



Circular Details	Circular No 19-21 / 26 September 2019 / A664471
Previous Circular	19-08 Consultation on revised IPC Guideline 1 Returns of Interests
Who should read this	Councillors / General Managers / Governance staff
Contact	Council Governance / olg@olg.nsw.gov.au / (02) 4428 4100
Action required	Information

Release of IPC Guideline 1 Returns of Interests

What's new or changing?

- The Information and Privacy Commission (IPC) has finalised and issued *Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons* (Guideline 1).
- Councils should review the positions they currently identify as designated persons in light of Guideline 1 by applying the principles set out in the attachment to this circular.

What this will mean for your council

- Guideline 1 states that councillors' and designated persons' returns of interests must be made publicly available free of charge on councils' websites, unless there is an overriding public interest against disclosure of the information contained in them or to do so would impose unreasonable additional costs on the council.
- Where a council decides that there is an overriding public interest against the disclosure of some of the information contained in a return, consideration should be given to releasing an edited copy of the return (for example redacting the individual's signature and residential address).
- Where information is deleted from a return, councils should keep a record indicating, in general terms, the nature of the information redacted from the return in accordance with section 6(5) of the *Government Information (Public Access) Act 2009* (GIPA Act).
- Councils should be mindful when identifying a position as the position of a designated person or a committee as a committee whose members are designated persons, that the consequence of this is that the council will be required to publish information contained in those persons' returns of interests on their websites.
- The Office of Local Government (OLG) would encourage councils to review the positions and committee memberships that they currently identify as those of designated persons with this consequence in mind.
- OLG would encourage councils to apply the principles set out in the attachment to this circular when identifying positions and committee memberships as those of designated persons.

Key points

- Section 6 of the GIPA Act provides for the mandatory proactive release by NSW public sector agencies (including councils) of open access information. The GIPA Act provides that open access information must be made publicly available free of charge on a website maintained by the agency.
- Councillors' and designated persons' returns of interests are prescribed as open access information for local government under Schedule 1 to the *Government Information (Public Access) Regulation 2018*.

Where to go for further information

- Guideline 1 and further information on open access information requirements for local government is available on the IPC's website at www.ipc.nsw.gov.au.
- The attachment to this circular provides guidance on the principles councils should apply when identifying positions and committee memberships as those of designated persons.
- See the [Guide to Completing Returns of Interests](#) which is available on OLG's website, for information on how to complete returns of interests and what information to include.
- Contact the IPC at 1800 472 679.
- Contact OLG's Council Governance Team on 02 4428 4100.



Tim Hurst
Deputy Secretary
Local Government, Planning and Policy

Office of Local Government
5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541
T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209
E olg@olg.nsw.gov.au W www.olg.nsw.gov.au ABN 44 913 630 046

ATTACHMENT

Identifying “designated persons”

The obligation to complete returns of interests

Under the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct), councillors and designated persons are required to complete and submit returns of interests within 3 months of:

- becoming a councillor or designated person
- 30 June of each year, and
- becoming aware of a new interest that must be disclosed in the return.

Who is a “designated person”?

Under clause 4.8 of the Model Code of Conduct, designated persons include:

- the general manager
- senior staff of councils for the purposes of section 332 of the *Local Government Act 1993*
- any other member of staff or delegate of the council who holds a position identified by the council as the position of a designated person because it involves the exercise of a function that could give rise to a conflict of interest, and
- a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of functions that could give rise to a conflict of interest.

Identifying “designated persons”

The requirement to publish returns of interests is designed to operate as a transparency mechanism to ensure that key decision makers in councils appropriately disclose and manage pecuniary interests they may have in matters they are dealing with.

Councils should be mindful when identifying a position as the position of a designated person or a committee as a committee whose members are designated persons, that the consequence of this is that the council will be required to publish personal information about those persons on their websites.

Councils should weigh this consequence against the risk that the requirement to publish returns of interests is designed to address to ensure that this is a proportionate mitigation of that risk. This assessment should be based on a consideration of the nature, responsibilities and functions of a role or a committee and the type and level of delegations it exercises.

