6.12.1 Government Information Public Access (GIPA) Act

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Information Access Policy

This document details Council’s principles and procedures that support the Access to Information Policy (6.12) to ensure compliance with the Privacy and Personal Information Protection (PPIPA) Act 1998, the Government Information (Public Access) Act 2009, the Health Records and Information and Privacy Act 2002 and Copyright Act 1968.

Introduction

Bega Valley Shire Council has identified the management and protection of information is critical to the business of effective local government. Council is the custodian of archival and community records and uses information provided by residents, ratepayers and others to assist in the delivery of services and make informed decisions. Council has developed this procedure and its attendant guidelines to ensure the above Acts are applied and access to and protection of information and intellectual property are dealt with as prescribed.

Information should be freely available about Council policies and services and in accordance with legislative requirements. This approach needs to be balanced with a need for caution and common sense to protect information about individuals, businesses etc., from unwarranted disclosure.

Principles

- openness and accountability
- transparency of decision making
- appropriate access to information about individuals and others
- provision of documents available for public inspection within the framework of legislation including regulations
- identification of documents and registers that are freely available to inspect or copy.
Government Information (Public Access) Act 2009

Set out below is a summary of the Government Information (Public Access) Act 2009 (the GIPA Act) as they apply to Bega Valley Shire Council. These guidelines set out what information Council can disclose and how.

Overview

The Government Information (Public Access) Act 2009 (known as the GIPA Act) came into effect on 1 July 2010 and replaces the Freedom of Information Act (FOI) and Section 12 of the Local Government Act 1993.

The objects of the GIPA Act are to:

- authorise and encourage the proactive release of information
- give members of the public an enforceable right to access information
- ensure access to information is only restricted when there is an overriding public interest against disclosure requirement

What is classed as ‘information’?

The words ‘document’ or ‘record’ are taken in this procedure to include any paper or other material on which there is writing; and paper and other material on which there are marks, symbols or perforations having a meaning for a person qualified to interpret them, and any disc, tape or other article from which sounds, images or messages are capable of being reproduced.

Who can ask for information?

Anyone can ask for information held by Council including:

- members of the public wanting to get access to general information
- individuals wanting to know what information is held about them in a government file
- organisations helping people access their information
- academics doing research
- special interest groups seeking information
- media agencies obtaining information for stories/reports
- Government agencies seeking information from another Government agency.

People, organisations, groups or agencies can request information for a variety of reasons including to:

- obtain personal information
- support a legal case
- conduct research and analysis
- publish reports and media stories
- ensure transparent and accountable government.
Is there any information that cannot be given out?

Sometimes there is an overriding public interest against disclosing certain information. Generally, Council must not publish and must refuse requests to disclose information in the 12 categories listed. Formal applications for ‘excluded information’ are invalid under the Act.

1. Information subject to an overriding secrecy law (26 specifically named Acts)
2. Cabinet information
3. Executive Council information
4. Information subject to the direction or order of a court or other body with the power to receive evidence on oath, or to Parliamentary privilege
5. Information subject to legal professional privilege
6. Excluded information; (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information, information in relation to specific functions about ranking and assessment of students completing the HSC)
7. Documents affecting law enforcement and public safety
8. Specific information relating to transport safety
9. Specific information in relation to adoption procedures and records
10. Specific reports concerning the care and protection of children
11. Information contained in the Register of Interests kept in relation to the Ministerial Code of Conduct
12. Specific information relating to Aboriginal and environmental heritage.

Council will maintain the following documents as a means of recording information that is requested and either disclosed or withheld:

- Disclosure Log
- Undisclosed Information Register
- Publication Guide

Public interest test

Under the GIPA Act, all government agencies, including Council, must disclose or release information unless there is an overriding public interest against disclosure. When deciding whether to release information, staff must weigh the factors in favour of disclosure against the public interest factors against disclosure.

Unless there is an overriding public interest against disclosure, Council must provide the information. There are some limited exceptions to this general rule, for example where dealing with an application would constitute a significant and unreasonable diversion of Council’s resources.

Applying the public interest test

The public interest test involves three steps:

1. Identifying the relevant public interest considerations for disclosure
2. Identifying any relevant public interests against disclosure
3. Assessing whether the public interest against disclosure outweighs the public interest in favour of disclosure.

