

## Organisational Guidelines

### Administrative Access & Right to Information

Corporate Plan reference	An Outstanding Organisation
Manager responsible for policy	Branch Manager, Corporate Governance, Office of the CEO

### Introduction

This guideline describes the general processes and conditions for accessing documents and information held by Council, or under the control of Council. It seeks to establish, promote and maintain the public right of access to Council-held information.

Council makes information available to the public in various ways, including via:

- Council websites
- The Publication Scheme
- Council Libraries and service centres
- Direct or informal access
- A formal application under the RTI Act or IP Act<sup>1</sup>.

This organisational guideline outlines the process and responsibilities for releasing information, and must be read in conjunction with the requirements of the Administrative Access and Right to Information Policy.

### Commitment to openness

The RTI Act commits Sunshine Coast Council to being open and transparent. It provides that *“Government information will be released administratively as a matter of course, unless there is a good reason not to”*, with formal access applications being necessary *“only as a last resort”*.

All Council employees have a role to play in this commitment. Individual officers and business areas across the organisation should be empowered to publish and provide information directly to members of the public, both proactively and in response to requests, subject to the guidelines in this document and any legislative or associated requirements.

This guideline outlines the process and responsibilities for releasing information.

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<sup>1</sup> *Right to Information Act 2009* (“RTI Act”) or *Information Privacy Act 2009* (“IP Act”)

## Benefits

Openness in government is recognised to enhance accountability and improve public administration and decision-making.

By providing efficient and open access to Council-held information, other benefits will include:

- Build trust with the community and individual customers.
- Information put into the community faster and at lower cost.
- Improve the service experience of customers and prevent escalation of issues and associated workloads.
- Create positive results which benefit the community and assist with our own everyday work as employees.
- Increase the level of community engagement and equip citizens to contribute to policy making and delivery.
- Provide data to support business and industry and their contribution to the economy.
- Demonstrate that Council is operating in accordance with the spirit of openness and accountability.

## Considerations for providing access

### What is administrative access?

Providing access directly or as a normal process, is known as 'administrative access'. It refers to the release of government-held information by means other than a formal access application under the RTI Act or *Information Privacy Act 2009* (IP Act).

Administrative release is a discretionary process, but the framework for release is based upon the same grounds implemented under the RTI Act and IP Act.

### Proactively releasing information

Council makes a broad range of information readily-available online, including through [Development.i](#), the [Open Data portal](#) and as part of community engagement.

Employees are encouraged to look for opportunities to publish additional and/or new information or data sets, including by raising this through their leader/supervisor/manager.

### Responding to requests for information

This guideline applies to any request for information from any person, group or entity (the "Requestor"). Where any verbal or written request for information is received, a timely and efficient response should be provided. As a general rule, all employees should be empowered to respond directly when asked for information, or otherwise another employee with sufficient authority and knowledge should be identified to take responsibility to respond. Usually the employee who responds will be from the relevant branch or business area which primarily handles the information or relevant subject matter, with some exceptions including for requests from journalists and dignitaries (see below).

Where a request for information involves separate branches, relevant employees should collaborate to provide either a consolidated response or separate responses.

Where a request is unclear or would be difficult or time-consuming, early contact should be made to discuss whether some particular document or information could be provided.

## Requirements for requests

Requests need not be in writing, but a common-sense approach should be adopted. If a Requestor verbally asks a question or requests information, then a verbal reply could be given.

If the matter may not be simple or may require further time or consideration to respond, then the Requestor could be asked to submit a written request (email is acceptable).

## Verifying identity of people seeking personal information

Personal information must only be released to the same person it is about, unless there is a specific exception under the privacy principles.<sup>2</sup>

While a common-sense approach may be adopted in verifying identity, employees should always be alert to whether a Requestor is not genuinely the same person.

It may be necessary to ask for direct or photographic evidence of identity, such as a copy of a driver's licence.

