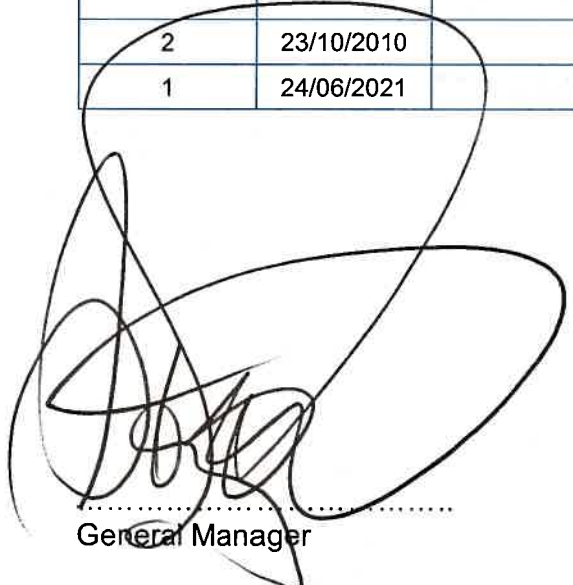




# **Access to Information Guidelines**

**DOCUMENT AUTHORISATION**

<b>RESPONSIBLE OFFICER:</b>		MANAGER OF GOVERNANCE RISK AND CORPORATE PLANNING			
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3	28/06/2018		Minor amendments	Director of Corporate and Community Services (DCCS)	Council
2	23/10/2010			DCCS	Council
1	24/06/2021			DCCS	Council



.....  
General Manager

29/7/21  
.....  
Date

## Contents

Access to Information Guidelines .....	1
1 Forms of Access.....	4
1.1 Information Available .....	5
1.1.1 Open Access.....	5
1.1.2 Proactive Release.....	8
1.1.3 Informal Request.....	8
1.1.4 Formal Application .....	8
1.2 Restrictions on Access to Information .....	8
1.2.1 Public Interest Test .....	9
1.2.2 Excluded Information .....	10
2 Accessing Information and Making an Application .....	11
2.1 Informal Request .....	11
2.2 Formal Access Application .....	11
2.2.1 Time Limits.....	11
2.2.2 Deferral .....	12
2.2.3 Rights of Review and Appeal.....	12
3 Variation and Review.....	13
4 Annexures .....	14
4.1 Annexure A - Informal Access Request Form .....	14
4.2 Annexure B - GIPA Access Application .....	18

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## 1 Forms of Access

**Glen Innes Severn Council** (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 public interest. In doing so, Council recognises that it must consider the privacy of others, legal and commercially sensitive information.

These guidelines 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 **Government Information (Public Access) Act 2009 (GIPA Act)** free of charge, however a reasonable photocopying fee may be payable under the Act and for access to versions of documents that are neither current nor immediately preceding versions of the document and are not reasonably accessible. All charges are detailed in Council's Schedule of Fees and Charges.

There is a right of access under the GIPA Act to certain documents held by Council unless there is an overriding public interest not to provide. Any applications under the GIPA Act will be processed in accordance with the Act's requirements and a determination made to release the documents or refuse access based on the relevant considerations under that Act. Charges for formal applications are in accordance with the GIPA Act Fees and Charges and include a \$30 application fee. In some circumstances processing charges charged at \$30 per hour may also be applied.

Council also may provide access to information under other legislation. Under the **NSW Privacy and Personal Information Protection Act 1998 (PPIPA)** and the **NSW Health Records and Information Privacy Act 2002 (HRIPA)**, 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 GIPA Act. The Act provides for consultation with other affected parties prior to disclosure of information concerning their personal or business affairs. Under the *State Records Act 1998* Council is required to give an access direction (whether the records are open or closed) for all their records that are at least thirty years old in what is described as the "open access period".

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Under the *NSW Environmental Planning and Assessment (EPA) Act 1979 and Regulations 2000* there is a right to access Development Application registers and documents held by Council subject to restrictions set out in s.268(3).

## 1.1 Information Available

There are various types of information available that may be accessed differently at Council such as through mandatory release, proactive release, an informal request and a formal application.

### 1.1.1 Open Access

Council publishes open access, or mandatory release, information on its website unless there is an overriding public interest against disclosure or do so would impose an unreasonable additional cost on Council. In respect of the latter the Council will make the information freely available in another format e.g., hard copy at the Council Administration Office.