Positions or committee memberships involving the performance of low-level administrative or regulatory functions that carry limited or no discretion or financial delegations, should not be identified as positions of designated persons.

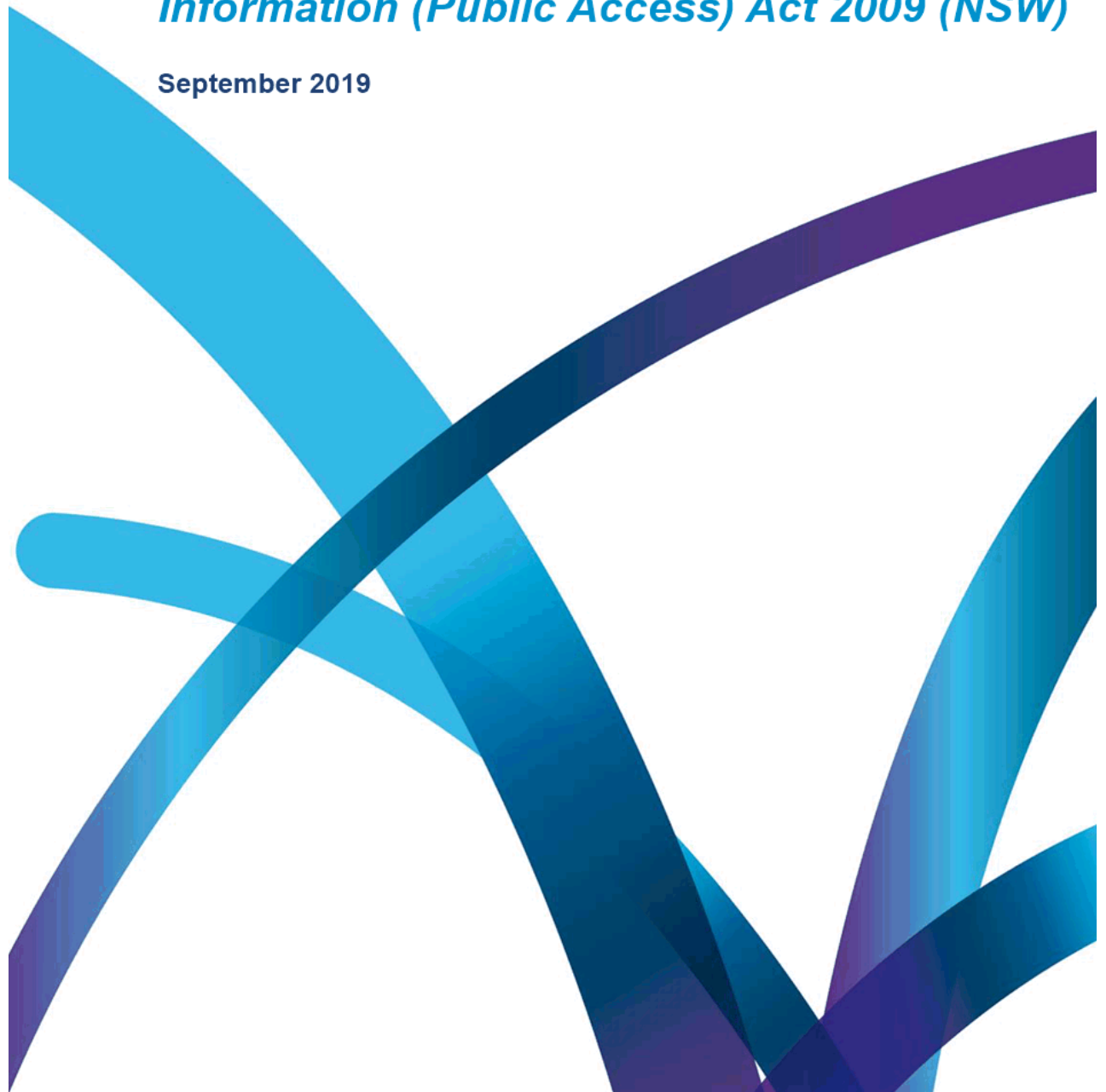
The types of positions or committee memberships that should be identified as designated persons are those that exercise functions or decision-making that involve the potential for significant risk to the council, including of damage to the council’s reputation, where conflicts of interest are not disclosed and appropriately managed.