Generally, identity could be verified by asking identifying questions and/or checking if interactions are occurring via the same email address or phone number. For example, Customer Contact has established identifying questions for call centre enquiries.<sup>3</sup> In some cases, particular officers will have had multiple interactions with certain individuals and will be satisfied of their identity, for example as part of an ongoing complaint-related matter.

A Requestor can also authorise a lawyer, family member or someone else to access their information or act on their behalf. In such cases employees must still ensure that personal information is provided only to the authorised person, and if necessary also verify the authorisation.

## Information appropriate for administrative access

The following types of information are appropriate for administrative release:

- Personal information of the Requestor (there must be no personal information of other individuals intertwined with the Requestor's information).
- Emails and correspondence previously sent between Council and the Requestor.
- Information which is publicly available (whether released by Council or not).
- Information which is routinely made available by Council.
- Information that would be released if it was requested under the RTI Act, either generally or to the particular Requestor.

However, each of these is subject to the *acceptable reasons for withholding access* outlined below. This is also not an exhaustive list. The next section outlines that information should be accessible unless an acceptable reason applies.

Some information is required to be available by law. For example, there is certain information about property ownership and rates which must be publicly available under local government legislation. Planning legislation requires a range information to be publicly available about building and development applications.

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<sup>2</sup> In particular, refer to [IPP 11 in the Information Privacy Act 2009](#) about limits on disclosure.

<sup>3</sup> Refer to InfoHub article [Customer identification process CCO procedure](#)

## Acceptable reasons to withhold access

All information should be accessible as a starting point, either for proactive publication or upon request from an individual or group.

However, there are certain protections which apply to formal publication or access under the RTI Act or IP Act, which do not apply to administrative access. Employees should be aware that publishing or providing information directly or administratively is **not** protected from actions for defamation or breach of confidence.

Council is not protected from any action for defamation or breach of confidence that may exist as a result of disclosure or publication of information. Protections for these apply only for formal applications under the RTI Act or IP Act.

Prior to releasing information, employees should firstly consider whether there is a good reason to not give access.

Information should only be withheld under one or more of the following reasons:

1. **Privacy and personal information:** To protect the personal information of someone else. This includes complainant or informant names and identifying information. This will not usually apply to employee names where it is only about their routine work, but it would apply to employee leave or grievance matters.
2. **Third party concerns:** If a third party would reasonably oppose disclosure or be concerned about disclosure, including if the information may be defamatory<sup>4</sup>. (Note: This would be negated if consent is given by the third party. It may be appropriate to ask the Requestor to seek the information directly from the third party, or it *may* be appropriate for a Council employee to consult the third party.)
3. **Legal professional privilege:** This applies to legal advice and confidential communications with an internal or external lawyer assisting Council.
4. **Prohibited by law:** Any legislation or law may be relevant, including the RTI Act. This will also include confidential information under the *Local Government Act 2009*, and corruption complaints and investigations under the *Public Interest Disclosure Act 2010*.<sup>5</sup>
5. **Other access available:** Informal access should not replace any existing access available. For example, there is information available via paid property searches, including in relation to building approvals or property rates charges.
6. **Breach of confidence:** If there is an explicit or implicit obligation which Council has to a person or entity to keep information confidential which they communicated to Council. Generally this will not apply to internal communications as part of a deliberative process. It will also not apply merely because a document is considered confidential or marked as “confidential”.
7. **Breach of policy or direction:** Employees must not release information in breach of an official Council policy or a direction given by the employee’s leader/supervisor/manager. However, employees and supervisors should also not give a direction which is contrary to this guideline or the RTI Act.
8. **Commercially sensitive:** To protect trade secrets, business affairs or commercially valuable information. However, there should be a real expectation that merely releasing the information would prejudice a business.

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<sup>4</sup> Defamatory matter is that which lowers the reputation or estimation of a person in the eyes of the public.

<sup>5</sup> See [section 200\(4\)](#) of the *Local Government Act 2009* and [section 65](#) of the *Public Interest Disclosure Act 2010*.