Open access information is:

- Council's policy documents that are related to its functions and are likely to affect members of the public such as rules, guidelines, statements of how administered schemes will operate and procedures to investigate contraventions (but are not legislative instruments);
- Council's **Agency Information Guide (AIG)** - A publication guide with information about Council's structure and functions, and listing the type of information that is publicly available;
- A disclosure log of formal access applications where in Council's opinion the information released may be of interest to other members of the public;
- A register of contracts worth more than \$150,000 that councils have with private sector bodies; and
- A record of open access information that Council does not make publicly available based on an overriding public interest against disclosure.

In addition, Schedule 5 of the GIPA Act requires that certain documents held by Council are to be made publicly available for inspection, free of charge. The public is entitled to inspect these documents either on Council's website (unless there is an unreasonable additional cost to Council to publish these documents on the website), or at the offices of the Council during ordinary office hours, or at any other place as determined by the Council. 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.

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These documents include:

**Information about Council:**

- The model Code of Conduct prescribed under section 440(1) of the **Local Government Act 1993 (LGA)** which has been arranged and adopted as Council's:
  - Code of Conduct for Council Staff;
  - Code of Conduct for Councillors; and
  - Code of Conduct for Council Committees Members, Delegates of Council and Council Advisers.
- Code of Meeting Practice;
- Annual Report;
- Annual Financial Reports;
- Auditor's Report;
- Operational Plan and Budget;
- EEO Management Plan;
- Policy concerning the Payment of Expenses and Provision of Facilities to the Mayor and Councillors;
- Annual Reports of Bodies Exercising Functions Delegated by Council (e.g. Section 355 or 377 Committees);
- Any Codes referred to in the Local Government Act;
- Returns of the Interests of Councillors, Designated Persons and Delegates;
- Agendas, Business Papers and Minutes of Council/Committee meetings (except meetings that are closed to the public);
- Office of Local Government, NSW Department of Premier and Cabinet Representative Reports presented at a meeting of Council;
- Land Register;
- Register of Investments;
- Register of Delegations;
- Register of Graffiti removal works;
- Register of current Declarations of Disclosures of Political donations; and
- Register of Voting on Planning Matters.

**Plans and Policies:**

- Local Policies adopted by Council concerning approvals and orders;
  - Plans of Management for Community Land;
  - Environmental Planning Instruments, Development Control Plans and Contribution Plans.
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**Information about Development Applications made on or after 1 July 2010 including associated documents and records of decisions such as:**

- Home Warranty Insurance documents;
- Construction Certificates;
- Occupation Certificates;
- Structural Certification Documents;
- Town Planner Reports;
- Submissions received on Development Applications;
- Heritage Consultant Reports;
- Tree Inspections Consultant Reports;
- Acoustic Consultant Reports;
- Land Contamination Consultant Reports;
- Records of decisions on Development Applications including decisions on appeals; and
- Records describing the general nature of documents that Council decides to exclude from public view after application of public interest test considerations.

**Approvals, Orders and Other Documents:**

- Applications for approvals under Part 7 of the LGA;
- Applications for approvals under any other Act and any associated documents received;
- Records of approvals granted or refused, any variation from Council Policies with reasons for the variation, and decisions made on appeals concerning approvals;
- Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under Section 136 of the LGA;
- Orders given under the Authority of any other Act;
- Records of Building Certificates under the *Environmental Planning and Assessment Act 1979*;
- Plans of land proposed to be compulsorily acquired by Council;
- Compulsory Acquisition Notices;
- Leases and Licenses for use of Public Land classified as Community Land.

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.

In addition, from time-to-time Council will make as much other information as possible publicly available in an appropriate manner, including on their website. The information will be available free of charge or at the lowest reasonable cost. Such other information includes frequently requested information or information of public interest that has been released because of other requests.

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### 1.1.2 Proactive Release

Council can make an executive decision to release extra information that is not covered by the mandatory provision and that is not already publicly available, free of charge.

### 1.1.3 Informal Request

Council will endeavour to release other information in response to an informal request, subject to any reasonable conditions as Council thinks fit to impose.

This is to allow the public to request information without the need of a formal application and may be inspected free of charge, however, copies of documents may incur charges not exceeding reasonable photocopying costs. It should be noted that this form of access does not allow for the applicant to seek any type of review of their determination. An informal application may be submitted via an ***Informal Access Request Form (Annexure A)***.