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Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the *Government Information (Public Access) Act 2009 (NSW)*

September 2019



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Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the *Government Information (Public Access) Act 2009 (NSW)*

The Information Commissioner is empowered under sections 12(3) and 14(3) of the *Government Information (Public Access) Act 2009 (NSW)* ("GIPA Act") to issue guidelines to assist agencies regarding the public interest considerations in favour of, or against, disclosure.

These Guidelines, made pursuant to those sections of the GIPA Act, are made to assist local councils to determine the public interest considerations for and against disclosure of information contained in the returns disclosing the interests of councillors and designated persons as required by clause 1(2)(a) of Schedule 1 of the *Government Information (Public Access) Regulation 2018 (NSW)* ('the GIPA Regulation').

These Guidelines supplement the provisions of the GIPA Act. Agencies must have regard to them in accordance with section 15(b) of the GIPA Act.

The Guidelines have been developed in consultation with the Office of Local Government, and the Privacy Commissioner.

The operation and effectiveness of the Guidelines will be reviewed after two years or as required by any intervening developments relevant to the Guideline.

Elizabeth Tydd

**IPC CEO, Information Commissioner
NSW Open Data Advocate**

September 2019

Overview

Part 4 of the *Model Code of conduct for Local Councils in NSW (2018)* (Model Code) requires a councillor or a designated person to complete and lodge with the general manager a return disclosing his or her pecuniary interests. That return may contain personal information about each councillor and designated person, including his or her name, address and signature, as well as information about property and share holdings, gifts received, debts owed, other sources of income, and positions held in a trade union or business or professional organisation. The form of the return is set out in Schedule 2 of the Model Code.

Mandatory proactive release, also known as open access information, is one of the four information access pathways under the GIPA Act. Proactive release advances the object of the GIPA Act to “maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective ...” The GIPA Act contributes to the building of an integrity culture through the establishment of a framework based around the principles of pro-active disclosure and a presumption in favour of public interest disclosure.

The mandatory proactive release provisions of the GIPA Act and the GIPA Regulation apply to the disclosure of information contained in returns disclosing the interests of councillors and designated persons. The combined effect of the GIPA Act and the GIPA Regulation is that the information in the returns needs to be disclosed on the website of each local council, unless to do so would impose unreasonable costs on the council, or if the council determined there was an overriding public interest against disclosing the information.

In order to decide whether there is an overriding public interest against disclosure, councils need to apply the public interest test, and weigh the public interest considerations in favour of and public interest considerations against disclosure.

This Guideline recognises that disclosing the information in the returns furthers openness, transparency and accountability in local government. It also facilitates the identification and management of potential conflicts of interest that might arise where councillors and other staff participate in decisions from which they may derive, or be perceived to derive, personal or financial benefit.

However, the returns may contain personal information about the person concerned, and, potentially, about third parties such as family members. This is information which individuals may have concerns about disclosing publicly on a website and may object to publication following consultation under the GIPA Act.

[Section 6\(4\)](#) of the GIPA Act requires agencies to “facilitate public access to open access information contained in a record by deleting matter from a copy of the record to be made publicly available, if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record, and it is practicable to delete the matter”.

Guideline 1: For local councils on the disclosure of information **September 2019**

The fact that information is open access information is an important factor in favour of disclosure which must be balanced against any applicable considerations against disclosure, as was noted by the NSW Civil and Administrative Tribunal Appeal Panel in two recent cases¹. In *Webb v Port Stephens Council (No. 3)* [2018] NSWCATAP 286, the Appeal Panel stated at paragraph 77:

Where the information in issue is in fact open access information, as noted by the Appeal Panel in McEwan, this is an “important factor in favour of disclosure” (in addition to other relevant factors in favour of disclosure, including the general public interest in favour of disclosure provided for in s12(1) of the GIPA Act) when it comes to determining whether the balance lies between a public interest consideration against disclosure and the public interest in favour of disclosure.

