GUIDE FOR ACCESSING COUNCIL INFORMATION

1) Overview of the GIPA Act

From 1 July 2010, the new Government Information (Public Access) Act 2009 (GIPA Act) replaces the Freedom of Information Act 1989 (NSW), bringing about the biggest change to rights to government information in New South Wales in 20 years. Implementation of the GIPA Act has also required Section 12 of the Local Government Act to be repealed.

The GIPA Act introduces a new regime for the way companies, property owners and citizens obtain information from councils and government authorities.

Key reforms include:

- the establishment of a new Office of the Information Commissioner;
- a single system for access to information (no more applications under Section 12 of the Local Government Act);
- broader contract disclosure requirements; and
- changed timelines and assessment criteria for applications and access to information.

These reforms will ensure government is more transparent and accountable. Under the new law, state and local government agencies will proactively release more information than ever before to the public.

2) Access to information

The object of the GIPA Act is to open government information to the public by:

- authorising and encouraging the proactive release of government information by agencies.
- giving members of the public an enforceable right to access government information.
- providing that access to government information is restricted only when there is an overriding public interest against disclosure.

The GIPA Act contains a broad presumption in favour of disclosure under which formal applications for access to information should be a last resort. It authorises and encourages the release of information proactively, limited only by legitimate public interest considerations.

Council holds a wide range of information, in both hard copy and electronic form in respect of the wide range of functions it undertakes. That information is contained in:

1. Files – either physical or electronic
2. Policy documents
3. General Documents

3) How do I get access to information?

Firstly, search Council's website, to see if the information is already available. If it isn't already on Council's website you will need to contact a customer service officer for assistance. The customer service officer will need to decide if the information you have requested:

- is open access, or 'mandatory release' information that is readily available.
- should be made available as part of a 'proactive release' of information.
• can be disclosed through ‘informal release’, for example where no third party personal information is involved.
• requires a formal access application, for example because consultation with a third party is required.

The types of information and the ways you can access each is described below.

4) Open Access Information

Open access, or mandatory release information must be published on Council’s website, unless to do so would impose unreasonable additional costs. It can also be made available in any other way. Council must make at least one of the ways to view open access information free of charge.

A list of Council’s Open Access Information can be viewed here.

Open access information includes Council’s policy documents which are maintained in a policy register. The policy register holds all council policies with only the policy documents that affect the community being published on the website.

Council policies that affect the community can be viewed here.

A full list of Council’s policy documents can be viewed here.

Council must also have a publication guide detailing who we are, what we do and how members of the public, community organisations, the media and government agencies can interact with us.

Cessnock City Council Publication Guide can be viewed here.

There are also many other documents that Council must make publicly available. These general documents held by Council have been divided into four sections as outlined by the GIPA Regulations:-

1. Information about Council
2. Plans and Policies
3. Information about Development Applications
4. Approvals, Orders and other Documents.

The public is entitled to inspect these documents on Council’s website (unless there is an unreasonable additional cost to Council to publish these documents on the website) and at the offices of the Council during ordinary office hours or at any other place as determined by the Council. In respect of some information, there may be an overriding public interest against publishing it on the website. Where this is the case, the information will be available for inspection at Council offices only. Any current and previous documents of this type may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges.

Copies of documents provided to members of the public 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. Copyright owner’s consent is required if any part of the document is used for any other purpose.
5) Proactive release documents

Any government information unless there is an overriding public interest against disclosure can be proactively released. Council will make as much information as possible publicly available for inspection at council’s administration centre or on our website. Information to be proactively released includes frequently requested information or information of public interest that has been released as a result of other requests.

To view a record of Council documents that have been proactively released click here.

What else do you need to know about proactive release?

- Information released in this way should be made available either free of charge or at the lowest reasonable cost to the council.
- Certain parts of a document can be deleted, if including the deleted information would create an overriding public interest against disclosure.

6) Informal Requests

The GIPA Act encourages the release of information in response to a request without the need for a formal application, unless there are good reasons to require one. Informal release documents are documents such as those that would have been handled under Section 12 of the Local Government Act.

Informal requests for information will allow access to all forms of government information unless there is an overriding interest against disclosure or it will take significant Councils resources to provide the information.

Council is not required to disclose information pursuant to an informal request, and there is no appeal right if refused.

