
POLICY MANUAL
(Post 1 July 1993)

SUBJECT: ACCESS TO INFORMATION

POLICY TITLE: ACCESS TO INFORMATION HELD BY COUNCIL

DIVISION: ADMINISTRATION

FILE NO: 1421/1, 201/2.1, 1420/16

OBJECTIVE

The objective of this policy is 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 Privacy Management Plan, Code of Conduct, Councillors Access to Information and Interaction with Staff Policy and Release of Complainant Policy.

PRINCIPLES

Wingecarribee Shire Council is committed to the following principles regarding public access to documents and information:

- Open and transparent government;
- Consideration of the public interest in relation to access requests; and
- Respect for the privacy of individuals.

SCOPE

This policy applies to all members of the public wishing to access Council information, councillors and employees Wingecarribee Shire Council.

IMPLEMENTATION:

- This policy identifies the documents and types of information that are available for public access and any restrictions that may apply.
- Council will assess all requests for access to documents and information in a timely manner and in accordance with this policy 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 adopted Schedule of Fees and Charges and relevant legislation.

Council will assess requests for access to information in accordance to:

- Section 12 of the *Local Government Act 1993* (LGA);
- *Privacy and Personal Information Protection Act 1998* (PIPPA);
- *Freedom of Information Act 1989* (FOI);
- *Environmental Planning & Assessment Act 1979* (EPA Act); and
- *Health Records and Information Privacy Act 2002* (HRIPA)

WINGECARRIBEE SHIRE COUNCIL – ACCESS TO INFORMATION POLICY

AUTHORISATION: MN 159/09

DATE: 13 MAY 2009

POLICY:

1. Accessing Information

Wingecarribee Shire 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.

This policy 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 the *Local Government Act 1993* free of charge but a reasonable photocopying fee may be payable under the Act. These charges are detailed in Council's Schedule of Fees and Charges.

There is a right of access under the *Local Government Act 1993* to documents held by Council subject to the restrictions outlined in section 12A of the Act.

There are additional rights of access to documents held by the Council under the *Freedom of Information Act 1989*. Any FOI applications will be processed in accordance with the Act's requirements and a determination made to release the documents or refuse access on the basis of the exemption provisions in the Act. Charges for FOI applications are in accordance with the *Freedom of Information Fees and Charges Order 1989* and are detailed in Council's adopted Fees and Charges.

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 FOI Act. The Act provides for consultation with other affected parties prior to disclosure of information concerning their personal or business affairs.

2. Documents Available

A number of documents are available for public access in accordance section 12(1) of the Local Government Act 1993. An 'Application for Access to Information' Form is not required to access these documents.

Some documents are available to be viewed but cannot be copied under State legislation. These include:

- The Residential Roll of Electors (as of the last election)
- The resumes of candidates for election
- Building Certificates (without building owner's consent)
- Plans of buildings and developments unless the copyright owner approves or the applicant signs to acknowledge copyright obligations and agrees not to use the documents provided for any other purpose without first gaining the copyright owners approval.

WINGECARRIBEE SHIRE COUNCIL – ACCESS TO INFORMATION POLICY

AUTHORISATION: MN 159/09

DATE: 13 MAY 2009

- Bulk property information such as development consent registers, sales registers etc unless the information is required by a government agency for statistical or other purposes consistent with the legitimate functions of that agency and in accordance with Council's Privacy Management Plan.

Section 12(6) of the *Local Government Act 1993* allows inspection of documents in addition to those referred to above unless inspection is deemed by Council to be contrary to the public interest or a restriction applies as listed in Section 3 below. Other documents available for view and copy under this clause may include but are not limited to:

- Home owner warranty insurance documents;
- Building essential certification documents;
- Construction certificates;
- Occupation certificates;
- Structural certification documents;
- Town Planners (DA) reports;
- DA submission letters (excepting where submitter requests confidentiality on the basis of personal safety);
- DA Heritage consultants reports;
- DA Traffic consultants reports;
- Tree inspection consultants reports;
- Acoustics consultants reports and
- Consultants' Land Contamination Reports.

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. Exemptions To Access

Under section 12 (7) and 11(3) of the Local Government Act, 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; or
- Documents which were submitted to or are to be submitted to a 'Closed Committee' of Council or Committee Meeting.

Section 12(1A) of the Local Government Act 1993 restricts access to internal configurations of residential developments but allows access to the height and external configuration of a building and other plans such as shadow diagrams and landscape plans.