Open access information should be available free of charge on a website maintained by the relevant agency. Open access information can also be made publically available in other ways, however at least one of the ways in which the information is accessible must be free of charge.²

Consequently, this Guideline provides that the requirement in Clause 1(2)(a) of [Schedule 1](#) of the GIPA Regulation, that returns of councillors and designated persons be released as part of local councils' open access information, should be interpreted as follows:

- The returns should be made publicly available on the council's website free of charge unless there is an overriding public interest against disclosure or to do so would impose unreasonable additional costs on the council
- The fact that a return of interests is open access information is a factor in favour of disclosure in balancing the public interest
- In the circumstances where council decides that there is an overriding public interest against disclosure of the return, consideration should then be given to whether it is practicable to release an edited copy of the return (for example redacting the individual's signature or residential address) in accordance with [section 6\(4\)](#) of the GIPA Act
- If it is practicable to do so, then the information should be deleted from a copy of the return and the remainder of the return made available on the council's website
- Where information is deleted from a return, council should keep a record indicating, in general terms, the nature of the information redacted in accordance with section 6(5) of the GIPA Act
- Copies of publicly available information about returns may be made in accordance with [clause 5\(1\)\(b\)](#) of the GIPA Regulation.

Releasing the information contained in the returns of councillors and designated persons in this manner facilitates the legitimate public interest in having access to the information, while protecting the individual's right to privacy and safety.

¹ *McEwan v Port Stephens Council* [2018] NSWCATAP 211, *Webb v Port Stephens Council (No. 3)* [2018] NSWCATAP 286

² GIPA Act sections 6(2);6(3)

Part 1: Returns disclosing the interests of councillors and designated persons

What is a return?

- 1.1 Part 4 of the [Model Code](#) establishes the requirements for the disclosure of pecuniary interests by councillors and designated persons. This includes disclosures of interests in written returns (returns of interests) and disclosures of pecuniary interests at meetings. This Guideline deals only with requirements in relation to written returns of interests and does not affect the obligations of councillors or committee members to disclose pecuniary interests at meetings.
- 1.2 The Model Code is made under section 440 of the *Local Government Act 1993* (NSW) (LGA) and Part 8 the *Local Government Regulation 2005*. Part 4 of the Model Code replicates and replaces the requirements previously set out in sections 441- 449 of the LGA.
- 1.3 Clause 4.21 of the Model Code requires that councillors and designated persons prepare and submit written returns of interest within three months after:
 - becoming a councillor or designated person, and
 - 30 June of each year, and
 - becoming aware of an interest they are required to disclose.
- 1.4 A 'designated person' is defined in clause 4.8 of the Model Code as:
 - *the general manager*
 - *other senior staff of the council*
 - *a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under the LGA or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest*
 - *a person who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.*
- 1.5 Clause 4.1 of the Model Code defines a 'pecuniary interest' as one involving a "reasonable likelihood or expectation of appreciable financial gain or loss to the person". Clause 4.2 provides that a person "will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6" (which are interests that do not have to be disclosed).

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- 1.6 For the purposes of the Model Code, a pecuniary interest is one held by the councillor and designated person, or his or her spouse, de facto partner, relative, partner or employer, or a company or other body of which the person, or a nominee, partner or employer of the person, is a shareholder or member.³ However, a person is not taken to have a pecuniary interest in a matter:
- if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body; or*
 - just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown; or*
 - just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.⁴*
- 1.7 The returns are designed to promote openness and transparency in local government, and to avoid a conflict of interest on the part of councillors and senior council staff who exercise decision-making functions.

What information do the returns contain?

- 1.7 Part 2 of Schedule 1 of the Model Code sets out the matters that must be disclosed in the returns of interests in the following categories:
- interests in real property: clauses 5 - 8
 - gifts: clauses 9-11
 - contributions to travel: clauses 12-14
 - interests and positions in corporations: clauses 15-18
 - interests as a property developer or a close associate of a property developer: clauses 19-20
 - positions in trade union and professional or business associations: clauses 21-22
 - dispositions of real property: clauses 23-25
 - sources of income: clauses 26-30
 - debts: clauses 31 - 33
 - discretionary disclosures: clause 34 (A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of the Schedule).
- 1.8 The form of the return is provided in Schedule 2 of the [Model Code](#).