**Step 1: Identify relevant public interest considerations for disclosure**

The GIPA Act provides examples of factors that Council may consider in favour of disclosure. These are:

- promoting open discussion of public affairs, enhancing government accountability or contributing to positive and informed debate on issues of public importance
- informing the public about the operations of Council and, in particular, our policies and practices for dealing with members of the public
- ensuring effective oversight of the expenditure of public funds
- the information is personal information of the person to whom it is to be disclosed
- revealing or substantiating that Council (or a member of Council) has engaged in misconduct or negligent, improper or unlawful conduct.

This not a complete list, and Council may identify other factors in favour of disclosure without advance notice.

The Information Commissioner may also issue guidelines on additional considerations favouring disclosure.

**Step 2: Identify relevant public interests against disclosure**

The Act provides an exhaustive list of public interest considerations against disclosure. These are the considerations against disclosure that Council may consider in applying the public interest test. Considerations are grouped under the following headings:

- responsible and effective government
- law enforcement and security
- individual rights, judicial processes and natural justice
- business interests of agencies and other persons
- environment, culture, economy and general matters
- secrecy provisions
- exempt documents under interstate Freedom of Information legislation.

The Act says that in applying the public interest test, Council is not to take into account:

- disclosure might cause embarrassment to, or loss of confidence in Council
- any information disclosed might be misinterpreted or misunderstood by any person

Council must consider any submissions made by an applicant in relation to public interest considerations, as well as any factors personal to the applicant.

**Step 3: Assess whether the public interest against disclosure outweighs the public interest in favour of disclosure, giving appropriate weight to each consideration**

The identification of one or even several public interest considerations against disclosure is not sufficient justification to refuse to provide information. Council will make their decision after balancing the relevant considerations for and against disclosure. In each case, Council will consider a range of factors, including:
• the nature and context of the information
• in the case of an informal or formal request, any factors special to the applicant
• the relevant weight of public interest considerations for and against disclosure.

Council should refuse to disclose information only where, on balance, there is an overriding public interest against disclosure, or are evenly balanced, the presumption in favour of disclosure stands, and information should be published or released.

How is information accessible?

Under the GIPA Act, there are 4 ways that government information will be released:

1. Open access information
2. Proactive release
3. Informal access
4. Formal access

Open access information

Open access information is information that Council must make readily available, unless there is an overriding public interest against disclosure. Open access information includes:

• Publication Guide
• Disclosure Log
• Register of Contracts
• Register of documents not made publicly available
• Code of Meeting Practice
• Annual Report
• Annual Financial Reports
• EEO Management Plan
• Council policies
• Pecuniary Interest Register
• Agendas and minutes of any meeting of Council or any committee of Council
• Land Register
• Register of delegations
• Register of graffiti removal work
• Register of current declarations of disclosures of political donations
• Register of Voting on planning matters
• Plans of land proposed to be compulsorily acquired
• Plans of management for community land
Section 6 of the GIPA Act states open access information must be publicly available on Council’s website, unless to do so would impose an unreasonable additional cost. In this case, the information must be freely available in some other format that we consider appropriate. For further information on how information will be available, please see the Information Matrix at Attachment A. Council can apply a charge for open access information, provided that it is free in at least one other way.

Proactive release

Council is encouraged to proactively release as much information as possible, in an appropriate manner and free of charge (or at the lowest reasonable cost). This information will be made available on Council’s website intermittently.

Informal access

Any information held by Council can be released under informal access so long as there is not an overriding public interest against disclosure. Council is releasing information informally whenever we provide information over the telephone, over the counter, by email or by fax, without needing an application form to be filled in.

If an overriding public interest against disclosure exists, information can released by deleting the controversial information, such as the personal information about someone else. Council can also release the information subject to any reasonable conditions and in any format that we consider appropriate.

The types of information suitable for informal release include:

- routine information
- personal information about the applicant
- small amounts of information that is easily accessible

Formal access

Council may also release information subject to a formal access application being made.

Applications can be submitted by completing the Formal GIPA Application Form

Applications must be made in writing, contain sufficient information to enable the information requested to be identified, and be accompanied by a $30 application fee. Council then have 20 working days to decide the
application (although this time can be extended up to a maximum of 15 days if the records need to be retrieved from archives or a third party needs to be consulted). A person who makes an access application has a legally enforceable right to be provided with the information requested unless there is an overriding public interest against disclosure.