While each application for access to information will be assessed on its merits, access to some documents may be contrary to the public interest under Section 12 or may otherwise be specifically exempt from access. Examples of such documents may include:

WINGECARRIBEE SHIRE COUNCIL – ACCESS TO INFORMATION POLICY

AUTHORISATION: MN 159/09

DATE: 13 MAY 2009

- Legal advice - legal professional privilege applies 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.
- Personnel (individual staff) matters;
- Complaints – as per the Release of Complainant Policy, Council will not release the name and/or address of complainants, or the details of any complaint that might identify the complainant(s), as a result of a request for information from Council's records. However documents detailing complaints will be released following a Freedom of Information application but will have material identifying the complaint(s) deleted.
- Individual's details on DA submissions where they claim personal safety issues;
- Council Lease documents;
- Council Contracts;
- Council Tenders; and
- Insurance claims.

4. Public Registers

Council also maintains public registers that are available for inspection by members of the public in consultation with the Customer Service staff. Registers that contain personal information can be inspected on Council premises but prior to any copies being made Council is required to ensure that any person seeking the information is doing so for a purpose consistent with the purpose for which the register was created. Council will require a statutory declaration from a person regarding the purpose for which access is sought.

In accordance with the Privacy Management Plan 2008, Council may also allow (without a specified reason) the inspection of any part of the register, the copying of a single entry from the register or the copy of part of the register as long as personal information is removed.

5. Handling Personal Information

Where Council invites or request any person to provide information to Council including applications, submissions, comments or objections, the person must be advised of the purpose for which the information is being collected by Council and the possibility that the information they provide to Council may be made available to a third party including members of the public.

Applicants may request that a document containing their personal information be updated/corrected in accordance with Section 15 PIPPA or Division 4 HRIPA. The applicant must not alter the documents themselves in any way.

In accordance with Council's Release of Complainant Policy Council will not release the personal details or identifying information of any person making a complaint. This does not cover submissions to applications for development and these details will be made available subject to the applicant having been provided with the pre collection privacy statement.

6. Making an Application

To request access to information under section 12 of the *Local Government Act 1993*, please complete the 'Application for Access to Information' Form.

WINGECARRIBEE SHIRE COUNCIL – ACCESS TO INFORMATION POLICY

AUTHORISATION: MN 159/09

DATE: 13 MAY 2009

All fees for photocopy for applications made under Section 12 are listed in Council's Adopted Schedule of Fees and Charges.

To request access to information under the *Freedom of Information Act 1989*, a Freedom of Information Application Form needs to be completed along with the payment of the specified application fee. Additional processing charges may be required as specified in the *Freedom of Information Fees and Charges Order 1989* and Council's Fees and Charges.

7. Preference for Application Type

To facilitate ease of access, 'Application for Access to Information' forms made under Section 12 of the Local Government Act 1993 will be used in preference to the Freedom of Information Act 1989 when a request for access to Council documents is made.

8. Rights of Review and Appeal

If access to any document(s) is refused the applicant will be advised of the reasons for the refusal and, where appropriate, other means of access will be suggested (such as submitting a Freedom of Information Application).

Where a member of the public is refused access under Section 12 of the Local Government Act 1993, staff will provide details of the reasons for refusal to the member of the public in writing. The member of the public can request further review of the decision after 3 months of the original decision or review.

Any member of the public who is dissatisfied with Council's handling of the request for access to information under the Local Government Act 1993 may lodge a complaint with the NSW Ombudsman. Advice on the process to be followed in either case can be obtained from these agencies.

LEGISLATION & REFERENCES

- Local Government Act 1993
- Freedom of Information Act 1989
- Freedom of Information Fees and Charges Order 1989
- Privacy and Personal Information Protection Act 1998
- Privacy and Personal Information Protection Regulation 2000
- Health Records and Personal Protection Act 2000
- Environmental Planning and Assessment Act 1979
- Copyright Act 1968
- State Records Act 1998
- Practice Note No. 7 – Freedom of Information (LGSA)

REVIEW PERIOD

The Policy will be reviewed within 12 months of the election of a new Council.

CONTACT

For further information relating to this policy please contact Council's Public Officer or Manager Administration Services.

WINGECARRIBEE SHIRE COUNCIL – ACCESS TO INFORMATION POLICY

AUTHORISATION: MN 159/09

DATE: 13 MAY 2009