Informal access application forms can be accessed here.

7) Formal access applications

In some limited circumstances, people seeking access to Council information will need to make a formal request for that information. The GIPA Act provides that a formal access application should only be made as a last resort.

When might I require a formal access application?

- If the scope of the request means that it will take significant Council resources to provide the information
- If the request seeks access to sensitive information
- If the GIPA Act requires consultation with third parties to take place before releasing the information, such as when the information:
  - includes personal information about a person other than the applicant.
  - concerns the business, commercial, professional or financial interests of a person other than the applicant.

A valid formal application for access to information must:

- be in writing on Council’s application form;
- state that it is made under the Government Information (Public Access) Act 2009 (NSW);
• have an Australian postal address for return correspondence;
• provide enough details to help identify the information that the applicant wants; and
• enclose the application fee of $30.

**Formal access application forms can be accessed here.**

The advantage in lodging a formal application is that time limits and appeal rights apply. The application must be dealt with within 20 working days (or an additional 15 working days in some cases, such as where the records are archived).

Informal and formal application forms are also available at the customer service centre.

8) **When can't I have access to information?**

Despite the overarching open access principle, it is not 'access all areas'. Access to information may be denied on the basis of the public interest test or if the information is declared to have "a conclusive presumption of overriding public interest against disclosure" (in accordance with the GIPA Regulations).

Council must not publish and must refuse requests to disclose information in the 12 categories listed in Schedule 1 to the GIPA Act. Some examples include information revealing sensitive personal or commercial-in-confidence information, and information that could jeopardise public safety. In all cases, public interest is the relevant criteria. Political considerations must not come into play.

If council refuses access to the information the applicant can request a review of the decision by Council, the Information Commissioner or, if not satisfied with those, the Administrative Decisions Tribunal.

Council must keep a record that describes the general nature of the information that it decides to exclude under the provisions of the GIPA Act.

**The access to information disclosure log can be viewed here.**

9) **What else do I need to know?**

1. **Files**

Prior to 2004 Cessnock City Council had a “hard copy” filing system, with material being held in physical files. Since then, Council’s files have been maintained in electronic format, physical files being dispensed with, except for development/building construction applications.

Council’s files are not available on the website however this information may be made available either by informal request or via a formal access application, unless there is an overriding public interest against disclosure of the information, in accordance with the provisions of GIPA.

2. **Draft documents**

Greater public access to documents includes draft versions of documents and all materials controlled and saved in Council systems.
3. **Contracts with Council**

Private sector entities (whether companies or individuals) which contract with Council will be required to make some information accessible and available to Council. A customer can submit an access application for information held by the contractor.

Information required to be made available by contractors includes information:

- relating directly to the performance of the services by the contractor
- information collected by the contractor from members of the public to whom it provides, or offers to provide, the services
- information received by the contractor from Council to enable it to provide the services.

Some information is not required to be provided. This includes information that:

- discloses or would tend to disclose the contractor’s financing arrangements, financial modelling, cost structure or profit margins;
- the contractor is prohibited from disclosing to Council under any Act (of this or another State or of the Commonwealth); or
- if disclosed to council, could reasonably be expected to place the contractor at a substantial commercial disadvantage in relation to Council.

Contracts with Council with a value of $150,000 or over will all be listed on a public register. The public register can be viewed here.

10) **Right to Information Officer**

Council has a designated Right to Information Officer and this person is responsible for assisting people to gain access to Council information. Formal applications for access to information made under the Government Information (Public Access) Act 2009 should be forwarded to the Right to Information Officer and must be accompanied by the application fee of $30.00. The Act makes provision for Council to charge for additional processing if significant work is involved in processing the application.

Applications should be addressed as follows:

Right to Information Officer  
Cessnock City Council  
PO Box 152  
Cessnock NSW 2325

Email: council@cessnock.nsw.gov.au

Council’s statutory responsibilities and legal obligations may restrict or prohibit the inspection of certain documents/files etc and, in some cases, may prevent us from providing a copy of the information.

11) **OFFICE OF THE INFORMATION COMMISSIONER**

If you require any other advice or assistance about access to information you may contact the Office of the Information Commissioner by telephone on 1800 194 210 (free call) or by email at oicenquiry@informationcommissioner.nsw.gov.au