



# Access to Information POLICY

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## Purpose

The purpose of the Access to Information Policy at Central Darling Shire Council (CDSC) is subject to NSW legislation that requires the Council to be open and accountable in the exercise of its functions, and to handle personal and health information in a fair and reasonable manner. CDSC 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 CDSC recognises that it must take into account the privacy of others, legal and commercially sensitive information.

This policy sets 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, CDSC will deal with requests to inspect documents in accordance with the Government Information (Public Access) Act (GIPAA) free of charge, but 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 CDSC's Schedule of Fees and Charges.

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

CDSC also may provide access to information under other legislation. Under the NSW Privacy and Personal Information Protection Act (PPIPA) 1998 and the NSW Health Records and Information Privacy Act (HRIPA) 2002, an individual also has a right to access and amend records held by Council which contain their personal details, matters related to their business affairs and any records containing information about their health. Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the GIPAA. 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 CDSC is required to give an access direction (whether the records are open or closed) for all their records that are at least thirty (30) years old in what is described as the "open access period". 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 CDSC subject to restrictions set out in s.268(3).

# Application

CDSC 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 CDSC. In respect of the latter the CDSC will make the information freely available in another format e.g., hard copy at the CDSC Administration Office. The open access information is:

- CDSC's policy documents.
- a publication guide with information about the CDSC's structure and functions and listing the type of information that is publicly available.
- a disclosure log of formal access applications where in CDSC'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 CDSCs have with private sector bodies.
- a record of open access information that CDSC does not make publicly available on the basis of an overriding public interest against disclosure.

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

These documents are:

## 1. Information about CDSC

- The model code of conduct prescribed under section 440(1) of the Local Government Act
- CDSC's adopted Code of Conduct
- Code of Meeting Practice
- Annual Report
- Annual Financial Reports
- Auditor's Report
- Workforce Management Plan
- Equal Employment Opportunity Policy concerning the Payment of Expenses and Provision of Facilities to the Mayor and Councillors
- Annual Reports of Bodies Exercising Functions Delegated by CDSC (e.g., Section 355/377 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 CDSC/Committee meetings (except meetings that are closed to the public)
- Division of Local Government, NSW Department of Premier and Cabinet Representative Reports presented at a meeting of CDSC.
- Land Register
- Register of Investments
- Register of Delegations

- Register of Graffiti removal works.
- Register of current Declarations of Disclosures of Political donations
- Register of Voting on Planning Matters

## **2. Plans and Policies**

- Local Policies adopted by CDSC concerning approvals and orders.
- Plans of Management for Community Land
- Environmental Planning Instruments, Development Control Plans and Contribution Plans

## **3. Information about Development Applications**

Development Applications and any associated documents received in relation to a proposed development, e.g.

- 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
- Records describing the general nature of documents that CDSC decides to exclude from public view after application of public interest test considerations.

## **4. 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 CDSC 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 CDSC.
- 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 CDSC to meet its requirements under relevant legislation. Copyright laws still apply to each document. The copyright-owner's consent is required for documents where copyright applies such as documents on development applications. This information would generally be available for inspection however may not be able to be copied.

In addition, from time-to-time CDSC 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 as a result of other requests.

CDSC will endeavour to release other information in response to an informal request, subject to any reasonable conditions as CDSC thinks fit to impose. However, notwithstanding the lodgement of an informal application, CDSC 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.

## Exemptions to Access

CDSC 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 CDSC's resources.

CDSC will always explain to the applicant its reasons for applying an exemption. CDSC 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.

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

The GIPA Act provides an exhaustive list of public interest considerations against disclosure. These are the **only** considerations against disclosure that CDSC 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.

In applying the public interest test, CDSC will **not** take into account:

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

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

Under GIPAA there are 12 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. These eight 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.
8. Specific information relating to Aboriginal and environmental heritage.

Generally, under GIPAA, CDSC 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 CDSC will apply a similar decision-making framework.

## Accessing Information and Making an application

The public may obtain access to information as follows:

- by searching the CDSC's website to see if it is already available
- by contacting CDSC and requesting the information. CDSC 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.

To make an **informal request** for access to information under GIPA Act, CDSC may require the completion of an 'Informal Access to Information Request' form. No fee is required on application.

To make a **formal request** for access to information under GIPA Act, the 'Formal Access to Information' Request Form should be completed. The Formal Application fee is \$30.00 and processing charges may be applicable (there is no GST in relation to these charges). An acknowledgement of such application will be provided by CDSC within five working days.

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

## Time Limits

In respect of formal applications, CDSC will notify applicants of the decision on an application within 20 working days, unless the applicant agrees to extend the time. CDSC may also extend the time by up to 15 working days where consultation with a third party is required or if CDSC needs to retrieve records from archives.

If access is deferred by CDSC, then CDSC 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 CDSC does not decide the applicant's access application within the above timeframes, it is deemed 'refused'. CDSC 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.

## Rights of Review and Appeal

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

1. Applicants can apply to CDSC for an **internal review**. This is 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.
2. 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 eight weeks from being notified of a decision to ask for this review.
3. If an applicant is not satisfied with the decision of the Information Commissioner or the internal reviewer or if they do not want to take these options, they can **apply to the Administrative Decisions Tribunal (ADT)**. If the applicant has already had a review by the Information Commissioner, they have four weeks from notification of the decision to make this application. If they haven't had a review by the Information Commissioner, they have eight weeks from notification of the decision to make this application.



