Part 6 of the State Records Act, the City is required to make Access Directions for all records over thirty years old. Access Directions determine whether information is freely available or not to the public. In making these Directions the public interest considerations of the GIPA Act are taken into account.

Records available without further restriction are given an Open for Public Access Direction.

Records which have a continuing public interest consideration against access are given a Closed for Public Access Direction. Should access to this information be requested under the GIPA Act and the request is declined, there are review provisions outlined below.

Access directions for archival records are normally made for classes of records, not individual records.

Open Access Information

The City must make its 'open access information' publicly available in accordance with the GIPA Act. Part 3 of the GIPA Act and Schedule 1 of the GIPA Regulation 2009 list the information that is 'open access information'.

The City's 'open access information' is made available to members of the public via a register which is published on the City's website.

Informal Access to Information

If a member of the public requests access to information that is not on the register of open access information, they will be directed to complete an Informal Access to Information Application.

The City of Sydney will allow access to information unless there is an overriding public interest against disclosure of the information.

There is no fee required for an informal access application, but a photocopying fee may be payable.

Informal access applications will be processed as soon as practicable, generally within 10 working days.

An applicant who is not given information in response to an Informal Access to Information Application will be informed of their right to make a Formal Access to Information Application under the GIPA Act.

Formal Access to Information

If information cannot be accessed through an informal request, a formal access application may be necessary. It may also be necessary if:

- a large volume of information is sought
- providing access would involve an extensive search
- the information sought involves personal or business information about third parties who must be consulted before the information can be released.

Applications must be in writing, and accompanied by a \$30 fee. Processing charges may also be levied, depending on the type and amount of information sought.

A written acknowledgement of the receipt of a formal application will be provided within 5 working days.

Formal requests will be processed within 20 working days and may be extended by up to 15 working days where consultation with a third party is required or if records need to be retrieved. A request for an advance deposit may also extend the statutory time period.

The applicant will be notified of the decision in writing. Any decision to refuse access will include reasons for the decision.

If charges are payable, access will be given to the information only when the payment has been received.

Review Rights

There are a number of review rights under the GIPA Act outlined in Part 5.

If someone is refused access to information, they have a number of options:

- they may seek an internal review by the City;
- they may approach the Office of the Information Commissioner for a review of the City's decision.
- they may also approach the Administrative Decisions Tribunal to request a review.

Application for internal review must be made within 20 working days of the notice of the decision being given to the applicant and must be accompanied by an Application for Internal Review and a fee of \$40.00.

The review will be undertaken by a senior officer who was not involved in making the original decision. A determination from an internal review will be issued within 15 working days. This may be extended by up to 10 working days where there is a need to consult with new third parties.

Alternatively, an applicant can appeal directly to the Information Commissioner or the NSW Administrative Decisions Tribunal. Applicants have 8 weeks from the date of the original decision being given to them to ask for this review. If the applicant has already had a review by the Information Commissioner, they have 4 weeks from the date that the decision was given to them to make an application to the ADT.

Access to Information by Councillors

Councillors have a right to access Council information that is reasonably necessary for exercising their functions of their civic office, including roles which extend beyond decision making at formal meetings.

When making a request for information, Councillors should draft the request carefully and should precisely detail the information, or the nature of the information, sought. It is expected that Councillors will act reasonably in making a request for information.

When dealing with a request by a Councillor for information, the Chief Executive Officer must act reasonably. Given that a Councillor may need the information to perform their public duty, if a request is to be denied, reasons for the refusal must be identified.

Any information that is given to a particular Councillor in the pursuit of their civic duties should also be available to any other Councillor who requests it. Councillors may request access to Council information by providing a written request to the Chief Executive Officer or relevant Director.

Councillors may also apply for information by making an Access to Information application with payment of the associated fees and charges.

Copyright

A large amount of information which is available for public access belongs to third parties and is the subject of copyright, such as plans and reports submitted with development applications. Access to this information is provided to members of the public in accordance with the GIPA Act and other relevant legislation, such as the Environmental Planning and Assessment Act 1979. Copyright laws apply to this information and applicants are advised to seek the consent of the copyright owner before reproducing the information in any way.

REFERENCES

Related Documentation

Open Access Information Register
Informal Access to Information Application
Formal Access to Information Application
Application for Internal Review

Related Legislation

Government Information (Public Access) Act 2009
Government Information (Public Access) Regulation 2009
State Records Act 1998

Superseded Documentation

Access to Archival Records by the Public – administrative policy

Review Period

Manager Governance will review this policy every four years.

Next Review Date

September 2014

TRIM Reference Number

Document number: 2010/267570

AUTHORISATION

Approved by Council on 14 February 2011