



POLICY:	ACCESS TO INFORMATION
POLICY TYPE:	Council
STATUS:	Current
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ISSUED BY:	Executive Services
INQUIRIES:	Team Leader Compliance

1. **OBJECTIVE**

To facilitate the timely access to Council documents by members of the public.

2. **BACKGROUND**

In order to comply with the requirements of the Acts and Regulations governing the actions of Local Government, and recognising the complexity of legislation governing the collection, dissemination and use of information gathered and stored by the Council, the following principles will guide decisions on public access to the Council documents.

- 2.1 The principle of open government is recognised and supported by Blue Mountains City Council through the provision of access to information held by the Council.
- 2.2 It is recognised that Section 12 of the Local Government Act 1993 guarantees a right of access to everyone, not just residents of the Council area.
- 2.3 The Council has an obligation to assist applicants in their requests, including, if necessary, assistance with amendments to requests in order to facilitate access.
- 2.4 It is a function of the Council to provide access to information, not hinder access.
- 2.5 Access to information is provided throughout the whole organisation and is not the province of any particular section of the Council. However, while information should be provided when is clearly within the authority of the staff member to so, more complex matters should be referred to Executive Services for advice.
- 2.6 The protection of personal information is an important function of the Council but it is recognised that it can only be one factor in determining whether the public interest is served by the release of information. Sections 12(1) and 12(6) of the Local Government Act 1993 will override the Privacy and Personal Information Protection Act 1998 with respect to information disclosures to third parties.

- 2.7 An appeals system is in place if an applicant is dissatisfied with a decision to refuse access (refer to Access to Information Procedures).
- 2.8 To facilitate ease of access, 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 a Council document is made.
- 2.9 The use of the Freedom of Information Act is a last resort mechanism.
- 2.10 The 'information protection principles' (see the Council PPIPA Management Plan 2003) of PIPPA continue to apply to the Council operations, such as information collection, storage and internal use, regardless of Section 12 of the Local Government Act.

3. **RELEVANT LEGISLATION AND POLICIES**

Local Government Act 1993 – specifically Section 12.
Freedom of Information Act 1989
Privacy and Personal Information Protection Act 1998
Code of Conduct 2007
Code of Meeting Practice 2007 - draft
Serious and Substantial Complaints Policy 2007 - draft
Dealing with Difficult Customers 2007 – draft

4. **WHAT SPECIFIC INFORMATION IS PUBLICLY AVAILABLE?**

Section 12(1) of the Local Government Act 1993 entitles everyone to inspect the current version of the specified documents free of charge.

Section 12(5) states, “the Council must allow inspection of versions of the documents other than the current and immediately preceding versions if those other versions are reasonably accessible”.

Section 12 (6) further states, “Council must allow inspection of its other documents free of charge”.

Documents publicly available include:

- The Council Code of Conduct;
- The Council Code of Meeting Practice;
- Annual Report;
- Annual financial reports;
- Auditor’s Report;
- Management Plan;
- EEO Management Plan;
- The Council policy concerning the Payment of Expenses and Provision of Facilities to Councillors, the Mayor and Deputy Mayor;
- The Council Land Register;
- Register of Investments;
- Register of Pecuniary Interests;
- Returns as to candidates’ campaign donations