9. **Law enforcement:** If disclosure will reasonably prejudice a current investigation or a law enforcement process. (For example, by disclosing a parking patrol schedule, or by prompting someone to destroy evidence for a current investigation.)
10. **Prejudice a deliberative process:** If the information is about a deliberative process of government, and disclosure is expected to prejudice that process. (For example, to release preliminary planning for a large infrastructure project would impact property values and cause angst and disruptive debate over a mere proposal.)
11. Another **good reason** or significant consequence of disclosure which is not merely hypothetical but can be demonstrated on real grounds.<sup>6</sup>

## Copyright and intellectual property

Copyright is not grounds to refuse access, but it may impact the form of access that can be given. To avoid a breach of copyright laws, Requestors can be allowed to view or inspect protected documents.

If Council is the copyright holder, a copy can be provided. Otherwise, Council may breach copyright by copying or reproducing a work (including electronically) without the consent of the copyright holder.

## Large, difficult or time-consuming requests

If the work involved in providing information is time-consuming, substantial or unreasonable, firstly consider if at least *some* information could be provided.

Early contact should be made to discuss whether at least some particular information or document could be provided.

Otherwise, if a Requestor cannot sufficiently narrow-down their request or identify some particular information, then a significant amount work involved may also provide a good reason for withholding access. As a guide, if it would take more than 5 hours of work to provide the information, the Requestor should be advised accordingly.

## Requirement to give people their own personal information

The IP Act places a duty upon Council to provide people with their **own** personal information, such as previous correspondence with the person. If none of the acceptable reasons above are applicable to the personal information, then access should always be provided, subject to being satisfied of identity as mentioned above.

If it is personal information of more than one person, then access should not be given. For example, in relation to a neighbourhood complaint or an employee grievance matter.

## Responding to requests for information

Overall, responding to customers is a normal process which occurs every day at Council. Responding is often about following a common-sense approach. Council has a Customer Charter

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<sup>6</sup> NOTE: It is recognised that this guideline does not provide for every circumstance. Council holds responsibility for a broad and diverse range of functions which may have many complexities, risks and consequences.

which outlines minimum service standards and commitments for responding and resolving requests efficiently, promptly and professionally.

The steps and issues below provide a guide for replying to information requests.

### Doubt or uncertainty about providing access

If unsure about whether information can be provided, employees should consult their leader/supervisor/manager or Corporate Governance.

### Documents and information covered by this guideline

Council's commitment to openness extends to any and all documents and information held by Council, or under the control of Council. Depending on the request for information, employees may need to search for any drafts, emails, text messages, database records, corporate records systems and hardcopy/paper records. Devices including phones and cameras may also need to be searched.

### Explanation to be provided if access not given

Requestors seeking information should be provided with an explanation of the reason/s if they are not given access, whether verbally or in writing. Responses should reference at least one or more of the acceptable reasons nominated above. Employees must keep records of responses in accordance with record-keeping requirements, including by documenting verbal responses.

Refer to **Appendix A** for an example of a written response which could be sent. This provides suggested wording only. Sometimes a tailored individual reply will be necessary, and operational areas should also consider developing and using their own templates for common requests.

### Responding and providing access

Refer to **Appendix B** for an example response which could be sent, but which provides a suggestion only. Information could be provided in the form of copies of existing documents, or provide a tailored response which includes some or all of the requested information. As previously mentioned, verbal responses may be appropriate, especially if the request was made verbally.

### Costs for providing access

Providing access to information is a part of Council's normal services for which Council bears the associated costs, except in limited circumstances where fees or cost recovery is authorised (e.g. for paid property searches or court subpoenas).

In any instance where fees or costs are applicable, these should be no higher than the actual costs incurred by the organisation, taking into account any associated on-costs.

### Costs for providing physical paper copies

Documents should generally be provided digitally or via email. If the size exceeds email attachment limits, employees should use *Mimecast* or another approved tool to send an email which will enable the Requestor to download the information securely.

If a Requestor would like paper copies, Council may require the Requestor to pay for the copies at the rate/s applicable for access charges under section 57 of the RTI Act<sup>7</sup>. Such costs may be waived at Council's discretion, including if the total cost would be under \$40 or if the Requestor is the holder of a valid concession card.