³ Clause 4.4 of the Model Code

⁴ Clause 4.5 of the Model Code

Guideline 1: For local councils on the disclosure of information**September 2019****Disclosure under the LGA now replaced with the GIPA Act and Regulations**

- 1.9 The LGA previously required that the current version of the return of interests of councillors and designated persons was to be made available for public inspection free of charge.
- 1.8 In 2009, the GIPA Act replaced section 12 of the LGA with the mandatory proactive release provisions in [sections 6](#) and [18](#) of the GIPA Act, and the GIPA Regulation (see [Part 2](#)).

Part 2: Disclosure requirements under the GIPA Act and the public interest test

Mandatory disclosure requirements

- 2.1 [Section 6](#) of the GIPA Act requires agencies to make certain information publicly available. This information is known as open access information. [Section 18](#) contains a list of the open access information that all agencies must make publicly available. Schedule 1 to the GIPA Regulation lists additional open access information relevant only to local councils. This includes the returns of the interests of councillors and designated persons (see [clause 1\(2\)\(a\)](#) of Schedule 1).
- 2.2 The GIPA Act requires under section 6 that open access material must be made publicly available unless there is an overriding public interest against disclosure. Section 6(2) provides that the information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate.
- 2.3 Section 6(4) requires agencies to facilitate public access to open access information by deleting matter (content) if it is practicable to do so. This facilitates the release of open access information by enabling any matter subject to an overriding public interest against disclosure to be deleted so that the remainder of the information can be released. In circumstances where council determines that there is an overriding public interest against disclosure of open access information, section 6(4) may operate to require public release of the remaining open access information which is not subject to the overriding public interest against disclosure. Where information is deleted in accordance with section 6(4), the agency is required to keep a record indicating, in general terms, the nature of the information that has been redacted (see section 6(5)).
- 2.4 [Part 2](#) of the GIPA Regulation also provides that local councils must provide a copy of a record containing the information (or providing the facilities for making a copy of a record containing the information) to any person either free of charge or for a charge not exceeding the reasonable cost of photocopying.
- 2.5 The combined effect of these provisions is that information in the returns of the interests of councillors and designated persons needs to be made available on a council's website, unless there is an overriding public interest against such disclosure, or if placing it on the web would impose unreasonable costs on a council.

Guideline 1: For local councils on the disclosure of information**September 2019****The public interest test**

- 2.6 The GIPA Act provides that there is a presumption in favour of disclosure of government information unless there is an overriding public interest against disclosure (section 5). In order to determine if there is an overriding public interest against disclosing information in the returns of the interests of councillors and designated persons, councils need to apply the public interest test under [Part 2](#) of the GIPA Act.
- 2.7 The fact that a return of interests is open access information is an important factor in favour of disclosure which must be balanced against any applicable considerations against disclosure. In balancing the public interest decision makers should have regard to the intent of the legislature and apply the Act consistent with the objects of section 3(2) of the GIPA Act.
- 2.8 The public interest test is described in [section 13](#) of the GIPA Act as “[t]here is an overriding public interest against disclosure of government information for the purposes of this Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure”.
- 2.9 In applying the public interest test factors such as privacy may be considered. While the note to [section 12](#) provides a non-exhaustive list of examples of factors that may be considered in favour of disclosing information, only those considerations listed in the Table in [section 14](#) may be taken into account in deciding that information should not be disclosed. The considerations against disclosure must be such that they outweigh those in favour, overturning the general presumption in the GIPA Act in favour of disclosure (see [section 5](#)).
- 2.10 The Information Commissioner has published the following resources to assist agencies to apply the public interest test:
- [Guideline 4: Personal information as a public interest consideration under the GIPA Act](#)
 - [What is the public interest test?](#)