### 1.1.4 Formal Application

Notwithstanding the lodgement of an informal request, Council may require a formal access application to be submitted where the information sought:

- Is of a sensitive nature that requires careful weighing of the considerations in favour of and against disclosure, or
- Contains personal or confidential information about a third party that requires consultation, or
- Would involve an unreasonable amount of time and resources to produce.

A ***Formal Access Application (Annexure B)*** may be submitted to Council including enough information for the required information to be identifiable along with the prescribed \$30.00 fee to validate the application. A processing charge for each application is applicable at a rate of \$30 per hour for each hour of processing time for the application after the first hour. If a Formal Access Application is made for personal information about the applicant (the applicant being an individual) the first 20 hours of processing time is free. Lodgement of a Formal Access Application entitles the applicant to review rights under the GIPA Act. There are three avenues of review; internal review, review by the Information and Privacy Commissioner and review by the NSW Civil and Administrative Tribunal (NCAT).

## 1.2 Restrictions on Access to Information

Council may refuse a request for information if there is an overriding public interest against disclosure or if searching for the requested information would require unreasonable and substantial diversion of the Council's resources.

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Council will always explain to the applicant its reasons for applying an exemption. Council will not classify information as exempt unless there are clear reasons for doing so. Where documents contain exempt information, any remaining information contained within the requested document will be available under the Act.

### 1.2.1 Public Interest Test

In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the Public Interest Test.

What is the Public Interest Test?

The public interest test requires balancing factors for and against disclosure of each piece of government information. That balancing must be undertaken within the context of the GIPA Act.

Accordingly, the:

- Object of the GIPA Act;
- Four legislative pathways through which information can be released;
- Presumption in favour of disclosure of information;
- Limited factors which operate against disclosure of information;
- Identification of irrelevant considerations; and
- Principles that apply to the public interest test

all form part of the legislative context in which the public interest test be undertaken.

Following recognition of the legislative context the public interest test then involves three steps:

1. Identify the relevant public interest considerations in favour of disclosure;
2. Identify the relevant public interest considerations against disclosure; and
3. Determine the weight of the public interest considerations in favour of and against disclosure and come to a conclusion about whether the factors favouring non-disclosure are strong enough to outweigh the factors in favour of disclosure (taking into account the presumption in favour of disclosure).

The public interest test requires that for information to be withheld the factors against disclosure must ultimately override public interest considerations in favour of disclosure.

In applying the public interest test, Council will **not** consider:

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

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

### 1.2.2 Excluded Information

The GIPA Act provides an exhaustive list of public interest considerations against disclosure. These are the **only** considerations against disclosure that Council will 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 (in legislation other than those listed in Schedule 1);
- Exempt documents under interstate Freedom of Information legislation.

Under the GIPA Act there are several categories of information (eight of which appear to affect Local Government) for which there is a conclusive presumption of an overriding public interest against disclosure. This information is known as *Excluded Information* and the eight categories are:

1. Information subject to an overriding secrecy law (26 specifically named Acts);
2. Information subject to the direction or order of a court or other body with the power to receive evidence on oath;
3. Information subject to legal professional privilege;
4. 'Excluded information' (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information and information in relation to specific functions of the Public Trustee);
5. Documents affecting law enforcement and public safety;
6. Specific information relating to transport safety;
7. Specific reports concerning the care and protection of children; and
8. Specific information relating to Aboriginal and environmental heritage.

Generally, under the GIPA Act, Council must not publish and must refuse requests to disclose information in the above categories. Formal applications for 'excluded information' are invalid under the Act.

In dealing with informal applications Council will apply a similar decision-making framework.

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## 2 Accessing Information and Making an Application

The public may obtain access to information as follows:

- By searching the Council's website to see if it is already available;
- By contacting Council and requesting the information. Council will advise whether the information requested:
  - Is *open access*, or *mandatory release* information that is readily available and where and how to get the information.
  - Should be made available as part of a *proactive release* of information.
  - Can be disclosed through an *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.

### 2.1 Informal Request

To make an informal request for access to information under the GIPA Act Council may require the completion of an Informal Access Request Form (Annexure A). No fee is required on application.

### 2.2 Formal Access Application

To make a formal request for access to information under the GIPA Act, the GIPA Access Application form (Annexure B) should be completed. The Formal GIPA Access Application fee is \$30.00 and processing charges (charged at \$30 per hour) may be applicable (there is no GST in relation to these charges). An acknowledgement of such application will be provided by Council within five (5) working days.

If a fee for photocopies of documents provided under the GIPA Act is payable, it will be listed in Council's adopted Fees and Charges and is GST inclusive.