If an applicant should seek to withdraw or amend his or her application they can do so by submitting an Application to Withdraw or Amend Application Form.

Decisions made regarding access applications are subject to internal review as well as to external review by the Information Commissioner and/or the Administrative Decisions Tribunal.

Council’s Publication Guide outlines which documents are provided proactively. A record of the information which has been requested and is either released or withheld will also be maintained using the:

- Disclosure Log
- Undisclosed Information Register

**The review process**

Formal Access applicants have a right to request a review of a decision regarding the release of information if they disagree with any of the following decisions as set out under the GIPA Act:

1. a decision an application is not a valid access application
2. a decision to transfer an access application to another agency, as an agency-initiated transfer
3. a decision to refuse to deal with an access application
4. a decision to provide access or to refuse to provide access to information in response to an access application
5. a decision that information is not held by Council
6. a decision that information applied for is already available to the applicant
7. a decision to refuse to confirm or deny that information is held by Council
8. a decision to defer the provision of access to information in response to an access application
9. a decision to provide access in a particular way in response to an access application (or a decision not to provide access in the way requested by the applicant)
10. a decision to impose a processing charge or to require an advance deposit
11. a decision to refuse a reduction in a processing charge
12. a decision to refuse to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment
13. a decision to include information in a disclosure log despite an objection by the access applicant (or a decision that the access applicant was not entitled to object)
There are generally 3 options to have a decision reviewed:

**Internal Review**

Applicants have 20 days from receiving notice of a decision to ask for an internal review. If the General Manager of Council or the Mayor made the decision, applicants cannot ask for an internal review, but they can ask for an external review (see below).

An internal review must be carried out by a more senior officer than the person who made the original decision. The review decision must be made as if it was a fresh application.

There is a $40 fee for an internal review application, except if the decision is ‘deemed refusal’ because Council did not process the application within the time frame. In this case, a review fee cannot be charged.

The application for review must be acknowledged by Council within 5 working days of receiving it.

Council must decide the internal review within 15 working days (this can be extended by 10 days if Council has to consult with a third party or by agreement with the applicant).

Applicants can submit a request for an internal review by submitting a completed Application for Internal Review form.

**External review by the Information Commissioner**

If an applicant disagrees with any of the decisions listed above, they can apply for a review by the Information Commissioner.

If the person applying for an external review is the initial applicant, they do not have to have an internal review of the decision before asking the Information Commissioner to view it.

If the initial applicant isn’t the one applying for an external review, then the new applicant must seek an internal review before applying for a review by the Information Commissioner.

An applicant has 8 weeks from being notified of the decision to ask for a review by the Information Commissioner.

Applicants can submit a request for an external review by visiting the website of the Office of the Information Commissioner.

On reviewing the decision, the Information Commissioner can make recommendations about the decision to Council.

Note: The Information Commissioner cannot be asked to review a decision that has already been reviewed by the Administrative Decisions Tribunal.

**External review by the Administrative Decisions Tribunal**

If an applicant disagrees with any of the decisions listed above, they can ask for a review by the Administrative Decisions Tribunal (ADT). The decision does not have to be reviewed internally or by the Information Commissioner before applying for a review by the ADT.

An applicant has 8 weeks from being notified of the decision to apply to the ADT for a review. If, however, the applicant has applied for a review by the Information Commissioner, they have 4 weeks from being notified on the Information Commissioner’s review outcome to apply to the ADT.
Frequently asked questions

Q. Can I be given details of my neighbour’s name and address?
A. Yes. Such information for one enquiry or single page in a public register can be provided without a reason.

The Local Government Code of Practice says that any person may inspect the publicly available version of a public register and copy an entry or page without Council needing to satisfy itself regarding the purpose for which the information will be used.

Q. I am a valuer. Can I look at Council’s rate register?
A. Council will not release names and addresses to commercial valuation enquiries.

Q. Can I look at Council’s Companion Animal Register?
A. Generally, information in the register is not available except in the following circumstances:
   i. If the person obtains that information for the lawful exercise or function under the Companion Animals Act
   ii. For the purpose of bringing legal proceedings against the owner of the animal, enquiries are to be in writing and directed to the responsible officer.