Part 3: How the information on returns should be disclosed

Public interest considerations in favour of disclosure

- 3.1 The note in [section 12](#) of the GIPA Act contains a number of factors that favour disclosure of information, including the following:
- (a) Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.*
 - (b) Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.*
 - (c) Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.*
 - (d) The information is personal information of the person to whom it is to be disclosed.*
 - (e) Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.*

Guideline 1: For local councils on the disclosure of information **September 2019**

- 3.2 Disclosure of the returns of the interests of councillors and designated persons promotes some of these public interest considerations in favour of disclosure (see (a), (b), (c) and (e)). It furthers openness, transparency and accountability in local government. Disclosing the returns also protects the integrity of councils' decision-making processes by allowing scrutiny of potential conflicts of interests that would arise where councillors or staff participate in decision making from which they or their close associates may derive, or be perceived to derive, personal or financial benefit.
- 3.3 To assist members of the public to have confidence that potential conflicts of interest are avoided, they should have sufficient information about the areas of conflict. In this respect, disclosure of the information contained in the returns is an important element in promoting public accountability.

Public interest considerations against disclosure

- 3.4 Councillors and designated persons may be required to disclose personal information in the returns. In addition to their names and addresses, the returns include details about each of their property and share holdings, debts and family business interests, as well as their signatures.
- 3.5 Clause 3 in the Table in [section 14](#) of the GIPA Act lists as a consideration against disclosure the fact that information may reveal someone's personal information, or would contravene an information privacy principle under the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act). An individual has a right to protect the privacy of their personal information. Given the amount of personal information that may be contained in the returns, special care should be taken to protect this right.
- 3.6 The balancing of public interest considerations may necessitate consideration of privacy protection principles and the interaction between the GIPA Act and the PPIP Act is well established within both statutes. While a return may reveal personal information, which is a public interest consideration against disclosure, this is not a conclusive presumption against disclosure. It is just one of the relevant factors that need to be weighed against other factors for and against disclosure. In this regard the considerations must be weighed in conducting the public interest test and this balancing should be informed by section 5 and section 20(5) of the PPIP Act which provide that the GIPA Act is not limited by the PPIP Act.
- 3.7 A further consideration against disclosure listed in clause 3 of the Table in [section 14](#) is where release of the information may expose a person to a risk of harm or of serious harassment or serious intimidation. It is foreseeable that disclosing the type and combination of information contained in the returns on a council's website could expose a person to harassment and intimidation, and potentially serious harm or identity theft.
- 3.8 In *Pallier v NSW State Emergency Service* [2016] NSWCATAD 293, the NSW Civil and Administrative Tribunal indicated that the intimidation or harassment needs to be heavy, weighty or grave and not trifling or transient.⁵ The risk needs to be considered objectively. Any evidence of the risk should be as it currently stands, rather than evidence of past actions.⁶

⁵ *Pallier v NSW State Emergency Service* [2016] NSWCATAD 293, paragraph 81

⁶ *Ibid*, paragraph 85.

Guideline 1: For local councils on the disclosure of information**September 2019****Application of section 6(4) of the GIPA Act**

- 3.9 In circumstances where council determines that there is an overriding public interest against disclosure of a return of interest, council may still be required to release an edited copy of the return.
- 3.10 [Section 6\(4\)](#) of the GIPA Act requires agencies 'must facilitate public access to open access information contained in a record by deleting matter from a copy of the record if disclosure of the matter would otherwise be prevented due to an overriding public interest against disclosure, and it is practicable to delete the matter'.
- 3.11 The type of matter which might be deleted from a return in these circumstances will vary depending on the public interest considerations applied. However, examples might include the signatures or residential address of the individual making the return.
- 3.12 Where information is deleted from a return, council should keep a record indicating, in general terms, the nature of the information redacted in accordance with section 6(5) of the GIPA Act