#### 2.2.1 Time Limits

Upon receipt of a formal application, Council must acknowledge receipt of the application and accept or reject the application within 5 working days.

If the application is invalid and does not contain enough information to process, the Council staff member determining the application will assist the applicant to enable a valid application.

A decision regarding access to information must be made within 20 working days unless the applicant agrees to extend the time. Council may also extend the time by up to 15 working days where consultation with a third party is required or if Council needs to retrieve records from archives.

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### 2.2.2 Deferral

If access is deferred by Council, then Council will notify the applicant and include the reason for deferral and the date on which the applicant will be given access. A decision to defer access is reviewable (see Rights of Review and Appeal). If Council does not decide the applicant's access application within the above timeframes, it is deemed 'refused'. Council will refund the application fee and the applicant may seek internal or external review (see Rights of Review and Appeal) of this refusal. This will not apply if an extension of time has been arranged or payment of an advance deposit is pending.

### 2.2.3 Rights of Review and Appeal

Where a member of the public is refused access under a formal application under the GIPA Act, staff will provide details of the reasons for refusal to the member of the public in writing. An applicant who has been refused access by Council to information requested under a formal request for access to information under the GIPA Act has three (3) options of review available.

#### **Internal review**

Applicants can apply to Council for an **internal review**. This is a review by someone more senior than the original decision maker and there is a \$40 fee. Applicants have 20 working days from receiving notice of a decision to ask for an internal review.

#### **Review by the Information Commissioner**

If an applicant is not satisfied with the internal review, or does not want one, they can ask for a **review by the Information Commissioner**. Applicants have 40 working days following the date of receipt of the decision to request this review.

#### **Review by NCAT**

Must be made by the applicant within 40 working days following the date of receipt of the decision.

If the decision is the subject of review by the Information Commissioner, an application for NCAT review can be made at any time up to 20 working days after the applicant is notified of the completion of the Information Commissioner's review.

The onus is on Council to justify decision.

It is noted that there are no rights of review in respect of informal applications, but the applicant may make a formal application at any time.

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### **3 Variation and Review**

The Access to Information Guidelines will be reviewed every three years, or earlier if deemed necessary, to ensure that it meets the requirements of legislation and the needs of Council. The Guidelines will continue in force until superseded, rescinded or varied either by legislation or a new decision of the General Manager. Any draft revised versions, where there are significant amendments, will be provided to Council for noting.

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## **4 Annexures**

### **4.1 Annexure A - Informal Access Request Form**

# Informal Access Request Form

## Section 8 Government Information (Public Access) Act 2009

This form is to be used for access and/or disclosure of documents held by Council within files or stored electronically on Council's Records Management System.

You may lodge this Request Form at Glen Innes Severn Council offices:

Administration Office		<b>Mail to:</b>		<b>Email:</b>
Town Hall		General Manager		
265 Grey Street	<b>OR</b>	Glen Innes Severn Council	<b>OR</b>	council@gisc.nsw.gov.au
GLEN INNES NSW 2370		PO Box 61		
		GLEN INNES NSW 2370		

### 1. Your details

Surname: ..... Title:  Mr  Mrs  Ms

Other names: .....

Postal address: ..... Postcode: .....

Day-time telephone: ..... Facsimile: .....

Email: .....

Is the information about your personal information:  Yes  No

I agree to receive correspondence at the above email address.

### 2. Are you seeking information on someone's behalf

No

Yes (Please provide details below)

Surname: ..... Title:  Mr  Mrs  Ms

Other names: .....

NOTE: You must attach proof of your authorisation to act on the person's behalf, such as legal documentation in support of your authority (for example: a client agreement if you are a solicitor) or written authorisation from the person concerned. If you are representing a corporation then you require an authority letter from the Managing Director on the company letterhead with a copy of the ASIC extract showing the Directors/Secretary names.

**3. Owner's (or Architect's) consent (to be completed if not the applicant):**

Owner's consent is required for requests for copies of Development & Building Application and Construction Certificate and for copies of Building Certificates (Please note this list is not definitive) \*. Copyright laws are applicable. Architect's consent may also be required for copies of Plans.

Owner's (or Architect's) Name: .....

Contact Telephone Number: .....

I/We consent to the lodgement of the application:

Signature of Owner/s (or Architect): ..... Date: .....

N.B: for strata or company title properties, a signed letter of authorisation from the Body Corporate or Managing Company is required.

\* A separate consent may be attached.