Q. Can I look at a Building Certificate Register?
A. The register is available for inspection free of charge. Copies of Certificates are only available with owners consent and payment of copying charges.

Q. Can I have a list of names and addresses so that I can mail out a circular?
A. No. The Privacy Information and Personal Protection Act allow copies of names and addresses, only where the request is for the purpose the register is kept.

Q. Can I see a copy of the development application or construction certificate?
A. Yes however access to the following information is not available
   i. the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
   ii. 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.

Q. Can I take away a copy of a development application or a construction certificate?
A. Yes. Subject to the provisions of copyright and payment of the copying charge.

Q. Can I look at Council’s contributions plans?
A. Council must make the following documents available for inspection:
   i. each of its current contributions plans
   ii. each of its annual statements
   iii. its contributions register
   iv. the documents must be available at Council’s Bega office, free of charge
Q. Can I see and take copies of all the objectors’ letters to my development application?
A. Yes

Q. How do I infringe copyright?
A. Reproduction in any way of music, intellectual property, house plans or documents without consent from
the owner of that information is a breach of copyright.

Q. What if I pay a builder to draw a plan based on my idea?
A. In most cases, the person who draws the plan will own copyright, because they are the author of the plan.

Q. Can I see the Electoral Roll used for Local Government Election purposes?
A. The Electoral Roll is accessible.

Q. Can I see a Council file in respect to a matter?
A. There are some files and documents that are available and depending on the circumstances some
information is not available. Specific enquiry should be directed to the Public Officer.

Q. Can a contractor have access to my personal records?
A. Yes, certain contractors are given Council records to enable them to perform their functions on behalf of
Council. In giving that information to contractors, the same privacy protection principles apply to the contractor
as those that apply to Council.

Q. Can I look at a building file?
A. Yes, you can look at your building file, but access may be denied to sensitive documents that contain
personal information about another person that, for example, may have objected in some way to the application.

Q. Can I copy information from that file?
A. Information may be copied and charged at the fee set out in Council’s Fees and Charges, but Council retains
the right not to copy personal information or matters that may be copyright, unless that person has consented to
the release or copying of that information.

Q. Can I obtain general information on property such as a drainage plan, rates certificate or Section 149
certificate?
A. Yes. A person is entitled to obtain these documents upon paying the prescribed fee. Normally a
satisfactory reason is required, such as the person is buying a property. A building certificate is available to:

i. the owner of the land in question  
ii. anyone with the consent of the owner  
iii. the purchaser under a Contract for Sale  
iv. an public authority.

Q. Can I look at a property file that contains a complaint about me?
A. Yes. You are entitled to look at a property file that contains a complaint, but the actual complaint may not
be accessible if it contains details that may identify a complainant.

Q. Can I look at a Development Application file?
A. Yes, you can look at a Development Application file, however the following information is not available;
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i. the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or

ii. 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.

Q. Can I have a copy of the recording of a Council meeting?
A. Yes, a person is entitled to a copy of a recording of a Council meeting upon payment of the cost to Council for providing that information, which may include the cost of the compact disc and staff time in locating and recording, plus on costs.

Q. Can I review the information retained by Council regarding the Council services I use such as my child’s child care records, my ageing and disability client files or my library loans history?
A. All of Council’s Community and Cultural Services have individual policies on how you can access the information retained about your use if the service such as client files or children’s records. Our aim is to make this information easily accessible to you but it is not available to third parties without your consent.

Q. Is a police officer entitled to obtain access to personal information?
A. The Privacy Act allows access to personal information for law enforcement purposes. However to control that information, Council’s procedure requires that before such information is released, a letter be provided from the NSW Police stating that police investigation is being carried out including a request for the personal information being sought.

In the case where broad information is being sought as part of an investigation – such as a complete copy of Council library members, a warrant will be required.
Reference list

Acts, Regulations and external websites
- Government Information Public Access (GIPA) Act 2009
- Privacy and Personal Information Protection (PPIPA) Act 1998
- Copyright Act 1968
- Health Records and Information and Privacy Act 2002

Reference documents
- Disclosure Log
- Undisclosed Information Register
- Publication Guide

Templates and forms
- Formal GIPA Application
- Application to Withdraw or Amend Access Application
- Application for Internal Review