Access to information held by Local Councils

A Legislation Update by Planning Law Solutions

There are now new laws governing public access to information held by State and Local Government agencies. Access to Government records is now governed by the Government Information (Public Access) Act 2009 (GIPA Act) and related Regulation, which commenced on 1 July 2010. The purpose of the new law is to "improve the transparency and integrity of government in New South Wales" (Hansard, 24 June 2010).


The new law introduces the terms “mandatory proactive release” and “authorised proactive release”. Mandatory proactive release is the term given to information held by an agency, described as open access information, that must be made publicly available unless there is an overriding public interest against disclosure (GIPA Act, s6). The Act deems specified types of information to be open access information (s18). The Regulation also deems specified types of information held by local authorities to be open access information (Schedule 1). This information includes such things as development application files, building certificates, proposed compulsory acquisition plans, leases and licences of public land. Any person may inspect open access information as of right.

Authorised proactive release is the term given to all other information held by an agency. An agency "is authorised" to make this information publicly available, unless there is an overriding public interest against disclosure of information (GIPA Act, s7).

The public interest test requires the decision maker to identify and compare the public interest in favour of disclosure against the public interest against disclosure. If there are no public interest reasons against disclosure, then the information must be made publicly available. The GIPA Act identifies principles that apply to the assessment of applications under the public interest (s15).

An agency may decide to allow informal or formal access to certain types of information. As the name suggests, informal access allows a person to obtain information without making a formal application, for example an agency may allow a request to be made by telephone, e-mail, letter, fax or in person. The
disadvantage of informal release is that an agency cannot be required to disclose information in response to an informal request, and cannot be required to consider an informal request (GIPA, s8(3)). There is no right of appeal against a determination of a request for informal release.

An applicant may choose to make a formal access application even if the agency allows informal access.

The Office of the Information Commissioner says that a fee may not be imposed for informal release of information (Knowledge Update, June 2010). However, this appears to contradict the *Local Government Act 1993* which permits a local government authority to charge a fee for information (s608).

Unlike the release of information under section 12 of the *Local Government Act 1993* (before its repeal), there are review and appeal rights, on the merits, under the GIPA Act. A "person aggrieved" by a decision of an agency has a right of internal review (s82), a right of review by the Information Commissioner (s89) and a right of appeal to the Administrative Decisions Tribunal (s100). Time limits apply.

For further information please contact Michael Mantei of Planning Law Solutions.

Michael Mantei

Solicitor and Accredited specialist local government and planning law

T: 8215 1558

E: michael@planninglawyer.com.au