- ❑ Agendas and Business Papers for Council and Committee Meetings but not including Business Papers for matters considered when part of a meeting is closed to the public
- ❑ Minutes of Council and Committee Meetings, but restricted (in the case of any part of a meeting that is closed to the public), to the resolutions and recommendations of the meeting;
- ❑ Any codes referred to in the Local Government Act;
- ❑ Register of Delegations
- ❑ Annual Reports of bodies exercising delegated council functions;
- ❑ Applications under Part 1 of Chapter 7 of the Local Government Act for approval to erect a building, and associated documents;
- ❑ Development applications within the meaning of the Environmental Planning and Assessment Act 1979 (EP & A Act) and associated documents;
- ❑ Local policies adopted by the Council concerning approvals and orders;
- ❑ Records of approvals granted, any variation from local policies with reasons for the variation and decisions made on appeals concerning approvals;
- ❑ Records of building certificates under the Environmental Planning and Assessment Act 1979;
- ❑ Plans of land proposed to be compulsorily acquired by the Council;
- ❑ Leases and licences for use of public land classified as community land;
- ❑ Plans of Management for community land;
- ❑ Environmental planning instruments, development control plans and plans made under section 94AB of the Environmental Planning and Assessment Act 1979 applying to land within the Council area;
- ❑ The Statement of Affairs, the Summary of Affairs and the Register of Policy documents required under the Freedom of Information Act 1989
- ❑ Department of Local Government representatives' reports presented at a meeting of the council in accordance with section 433 of the Local Government Act and
- ❑ The Register of Graffiti Removal Work.

5. **WHAT OTHER DOCUMENTS ARE PUBLICLY AVAILABLE?**

Besides the documents specifically mentioned in Section 12(1) of the Local Government Act, members of the public may inspect or copy any other Council document subject to the constraints outlined in Section 5 and Section 7 of this Policy.

It should be noted that Section 12(1) of the Local Government Act allows:

- inspection of applications under Part 1 of Chapter 7 of the Local Government Act for approval to erect a building, and **associated documents**; and
- development applications within the meaning of the Environmental Planning and Assessment Act 1979 and **associated documents**.

Subject to this Policy, "**associated documents**" is taken to mean:

- the application and supporting information submitted with or later as part of the application process;
- plans and specifications (except the internal building configurations);

- letters and advertisements used for public notification of the application;
- objections and submissions received; and
- any notice of determination.

However, the following documents may only to be made available after the Development Application has been finalised.

- report/s on the application's assessment made to the person or body responsible for the application's determination;
- any other internal working document; and
- any other document held by the Council created as part of, or in support of, the application process.

In reference to other polices, procedures and documents developed by the Council, internal working documents may only be available after the document has been finalised.

6. ACCESS TO PUBLIC REGISTERS

Generally information contained in the Public Registers held by the Council will be made available having regard to the Council Privacy Management Plan. The Council holds the following Public Registers:

Act of Parliament	Register / Records
s53 Local Government Act	Council Land Register
s12 Local Government Act	Register of Investments
s12 Local Government Act	Register of Delegations
s12 Local Government Act	Policy Register
s67C Local Government Act (refers to 67A & 67B)	Register of Graffiti Removal
s308 Protection of the Environment Operations Act	Register of Licensed Activities
s100 Environmental Planning & Assessment Act	Register of consents and certificates
s34 Environmental Planning & Assessment Act	Contributions Register
s170 Heritage Act	Heritage and Conservation Register
DCP 9 – Significant Trees	Significant Tree Register
cl.13 Public Health (Skin Penetration) Regulation 2000	Skin Penetration Register
cl.15 Public Health (Microbial Control) Regulation 2000	Cooling Tower Register

7. THE PUBLIC INTEREST TEST

Section 12 of the Local Government Act allows access to other documents except if contrary to the public interest or if specifically exempted. Specific exemptions are information disclosures relating to the following matters:

- personnel matters concerning particular individuals;
- personal hardship of any resident or ratepayer;
- trade secrets;
- a matter the disclosure of which would constitute an offence against an act or found an action for breach of confidence;
- the plans and specifications for any residential parts of a proposed building, other than plans that show its height and its external configuration in relation to the site on which it is proposed to be erected;
- commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it, or to reveal a trade secret; and
- that part of a draft or adopted plan of management that is the subject of a resolution of confidentiality under section 36DA of the Local Government Act.

The Public Officer or his/her nominee will make a determination on documents requiring the public interest test. In essence the test involves weighing, in each particular case, the benefit to the public against any possible adverse effects in allowing inspection, including whether it would have an adverse effect on the Council, with a general preference to allowing access.