## Review process

It is not mandatory for employees to review or revisit a request for information which has been declined, but this does not negate Council's general duty to respond to customers, plus the benefits of good communication. Furthermore, employees are also not prohibited from reconsidering a request, including as a type of review by a more senior officer.

In some cases, the circumstances for declining a request may have changed, or a Requestor may present relevant arguments or new information which requires a reply under Council's customer charter.

Requestors may also be referred make a formal application for access to documents under the RTI Act or IP Act, under which formal review rights are applicable.

## Identifying opportunities to improve access

### Improve processes or develop schemes for common requests

Employees and business areas should be watchful of any emerging patterns of common or popular requests for information.

Consideration should then be given to:

- Developing administrative access schemes or processes for streamlining such requests.
- Potential for proactive publication of information, which enables people to access it without making a request. This includes publishing additional digital data sets on Open Data.

### Publish significant and appropriate information online

As a minimum, Council must maintain a Publications Scheme on its website, which covers these seven classes of information<sup>8</sup>:

- About us (Who we are and what we do)
- Our services (The services we offer)
- Our finances (What we spend and how we spend it)
- Our priorities (What our priorities are and how we are doing)
- Our decisions (How we make decisions)
- Our policies (Our policies and procedures)
- Our lists (Lists and registers)

Significant and appropriate information must be included in the publication scheme.

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<sup>7</sup> Currently \$0.25 per black-and-white A4 page under [section 6\(1\)\(b\) of the Right to Information Regulation 2009](#)

<sup>8</sup> As required by section 21 of the RTI Act and the associated Ministerial Guidelines.

**Significant** information includes key initiatives and policy documents. Significant information may be identified by:

- experiencing a high demand for certain categories of information
- whether the information is required to be published by law, such as corporate plans, financial planning documents or public registers
- information relating to problems currently faced by Council which the community could help resolve
- the information relating to future challenges, such as events associated with climate change
- whether the information will facilitate industry development, efficient markets and growth in trade and commerce
- documents tabled in Parliament
- whether the information assists members of the public to identify what information is held by Council, such as an information asset register
- whether publication would promote Council accountability, such as reasons for certain decisions, governance arrangements and achievement of key performance targets
- information that could inform policy and program work of other agencies or non-government organisations, such as statistical information
- whether the information relates to a program or initiative that was the subject of a media release or highlighted in a corporate plan or strategy
- plans that underpin achievement of the Council's strategic and operational goals; and
- whether the information promotes community well being.<sup>9</sup>

**Appropriate** information for publication is about having regard to legislation, privacy and security concerns. Primarily, the appropriateness of the information for release can be assessed by reference to the *acceptable reasons for withholding access* as stated above.

## Special types of requests

### Requests from councillors

This guideline does not apply to requests for information from a current councillor or the mayor. Such requests must instead be handled in accordance with [section 170A](#) of the *Local Government Act 2009* and the associated *Councillors Acceptable Request Guidelines* as adopted by Council.

### Requests from journalists and dignitaries

Any requests from journalists or media should be referred to the Communication branch and the manager of the operational branch which is responsible for the subject matter. The *Employee Code of Conduct* affirms as follows:

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<sup>9</sup> These factors for assessing significance are from the OIC guideline [Proactive disclosure and publication schemes](#), as licenced under [Creative Commons Attribution 4.0 Australia Licence](#)



*As a general rule, only councillors or senior managers comment publicly on council business. Council business can be topical, sensitive and controversial and there is a process to be followed when making public comments.*

Responses to Members of Parliament and other dignitaries must only be sent by the Mayor or a senior employee designated in the *Protocol for correspondence to dignitaries*.

## Requests from police and law enforcement agencies

Police and government agencies may seek personal information from Council as part of their functions for investigating and enforcing compliance with laws.

Requests should be made **in writing** by a sufficiently senior officer, and include information setting out the reasons why the personal information is required.