Conclusion

- 3.13 Disclosure of information contained in the returns of the interests of councillors and designated persons is an important public accountability measure. Open access information should be treated as a special class of information when determining information access. Accordingly, the threshold to displace Parliament's intent that it is open access is set at a high level.
- 3.14 The requirement in clause 1(2)(a) of [Schedule 1](#) of the GIPA Regulation that returns of councillors and designated persons be released as part of local councils' open access information should be interpreted as follows:
- The returns should be made publicly available on the council's website unless there is an overriding public interest against release or to do so would impose unreasonable additional costs on council.
 - The fact that a return of interests is open access information is a factor in favour of disclosure in balancing the public interest.
 - In the circumstances where council decides that there is an overriding public interest against disclosure, consideration should then be given to whether it is practicable to release an edited copy of the record (for example redacting the individual's signature or residential address) in accordance with [section 6\(4\)](#) of the GIPA Act.
 - If it is practicable to do so, then the information should be deleted from a copy of the record and the remainder of the return made available on the council's website.
 - Where information is deleted from a return, council should keep a record indicating, in general terms, the nature of the information redacted.
 - Copies of publicly available information about returns may be made in accordance with [clause 5\(1\)\(b\)](#) of the GIPA Regulation.
- 3.15 Releasing the information contained in the returns of councillors and designated persons in this manner facilitates the legitimate public interest in having access to the information, while respecting other considerations against disclosure including privacy.

Guideline 1: For local councils on the disclosure of information**September 2019****Document information**

Title:	Guidelines for local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the Government Information (Public Access) Act 2009 (NSW)
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1. Document history

Version	Date	Reason for amendment
1.1	July 2014	Accessibility update
2	May 2019	Review of content

Local Government Act 1993 No 30

Current version for 25 June 2019 to date (accessed 30 September 2019 at 10:41)

Chapter 11 ▶ Part 1 ▶ Section 332

332 Determination of structure

- (1) A council must, after consulting the general manager, determine the following:
 - (a) the senior staff positions within the organisation structure of the council,
 - (b) the roles and reporting lines (for other senior staff) of holders of senior staff positions,
 - (c) the resources to be allocated towards the employment of staff.
- (1A) The general manager must, after consulting the council, determine the positions (other than the senior staff positions) within the organisation structure of the council.
- (1B) The positions within the organisation structure of the council are to be determined so as to give effect to the priorities set out in the strategic plans (including the community strategic plan) and delivery program of the council.
- (2) A council may not determine a position to be a senior staff position unless:
 - (a) the responsibilities, skills and accountabilities of the position are generally equivalent to those applicable to the Executive Band of the Local Government (State) Award, and
 - (b) the total remuneration package payable with respect to the position is equal to or greater than the minimum remuneration package (within the meaning of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*) payable with respect to senior executives whose positions are graded Band 1 under the *Government Sector Employment Act 2013*.
- (3) For the purposes of subsection (2) (b), the total remuneration package payable with respect to a position within a council's organisation structure includes:
 - (a) the total value of the salary component of the package, and
 - (b) the total amount payable by the council by way of the employer's contribution to any superannuation scheme to which the holder of the position may be a contributor, and
 - (c) the total value of any non-cash benefits for which the holder of the position may elect under the package, and
 - (d) the total amount payable by the council by way of fringe benefits tax for any such non-cash benefits.

Government Information (Public Access) Act 2009 No 52

Current version for 1 July 2019 to date (accessed 3 October 2019 at 16:16)

Part 2 ▶ Division 1 ▶ Section 6

6 Mandatory proactive release of certain government information

- (1) An agency must make the government information that is its *open access information* publicly available unless there is an overriding public interest against disclosure of the information.
Note. Part 3 lists the information that is open access information.
- (2) Open access information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate.
- (3) At least one of the ways in which an agency makes open access information publicly available must be free of charge. Access provided in any other way can be charged for.
- (4) An agency must facilitate public access to open access information contained in a record by deleting matter from a copy of the record to be made publicly available if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record and it is practicable to delete the matter.
- (5) An agency must keep a record of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure. The record is to indicate only the general nature of the information concerned.
- (6) Nothing in this section or the regulations requires or permits an agency to make open access information available in any way that would constitute an infringement of copyright.