The test for public interest will also be made in consultation with any policies and guidelines issued by the Department of Local Government, the Office of the Ombudsman and the NSW Premier's Department in relation to FOI and access generally. In general it is considered that it might be contrary to the public interest to allow access to the following types of documents:

- any part of a document that contains the name and address of a person (and any other identifiers in the document) who has made a complaint to the Council regarding the activities of another person or organisation;
- any part of a tender document disclosing confidential information;
- any part of a document containing financial or commercial information regarding a person or organisation the disclosure of which could have an unreasonable adverse effect on the person or organisation;
- any document that could have a detrimental effect on law enforcement or public safety;
- any confidential Council reports;
- privileged communications between the Council and its legal advisors;

- any other document (internal or external) marked, or classified as, confidential;
- if the work involved in dealing with the application for access to the document would, if carried out, substantially and unreasonably divert the Council's resources away from their use by the Council in the exercise of its functions. (*There is an obligation to assist the applicant to amend the application to permit access*);
- information which would, if disclosed, prejudice the maintenance of law;
- information which would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business; and
- matters affecting the security of the Council, Councillors, Council staff or Council property.

In relation to the Complaints the Council has a duty of care to protect the identity of complainants, acting in good faith, who draw the attention of the Council to actual or potential breaches of law for which the Council has enforcement responsibilities.

8. **PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998**

In applying the public interest test one must take account of the information protection principles, the *Privacy and Personal Information Protection Act 1998*, the *Privacy Code of Practice for Local Government* and the Council Privacy Management Plan.

The *Privacy and Personal Information Protection Act 1998* and the *Privacy Code of Practice for Local Government* give people right of access to certain personal information.

As a general principle the protection of personal information is a function of the Council. The Council must ensure that breaches do not occur when information is provided but it is recognised that it is only one factor in determining whether the public interest is served in the release of information. Sections 12(1) and 12(6) of the Local Government Act will override the PIPPA with respect to information disclosures to third parties.

The Council Privacy Management Plan refers to the details of the Council implementation and interpretation of the privacy requirements.

9. **CAN COPIES OF DOCUMENTS BE TAKEN?**

As well as the right to inspect, members of the public have a right to a copy of the document inspected for a fee, except for the following, which cannot be copied:

- (a) the residential roll of electors;
- (b) the resumes of candidates for election;

- (c) building certificates, unless consent of the owner of the building is obtained;
- (d) the plans of buildings and developments, unless the approval of the copyright holder has been obtained, or where the plans of a proposed building show only the height and external configurations of the building in relation to the site; or
- (e) bulk property information such as development consent registers, sales of registers etc unless the information is required by a government agency for statistical or other purposes consistent with the legitimate function of that agency.

10. **WHAT FEES ARE INVOLVED?**

There is no prescribed charge for the inspection of a Council file and therefore access to a file is free. The Local Government Act allows a Council to charge a reasonable photocopying fee where copies are required. The Council copying charges are contained in the current Fees and Charges Schedule of the Annual Management Plan. The basis and level of fees and charges for photocopying are reviewed annually.

A fee as outlined in the current Fees and Charges Schedule of the Annual Management Plan will be charged for searching files and providing copies.

The fee for processing a Freedom of Information application is set by the Premiers Department and is currently \$30 (GST does not apply).

11. **REVIEW OF ACCESS**

Section 12A of the Local Government Act sets out the process for reviewing restrictions to access. Where the Council decides access to information should not be given, the applicant must receive written reasons for the restriction as set out in the Act.

The Council is required to carry out further reviews when requested by the applicant. These reviews can occur no sooner than three months after the previous review. Restrictions must be removed if the Council finds that there are no grounds for the restriction or if access to the information has been obtained under the FOI Act. It is not necessary for the Council to review any restriction once it has been removed.

A report on Access to Information applications made under Section 12 of the Local Government Act and applications made under the Freedom of Information Act, will be provided to the Council each quarter.

The report will contain details of restrictions that staff have placed on access to information and the reasons for the restriction. The report will also include details of applications for lifting the restrictions that have been made subsequent to the original three-month review.

12. **REVIEW PERIOD**

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