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.

## Responsibilities

This policy and associated business rules will be formally reviewed, on a two-yearly basis.

The success of the Policy relies on everyone recognising information as an asset of strategic, operational, and administrative value; and handling it in a manner that is transparent and accountable. Policies can specify tasks, but unless responsibility is assigned and individuals are held accountable for carrying them out, implementation will be ineffective.

The **General Manager** is responsible for:

- authorising and promulgating Council Instructions regarding records Management.
- promoting compliance with this policy.
- managing the Council's information governance and management frameworks, policies and practices, and provision of advice to staff.
- provides sufficient support and resources for ensuring the successful implementation of the policy and guidance.
- ensures that adequate guidance is produced to support Council staff, contractors and outsourced providers in understanding and implementing the policy.
- promoting compliance with the policy and procedures; and
- fostering a culture of information as an asset and best practice recordkeeping and information management within the Council.

**The Director, Managers, and Supervisors shall be responsible for:**

- ensuring that officers under their management are aware of their information management obligations; and
- supporting and fostering a culture of information as an asset.
- ensuring full and accurate records of decisions and agreed actions of the project are created and captured into the corporate recordkeeping system.
- ensuring that high risk and high value records and information are identified for protection from loss and disaster; and
- ensuring records and information management is considered and included in systems and processes used.
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**The Customer Service Manager shall be responsible for:**

- advocating and fostering a culture of information as an asset and best practice recordkeeping and information management practices.
- approving Council's information management procedures and guidelines.
- approving strategies to support records management in Council; and
- preserving information of continuing value.



- advocating and fostering a culture of information as an asset and best practice recordkeeping and information management practices.
- reviewing, developing, and updating records management policies, procedures.
- reviewing, developing, and implementing strategies to support records and information.
- providing advice on records and information management.
- encouraging the incorporation of policy directives into business unit work procedures.

**The Records Management and Administration Officer shall be responsible for:**

- advocating and fostering a culture of information as an asset best practice recordkeeping and information management practices.
- managing the archiving and disposal of records over time.
- maintaining, monitoring, and reviewing Council's recordkeeping program.
- providing support to CM10 users through effective service desk support arrangements.
- creating and maintaining recordkeeping procedures; and
- delivering recordkeeping and CM10 training, support, and advice to all staff.
- the information management monitoring and review program.

**Customer Service Team** shall be responsible for:

- for maintaining the technology for Council's business information systems, including maintaining appropriate system accessibility, security and back up.
- ensuring that any actions, such as removing data from systems, storage, or folders, are undertaken in accordance with this and other relevant policies; and
- Maintenance of the corporate recordkeeping and business systems, the servers where the metadata and data reside, and the network environment to enable access to the recordkeeping and business applications, ensuring that all records and information are reliable, available, and accessible to staff when required.

**All Staff** must ensure that they:

- understand their records management obligations and policies that relate to their role.
- support and build a culture that promotes information as an asset.
- make sure that the record they destroy is not an agreement, contract, or a legal document.
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## Provisions

To meet the obligations of the Access to Information policy, CDSC will abide by the fundamental principles of the GIPA Act and the State Records Act

## Legislation

Council's records management practices comply with relevant Acts and Regulations and standards relating to records management.

Legislation Includes:

- *State Records Act 1998 - (Reviewed 2004)– (including standards and retention and disposal)*
- *Government Information (Public Access) Act 2009: 2022 – 2023 (GIPA)*
- *Privacy and Protection of Personal information Act 1998*
- *Evidence Act 1995*
- *Health Records and Information Privacy Act 2002*
- *Local Government Act 1993*
- *Standard on Full and Accurate Records (Standard 7)*
- *Standard on Managing a Records Management Program (Standard 8)*
- *Standard on the Physical Storage of State Records*
- *Standard on Recordkeeping in the Electronic Business Environment (Standard 4)*
- *Environment Protection Act*
- *Environmental Planning & Assessment Act*
- *Evidence Act 1995 (NSW)*
- *Fringe Benefits & Income Tax Assessment Act*
- *Insurance Act*
- *Local Government Act 1993*
- *Public Health Act & Regulations*
- *Public Sector Management Act 1988*
- *Roads Act & General Regulation*
- *Roads & Traffic Act*
- *State Emergency & Rescue Management Act*
- *Swimming Pools Act*

## Related Documents

- Records Management Framework
- Records Management Strategic Plan
- Access to Information Policy
- Internet and Email Policy
- Privacy Management Plan
- Bring Your Own Devices (BYOD) Policy
- Normal Administrative Practices (NAP)
- Workplace Surveillance Procedure – (which covers off on how information obtained through surveillance devices will be treated.)
- Workplace Privacy - Employee Information Procedure (*which outlines how employee records will be managed.*)

## Monitoring and Review

This policy will be monitored and reviewed by the responsible person to ensure compliance. Once adopted, it remains in force until it is reviewed by Council. It is to be reviewed approximately every two (2) years to ensure that it meets requirements, or sooner if the General Manager determines appropriate.