Government Information (Public Access) Act 2009 No 52

Current version for 1 July 2019 to date (accessed 30 September 2019 at 13:59)

Part 2 > Division 2 > Section 14

14 Public interest considerations against disclosure

- (1) It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1.
- (2) The public interest considerations listed in the Table to this section are the only other considerations that may be taken into account under this Act as public interest considerations against disclosure for the purpose of determining whether there is an overriding public interest against disclosure of government information.
- (3) The Information Commissioner can issue guidelines about public interest considerations against the disclosure of government information, for the assistance of agencies, but cannot add to the list of considerations in the Table to this section.
- (4) The Information Commissioner must consult with the Privacy Commissioner before issuing any guideline about a privacy-related public interest consideration (being a public interest consideration referred to in clause 3 (a) or (b) of the Table to this section).

Table

1 Responsible and effective government

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

- (a) prejudice collective Ministerial responsibility,
- (b) prejudice Ministerial responsibility to Parliament,
- (c) prejudice relations with, or the obtaining of confidential information from, another government,
- (d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions,
- (e) reveal a deliberation or consultation conducted, or an opinion, advice or recommendation given, in such a way as to prejudice a deliberative process of government or an agency,
- (f) prejudice the effective exercise by an agency of the agency's functions,
- (g) found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence,
- (h) prejudice the conduct, effectiveness or integrity of any audit, test, investigation or review conducted by or on behalf of an agency by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).



2 Law enforcement and security

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

- (a) reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant,
- (b) prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law,
- (c) increase the likelihood of, or prejudice the prevention of, preparedness against, response to, or recovery from, a public emergency (including any natural disaster, major accident, civil disturbance or act of terrorism),
- (d) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person,
- (e) endanger the security of, or prejudice any system or procedure for protecting, any place, property or vehicle,
- (f) facilitate the commission of a criminal act (including a terrorist act within the meaning of the *Terrorism (Police Powers) Act 2002*),
- (g) prejudice the supervision of, or facilitate the escape of, any person in lawful custody,
- (h) prejudice the security, discipline or good order of any correctional facility.

3 Individual rights, judicial processes and natural justice

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) reveal an individual's personal information,
- (b) contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002*,
- (c) prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings,
- (d) prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness,
- (e) reveal false or unsubstantiated allegations about a person that are defamatory,
- (f) expose a person to a risk of harm or of serious harassment or serious intimidation,
- (g) in the case of the disclosure of personal information about a child—the disclosure of information that it would not be in the best interests of the child to have disclosed.



4 Business interests of agencies and other persons

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market,
- (b) reveal commercial-in-confidence provisions of a government contract,
- (c) diminish the competitive commercial value of any information to any person,
- (d) prejudice any person's legitimate business, commercial, professional or financial interests,
- (e) prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

5 Environment, culture, economy and general matters

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) endanger, or prejudice any system or procedure for protecting, the environment,
- (b) prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge,
- (c) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any animal or other living thing, or threaten the existence of any species,
- (d) damage, or prejudice the ability of the Government or an agency to manage, the economy,
- (e) expose any person to an unfair advantage or disadvantage as a result of the premature disclosure of information concerning any proposed action or inaction of the Government or an agency.

6 Secrecy provisions

- (1) There is a public interest consideration against disclosure of information if disclosure of the information by any person could (disregarding the operation of this Act) reasonably be expected to constitute a contravention of a provision of any other Act or statutory rule (of this or another State or of the Commonwealth) that prohibits the disclosure of information, whether or not the prohibition is subject to specified qualifications or exceptions.
- (2) The public interest consideration under this clause extends to consideration of the policy that underlies the prohibition against disclosure.



7 Exempt documents under interstate Freedom of Information legislation

(1)

There is a public interest consideration against disclosure of information communicated to the Government of New South Wales by the Government of the Commonwealth or of another State if notice has been received from that Government that the information is exempt matter within the meaning of a corresponding law of the Commonwealth or that other State.

(2)

The public interest consideration under this clause extends to consideration of the policy that underlies the exemption.

(3)

In this clause, a reference to a corresponding law is a reference to:

(a)

the *Freedom of Information Act 1982* of the Commonwealth, or

(b)

a law of any other State that is prescribed by the regulations as a corresponding law for the purposes of this clause.

