

CESSNOCK CITY COUNCIL

PUBLIC INFORMATION ACCESS POLICY 2011

October 2011

**Prepared in accordance with the Government
Information (Public Access) Act 2009 (GIPA
Act), as amended 2011.**

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Legislation:

Government Information (Public Access) Act 2009 (GIPA Act)
Government Information (Public Access) Regulation 2009 (GIPA Regulation)

BACKGROUND

The Government Information (Public Access) Act 2009 (GIPA Act) and associated Government Information (Public Access) Regulation 2009 (GIPA Regulation), replaces the former Freedom of Information Act 1989, effective from 1 July 2010.

The GIPA Act is designed to meet community expectations of more open and transparent government for the people of NSW. The object of 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 Cessnock City Council principles regarding public access to information and the process of managing requests for such access.

SCOPE

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

PRINCIPLES

Cessnock City Council 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.

All charges that may be incurred are listed in the Cessnock City Council Schedule of Fees and Charges available on our website.

A discounted fee may apply in accordance with Division 5 of the GIPA Act, for requests made in specific circumstances such as financial hardship, special public benefit, or applicant personal information.

PUBLIC INFORMATION ACCESS PROCEDURES

Accessing Information

Access to information is provided in accordance with the GIPA Act and Regulations. Any member of the public has a legal right to make application to Cessnock City Council for access to information that Council holds. Council also publishes a wide range of information on its website and makes information available to members of the public.

Open Access Information

Information held by Council that is available as 'Open Access Information' is listed in Section 18 of the GIPA Act and in Schedule 1 of the Government Information (Public Access) Regulation 2009.

Open Access Information is available for inspection at council offices during normal business hours, free of charge. In addition, Council's website also provides many documents for public viewing. Any records that have been archived and considered 'Open Access Information' will be made available as soon as reasonably practical. A copy of a record containing the information can be provided at the cost of photocopying charges as listed in Council's Fees and Charges.

Council will allow access to 'Open Access Information' unless there is an overriding public interest against disclosure of the information.

Informal Access Application Form

An "Informal Access Application Form" is available on Council's website and at Council Offices, to be completed where an applicant seeks access to and/or disclosure of 'Open Access Information' documents held by council within files or stored electronically on Council's records management system.

There is no application fee required for an informal access application, but a photocopying/processing 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 Application Form

A 'Formal Access Application Form' is available on Council's website and at Council Offices, to be completed in relation to open access information requests where one or more of the following applies:

- 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, preferably on the 'Formal Access Application Form', and accompanied by a \$30 application fee.

Processing charges may apply in accordance with Council Fees and Charges, including processing and photocopy charges, depending on the type and amount of information sought. Payment of an advance deposit may be required for an amount of up to 50% of estimated processing charges in accordance with Sections 68-71 of the GIPA Act.

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

Deciding access applications

Access applications will be assessed and decided, and applicant advised, within 20 working days after receipt of the application. The decision period may be extended 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 an applicant is refused access to information, a number of options are available:

- seek an internal review by Council;
- contact the Office of the Information Commissioner for a review of the Cessnock City Council decision.
- contact 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 (ADT). 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 General Manager 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 General Manager or relevant Group Leader.

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 Legislation

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

Superseded Documentation

This policy replaces existing policy: "Access to Information held by Council"

Review Period

This policy is to be reviewed within 12 months of a council election, and upon any legislative amendment.

Next Review Date

September 2013

AUTHORISATION

Adopted by Council : 2 November 2011