This will apply to State and Federal agencies and local government, including internally for Council's own law enforcement functions.

Requests for personal information should meet all of these requirements:

- Be made by the investigating agency officer in writing.
- Explain what is being investigated and why the personal information is required.
- Include the agency's reference number (QPS use references starting with QP).

Alternatively, if the agency has a legal power to require council to provide information, the agency may exercise this power by issuing the relevant written notice under the legislation which provides the power<sup>10</sup>.

Council may disclose personal information to a "*law enforcement agency*" if it is satisfied on reasonable grounds that it is necessary under one of the clauses in IPP 11(1)(e) in the IP Act. For example, we must have sufficient evidence that disclosure is necessary for an agency to prevent, detect, investigate or prosecute a breach of a law imposing a penalty or sanction. When information is provided to police in this way, employees must:

- document the reasons why satisfied disclosure is necessary under IPP 11;
- keep a note of the disclosure with the documents and information that was released; and
- take all reasonable steps to ensure the information is only used for the relevant purpose, including by providing the following disclaimer (or similar) with the release:

*I am authorising release of this information as permitted by IPP11(1)(e) under the Information Privacy Act 2009, for public safety and law enforcement purposes. The personal information must be handled strictly in accordance with the IPP's. No unauthorised viewing, copying or use of its contents is permitted.*

NOTE: Ordinarily the *acceptable reasons* above will not be relevant to a request from a law enforcement agency.

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<sup>10</sup> disclosure in these circumstances isn't disclosure under RTI Act Section 11(1)(e), it is disclosure under RTI Act Section 11(1)(d), which does not have the same notation requirements.

## Formal access applications under the RTI Act and IP Act

Customers may be referred to make a formal application for access to documents under the RTI Act or the IP Act.

As applications are intended to be necessary only as a last resort, generally employees should still provide information up-front wherever possible, although there will be instances where employees should refer people to make a formal application.

Information about how to make an application is published on Council's website, including the application form plus details about fees and third party consultation.

Formal applications will usually generate more workload, as you and other officers may need to undertake thorough and time-consuming searches. This also creates delays for customers, with additional expenses for Council and the customer.

Corporate Governance will process the applications in accordance with the legislation and adopted internal procedures. This includes considering documents for publication by inclusion on the [disclosure log](#) on Council's website.

## Other legislative and court processes which seek or require access

This guideline does not apply to subpoenas, notices of non-party disclosure or similar court-issued notices requiring production of documents or information. Contact Corporate Governance for assistance in the event of such requests.

## Roles and responsibilities

As mentioned, employees and business areas across the organisation have a role to play in Council's commitment to being open and transparent.

### All employees (including supervisors/managers)

- Understand their role in Council's commitment to be open and transparent, including by undertaking relevant training, especially online training mandated by the organisation.
- Provide information where this forms part of normal duties or established processes, subject to this guideline any direction and guidance from their leader/supervisor/manager.
- Identify any emerging patterns of common or popular requests for information, for consideration of developing a scheme or process for streamlining such requests.
- Seek appropriate help or assistance if unsure about providing information.
- Do not direct other employees in a way which is contrary to the RTI Act.
- As a general rule, do not direct other employees in a way which is contrary to this guideline.

### Supervisors/managers

- Responsible for training and assisting their team/s to understand relevant limits and precautions for providing access, particularly in relation to requests the employees may receive as part of their role.

### Corporate Governance:

- Handling applications made under the RTI Act and IP Act
- Assist the organisation to develop an understanding of Administrative Access and RTI obligations, including the development of relevant training programs and packages.

- Develop a mandatory online training module in relation to privacy and access to information to be completed by all employees at least every 2 years.
- Provide guidance or advice on privacy and access to information questions or queries.
- Monitoring the completion rate of mandatory training for both RTI and privacy online training courses, and working with Learning and Management team to follow up on any uncompleted training.
- Responsible for ensuring these guidelines remain current and the ongoing implementation and review of these guidelines.
- Reviewing and updating the Publications Scheme at least annually.