**4. If the information sought is about a property:**

PROPERTY DETAILS

Street Address: .....

Lot No: ..... DP: ..... Application No: .....

Description of development: .....

**5. Details of Informal Request:**

Please provide specific and detailed information about what you are seeking.

Note: To facilitate the supply of information by Council, it is essential that your request be very specific and clear.

a) The type of information you are seeking

.....  
.....  
.....  
.....

b) The time/date range you would like us to search within

From: ..... To: .....





**6. Copying Charges:**

Applicant advised of estimated copying charges of \$ .....  Yes  No  Not required

Note: Copy charges apply in accordance with Council's adopted fees and charges.

**7. Document Inspection / Delivery Details (Select one item):**

- Inspect the document(s) at Council's Administration Office
- Forward by Mail
- Forward by Fax
- Forward by Email

<p><b>PRIVACY AND PERSONAL INFORMATION PROTECTION NOTICE</b></p> <p>Purpose of collection: Public access to Council's documents.          Intended recipients: Council staff and is publicly available under the Government Information (Public Access) Act 2009.          Supply: Voluntary, a consequence of non-provision is that insufficient information will be provided.          Access / Correction: Requests for access / correction of information under the Government Information (Public Access) Act or Privacy and Personal Information Protection Act 1998, contact the Council's Public Access Coordinator.          Storage: This form will be placed on a relevant file and/or will be saved on Council's main records management database when the request has been processed and the enquiry is completed.</p>
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**8. Applicants Signature:**

Applicant's signature: ..... Date:.....

*General information about the GIPA Act is available by calling the NSW Information and Privacy Commission on*

**1800 472 679** or visit their website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

**Office use only**

Date application received: .....

File reference:.....

## **4.2 Annexure B - GIPA Access Application**

## Government Information (Public Access) Act 2009 ACCESS APPLICATION

Please complete this form to apply for formal access to government information under the *Government Information (Public Access) Act 2009 (GIPA Act)*. If you need help in filling out this form, please contact the Public Officer on 02 6730 2300 or visit our website at [www.gisc.nsw.gov.au](http://www.gisc.nsw.gov.au)

### 1. Your details

Surname: ..... Title:  Mr  Mrs  Ms

Other names: .....

Postal address: ..... Postcode: .....

Day-time telephone: ..... Facsimile: .....

Email: .....

Is the information about your personal information:  Yes  No

I agree to receive correspondence at the above email address.

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*The questions below are optional and the information will only be used for the purposes of providing better service.*

Place of birth: .....

Main language spoken: .....

Aboriginal or Torres Strait Islander:  Yes  No

Do you have special needs for assistance with this application? .....

### 2. Proof of identity

*Only required when an applicant is requesting information on their own behalf.*

**When seeking access to personal information, an applicant must provide proof of identity in the form of a *certified copy* of any one of the following documents:**

Australian Drivers Licence, with photograph, signature and current address.

Current Australian Passport

Other proof of signature and current address details

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**3. Government information**

Please describe the information you would like to access in enough detail to allow us to identify it.

Note: If you do not give enough details about the information, we may refuse to process your application.

.....  
.....  
.....  
.....  
.....

Are you seeking personal information?    Yes     No

**4. Form of access**

How do you wish to access the information?

- Inspect the document(s) at Council offices
- A copy of the document(s)
- Access in another way (Please Specify)

.....  
.....

**5. Application Fee**

I attach payment of the **\$30 application fee** by cash / cheque / money order (circle one).

(Note: please do not send cash by post)



**6. Disclosure log**

If the information sought is released to you and would be of interest to other members of the public, details about your application may be recorded in the agency's 'disclosure log'. This is published on the agency's website.

Do you object to this? **Yes / No** (circle one)

**7. Discount in processing charges**

You may be asked to pay a charge for processing the application (\$30 / hour). Some applicants may be entitled to a 50% reduction in their processing charges. If you wish to apply for a discount, please indicate the reason:

- Financial hardship – please attach supporting documentation (e.g., a pension or Centrelink card).

**AND / OR**

- Special benefit to the public – please specify why below:

.....

.....

Applicant's signature: ..... Date: .....

Please post this form or lodge it at: **Glen Innes Severn Council, 265 Grey Street, Glen Innes, 2370**

*General information about the GIPA Act is available by calling the Office of the Information and Privacy Commissioner on freecall 1800 INFOCOM (1800 472 679) or at its website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)*

**Office use only**

Date application received:

File reference: .....